

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—111th Cong., 1st Sess.

S. 1692

To extend the sunset of certain provisions of the USA PATRIOT Act and the authority to issue national security letters, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. LEAHY

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “USA PATRIOT Act
5 Sunset Extension Act of 2009”.

6 **SEC. 2. SUNSETS.**

7 (a) SECTIONS 206 AND 215 SUNSET.—

8 (1) IN GENERAL.—Section 102(b)(1) of the
9 USA PATRIOT Improvement and Reauthorization

1 Act of 2005 (Public Law 109–177; 50 U.S.C. 1805
2 note, 50 U.S.C. 1861 note, and 50 U.S.C. 1862
3 note) is amended by striking “2009” and inserting
4 “2013”.

5 (2) CONFORMING AMENDMENTS.—

6 (A) IN GENERAL.—Section 601(a)(1)(D)
7 of the Foreign Intelligence Surveillance Act of
8 1978 (50 U.S.C. 1871(a)(1)(D)) is amended by
9 striking “section 501;” and inserting “section
10 502 or under section 501 pursuant to section
11 102(b)(2) the USA PATRIOT Improvement
12 and Reauthorization Act of 2005 (Public Law
13 109–177; 50 U.S.C. 1861 note);”.

14 (B) APPLICATION UNDER SECTION 404 OF
15 THE FISA AMENDMENTS ACT OF 2008.—Section
16 404(b)(4)(A) of the FISA Amendments Act of
17 2008 (Public Law 110–261; 122 Stat. 2477) is
18 amended by striking the period at the end and
19 inserting “, except that paragraph (1)(D) of
20 such section 601(a) shall be applied as if it read
21 as follows:

22 ‘(D) access to records under section 502 or
23 under section 501 pursuant to section
24 102(b)(2) the USA PATRIOT Improvement

1 and Reauthorization Act of 2005 (Public Law
2 109–177; 50 U.S.C. 1861 note);’.”.

3 (C) EFFECTIVE DATE.—The amendments
4 made by this paragraph shall take effect on De-
5 cember 31, 2013.

6 (b) EXTENSION OF SUNSET RELATING TO INDI-
7 VIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS.—

8 (1) IN GENERAL.—Section 6001(b) of the Intel-
9 ligence Reform and Terrorism Prevention Act of
10 2004 (Public Law 108–458; 50 U.S.C. 1801 note)
11 is amended to read as follows:

12 “(b) SUNSET.—

13 “(1) REPEAL.—Subparagraph (C) of section
14 101(b)(1) of the Foreign Intelligence Surveillance
15 Act of 1978 (50 U.S.C. 1801(b)(1)), as added by
16 subsection (a), is repealed effective December 31,
17 2013.

18 “(2) TRANSITION PROVISION.—Notwithstanding
19 paragraph (1), subparagraph (C) of section
20 101(b)(1) of the Foreign Intelligence Surveillance
21 Act of 1978 (50 U.S.C. 1801(b)(1)) shall continue
22 to apply after December 31, 2013, with respect to
23 any particular foreign intelligence investigation or
24 with respect to any particular offense or potential of-

1 fense that began or occurred before December 31,
2 2013.”.

3 (2) CONFORMING AMENDMENT.—

4 (A) IN GENERAL.—Section 601(a)(2) of
5 the Foreign Intelligence Surveillance Act of
6 1978 (50 U.S.C. 1871(a)(2)) is amended by
7 striking the semicolon at the end and inserting
8 “pursuant to subsection (b)(2) of section 6001
9 of the Intelligence Reform and Terrorism Pre-
10 vention Act of 2004 (Public Law 108–458; 50
11 U.S.C. 1801 note);”.

12 (B) EFFECTIVE DATE.—The amendment
13 made by subparagraph (A) shall take effect on
14 December 31, 2013.

15 (c) NATIONAL SECURITY LETTERS.—

16 (1) IN GENERAL.—Effective on December 31,
17 2013, the following provisions of law are amended to
18 read as such provisions read on October 25, 2001:

19 (A) Section 2709 of title 18, United States
20 Code.

21 (B) Section 1114(a)(5) of the Right to Fi-
22 nancial Privacy Act of 1978 (12 U.S.C.
23 3414(a)(5)).

1 (C) Subsections (a) and (b) of section 626
2 of the Fair Credit Reporting Act (15 U.S.C.
3 1681u).

4 (D) Section 627 of the Fair Credit Report-
5 ing Act (15 U.S.C. 1681v).

6 (E) Section 802 of the National Security
7 Act of 1947 (50 U.S.C. 436).

8 (2) TRANSITION PROVISION.—Notwithstanding
9 paragraph (1), the provisions of law referred to in
10 paragraph (1), as in effect on December 30, 2013,
11 shall continue to apply after December 31, 2013,
12 with respect to any particular foreign intelligence in-
13 vestigation or with respect to any particular offense
14 or potential offense that began or occurred before
15 December 31, 2013.

16 **SEC. 3. ORDERS FOR ACCESS TO CERTAIN BUSINESS**
17 **RECORDS AND TANGIBLE THINGS.**

18 (a) IN GENERAL.—Section 501 of the Foreign Intel-
19 ligence Surveillance Act of 1978 (50 U.S.C. 1861) is
20 amended—

21 (1) in the section heading, by inserting “**AND**
22 **OTHER TANGIBLE THINGS**” after “**CERTAIN**
23 **BUSINESS RECORDS**”;

24 (2) in subsection (b)(2)—

25 (A) in subparagraph (A)—

1 (i) by striking “a statement of facts
2 showing” and inserting “a statement of
3 the facts and circumstances relied upon by
4 the applicant to justify the belief of the ap-
5 plicant”; and

6 (ii) by striking “clandestine intel-
7 ligence activities,” and all that follows and
8 inserting “clandestine intelligence activi-
9 ties;”; and

10 (B) by striking subparagraph (B) and in-
11 serting the following:

12 “(B) if the records sought pertain to li-
13 braries (as defined in section 213(1) of the Li-
14 brary Services and Technology Act (20 U.S.C.
15 9122(1)), including library records or patron
16 lists, a statement of facts showing that there
17 are reasonable grounds to believe that the
18 records sought—

19 “(i) are relevant to an authorized in-
20 vestigation (other than a threat assess-
21 ment) conducted in accordance with sub-
22 section (a)(2) to obtain foreign intelligence
23 information not concerning a United
24 States person or to protect against inter-

1 national terrorism or clandestine intel-
2 ligence activities; and

3 “(ii)(I) pertain to a foreign power or
4 an agent of a foreign power;

5 “(II) are relevant to the activities of
6 a suspected agent of a foreign power who
7 is the subject of such authorized investiga-
8 tion; or

9 “(III) pertain to an individual in con-
10 tact with, or known to, a suspected agent
11 of a foreign power; and

12 “(C) a statement of proposed minimization
13 procedures.”; and

14 (3) in subsection (c)—

15 (A) in paragraph (1)—

16 (i) by inserting “and that the pro-
17 posed minimization procedures meet the
18 definition of minimization procedures
19 under subsection (g)” after “subsections
20 (a) and (b)”; and

21 (ii) by striking the second sentence;
22 and

23 (B) in paragraph (2)—

24 (i) in subparagraph (D), by striking
25 “and” at the end;

1 (ii) in subparagraph (E), by striking
2 the period at the end and inserting “;
3 and”; and

4 (iii) by adding at the end the fol-
5 lowing:

6 “(F) shall direct that the minimization
7 procedures be followed.”.

8 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

9 (1) DEFINITIONS.—Title V of the Foreign In-
10 telligence Surveillance Act of 1978 (50 U.S.C. 1861
11 et seq.) is amended by adding at the end the fol-
12 lowing:

13 **“SEC. 503. DEFINITIONS.**

14 “In this title, the terms ‘Attorney General’, ‘foreign
15 intelligence information’, ‘international terrorism’, ‘per-
16 son’, ‘United States’, and ‘United States person’ have the
17 meanings given such terms in section 101.”.

18 (2) TITLE HEADING.—Title V of the Foreign
19 Intelligence Surveillance Act of 1978 (50 U.S.C.
20 1861 et seq.) is amended in the title heading by in-
21 sserting “AND OTHER TANGIBLE THINGS”
22 after “CERTAIN BUSINESS RECORDS”.

23 (3) TABLE OF CONTENTS.—The table of con-
24 tents in the first section of the Foreign Intelligence

1 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
2 is amended—

3 (A) by striking the items relating to title
4 V and section 501 and inserting the following:

“TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS AND OTHER
TANGIBLE THINGS FOR FOREIGN INTELLIGENCE PURPOSES

“Sec. 501. Access to certain business records and other tangible things for foreign intelligence purposes and international terrorism investigations.”; and

5 (B) by inserting after the item relating to
6 section 502 the following:

“Sec. 503. Definitions.”.

7 **SEC. 4. ORDERS FOR PEN REGISTERS AND TRAP AND**
8 **TRACE DEVICES FOR FOREIGN INTEL-**
9 **LIGENCE PURPOSES.**

10 (a) IN GENERAL.—

11 (1) APPLICATION.—Section 402(c) of the For-
12 eign Intelligence Surveillance Act of 1978 (50
13 U.S.C. 1842(c)) is amended—

14 (A) in paragraph (1), by striking “and” at
15 the end; and

16 (B) in paragraph (2)—

17 (i) by striking “a certification by the
18 applicant” and inserting “a statement of
19 the facts and circumstances relied upon by
20 the applicant to justify the belief of the ap-
21 plicant”; and

1 (ii) by striking the period at the end
2 and inserting “; and”; and

3 (C) by adding at the end the following:

4 “(3) a statement of proposed minimization pro-
5 cedures.”.

6 (2) MINIMIZATION.—

7 (A) DEFINITION.—Section 401 of the For-
8 eign Intelligence Surveillance Act of 1978 (50
9 U.S.C. 1841) is amended by adding at the end
10 the following:

11 “(4) The term ‘minimization procedures’
12 means—

13 “(A) specific procedures that are reason-
14 ably designed in light of the purpose and tech-
15 nique of an order for the installation and use
16 of a pen register or trap and trace device, to
17 minimize the retention, and prohibit the dis-
18 semination, of nonpublicly available information
19 concerning unconsenting United States persons
20 consistent with the need of the United States to
21 obtain, produce, and disseminate foreign intel-
22 ligence information;

23 “(B) procedures that require that nonpub-
24 licly available information, which is not foreign
25 intelligence information shall not be dissemi-

1 nated in a manner that identifies any United
2 States person, without such person’s consent,
3 unless such person’s identity is necessary to un-
4 derstand foreign intelligence information or as-
5 sess its importance; and

6 “(C) notwithstanding subparagraphs (A)
7 and (B), procedures that allow for the retention
8 and dissemination of information that is evi-
9 dence of a crime which has been, is being, or
10 is about to be committed and that is to be re-
11 tained or disseminated for law enforcement pur-
12 poses.”.

13 (B) PEN REGISTERS AND TRAP AND TRACE
14 DEVICES.—Section 402 of the Foreign Intel-
15 ligence Surveillance Act of 1978 (50 U.S.C.
16 1842) is amended—

17 (i) in subsection (d)—

18 (I) in paragraph (1), by inserting
19 “, and that the proposed minimization
20 procedures meet the definition of
21 minimization procedures under this
22 title” before the period at the end;
23 and

24 (II) in paragraph (2)(B)—

1 (aa) in clause (ii)(II), by
2 striking “and” after the semi-
3 colon; and

4 (bb) by adding at the end
5 the following:

6 “(iv) the minimization procedures be
7 followed; and”; and

8 (ii) by adding at the end the fol-
9 lowing:

10 “(h) At or before the end of the period of time for
11 which the installation and use of a pen register or trap
12 and trace device is approved under an order or an exten-
13 sion under this section, the judge may assess compliance
14 with the minimization procedures by reviewing the cir-
15 cumstances under which information concerning United
16 States persons was retained or disseminated.”.

17 (C) EMERGENCIES.—Section 403 of the
18 Foreign Intelligence Surveillance Act of 1978
19 (50 U.S.C. 1843) is amended—

20 (i) by redesignating subsection (c) as
21 (d); and

22 (ii) by inserting after subsection (b)
23 the following:

24 “(c) If the Attorney General authorizes the emer-
25 gency installation and use of a pen register or trap and

1 trace device under this section, the Attorney General shall
2 require that the minimization procedures required by this
3 title for the issuance of a judicial order be followed.”.

4 (D) USE OF INFORMATION.—Section
5 405(a) of the Foreign Intelligence Surveillance
6 Act of 1978 (50 U.S.C. 1845(a)) is amended by
7 striking “provisions of” and inserting “mini-
8 mization procedures required under”.

9 **SEC. 5. LIMITATIONS ON DISCLOSURE OF NATIONAL SECU-**
10 **RITY LETTERS.**

11 (a) IN GENERAL.—Section 2709 of title 18, United
12 States Code, is amended by striking subsection (c) and
13 inserting the following:

14 “(c) PROHIBITION OF CERTAIN DISCLOSURE.—

15 “(1) PROHIBITION.—

16 “(A) IN GENERAL.—If a certification is
17 issued under subparagraph (B) and notice of
18 the right to judicial review under paragraph (3)
19 is provided, no wire or electronic communica-
20 tion service provider, or officer, employee, or
21 agent thereof, that receives a request under
22 subsection (a), shall disclose to any person that
23 the Director of the Federal Bureau of Inves-
24 tigation has sought or obtained access to infor-
25 mation or records under this section.

1 “(B) CERTIFICATION.—The requirements
2 of subparagraph (A) shall apply if the Director
3 of the Federal Bureau of Investigation, or a
4 designee of the Director whose rank shall be no
5 lower than Deputy Assistant Director at Bu-
6 reau headquarters or a Special Agent in Charge
7 of a Bureau field office, certifies that, absent a
8 prohibition of disclosure under this subsection,
9 there may result—

10 “(i) a danger to the national security
11 of the United States;

12 “(ii) interference with a criminal,
13 counterterrorism, or counterintelligence in-
14 vestigation;

15 “(iii) interference with diplomatic re-
16 lations; or

17 “(iv) danger to the life or physical
18 safety of any person.

19 “(2) EXCEPTION.—

20 “(A) IN GENERAL.—A wire or electronic
21 communication service provider, or officer, em-
22 ployee, or agent thereof, that receives a request
23 under subsection (a) may disclose information
24 otherwise subject to any applicable nondisclo-
25 sure requirement to—

1 “(i) those persons to whom disclosure
2 is necessary in order to comply with the re-
3 quest;

4 “(ii) an attorney in order to obtain
5 legal advice or assistance regarding the re-
6 quest; or

7 “(iii) other persons as permitted by
8 the Director of the Federal Bureau of In-
9 vestigation or the designee of the Director.

10 “(B) PERSONS NECESSARY FOR COMPLI-
11 ANCE.—Upon a request by the Director of the
12 Federal Bureau of Investigation or the designee
13 of the Director, those persons to whom disclo-
14 sure will be made under subparagraph (A)(i) or
15 to whom such disclosure was made before the
16 request shall be identified to the Director or the
17 designee.

18 “(C) NONDISCLOSURE REQUIREMENT.—A
19 person to whom disclosure is made under sub-
20 paragraph (A) shall be subject to the nondisclo-
21 sure requirements applicable to a person to
22 whom a request is issued under subsection (a)
23 in the same manner as the person to whom the
24 request is issued.

1 “(D) NOTICE.—Any recipient that dis-
2 closes to a person described in subparagraph
3 (A) information otherwise subject to a non-
4 disclosure requirement shall inform the person
5 of the applicable nondisclosure requirement.

6 “(3) RIGHT TO JUDICIAL REVIEW.—

7 “(A) IN GENERAL.—A wire or electronic
8 communications service provider that receives a
9 request under subsection (a) shall have the
10 right to judicial review of any applicable non-
11 disclosure requirement.

12 “(B) NOTIFICATION.—A request under
13 subsection (a) shall state that if the recipient
14 wishes to have a court review a nondisclosure
15 requirement, the recipient shall notify the Gov-
16 ernment.

17 “(C) INITIATION OF PROCEEDINGS.—If a
18 recipient of a request under subsection (a)
19 makes a notification under subparagraph (B),
20 the Government shall initiate judicial review
21 under the procedures established in section
22 3511 of this title, unless an appropriate official
23 of the Federal Bureau of the Investigation
24 makes a notification under paragraph (4).

1 “(4) TERMINATION.—If the facts supporting a
2 nondisclosure requirement cease to exist, an appro-
3 priate official of the Federal Bureau of Investigation
4 shall promptly notify the wire or electronic service
5 provider, or officer, employee, or agent thereof, sub-
6 ject to the nondisclosure requirement that the non-
7 disclosure requirement is no longer in effect.”.

8 (b) IDENTITY OF FINANCIAL INSTITUTIONS AND
9 CREDIT REPORTS.—Section 626 of the Fair Credit Re-
10 porting Act (15 U.S.C. 1681u) is amended by striking
11 subsection (d) and inserting the following:

12 “(d) PROHIBITION OF CERTAIN DISCLOSURE.—

13 “(1) PROHIBITION.—

14 “(A) IN GENERAL.—If a certification is
15 issued under subparagraph (B) and notice of
16 the right to judicial review under paragraph (3)
17 is provided, no consumer reporting agency, or
18 officer, employee, or agent thereof, that receives
19 a request or order under subsection (a), (b), or
20 (c), shall disclose or specify in any consumer re-
21 port, that the Federal Bureau of Investigation
22 has sought or obtained access to information or
23 records under subsection (a), (b), or (c).

24 “(B) CERTIFICATION.—The requirements
25 of subparagraph (A) shall apply if the Director

1 of the Federal Bureau of Investigation, or a
2 designee of the Director whose rank shall be no
3 lower than Deputy Assistant Director at Bu-
4 reau headquarters or a Special Agent in Charge
5 of a Bureau field office, certifies that, absent a
6 prohibition of disclosure under this subsection,
7 there may result—

8 “(i) a danger to the national security
9 of the United States;

10 “(ii) interference with a criminal,
11 counterterrorism, or counterintelligence in-
12 vestigation;

13 “(iii) interference with diplomatic re-
14 lations; or

15 “(iv) danger to the life or physical
16 safety of any person.

17 “(2) EXCEPTION.—

18 “(A) IN GENERAL.—A consumer reporting
19 agency, or officer, employee, or agent thereof,
20 that receives a request or order under sub-
21 section (a), (b), or (c) may disclose information
22 otherwise subject to any applicable nondisclo-
23 sure requirement to—

1 “(i) those persons to whom disclosure
2 is necessary in order to comply with the re-
3 quest or order;

4 “(ii) an attorney in order to obtain
5 legal advice or assistance regarding the re-
6 quest or order; or

7 “(iii) other persons as permitted by
8 the Director of the Federal Bureau of In-
9 vestigation or the designee of the Director.

10 “(B) PERSONS NECESSARY FOR COMPLI-
11 ANCE.—Upon a request by the Director of the
12 Federal Bureau of Investigation or the designee
13 of the Director, those persons to whom disclo-
14 sure will be made under subparagraph (A)(i) or
15 to whom such disclosure was made before the
16 request shall be identified to the Director or the
17 designee.

18 “(C) NONDISCLOSURE REQUIREMENT.—A
19 person to whom disclosure is made under sub-
20 paragraph (A) shall be subject to the nondisclo-
21 sure requirements applicable to a person to
22 whom a request or order is issued under sub-
23 section (a), (b), or (c) in the same manner as
24 the person to whom the request or order is
25 issued.

1 “(D) NOTICE.—Any recipient that dis-
2 closes to a person described in subparagraph
3 (A) information otherwise subject to a non-
4 disclosure requirement shall inform the person
5 of the applicable nondisclosure requirement.

6 “(3) RIGHT TO JUDICIAL REVIEW.—

7 “(A) IN GENERAL.—A consumer reporting
8 agency that receives a request or order under
9 subsection (a), (b), or (c) shall have the right
10 to judicial review of any applicable nondisclo-
11 sure requirement.

12 “(B) NOTIFICATION.—A request or order
13 under subsection (a), (b), or (c) shall state that
14 if the recipient wishes to have a court review a
15 nondisclosure requirement, the recipient shall
16 notify the Government.

17 “(C) INITIATION OF PROCEEDINGS.—If a
18 recipient of a request or order under subsection
19 (a), (b), or (c) makes a notification under sub-
20 paragraph (B), the Government shall initiate
21 judicial review under the procedures established
22 in section 3511 of title 18, United States Code,
23 unless an appropriate official of the Federal
24 Bureau of Investigation makes a notification
25 under paragraph (4).

1 “(4) TERMINATION.—If the facts supporting a
2 nondisclosure requirement cease to exist, an appro-
3 priate official of the Federal Bureau of Investigation
4 shall promptly notify the consumer reporting agency,
5 or officer, employee, or agent thereof, subject to the
6 nondisclosure requirement that the nondisclosure re-
7 quirement is no longer in effect.”.

8 (c) DISCLOSURES TO GOVERNMENTAL AGENCIES
9 FOR COUNTERTERRORISM PURPOSES.—Section 627 of the
10 Fair Credit Reporting Act (15 U.S.C. 1681v) is amended
11 by striking subsection (c) and inserting the following:

12 “(c) PROHIBITION OF CERTAIN DISCLOSURE.—

13 “(1) PROHIBITION.—

14 “(A) IN GENERAL.—If a certification is
15 issued under subparagraph (B) and notice of
16 the right to judicial review under paragraph (3)
17 is provided, no consumer reporting agency, or
18 officer, employee, or agent thereof, that receives
19 a request under subsection (a), shall disclose to
20 any person or specify in any consumer report,
21 that a government agency has sought or ob-
22 tained access to information under subsection
23 (a).

24 “(B) CERTIFICATION.—The requirements
25 of subparagraph (A) shall apply if the head of

1 a government agency authorized to conduct in-
2 vestigations of intelligence or counterintelligence
3 activities or analysis related to international
4 terrorism, or a designee, certifies that, absent a
5 prohibition of disclosure under this subsection,
6 there may result—

7 “(i) a danger to the national security
8 of the United States;

9 “(ii) interference with a criminal,
10 counterterrorism, or counterintelligence in-
11 vestigation;

12 “(iii) interference with diplomatic re-
13 lations; or

14 “(iv) danger to the life or physical
15 safety of any person.

16 “(2) EXCEPTION.—

17 “(A) IN GENERAL.—A consumer reporting
18 agency, or officer, employee, or agent thereof,
19 that receives a request under subsection (a)
20 may disclose information otherwise subject to
21 any applicable nondisclosure requirement to—

22 “(i) those persons to whom disclosure
23 is necessary in order to comply with the re-
24 quest;

1 “(ii) an attorney in order to obtain
2 legal advice or assistance regarding the re-
3 quest; or

4 “(iii) other persons as permitted by
5 the head of the government agency author-
6 ized to conduct investigations of intel-
7 ligence or counterintelligence activities or
8 analysis related to international terrorism,
9 or a designee.

10 “(B) PERSONS NECESSARY FOR COMPLI-
11 ANCE.—Upon a request by the head of a gov-
12 ernment agency authorized to conduct inves-
13 tigations of intelligence or counterintelligence
14 activities or analysis related to international
15 terrorism, or a designee, those persons to whom
16 disclosure will be made under subparagraph
17 (A)(i) or to whom such disclosure was made be-
18 fore the request shall be identified to the head
19 of the government agency or the designee.

20 “(C) NONDISCLOSURE REQUIREMENT.—A
21 person to whom disclosure is made under sub-
22 paragraph (A) shall be subject to the nondislo-
23 sure requirements applicable to a person to
24 whom a request is issued under subsection (a)

1 in the same manner as the person to whom the
2 request is issued.

3 “(D) NOTICE.—Any recipient that dis-
4 closes to a person described in subparagraph
5 (A) information otherwise subject to a non-
6 disclosure requirement shall inform the person
7 of the applicable nondisclosure requirement.

8 “(3) RIGHT TO JUDICIAL REVIEW.—

9 “(A) IN GENERAL.—A consumer reporting
10 agency that receives a request under subsection
11 (a) shall have the right to judicial review of any
12 applicable nondisclosure requirement.

13 “(B) NOTIFICATION.—A request under
14 subsection (a) shall state that if the recipient
15 wishes to have a court review a nondisclosure
16 requirement, the recipient shall notify the gov-
17 ernment.

18 “(C) INITIATION OF PROCEEDINGS.—If a
19 recipient of a request under subsection (a)
20 makes a notification under subparagraph (B),
21 the government shall initiate judicial review
22 under the procedures established in section
23 3511 of title 18, United States Code, unless an
24 appropriate official of the government agency
25 authorized to conduct investigations of intel-

1 ligence or counterintelligence activities or anal-
2 ysis related to international terrorism makes a
3 notification under paragraph (4).

4 “(4) TERMINATION.—If the facts supporting a
5 nondisclosure requirement cease to exist, an appro-
6 priate official of the government agency authorized
7 to conduct investigations of intelligence or counter-
8 intelligence activities or analysis related to inter-
9 national terrorism shall promptly notify the con-
10 sumer reporting agency, or officer, employee, or
11 agent thereof, subject to the nondisclosure require-
12 ment that the nondisclosure requirement is no longer
13 in effect.”.

14 (d) FINANCIAL RECORDS.—Section 1114(a)(5) of the
15 Right to Financial Privacy Act (12 U.S.C. 3414(a)(5)) is
16 amended by striking subparagraph (D) and inserting the
17 following:

18 “(D) PROHIBITION OF CERTAIN DISCLO-
19 SURE.—

20 “(i) PROHIBITION.—

21 “(I) IN GENERAL.—If a certifi-
22 cation is issued under subclause (II)
23 and notice of the right to judicial re-
24 view under clause (iii) is provided, no
25 financial institution, or officer, em-

1 ployee, or agent thereof, that receives
2 a request under subparagraph (A),
3 shall disclose to any person that the
4 Federal Bureau of Investigation has
5 sought or obtained access to informa-
6 tion or records under subparagraph
7 (A).

8 “(II) CERTIFICATION.—The re-
9 quirements of subclause (I) shall
10 apply if the Director of the Federal
11 Bureau of Investigation, or a designee
12 of the Director whose rank shall be no
13 lower than Deputy Assistant Director
14 at Bureau headquarters or a Special
15 Agent in Charge of a Bureau field of-
16 fice, certifies that, absent a prohibi-
17 tion of disclosure under this subpara-
18 graph, there may result—

19 “(aa) a danger to the na-
20 tional security of the United
21 States;

22 “(bb) interference with a
23 criminal, counterterrorism, or
24 counterintelligence investigation;

1 “(cc) interference with diplo-
2 matic relations; or

3 “(dd) danger to the life or
4 physical safety of any person.

5 “(ii) EXCEPTION.—

6 “(I) IN GENERAL.—A financial
7 institution, or officer, employee, or
8 agent thereof, that receives a request
9 under subparagraph (A) may disclose
10 information otherwise subject to any
11 applicable nondisclosure requirement
12 to—

13 “(aa) those persons to whom
14 disclosure is necessary in order to
15 comply with the request;

16 “(bb) an attorney in order
17 to obtain legal advice or assist-
18 ance regarding the request; or

19 “(cc) other persons as per-
20 mitted by the Director of the
21 Federal Bureau of Investigation
22 or the designee of the Director.

23 “(II) PERSONS NECESSARY FOR
24 COMPLIANCE.—Upon a request by the
25 Director of the Federal Bureau of In-

1 investigation or the designee of the Di-
2 rector, those persons to whom disclo-
3 sure will be made under subclause
4 (I)(aa) or to whom such disclosure
5 was made before the request shall be
6 identified to the Director or the des-
7 ignee.

8 “(III) NONDISCLOSURE RE-
9 QUIREMENT.—A person to whom dis-
10 closure is made under subclause (I)
11 shall be subject to the nondisclosure
12 requirements applicable to a person to
13 whom a request is issued under sub-
14 paragraph (A) in the same manner as
15 the person to whom the request is
16 issued.

17 “(IV) NOTICE.—Any recipient
18 that discloses to a person described in
19 subclause (I) information otherwise
20 subject to a nondisclosure requirement
21 shall inform the person of the applica-
22 ble nondisclosure requirement.

23 “(iii) RIGHT TO JUDICIAL REVIEW.—

24 “(I) IN GENERAL.—A financial
25 institution that receives a request

1 under subparagraph (A) shall have
2 the right to judicial review of any ap-
3 plicable nondisclosure requirement.

4 “(II) NOTIFICATION.—A request
5 under subparagraph (A) shall state
6 that if the recipient wishes to have a
7 court review a nondisclosure require-
8 ment, the recipient shall notify the
9 Government.

10 “(III) INITIATION OF PRO-
11 CEEDINGS.—If a recipient of a re-
12 quest under subparagraph (A) makes
13 a notification under subclause (II),
14 the Government shall initiate judicial
15 review under the procedures estab-
16 lished in section 3511 of title 18,
17 United States Code, unless an appro-
18 priate official of the Federal Bureau
19 of Investigation makes a notification
20 under clause (iv).

21 “(iv) TERMINATION.—If the facts
22 supporting a nondisclosure requirement
23 cease to exist, an appropriate official of the
24 Federal Bureau of Investigation shall
25 promptly notify the financial institution, or

1 officer, employee, or agent thereof, subject
2 to the nondisclosure requirement that the
3 nondisclosure requirement is no longer in
4 effect.”.

5 (e) REQUESTS BY AUTHORIZED INVESTIGATIVE
6 AGENCIES.—Section 802 of the National Security Act of
7 1947 (50 U.S.C. 436), is amended by striking subsection
8 (b) and inserting the following:

9 “(b) PROHIBITION OF CERTAIN DISCLOSURE.—

10 “(1) PROHIBITION.—

11 “(A) IN GENERAL.—If a certification is
12 issued under subparagraph (B) and notice of
13 the right to judicial review under paragraph (3)
14 is provided, no governmental or private entity,
15 or officer, employee, or agent thereof, that re-
16 ceives a request under subsection (a), shall dis-
17 close to any person that an authorized inves-
18 tigative agency described in subsection (a) has
19 sought or obtained access to information under
20 subsection (a).

21 “(B) CERTIFICATION.—The requirements
22 of subparagraph (A) shall apply if the head of
23 an authorized investigative agency described in
24 subsection (a), or a designee, certifies that, ab-

1 sent a prohibition of disclosure under this sub-
2 section, there may result—

3 “(i) a danger to the national security
4 of the United States;

5 “(ii) interference with a criminal,
6 counterterrorism, or counterintelligence in-
7 vestigation;

8 “(iii) interference with diplomatic re-
9 lations; or

10 “(iv) danger to the life or physical
11 safety of any person.

12 “(2) EXCEPTION.—

13 “(A) IN GENERAL.—A governmental or
14 private entity, or officer, employee, or agent
15 thereof, that receives a request under sub-
16 section (a) may disclose information otherwise
17 subject to any applicable nondisclosure require-
18 ment to—

19 “(i) those persons to whom disclosure
20 is necessary in order to comply with the re-
21 quest;

22 “(ii) an attorney in order to obtain
23 legal advice or assistance regarding the re-
24 quest; or

1 “(iii) other persons as permitted by
2 the head of the authorized investigative
3 agency described in subsection (a).

4 “(B) PERSONS NECESSARY FOR COMPLI-
5 ANCE.—Upon a request by the head of an au-
6 thorized investigative agency described in sub-
7 section (a), or a designee, those persons to
8 whom disclosure will be made under subpara-
9 graph (A)(i) or to whom such disclosure was
10 made before the request shall be identified to
11 the head of the authorized investigative agency
12 or the designee.

13 “(C) NONDISCLOSURE REQUIREMENT.—A
14 person to whom disclosure is made under sub-
15 paragraph (A) shall be subject to the nondislo-
16 sure requirements applicable to a person to
17 whom a request is issued under subsection (a)
18 in the same manner as the person to whom the
19 request is issued.

20 “(D) NOTICE.—Any recipient that dis-
21 closes to a person described in subparagraph
22 (A) information otherwise subject to a non-
23 disclosure requirement shall inform the person
24 of the applicable nondisclosure requirement.

25 “(3) RIGHT TO JUDICIAL REVIEW.—

1 “(A) IN GENERAL.—A governmental or
2 private entity that receives a request under sub-
3 section (a) shall have the right to judicial re-
4 view of any applicable nondisclosure require-
5 ment.

6 “(B) NOTIFICATION.—A request under
7 subsection (a) shall state that if the recipient
8 wishes to have a court review a nondisclosure
9 requirement, the recipient shall notify the Gov-
10 ernment.

11 “(C) INITIATION OF PROCEEDINGS.—If a
12 recipient of a request under subsection (a)
13 makes a notification under subparagraph (B),
14 the Government shall initiate judicial review
15 under the procedures established in section
16 3511 of title 18, United States Code, unless an
17 appropriate official of the authorized investiga-
18 tive agency described in subsection (a) makes a
19 notification under paragraph (4).

20 “(4) TERMINATION.—If the facts supporting a
21 nondisclosure requirement cease to exist, an appro-
22 priate official of the authorized investigative agency
23 described in subsection (a) shall promptly notify the
24 governmental or private entity, or officer, employee,
25 or agent thereof, subject to the nondisclosure re-

1 requirement that the nondisclosure requirement is no
2 longer in effect.”.

3 **SEC. 6. JUDICIAL REVIEW OF FISA ORDERS AND NATIONAL**
4 **SECURITY LETTERS.**

5 (a) FISA.—Section 501(f)(2) of the Foreign Intel-
6 ligence Surveillance Act of 1978 (50 U.S.C. 1861(f)(2))
7 is amended—

8 (1) in subparagraph (A)—

9 (A) in clause (i)—

10 (i) by striking “a production order”
11 and inserting “a production order or non-
12 disclosure order”; and

13 (ii) by striking “Not less than 1 year”
14 and all that follows;

15 (B) in clause (ii), by striking “production
16 order or nondisclosure”; and

17 (2) in subparagraph (C)—

18 (A) by striking clause (ii); and

19 (B) by redesignating clause (iii) as clause
20 (ii).

21 (b) JUDICIAL REVIEW OF NATIONAL SECURITY LET-
22 TERS.—Section 3511(b) of title 18, United States Code,
23 is amended to read as follows:

24 “(b) NONDISCLOSURE.—

25 “(1) IN GENERAL.—

1 “(A) NOTICE.—If a recipient of a request
2 or order for a report, records, or other informa-
3 tion under section 2709 of this title, section
4 626 or 627 of the Fair Credit Reporting Act
5 (15 U.S.C. 1681u and 1681v), section 1114 of
6 the Right to Financial Privacy Act (12 U.S.C.
7 3414), or section 802 of the National Security
8 Act of 1947 (50 U.S.C. 436), wishes to have a
9 court review a nondisclosure requirement im-
10 posed in connection with the request, the recipi-
11 ent shall notify the Government.

12 “(B) APPLICATION.—Not later than 30
13 days after the date of receipt of a notification
14 under subparagraph (A), the Government shall
15 apply for an order prohibiting the disclosure of
16 the existence or contents of the relevant request
17 or order. An application under this subpara-
18 graph may be filed in the district court of the
19 United States for any district within which the
20 authorized investigation that is the basis for the
21 request or order is being conducted. The appli-
22 cable nondisclosure requirement shall remain in
23 effect during the pendency of proceedings relat-
24 ing to the requirement.

1 “(C) CONSIDERATION.—A district court of
2 the United States that receives an application
3 under subparagraph (B) should rule expedi-
4 tiously, and may issue a nondisclosure order
5 that includes conditions appropriate to the cir-
6 cumstances.

7 “(2) APPLICATION CONTENTS.—An application
8 for a nondisclosure order or extension thereof under
9 this subsection shall include a certification from the
10 Attorney General, Deputy Attorney General, an As-
11 sistant Attorney General, or the Director of the Fed-
12 eral Bureau of Investigation, or in the case of a re-
13 quest by a department, agency, or instrumentality of
14 the Federal Government other than the Department
15 of Justice, the head or deputy head of the depart-
16 ment, agency, or instrumentality, containing a state-
17 ment of specific and articulable facts indicating that,
18 absent a prohibition of disclosure under this sub-
19 section, there may result—

20 “(A) a danger to the national security of
21 the United States;

22 “(B) interference with a criminal, counter-
23 terrorism, or counterintelligence investigation;

24 “(C) interference with diplomatic relations;

25 or

1 “(D) danger to the life or physical safety
2 of any person.

3 “(3) STANDARD.—A district court of the
4 United States may issue a nondisclosure require-
5 ment order or extension thereof under this sub-
6 section if the court determines, giving appropriate
7 weight to the certification under paragraph (2) that
8 there is reason to believe that disclosure of the infor-
9 mation subject to the nondisclosure requirement dur-
10 ing the applicable time period will result in—

11 “(A) a danger to the national security of
12 the United States;

13 “(B) interference with a criminal, counter-
14 terrorism, or counterintelligence investigation;

15 “(C) interference with diplomatic relations;

16 or

17 “(D) danger to the life or physical safety
18 of any person.”.

19 (c) MINIMIZATION.—Section 501(g)(1) of the For-
20 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
21 1861(g)(1)) is amended by striking “Not later than” and
22 all that follows and inserting “At or before the end of the
23 period of time for the production of tangible things under
24 an order approved under this section or at any time after
25 the production of tangible things under an order approved

1 under this section, a judge may assess compliance with
2 the minimization procedures by reviewing the cir-
3 cumstances under which information concerning United
4 States persons was retained or disseminated.”.

5 **SEC. 7. CERTIFICATION FOR ACCESS TO TELEPHONE TOLL**
6 **AND TRANSACTIONAL RECORDS.**

7 (a) IN GENERAL.—Section 2709 of title 18, United
8 States Code, as amended by this Act, is amended—

9 (1) by redesignating subsections (c), (d), (e),
10 and (f) as subsections (d), (e), (f), and (g), respec-
11 tively; and

12 (2) by inserting after subsection (b) the fol-
13 lowing:

14 “(c) WRITTEN STATEMENT.—The Director of the
15 Federal Bureau of Investigation, or a designee in a posi-
16 tion not lower than Deputy Assistant Director at Bureau
17 headquarters or a Special Agent in Charge in a Bureau
18 field office designated by the Director, may make a certifi-
19 cation under subsection (b) only upon a written statement,
20 which shall be retained by the Federal Bureau of Inves-
21 tigation, of specific and articulable facts showing that
22 there are reasonable grounds to believe that the informa-
23 tion sought is relevant to the authorized investigation de-
24 scribed in subsection (b).”.

1 (b) IDENTITY OF FINANCIAL INSTITUTIONS AND
2 CREDIT REPORTS.—Section 626 of the Fair Credit Re-
3 porting Act (15 U.S.C. 1681u), as amended by this Act,
4 is amended—

5 (1) by redesignating subsections (d) through
6 (m) as subsections (e) through (n), respectively; and

7 (2) by inserting after subsection (c) the fol-
8 lowing:

9 “(d) WRITTEN STATEMENT.—The Director of the
10 Federal Bureau of Investigation, or a designee in a posi-
11 tion not lower than Deputy Assistant Director at Bureau
12 headquarters or a Special Agent in Charge in a Bureau
13 field office designated by the Director, may make a certifi-
14 cation under subsection (a) or (b) only upon a written
15 statement, which shall be retained by the Federal Bureau
16 of Investigation, of specific and articulable facts showing
17 that there are reasonable grounds to believe that the infor-
18 mation sought is relevant to the authorized investigation
19 described in subsection (a) or (b), as the case may be.”.

20 (c) DISCLOSURES TO GOVERNMENTAL AGENCIES
21 FOR COUNTERTERRORISM PURPOSES.—Section 627(b) of
22 the Fair Credit Reporting Act (15 U.S.C. 1681v(b)) is
23 amended—

1 (1) in the subsection heading, by striking
2 “FORM OF CERTIFICATION” and inserting “CER-
3 TIFICATION”;

4 (2) by striking “The certification” and inserting
5 the following:

6 “(1) FORM OF CERTIFICATION.—The certifi-
7 cation”;

8 (3) by adding at the end the following:

9 “(2) WRITTEN STATEMENT.—A supervisory of-
10 ficial or officer described in paragraph (1) may
11 make a certification under subsection (a) only upon
12 a written statement, which shall be retained by the
13 government agency, of specific and articulable facts
14 showing that there are reasonable grounds to believe
15 that the information sought is relevant to the au-
16 thorized investigation described in subsection (a).”.

17 (d) FINANCIAL RECORDS.—Section 1114(a)(5) of the
18 Right to Financial Privacy Act (12 U.S.C. 3414(a)(5)),
19 as amended by this Act, is amended—

20 (1) by redesignating subparagraphs (B), (C),
21 and (D) as subparagraphs (C), (D), and (E), respec-
22 tively; and

23 (2) by inserting after subparagraph (A) the fol-
24 lowing:

1 “(B) The Director of the Federal Bureau of Inves-
2 tigation, or a designee in a position not lower than Deputy
3 Assistant Director at Bureau headquarters or a Special
4 Agent in Charge in a Bureau field office designated by
5 the Director, may make a certification under subpara-
6 graph (A) only upon a written statement, which shall be
7 retained by the Federal Bureau of Investigation, of spe-
8 cific and articulable facts showing that there are reason-
9 able grounds to believe that the information sought is rel-
10 evant to the authorized investigation described in subpara-
11 graph (A).”.

12 (e) REQUESTS BY AUTHORIZED INVESTIGATIVE
13 AGENCIES.—Section 802(a) of the National Security Act
14 of 1947 (50 U.S.C. 436(a)), is amended by adding at the
15 end the following:

16 “(4) A department or agency head, deputy de-
17 partment or agency head, or senior official described
18 in paragraph (3)(A) may make a certification under
19 paragraph (3)(A) only upon a written statement,
20 which shall be retained by the authorized investiga-
21 tive agency, of specific and articulable facts showing
22 that there are reasonable grounds to believe that the
23 information sought is relevant to the authorized in-
24 quiry or investigation described in paragraph
25 (3)(A)(ii).”.

1 (f) TECHNICAL AND CONFORMING AMENDMENTS.—

2 (1) OBSTRUCTION OF CRIMINAL INVESTIGA-
3 TIONS.—Section 1510(e) of title 18, United States
4 Code, is amended by striking “section 2709(c)(1) of
5 this title, section 626(d)(1) or 627(c)(1) of the Fair
6 Credit Reporting Act (15 U.S.C. 1681u(d)(1) or
7 1681v(e)(1)), section 1114(a)(3)(A) or
8 1114(a)(5)(D)(i) of the Right to Financial Privacy
9 Act (12 U.S.C. 3414(a)(3)(A) or
10 3414(a)(5)(D)(i)),” and inserting “section
11 2709(d)(1) of this title, section 626(e)(1) or
12 627(c)(1) of the Fair Credit Reporting Act (15
13 U.S.C. 1681u(e)(1) or 1681v(e)(1)), section
14 1114(a)(3)(A) or 1114(a)(5)(E)(i) of the Right to
15 Financial Privacy Act of 1978 (12 U.S.C.
16 3414(a)(3)(A) or 3414(a)(5)(E)(i)),”.

17 (2) SEMIANNUAL REPORTS.—Section 507(b) of
18 the National Security Act of 1947 (50 U.S.C.
19 415b(b)) is amended—

20 (A) in paragraph (4), by striking “section
21 624(h)(2) of the Fair Credit Reporting Act (15
22 U.S.C. 1681u(h)(2))” and inserting “section
23 626(i)(2) of the Fair Credit Reporting Act (15
24 U.S.C. 1681u(i)(2))”; and

1 (B) in paragraph (5), by striking “section
2 1114(a)(5)(C) of the Right to Financial Privacy
3 Act of 1978 (12 U.S.C. 3414(a)(5)(C))” and
4 inserting “section 1114(a)(5)(D) of the Right
5 to Financial Privacy Act of 1978 (12 U.S.C.
6 3414(a)(5)(D))”.

7 **SEC. 8. PUBLIC REPORTING ON NATIONAL SECURITY LET-**
8 **TERS.**

9 Section 118(c) of the USA PATRIOT Improvement
10 and Reauthorization Act of 2005 (18 U.S.C. 3511 note)
11 is amended—

12 (1) in paragraph (1)—

13 (A) in the matter preceding subparagraph
14 (A), by striking “concerning different United
15 States persons”; and

16 (B) in subparagraph (A), by striking “, ex-
17 cluding the number of requests for subscriber
18 information”;

19 (2) by redesignating paragraph (2) as para-
20 graph (3); and

21 (3) by inserting after paragraph (1) the fol-
22 lowing:

23 “(2) **CONTENT.**—

24 “(A) **IN GENERAL.**—Except as provided in
25 subparagraph (B), each report required under

1 this subsection shall include the total number of
2 requests described in paragraph (1) requiring
3 disclosure of information concerning—

4 “(i) United States persons;

5 “(ii) persons who are not United
6 States persons;

7 “(iii) persons who are the subjects of
8 authorized national security investigations;

9 or

10 “(iv) persons who are not the subjects
11 of authorized national security investiga-
12 tions.

13 “(B) EXCEPTION.—With respect to the
14 number of requests for subscriber information
15 under section 2709 of title 18, United States
16 Code, a report required under this subsection
17 need not provide information separated into
18 each of the categories described in subpara-
19 graph (A).”.

20 **SEC. 9. PUBLIC REPORTING ON THE FOREIGN INTEL-**
21 **LIGENCE SURVEILLANCE ACT.**

22 Section 601 of the Foreign Intelligence Surveillance
23 Act of 1978 (50 U.S.C. 1871) is amended—

24 (1) by redesignating subsections (b) through (e)
25 as subsections (c) through (f), respectively;

1 (2) by inserting after subsection (a) the fol-
2 lowing:

3 “(b) PUBLIC REPORT.—The Attorney General shall
4 make publicly available the portion of each report under
5 subsection (a) relating to paragraphs (1) and (2) of sub-
6 section (a).”; and

7 (3) in subsection (e), as so redesignated, by
8 striking “subsection (e)” and inserting “subsection
9 (d)”.

10 **SEC. 10. AUDITS.**

11 (a) TANGIBLE THINGS.—Section 106A of the USA
12 PATRIOT Improvement and Reauthorization Act of 2005
13 (Public Law 109–177; 120 Stat. 200) is amended—

14 (1) in subsection (b)—

15 (A) in paragraph (1), by striking “2006”
16 and inserting “2012”; and

17 (B) in paragraph (5)(C), by striking “cal-
18 endar year 2006” and inserting “each of cal-
19 endar years 2006 through 2011”;

20 (2) in subsection (c), by adding at the end the
21 following:

22 “(3) CALENDAR YEARS 2007, 2008, AND 2009.—
23 Not later than June 30, 2011, the Inspector General
24 of the Department of Justice shall submit to the
25 Committee on the Judiciary and the Permanent Se-

1 lect Committee on Intelligence of the House of Rep-
2 resentatives and the Committee on the Judiciary and
3 the Select Committee on Intelligence of the Senate
4 a report containing the results of the audit con-
5 ducted under this section for calendar years 2007,
6 2008, and 2009.

7 “(4) CALENDAR YEARS 2010 AND 2011.—Not
8 later than December 31, 2012, the Inspector Gen-
9 eral of the Department of Justice shall submit to the
10 Committee on the Judiciary and the Permanent Se-
11 lect Committee on Intelligence of the House of Rep-
12 resentatives and the Committee on the Judiciary and
13 the Select Committee on Intelligence of the Senate
14 a report containing the results of the audit con-
15 ducted under this section for calendar years 2010
16 and 2011.”;

17 (3) in subsection (d)—

18 (A) in paragraph (1), by striking “or
19 (c)(2)” and inserting “(c)(2), (c)(3), or (c)(4)”;
20 and

21 (B) in paragraph (2), by striking “and
22 (c)(2)” and inserting “(c)(2), (c)(3), or (c)(4)”;
23 and

24 (4) in subsection (e), by striking “and (c)(2)”
25 and inserting “(c)(2), (c)(3), or (c)(4)”.

1 (b) NATIONAL SECURITY LETTERS.—Section 119 of
2 the USA PATRIOT Improvement and Reauthorization
3 Act of 2005 (Public Law 109–177; 120 Stat. 219) is
4 amended—

5 (1) in subsection (b)(1), by striking “2006”
6 and inserting “2011”;

7 (2) in subsection (c), by adding at the end the
8 following:

9 “(3) CALENDAR YEARS 2007, 2008, AND 2009.—
10 Not later than June 30, 2011, the Inspector General
11 of the Department of Justice shall submit to the
12 Committee on the Judiciary and the Permanent Se-
13 lect Committee on Intelligence of the House of Rep-
14 resentatives and the Committee on the Judiciary and
15 the Select Committee on Intelligence of the Senate
16 a report containing the results of the audit con-
17 ducted under this section for calendar years 2007,
18 2008, and 2009.

19 “(4) CALENDAR YEARS 2010 AND 2011.—Not
20 later than December 31, 2012, the Inspector Gen-
21 eral of the Department of Justice shall submit to the
22 Committee on the Judiciary and the Permanent Se-
23 lect Committee on Intelligence of the House of Rep-
24 resentatives and the Committee on the Judiciary and
25 the Select Committee on Intelligence of the Senate

1 a report containing the results of the audit con-
2 ducted under this section for calendar years 2010
3 and 2011.”;

4 (3) in subsection (d)—

5 (A) in paragraph (1), by striking “or
6 (c)(2)” and inserting “(c)(2), (c)(3), or (c)(4)”;
7 and

8 (B) in paragraph (2), by striking “or
9 (c)(2)” and inserting “(c)(2), (c)(3), or (c)(4)”;
10 and

11 (4) in subsection (e), by striking “or (c)(2)”
12 and inserting “(c)(2), (c)(3), or (c)(4)”.

13 (c) PEN REGISTERS AND TRAP AND TRACE DE-
14 VICES.—

15 (1) AUDITS.—The Inspector General of the De-
16 partment of Justice shall perform comprehensive au-
17 dits of the effectiveness and use, including any im-
18 proper or illegal use, of pen registers and trap and
19 trace devices under title IV of the Foreign Intel-
20 ligence Surveillance Act of 1978 (50 U.S.C. 1841 et
21 seq.) during the period beginning on January 1,
22 2007 and ending on December 31, 2011.

23 (2) REQUIREMENTS.—The audits required
24 under paragraph (1) shall include—

1 (A) an examination of the use of pen reg-
2 isters and trap and trace devices under title IV
3 of the Foreign Intelligence Surveillance Act of
4 1978 for calendar years 2007 through 2011;

5 (B) an examination of the installation and
6 use of a pen register or trap and trace device
7 on emergency bases under section 403 of the
8 Foreign Intelligence Surveillance Act of 1978
9 (50 U.S.C. 1843);

10 (C) any noteworthy facts or circumstances
11 relating to the use of a pen register or trap and
12 trace device under title IV of the Foreign Intel-
13 ligence Surveillance Act of 1978, including any
14 improper or illegal use of the authority provided
15 under that title; and

16 (D) an examination of the effectiveness of
17 the authority under title IV of the Foreign In-
18 telligence Surveillance Act of 1978 as an inves-
19 tigative tool, including—

20 (i) the importance of the information
21 acquired to the intelligence activities of the
22 Federal Bureau of Investigation or any
23 other department or agency of the Federal
24 Government;

1 (ii) the manner in which the informa-
2 tion is collected, retained, analyzed, and
3 disseminated by the Federal Bureau of In-
4 vestigation, including any direct access to
5 the information provided to any other de-
6 partment, agency, or instrumentality of
7 Federal, State, local, or tribal governments
8 or any private sector entity;

9 (iii) with respect to calendar years
10 2010 and 2011, an examination of the
11 minimization procedures used in relation to
12 pen registers and trap and trace devices
13 under title IV of the Foreign Intelligence
14 Surveillance Act of 1978 and whether the
15 minimization procedures protect the con-
16 stitutional rights of United States persons;

17 (iv) whether, and how often, the Fed-
18 eral Bureau of Investigation used informa-
19 tion acquired under a pen register or trap
20 and trace device under title IV of the For-
21 eign Intelligence Surveillance Act of 1978
22 to produce an analytical intelligence prod-
23 uct for distribution within the Federal Bu-
24 reau of Investigation, to the intelligence
25 community (as defined in section 3(4) of

1 the National Security Act of 1947 (50
2 U.S.C. 401a(4))), or to other Federal,
3 State, local, or tribal government depart-
4 ments, agencies, or instrumentalities; and

5 (v) whether, and how often, the Fed-
6 eral Bureau of Investigation provided in-
7 formation acquired under a pen register or
8 trap and trace device under title IV of the
9 Foreign Intelligence Surveillance Act of
10 1978 to law enforcement authorities for
11 use in criminal proceedings.

12 (3) SUBMISSION DATES.—

13 (A) PRIOR YEARS.—Not later than June
14 30, 2011, the Inspector General of the Depart-
15 ment of Justice shall submit to the Committee
16 on the Judiciary and the Select Committee on
17 Intelligence of the Senate and the Committee
18 on the Judiciary and the Permanent Select
19 Committee on Intelligence of the House of Rep-
20 resentatives a report containing the results of
21 the audit conducted under this section for cal-
22 endar years 2007 through 2009.

23 (B) CALENDAR YEARS 2010 AND 2011.—
24 Not later than December 21, 2012, the Inspec-
25 tor General of the Department of Justice shall

1 submit to the Committee on the Judiciary and
2 the Select Committee on Intelligence of the
3 Senate and the Committee on the Judiciary and
4 the Permanent Select Committee on Intelligence
5 of the House of Representatives a report con-
6 taining the results of the audit conducted under
7 this section for calendar years 2010 and 2011.

8 (4) PRIOR NOTICE TO ATTORNEY GENERAL AND
9 DIRECTOR OF NATIONAL INTELLIGENCE; COM-
10 MENTS.—

11 (A) NOTICE.—Not less than 30 days be-
12 fore the submission of a report under subpara-
13 graph (A) or (B) of paragraph (3), the Inspec-
14 tor General of the Department of Justice shall
15 provide the report to the Attorney General and
16 the Director of National Intelligence.

17 (B) COMMENTS.—The Attorney General or
18 the Director of National Intelligence may pro-
19 vide such comments to be included in a report
20 submitted under subparagraph (A) or (B) of
21 paragraph (3) as the Attorney General or the
22 Director of National Intelligence may consider
23 necessary.

24 (5) UNCLASSIFIED FORM.—A report submitted
25 under subparagraph (A) or (B) of paragraph (3)

- 1 and any comments included under paragraph (4)(B)
- 2 shall be in unclassified form, but may include a clas-
- 3 sified annex.