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

(2) CONFORMING AMENDMENTS.—

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

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

‘(D) access to records under section 502 or under section 501 pursuant to section 102(b)(2) the USA PATRIOT Improvement Act of 2006 (Public Law 109–177; 120 Stat. 350);’.
and Reauthorization Act of 2005 (Public Law 109–177; 50 U.S.C. 1861 note);’.”.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall take effect on December 31, 2013.

(b) EXTENSION OF SUNSET RELATING TO INDIVIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS.—

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

“(b) SUNSET.—

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101(b)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(1)), as added by subsection (a), is repealed effective December 31, 2013.

“(2) TRANSITION PROVISION.—Notwithstanding paragraph (1), subparagraph (C) of section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(1)) shall continue to apply after December 31, 2013, with respect to any particular foreign intelligence investigation or with respect to any particular offense or potential of-
fense that began or occurred before December 31, 2013.”.

(2) CONFORMING AMENDMENT.—

(A) IN GENERAL.—Section 601(a)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(2)) is amended by striking the semicolon at the end and inserting “pursuant to subsection (b)(2) of section 6001 of the Intelligence Reform and Terrorism Pre-

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

c) NATIONAL SECURITY LETTERS.—

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

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

(B) Section 1114(a)(5) of the Right to Fi-
nancial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)).
(C) Subsections (a) and (b) of section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u).

(D) Section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681v).


(2) TRANSITION PROVISION.—Notwithstanding paragraph (1), the provisions of law referred to in paragraph (1), as in effect on December 30, 2013, shall continue to apply after December 31, 2013, with respect to any particular foreign intelligence investigation or with respect to any particular offense or potential offense that began or occurred before December 31, 2013.

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

(a) IN GENERAL.—Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended—

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

(2) in subsection (b)(2)—

(A) in subparagraph (A)—
(i) by striking “a statement of facts showing” and inserting “a statement of the facts and circumstances relied upon by the applicant to justify the belief of the applicant”; and

(ii) by striking “clandestine intelligence activities,” and all that follows and inserting “clandestine intelligence activities;”; and

(B) by striking subparagraph (B) and inserting the following:

“(B) if the records sought pertain to libraries (as defined in section 213(1) of the Library Services and Technology Act (20 U.S.C. 9122(1)), including library records or patron lists, a statement of facts showing that there are reasonable grounds to believe that the records sought—

“(i) are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against inter-
national terrorism or clandestine intelligence activities; and

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

“(II) are relevant to the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or

“(III) pertain to an individual in contact with, or known to, a suspected agent of a foreign power; and

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

(3) in subsection (c)—

(A) in paragraph (1)—

(i) by inserting “and that the proposed minimization procedures meet the definition of minimization procedures under subsection (g)” after “subsections (a) and (b)”; and

(ii) by striking the second sentence; and

(B) in paragraph (2)—

(i) in subparagraph (D), by striking “and” at the end;
(ii) in subparagraph (E), by striking the period at the end and inserting “; and”;

(iii) by adding at the end the following:

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

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITIONS.—Title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) is amended by adding at the end the following:

“SEC. 503. DEFINITIONS.

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

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

(3) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence
Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(A) by striking the items relating to title 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

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

“Sec. 503. Definitions.”.

SEC. 4. ORDERS FOR PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE PURPOSES.

(a) In General.—

(1) Application.—Section 402(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842(c)) is amended—

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

(B) in paragraph (2)—

(i) by striking “a certification by the applicant” and inserting “a statement of the facts and circumstances relied upon by the applicant to justify the belief of the applicant”; and
(ii) by striking the period at the end and inserting ‘; and’; and

(C) by adding at the end the following:

“(3) a statement of proposed minimization procedures.”.

(2) MINIMIZATION.—

(A) DEFINITION.—Section 401 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1841) is amended by adding at the end the following:

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

“(A) specific procedures that are reasonably designed in light of the purpose and technique of an order for the installation and use of a pen register or trap and trace device, to minimize the retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

“(B) procedures that require that nonpublicly available information, which is not foreign intelligence information shall not be dissemi-
nated in a manner that identifies any United States person, without such person’s consent, unless such person’s identity is necessary to understand foreign intelligence information or assess its importance; and

“(C) notwithstanding subparagraphs (A) and (B), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes.”.

(B) Pen registers and trap and trace devices.—Section 402 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842) is amended—

(i) in subsection (d)—

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

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

(bb) by adding at the end the following:

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

(ii) by adding at the end the following:

“(h) At or before the end of the period of time for which the installation and use of a pen register or trap and trace device is approved under an order or an extension under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was retained or disseminated.”.

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

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

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

“(c) If the Attorney General authorizes the emergency installation and use of a pen register or trap and
trace device under this section, the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.”.

(D) USE OF INFORMATION.—Section 405(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1845(a)) is amended by striking “provisions of” and inserting “minimization procedures required under”.

SEC. 5. LIMITATIONS ON DISCLOSURE OF NATIONAL SECURITY LETTERS.

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

“(c) PROHIBITION OF CERTAIN DISCLOSURE.—

“(1) PROHIBITION.—

“(A) IN GENERAL.—If a certification is issued under subparagraph (B) and notice of the right to judicial review under paragraph (3) is provided, no wire or electronic communication service provider, or officer, employee, or agent thereof, that receives a request under subsection (a), shall disclose to any person that the Director of the Federal Bureau of Investigation has sought or obtained access to information or records under this section.
“(B) CERTIFICATION.—The requirements of subparagraph (A) shall apply if the Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office, certifies that, absent a prohibition of disclosure under this subsection, there may result—

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

“(ii) interference with a criminal, counterterrorism, or counterintelligence investigation;

“(iii) interference with diplomatic relations; or

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

“(2) EXCEPTION.—

“(A) IN GENERAL.—A wire or electronic communication service provider, or officer, employee, or agent thereof, that receives a request under subsection (a) may disclose information otherwise subject to any applicable nondisclosure requirement to—
“(i) those persons to whom disclosure is necessary in order to comply with the request;
(ii) an attorney in order to obtain legal advice or assistance regarding the request; or
(iii) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

“(B) Persons necessary for compliance.—Upon a request by the Director of the Federal Bureau of Investigation or the designee of the Director, those persons to whom disclosure will be made under subparagraph (A)(i) or to whom such disclosure was made before the request shall be identified to the Director or the designee.

“(C) Nondisclosure requirement.—A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subsection (a) in the same manner as the person to whom the request is issued.
“(D) Notice.—Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

“(3) Right to Judicial Review.—

“(A) In general.—A wire or electronic communications service provider that receives a request under subsection (a) shall have the right to judicial review of any applicable nondisclosure requirement.

“(B) Notification.—A request under subsection (a) shall state that if the recipient wishes to have a court review a nondisclosure requirement, the recipient shall notify the Government.

“(C) Initiation of Proceedings.—If a recipient of a request under subsection (a) makes a notification under subparagraph (B), the Government shall initiate judicial review under the procedures established in section 3511 of this title, unless an appropriate official of the Federal Bureau of the Investigation makes a notification under paragraph (4).
“(4) DECISION.—If the facts supporting a nondisclosure requirement cease to exist, an appropriate official of the Federal Bureau of Investigation shall promptly notify the wire or electronic service provider, or officer, employee, or agent thereof, subject to the nondisclosure requirement that the nondisclosure requirement is no longer in effect.”

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

“(d) PROHIBITION OF CERTAIN DISCLOSURE.—

“(1) PROHIBITION.—

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

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

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

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

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

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

“(2) EXCEPTION.—

“(A) IN GENERAL.—A consumer reporting
agency, or officer, employee, or agent thereof,
that receives a request or order under sub-
section (a), (b), or (c) may disclose information
otherwise subject to any applicable nondisclo-
sure requirement to—
“(i) those persons to whom disclosure is necessary in order to comply with the request or order;
“(ii) an attorney in order to obtain legal advice or assistance regarding the request or order; or
“(iii) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

“(B) PERSONS NECESSARY FOR COMPLIANCE.—Upon a request by the Director of the Federal Bureau of Investigation or the designee of the Director, those persons to whom disclosure will be made under subparagraph (A)(i) or to whom such disclosure was made before the request shall be identified to the Director or the designee.

“(C) NONDISCLOSURE REQUIREMENT.—A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request or order is issued under subsection (a), (b), or (e) in the same manner as the person to whom the request or order is issued.
“(D) NOTICE.—Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a non-disclosure requirement shall inform the person of the applicable nondisclosure requirement.

“(3) RIGHT TO JUDICIAL REVIEW.—

“(A) IN GENERAL.—A consumer reporting agency that receives a request or order under subsection (a), (b), or (c) shall have the right to judicial review of any applicable nondisclosure requirement.

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

“(C) INITIATION OF PROCEEDINGS.—If a recipient of a request or order under subsection (a), (b), or (c) makes a notification under subparagraph (B), the Government shall initiate judicial review under the procedures established in section 3511 of title 18, United States Code, unless an appropriate official of the Federal Bureau of Investigation makes a notification under paragraph (4).
“(4) TERMINATION.—If the facts supporting a nondisclosure requirement cease to exist, an appropriate official of the Federal Bureau of Investigation shall promptly notify the consumer reporting agency, or officer, employee, or agent thereof, subject to the nondisclosure requirement that the nondisclosure requirement is no longer in effect.”.

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

“(c) PROHIBITION OF CERTAIN DISCLOSURE.—

“(1) PROHIBITION.—

“(A) IN GENERAL.—If a certification is issued under subparagraph (B) and notice of the right to judicial review under paragraph (3) is provided, no consumer reporting agency, or officer, employee, or agent thereof, that receives a request under subsection (a), shall disclose to any person or specify in any consumer report, that a government agency has sought or obtained access to information under subsection (a).

“(B) CERTIFICATION.—The requirements of subparagraph (A) shall apply if the head of
a government agency authorized to conduct investigations of intelligence or counterintelligence activities or analysis related to international terrorism, or a designee, certifies that, absent a prohibition of disclosure under this subsection, there may result—

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

“(ii) interference with a criminal, counterterrorism, or counterintelligence investigation;

“(iii) interference with diplomatic relations; or

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

“(2) EXCEPTION.—

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

“(i) those persons to whom disclosure is necessary in order to comply with the request;
“(ii) an attorney in order to obtain legal advice or assistance regarding the request; or

“(iii) other persons as permitted by the head of the government agency authorized to conduct investigations of intelligence or counterintelligence activities or analysis related to international terrorism, or a designee.

“(B) PERSONS NECESSARY FOR COMPLIANCE.—Upon a request by the head of a government agency authorized to conduct investigations of intelligence or counterintelligence activities or analysis related to international terrorism, or a designee, those persons to whom disclosure will be made under subparagraph (A)(i) or to whom such disclosure was made before the request shall be identified to the head of the government agency or the designee.

“(C) NONDISCLOSURE REQUIREMENT.—A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subsection (a)
in the same manner as the person to whom the request is issued.

“(D) NOTICE.—Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

“(3) RIGHT TO JUDICIAL REVIEW.—

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

“(B) NOTIFICATION.—A request under subsection (a) shall state that if the recipient wishes to have a court review a nondisclosure requirement, the recipient shall notify the government.

“(C) INITIATION OF PROCEEDINGS.—If a recipient of a request under subsection (a) makes a notification under subparagraph (B), the government shall initiate judicial review under the procedures established in section 3511 of title 18, United States Code, unless an appropriate official of the government agency authorized to conduct investigations of intel-
intelligence or counterintelligence activities or analysis related to international terrorism makes a notification under paragraph (4).

“(4) Termination.—If the facts supporting a nondisclosure requirement cease to exist, an appropriate official of the government agency authorized to conduct investigations of intelligence or counterintelligence activities or analysis related to international terrorism shall promptly notify the consumer reporting agency, or officer, employee, or agent thereof, subject to the nondisclosure requirement that the nondisclosure requirement is no longer in effect.”.

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

“(D) Prohibition of certain disclosure.—

“(i) Prohibition.—

“(I) In general.—If a certification is issued under subclause (II) and notice of the right to judicial review under clause (iii) is provided, no financial institution, or officer, em-
ployee, or agent thereof, that receives
a request under subparagraph (A),
shall disclose to any person that the
Federal Bureau of Investigation has
sought or obtained access to informa-
tion or records under subparagraph
(A).

“(II) Certification.—The re-
quirements of subclause (I) shall
apply if the Director of the Federal
Bureau of Investigation, or a designee
of the Director whose rank shall be no
lower than Deputy Assistant Director
at Bureau headquarters or a Special
Agent in Charge of a Bureau field of-
face, certifies that, absent a prohibi-
tion of disclosure under this subpara-
graph, there may result—

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

“(bb) interference with a
criminal, counterterrorism, or
counterintelligence investigation;
“(cc) interference with diplomatic relations; or

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

“(ii) EXCEPTION.—

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

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

“(bb) an attorney in order to obtain legal advice or assistance regarding the request; or

“(cc) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

“(II) PERSONS NECESSARY FOR COMPLIANCE.—Upon a request by the Director of the Federal Bureau of In-
vestigation or the designee of the Director, those persons to whom disclosure will be made under subclause (I)(aa) or to whom such disclosure was made before the request shall be identified to the Director or the designee.

“(III) NONDISCLOSURE REQUIREMENT.—A person to whom disclosure is made under subclause (I) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subparagraph (A) in the same manner as the person to whom the request is issued.

“(IV) NOTICE.—Any recipient that discloses to a person described in subclause (I) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

“(iii) RIGHT TO JUDICIAL REVIEW.—

“(I) IN GENERAL.—A financial institution that receives a request
under subparagraph (A) shall have
the right to judicial review of any ap-
licable nondisclosure requirement.

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

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

“(iv) TERMINATION.—If the facts
supporting a nondisclosure requirement
cease to exist, an appropriate official of the
Federal Bureau of Investigation shall
promptly notify the financial institution, or
officer, employee, or agent thereof, subject to the nondisclosure requirement that the nondisclosure requirement is no longer in effect.”.

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

“(b) PROHIBITION OF CERTAIN DISCLOSURE.—

“(1) PROHIBITION.—

“(A) IN GENERAL.—If a certification is issued under subparagraph (B) and notice of the right to judicial review under paragraph (3) is provided, no governmental or private entity, or officer, employee, or agent thereof, that receives a request under subsection (a), shall disclose to any person that an authorized investigative agency described in subsection (a) has sought or obtained access to information under subsection (a).

“(B) CERTIFICATION.—The requirements of subparagraph (A) shall apply if the head of an authorized investigative agency described in subsection (a), or a designee, certifies that, ab-
sent a prohibition of disclosure under this sub-
section, there may result—

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

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

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

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

“(2) Exception.—

“(A) In general.—A governmental or
private entity, or officer, employee, or agent
thereof, that receives a request under sub-
section (a) may disclose information otherwise
subject to any applicable nondisclosure require-
ment to—

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

“(ii) an attorney in order to obtain
legal advice or assistance regarding the re-
quest; or
“(iii) other persons as permitted by the head of the authorized investigative agency described in subsection (a).

“(B) PERSONS NECESSARY FOR COMPLIANCE.—Upon a request by the head of an authorized investigative agency described in subsection (a), or a designee, those persons to whom disclosure will be made under subparagraph (A)(i) or to whom such disclosure was made before the request shall be identified to the head of the authorized investigative agency or the designee.

“(C) NONDISCLOSURE REQUIREMENT.—A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subsection (a) in the same manner as the person to whom the request is issued.

“(D) NOTICE.—Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

“(3) RIGHT TO JUDICIAL REVIEW.—
“(A) IN GENERAL.—A governmental or private entity that receives a request under subsection (a) shall have the right to judicial review of any applicable nondisclosure requirement.

“(B) NOTIFICATION.—A request under subsection (a) shall state that if the recipient wishes to have a court review a nondisclosure requirement, the recipient shall notify the Government.

“(C) INITIATION OF PROCEEDINGS.—If a recipient of a request under subsection (a) makes a notification under subparagraph (B), the Government shall initiate judicial review under the procedures established in section 3511 of title 18, United States Code, unless an appropriate official of the authorized investigative agency described in subsection (a) makes a notification under paragraph (4).

“(4) TERMINATION.—If the facts supporting a nondisclosure requirement cease to exist, an appropriate official of the authorized investigative agency described in subsection (a) shall promptly notify the governmental or private entity, or officer, employee, or agent thereof, subject to the nondisclosure re-
quirement that the nondisclosure requirement is no longer in effect.”.

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

(a) FISA.—Section 501(f)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(f)(2)) is amended—

(1) in subparagraph (A)—

(A) in clause (i)—

(i) by striking “a production order” and inserting “a production order or nondisclosure order”; and

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

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

(2) in subparagraph (C)—

(A) by striking clause (ii); and

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

(b) JUDICIAL REVIEW OF NATIONAL SECURITY LETTERS.—Section 3511(b) of title 18, United States Code, is amended to read as follows:

“(b) NONDISCLOSURE.—

“(1) IN GENERAL.—
“(A) NOTICE.—If a recipient of a request or order for a report, records, or other information under section 2709 of this title, section 626 or 627 of the Fair Credit Reporting Act (15 U.S.C. 1681u and 1681v), section 1114 of the Right to Financial Privacy Act (12 U.S.C. 3414), or section 802 of the National Security Act of 1947 (50 U.S.C. 436), wishes to have a court review a nondisclosure requirement imposed in connection with the request, the recipient shall notify the Government.

“(B) APPLICATION.—Not later than 30 days after the date of receipt of a notification under subparagraph (A), the Government shall apply for an order prohibiting the disclosure of the existence or contents of the relevant request or order. An application under this subparagraph may be filed in the district court of the United States for any district within which the authorized investigation that is the basis for the request or order is being conducted. The applicable nondisclosure requirement shall remain in effect during the pendency of proceedings relating to the requirement.
“(C) CONSIDERATION.—A district court of
the United States that receives an application
under subparagraph (B) should rule expedi-
tiously, and may issue a nondisclosure order
that includes conditions appropriate to the cir-
cumstances.

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

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

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

“(C) interference with diplomatic relations;

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

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

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

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

“(C) interference with diplomatic relations;

or

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

(c) MINIMIZATION.—Section 501(g)(1) of the For-
gn Intelligence Surveillance Act of 1978 (50 U.S.C.
1861(g)(1)) is amended by striking “Not later than” and all that follows and inserting “At or before the end of the period of time for the production of tangible things under an order approved under this section or at any time after the production of tangible things under an order approved
under this section, a judge may assess compliance with
the minimization procedures by reviewing the cir-
cumstances under which information concerning United
States persons was retained or disseminated.”.

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

(a) In General.—Section 2709 of title 18, United
States Code, as amended by this Act, is amended—

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

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

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

September 30, 2009 (4:48 p.m.)
(b) **IDENTITY OF FINANCIAL INSTITUTIONS AND CREDIT REPORTS.**—Section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u), as amended by this Act, is amended—

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

(2) by inserting after subsection (c) the following:

“(d) **WRITTEN STATEMENT.**—The Director of the Federal Bureau of Investigation, or a designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, may make a certification under subsection (a) or (b) only upon a written statement, which shall be retained by the Federal Bureau of Investigation, of specific and articulable facts showing that there are reasonable grounds to believe that the information sought is relevant to the authorized investigation described in subsection (a) or (b), as the case may be.”.

(e) **DISCLOSURES TO GOVERNMENTAL AGENCIES FOR COUNTERTERRORISM PURPOSES.**—Section 627(b) of the Fair Credit Reporting Act (15 U.S.C. 1681v(b)) is amended—
(1) in the subsection heading, by striking "FORM OF CERTIFICATION" and inserting "CERTIFICATION";

(2) by striking "The certification" and inserting the following:

"(1) FORM OF CERTIFICATION.—The certification"; and

(3) by adding at the end the following:

"(2) WRITTEN STATEMENT.—A supervisory official or officer described in paragraph (1) may make a certification under subsection (a) only upon a written statement, which shall be retained by the government agency, of specific and articulable facts showing that there are reasonable grounds to believe that the information sought is relevant to the authorized investigation described in subsection (a).”.

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

(1) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively; and

(2) by inserting after subparagraph (A) the following:
“(B) The Director of the Federal Bureau of Investigation, or a designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, may make a certification under subparagraph (A) only upon a written statement, which shall be retained by the Federal Bureau of Investigation, of specific and articulable facts showing that there are reasonable grounds to believe that the information sought is relevant to the authorized investigation described in subparagraph (A).”.

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

“(4) A department or agency head, deputy department or agency head, or senior official described in paragraph (3)(A) may make a certification under paragraph (3)(A) only upon a written statement, which shall be retained by the authorized investigative agency, of specific and articulable facts showing that there are reasonable grounds to believe that the information sought is relevant to the authorized inquiry or investigation described in paragraph (3)(A)(ii).”.
(f) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

SEC. 8. PUBLIC REPORTING ON NATIONAL SECURITY LETTERS.

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

(1) in paragraph (1)—

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

(B) in subparagraph (A), by striking “, excluding the number of requests for subscriber information”;

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following:

“(2) CONTENT.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), each report required under
this subsection shall include the total number of requests described in paragraph (1) requiring disclosure of information concerning—

“(i) United States persons;
“(ii) persons who are not United States persons;
“(iii) persons who are the subjects of authorized national security investigations;

or

“(iv) persons who are not the subjects of authorized national security investigations.

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

SEC. 9. PUBLIC REPORTING ON THE FOREIGN INTELLIGENCE SURVEILLANCE ACT.

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

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively;
(2) by inserting after subsection (a) the following:

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

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

SEC. 10. AUDITS.

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

(1) in subsection (b)—

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

(B) in paragraph (5)(C), by striking “calendar year 2006” and inserting “each of calendar years 2006 through 2011”;

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

“(3) CALENDAR YEARS 2007, 2008, AND 2009.—Not later than June 30, 2011, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Se-
lect Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the results of the audit conducted under this section for calendar years 2007, 2008, and 2009.

“(4) Calendar years 2010 and 2011.—Not later than December 31, 2012, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the results of the audit conducted under this section for calendar years 2010 and 2011.”;

(3) in subsection (d)—

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

and

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

and

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

September 30, 2009 (4:48 p.m.)
(b) NATIONAL SECURITY LETTERS.—Section 119 of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109–177; 120 Stat. 219) is amended—

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

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

“(3) CALENDAR YEARS 2007, 2008, AND 2009.—Not later than June 30, 2011, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the results of the audit conducted under this section for calendar years 2007, 2008, and 2009.

“(4) CALENDAR YEARS 2010 AND 2011.—Not later than December 31, 2012, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate
a report containing the results of the audit conducted under this section for calendar years 2010 and 2011.”;

(3) in subsection (d)—

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

and

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

and

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

(c) PEN REGISTERS AND TRAP AND TRACE DEVICES.—

(1) AUDITS.—The Inspector General of the Department of Justice shall perform comprehensive audits of the effectiveness and use, including any improper or illegal use, of pen registers and trap and trace devices under title IV of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1841 et seq.) during the period beginning on January 1, 2007 and ending on December 31, 2011.

(2) REQUIREMENTS.—The audits required under paragraph (1) shall include—
(A) an examination of the use of pen registers and trap and trace devices under title IV of the Foreign Intelligence Surveillance Act of 1978 for calendar years 2007 through 2011;

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

(C) any noteworthy facts or circumstances relating to the use of a pen register or trap and trace device under title IV of the Foreign Intelligence Surveillance Act of 1978, including any improper or illegal use of the authority provided under that title; and

(D) an examination of the effectiveness of the authority under title IV of the Foreign Intelligence Surveillance Act of 1978 as an investigative tool, including—

(i) the importance of the information acquired to the intelligence activities of the Federal Bureau of Investigation or any other department or agency of the Federal Government;
(ii) the manner in which the information is collected, retained, analyzed, and disseminated by the Federal Bureau of Investigation, including any direct access to the information provided to any other department, agency, or instrumentality of Federal, State, local, or tribal governments or any private sector entity;

(iii) with respect to calendar years 2010 and 2011, an examination of the minimization procedures used in relation to pen registers and trap and trace devices under title IV of the Foreign Intelligence Surveillance Act of 1978 and whether the minimization procedures protect the constitutional rights of United States persons;

(iv) whether, and how often, the Federal Bureau of Investigation used information acquired under a pen register or trap and trace device under title IV of the Foreign Intelligence Surveillance Act of 1978 to produce an analytical intelligence product for distribution within the Federal Bureau of Investigation, to the intelligence community (as defined in section 3(4) of
the National Security Act of 1947 (50 U.S.C. 401a(4))), or to other Federal, State, local, or tribal government departments, agencies, or instrumentalities; and (v) whether, and how often, the Federal Bureau of Investigation provided information acquired under a pen register or trap and trace device under title IV of the Foreign Intelligence Surveillance Act of 1978 to law enforcement authorities for use in criminal proceedings.

(3) Submission dates.—

(A) Prior years.—Not later than June 30, 2011, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives a report containing the results of the audit conducted under this section for calendar years 2007 through 2009.

(B) Calendar years 2010 and 2011.—Not later than December 21, 2012, the Inspector General of the Department of Justice shall
submits to the Committee on the Judiciary and
the Select Committee on Intelligence of the
Senate and the Committee on the Judiciary and
the Permanent Select Committee on Intelligence
of the House of Representatives a report con-
taining the results of the audit conducted under
this section for calendar years 2010 and 2011.

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

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

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

(5) UNCLASSIFIED FORM.—A report submitted
under subparagraph (A) or (B) of paragraph (3)
and any comments included under paragraph (4)(B) shall be in unclassified form, but may include a classified annex.