

114TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To provide for the creation of the Missing Armed Forces Personnel Records Collection at the National Archives, to require the expeditious public transmission to the Archivist and public disclosure of Missing Armed Forces Personnel records, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

Ms. AYOTTE introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To provide for the creation of the Missing Armed Forces Personnel Records Collection at the National Archives, to require the expeditious public transmission to the Archivist and public disclosure of Missing Armed Forces Personnel records, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Bring Our Heroes  
5 Home Act of 2016”.

1 **SEC. 2. FINDINGS, DECLARATIONS, AND PURPOSES.**

2 (a) FINDINGS AND DECLARATIONS.—Congress finds  
3 and declares the following:

4 (1) A vast number of records relating to Miss-  
5 ing Armed Forces Personnel have not been identi-  
6 fied, located, or transferred to the National Archives  
7 for review and declassification. Only in the rarest  
8 cases is there any legitimate need for continued pro-  
9 tection of records pertaining to Missing Armed  
10 Forces Personnel who have been missing for dec-  
11 ades.

12 (2) There has been insufficient priority placed  
13 on identifying, locating, transferring, reviewing, or  
14 declassifying records relating to Missing Armed  
15 Forces Personnel.

16 (3) Mandates for declassification set forth in  
17 multiple Executive Orders have been broadly writ-  
18 ten, loosely interpreted, and often ignored by Fed-  
19 eral Government officials in possession and control  
20 of records related to Missing Armed Forces Per-  
21 sonnel.

22 (4) No individual or entity has been tasked with  
23 oversight of the identification, collection, review, and  
24 declassification of records related to Missing Armed  
25 Forces Personnel.

1           (5) The interest, desire, workforce, and funding  
2 of Federal agencies to assemble, review, and declas-  
3 sify records relating to Missing Armed Forces Per-  
4 sonnel have been lacking.

5           (6) All records of the Federal Government re-  
6 lating to Missing Armed Forces Personnel should be  
7 preserved for historical and Governmental purposes.

8           (7) All records of the Federal Government re-  
9 lating Missing Armed Forces Personnel should carry  
10 a presumption of immediate disclosure, and all such  
11 records should be disclosed under this Act to enable  
12 the fullest possible accounting for Missing Armed  
13 Forces Personnel.

14           (8) Legislation is necessary to create an en-  
15 forceable, independent, and accountable process for  
16 the public disclosure of records relating to Missing  
17 Armed Forces Personnel.

18           (9) Legislation is necessary because section 552  
19 of title 5, United States Code (commonly known as  
20 the Freedom of Information Act), as implemented by  
21 the executive branch of the Federal Government, has  
22 prevented the timely public disclosure of records re-  
23 lating to Missing Armed Forces Personnel.

24           (b) PURPOSES.—The purposes of this Act are—

1           (1) to provide for the creation of the Missing  
2           Armed Forces Personnel Records Collection at the  
3           National Archives; and

4           (2) to require the expeditious public trans-  
5           mission to the Archivist and public disclosure of  
6           Missing Armed Forces Personnel records.

7   **SEC. 3. DEFINITIONS.**

8           In this Act:

9           (1) ARCHIVIST.—The term “Archivist” means  
10          Archivist of the United States.

11          (2) COLLECTION.—The term “Collection”  
12          means the Missing Armed Forces Personnel Records  
13          Collection established under section 4(a).

14          (3) EXECUTIVE AGENCY.—The term “Executive  
15          agency”—

16                 (A) means an agency, as defined in section  
17                 552(f) of title 5, United States Code; and

18                 (B) includes any Executive department,  
19                 military department, Government corporation,  
20                 Government controlled corporation, or other es-  
21                 tablishment in the executive branch of the Fed-  
22                 eral Government, including the Executive Office  
23                 of the President, any branch of the Armed  
24                 Forces, and any independent regulatory agency.

1           (4) EXECUTIVE BRANCH MISSING ARMED  
2           FORCES PERSONNEL RECORD.—The term “executive  
3           branch Missing Armed Forces Personnel record”  
4           means a Missing Armed Forces Personnel record of  
5           an Executive agency, or information contained in  
6           such a Missing Armed Forces Personnel record ob-  
7           tained or developed solely within the executive  
8           branch of the Federal Government.

9           (5) GOVERNMENT OFFICE.—The term “Govern-  
10          ment office” means an Executive agency, the Li-  
11          brary of Congress, and the National Archives.

12          (6) IDENTIFICATION AID.—The term “identi-  
13          fication aid” means the standard form prepared  
14          under section 5(d)(1)(A).

15          (7) MISSING ARMED FORCES PERSONNEL.—The  
16          term “Missing Armed Forces Personnel” means 1 or  
17          more “missing persons” as defined in section 1513  
18          of title 10, United States Code.

19          (8) MISSING ARMED FORCES PERSONNEL  
20          RECORD.—The term “Missing Armed Forces Per-  
21          sonnel record” means a record that relates, directly  
22          or indirectly, to the loss, fate, or status of Missing  
23          Armed Forces Personnel that was created or made  
24          available for use by, obtained by, or otherwise came  
25          into the custody, possession, or control of—

1 (A) any Government office;

2 (B) any Presidential library; or

3 (C) any of the Armed Forces.

4 (9) NATIONAL ARCHIVES.—The term “National  
5 Archives”—

6 (A) means the National Archives and  
7 Records Administration; and

8 (B) includes—

9 (i) any component of the National Ar-  
10 chives and Records Administration; and

11 (ii) a Presidential archival depository  
12 established under section 2112 of title 44,  
13 United States Code.

14 (10) OFFICIAL INVESTIGATION.—The term “of-  
15 ficial investigation” means a review, briefing, or  
16 hearing relating to Missing Armed Forces Personnel  
17 conducted by a Presidential commission, committee  
18 of Congress, or agency, regardless of whether it is  
19 conducted independently, at the request of any Pres-  
20 idential commission or committee of Congress, or at  
21 the request of any official of the Federal Govern-  
22 ment.

23 (11) ORIGINATING BODY.—The term “origi-  
24 nating body” means the Government office that cre-

1       ated a record or particular information within a  
2       record.

3               (12) PUBLIC INTEREST.—The term “public in-  
4       terest” means the compelling interest in the prompt  
5       public disclosure of Missing Armed Forces Personnel  
6       records for historical and Governmental purposes  
7       and for the purpose of fully informing the people of  
8       the United States, most importantly families of  
9       Missing Armed Forces Personnel, about the fate of  
10      the Missing Armed Forces Personnel and the proc-  
11      ess by which the Federal Government has sought to  
12      account for them.

13              (13) RECORD.—The term “record” includes a  
14      book, paper, map, photograph, sound or video re-  
15      cording, machine readable material, computerized,  
16      digitized, or electronic information, regardless of the  
17      medium on which it is stored, and other documen-  
18      tary material, regardless of its physical form or  
19      characteristics.

20              (14) REVIEW BOARD.—The term “Review  
21      Board” means the Missing Armed Forces Personnel  
22      Records Review Board established under section 7.

23              (15) THIRD AGENCY.—The term “third agen-  
24      cy” means a Government office that originated a  
25      Missing Armed Forces Personnel record that is in

1 the custody, possession, or control of another Gov-  
2 ernment office whose review and authorization is re-  
3 quired before a record can be designated for disclo-  
4 sure.

5 **SEC. 4. MISSING ARMED FORCES PERSONNEL RECORDS**  
6 **COLLECTION AT THE NATIONAL ARCHIVES.**

7 (a) ESTABLISHMENT OF COLLECTION.—Not later  
8 than 60 days after the date of enactment of this Act, the  
9 National Archives shall commence establishment of a col-  
10 lection of records to be known as the Missing Armed  
11 Forces Personnel Records Collection.

12 (b) REGULATIONS.—

13 (1) IN GENERAL.—Not later than 180 days  
14 after the date of enactment of this Act, the Review  
15 Board shall promulgate rules to establish guidelines  
16 and processes for the maintenance of the Collection.

17 (2) REQUIREMENTS.—The rules required to be  
18 promulgated under paragraph (1) shall include  
19 guidelines and processes for—

20 (A) transmission of records for inclusion in  
21 the Collection;

22 (B) disclosure of records contained in the  
23 Collection;

24 (C) fees for copying of records contained in  
25 the Collection; and



1 (D) availability and security of records  
2 contained in the Collection.

3 **SEC. 5. REVIEW, IDENTIFICATION, TRANSMISSION TO THE**  
4 **NATIONAL ARCHIVES, AND PUBLIC DISCLO-**  
5 **SURE OF MISSING ARMED FORCES PER-**  
6 **SONNEL RECORDS BY GOVERNMENT OF-**  
7 **FICES.**

8 (a) IN GENERAL.—

9 (1) PREPARATION.—As soon as practicable  
10 after the date of enactment of this Act, and suffi-  
11 ciently in advance of the deadlines established under  
12 this Act, each Government office shall—

13 (A) identify, locate, and organize any Miss-  
14 ing Armed Forces Personnel records in the cus-  
15 tody, possession, or control of the Government  
16 office; and

17 (B) prepare for transmission to the Archi-  
18 vist any Missing Armed Forces Personnel  
19 records that have not previously been trans-  
20 mitted to the Archivist by the Government of-  
21 fice.

22 (2) CERTIFICATION.—Each Government office  
23 shall submit to the Archivist, under penalty of per-  
24 jury, a certification indicating—

1           (A) whether the Government office has  
2           conducted a thorough search for all Missing  
3           Armed Forces Personnel records in the custody,  
4           possession, or control of the Government office;  
5           and

6           (B) whether any Missing Armed Forces  
7           Personnel record has been withheld by the of-  
8           fice, other than in accordance with this Act.

9           (3) PRESERVATION.—No Missing Armed  
10          Forces Personnel record shall be destroyed, altered,  
11          or mutilated in any way.

12          (4) EFFECT OF PREVIOUS DISCLOSURE.—A  
13          Missing Armed Forces Personnel record made avail-  
14          able or disclosed to the public before the date of en-  
15          actment of this Act may not be withheld, redacted,  
16          postponed for public disclosure, or reclassified.

17          (5) NON-FEDERAL RECORDS.—Except for the  
18          exclusion of names or identities in accordance with  
19          section 6, a Missing Armed Forces Personnel record  
20          created by an individual or entity that is not part of  
21          the Federal Government may not be withheld, re-  
22          dacted, postponed for public disclosure, or reclassi-  
23          fied.

24          (6) WITHHELD RECORDS.—For any Missing  
25          Armed Forces Personnel record that is withheld by

1 a Government office from the Archivist or the Re-  
2 view Board, the head of the Government Office shall  
3 submit an unclassified report to the Review Board  
4 and each appropriate committee of the Senate and  
5 the House of Representatives explaining the decision  
6 to withhold the record.

7 (b) CUSTODY OF MISSING ARMED FORCES PER-  
8 SONNEL RECORDS PENDING REVIEW.—During the period  
9 during which a Missing Armed Forces Personnel record  
10 is being reviewed by a Government office and any review  
11 activity by the Review Board relating to the Missing  
12 Armed Forces Personnel record is pending, the Govern-  
13 ment office shall retain custody of the Missing Armed  
14 Forces Personnel record for purposes of preservation, se-  
15 curity, and efficiency, unless—

16 (1) the Review Board requires the physical  
17 transfer of the Missing Armed Forces Personnel  
18 record for purposes of conducting an independent  
19 and impartial review; or

20 (2) transfer is necessary for an administrative  
21 hearing or other Review Board function.

22 (c) REVIEW.—

23 (1) IN GENERAL.—Not later than 180 days  
24 after the date of enactment of this Act, each Gov-

1       ernment office shall, in accordance with the rules  
2       promulgated under paragraph (2)—

3               (A) identify, locate, review, and organize  
4               each Missing Armed Forces Personnel record in  
5               the custody, possession, or control of the Gov-  
6               ernment office for transmission to the Archivist  
7               and disclosure to the public or, if needed, re-  
8               view by the Review Board; and

9               (B) identify and review for public disclo-  
10              sure each Missing Armed Services Personnel  
11              record previously transferred to the National  
12              Archives that remains classified in whole or in  
13              part.

14             (2) REQUIREMENT.—The Review Board shall  
15             promulgate rules for the disclosure of relevant  
16             records by Government offices under paragraph (1).

17             (3) PRESIDENTIAL ARCHIVAL DEPOSITORIES.—  
18             The Director of each Presidential archival depository  
19             established under section 2112 of title 44, United  
20             States Code, shall—

21               (A) have as a priority the expedited review  
22               for public disclosure of Missing Armed Forces  
23               Personnel records in the custody, possession, or  
24               control of the depository; and

1 (B) make Missing Armed Forces Personnel  
2 records available to the Review Board as re-  
3 quired under this Act.

4 (4) NATIONAL ARCHIVES RECORDS.—Not later  
5 than 60 days after the date of enactment of this  
6 Act, the Archivist shall—

7 (A) locate and identify all Missing Armed  
8 Forces Personnel records in the custody, pos-  
9 session, or control of the National Archives that  
10 remain classified, in whole or in part;

11 (B) notify a Government office if the Ar-  
12 chivist locates and identifies a record of the  
13 Government office under subparagraph (A); and

14 (C) make each Missing Armed Forces Per-  
15 sonnel record located and identified under sub-  
16 paragraph (A) available for review by the origi-  
17 nating body.

18 (d) IDENTIFICATION AIDS.—

19 (1) PREPARATION.—

20 (A) IN GENERAL.—Not later than 45 days  
21 after the date of enactment of this Act, the Ar-  
22 chivist, in consultation with the appropriate  
23 Government offices, shall prepare and make  
24 available to all Government offices a standard  
25 form for collecting information relating to each

1 Missing Armed Forces Personnel record subject  
2 to review under this Act.

3 (B) COMPATIBILITY.—The Archivist shall  
4 prepare and make available identification aids  
5 in a manner that results in a uniform and com-  
6 patible system of electronic records for use by  
7 Government offices.

8 (2) USE.—Upon completion of an identification  
9 aid, a Government office shall—

10 (A) attach a printed copy to the record to  
11 which the identification aid relates;

12 (B) transmit to the Review Board a print-  
13 ed copy of the identification aid; and

14 (C) attach a printed copy to each Missing  
15 Armed Forces Personnel record described in the  
16 identification aid when the Missing Armed  
17 Forces Personnel record is transmitted to the  
18 Archivist.

19 (3) RECORDS ALREADY PUBLIC.—A Missing  
20 Armed Forces Personnel record that is in the cus-  
21 tody, possession, or control of the National Archives  
22 on the date of enactment of this Act, and that has  
23 been publicly available in its entirety without redac-  
24 tion—

1 (A) shall be made available in the Collec-  
2 tion without any additional review by the Re-  
3 view Board or another Government office under  
4 this Act; and

5 (B) shall not be required to have an identi-  
6 fication aid, unless required by the Archivist.

7 (e) TRANSMISSION TO THE NATIONAL ARCHIVES.—

8 Each Government office shall—

9 (1) not later than 180 days after the date of  
10 enactment of this Act, transmit to the Archivist, and  
11 make available to the public, all Missing Armed  
12 Forces Personnel records in the custody, possession  
13 or control of the Government office that may be  
14 publicly disclosed under the standards under this  
15 Act, including those that are publicly available on  
16 the date of enactment of this Act, without any re-  
17 daction, adjustment, or withholding; and

18 (2) transmit to the Archivist upon approval for  
19 postponement by the Review Board or upon comple-  
20 tion of other action authorized by this Act, all Miss-  
21 ing Armed Forces Personnel records the public dis-  
22 closure of which has been postponed, in whole or in  
23 part, under the standards under this Act, to become  
24 part of the protected Collection.

1 (f) CUSTODY OF POSTPONED MISSING ARMED SERV-  
2 ICES PERSONNEL RECORDS.—A Missing Armed Forces  
3 Personnel record the public disclosure of which has been  
4 postponed under the standards under this Act shall, pend-  
5 ing transmission to the Archivist, be held for reasons of  
6 security and preservation by the originating body until  
7 such time as an information security program has been  
8 established at the National Archives.

9 (g) PERIODIC REVIEW OF POSTPONED MISSING  
10 ARMED SERVICES PERSONNEL RECORDS.—

11 (1) IN GENERAL.—All Missing Armed Forces  
12 Personnel records, or information within a Missing  
13 Armed Forces Personnel record, the public disclo-  
14 sure of which has been postponed under the stand-  
15 ards under this Act shall be reviewed periodically by  
16 the originating body and by the Archivist consistent  
17 with the recommendations of the Review Board  
18 under section 9(c)(3)(B).

19 (2) CONTENTS.—

20 (A) IN GENERAL.—A periodic review of a  
21 Missing Armed Forces Personnel record, or in-  
22 formation within a Missing Armed Forces Per-  
23 sonnel record, by the originating body shall ad-  
24 dress the public disclosure of the Missing



1 Armed Forces Personnel record under the  
2 standards under this Act.

3 (B) CONTINUED POSTPONEMENT.—If an  
4 originating body conducting a periodic review of  
5 a Missing Armed Forces Personnel record, or  
6 information within a Missing Armed Forces  
7 Personnel record, the public disclosure of which  
8 has been postponed under the standards under  
9 this Act determines that continued postpone-  
10 ment is required, the originating body shall pro-  
11 vide to the Archivist and publish in the Federal  
12 Register an unclassified written description of  
13 the reason for the continued postponement.

14 (C) SCOPE.—The periodic review of post-  
15 poned Missing Armed Forces Personnel records,  
16 or information within a Missing Armed Forces  
17 Personnel record, shall serve the purpose stated  
18 in section 2(b)(2), to provide expeditious public  
19 disclosure of Missing Armed Forces Personnel  
20 records, to the fullest extent possible, subject  
21 only to the grounds for postponement of disclo-  
22 sure under section 6.

23 (D) DISCLOSURE ABSENT CERTIFICATION  
24 BY PRESIDENT.—Not later than 5 years after  
25 the date of enactment of this Act, all Missing

1 Armed Forces Personnel records, and informa-  
2 tion within a Missing Armed Forces Personnel  
3 record, shall be publicly disclosed in full, and  
4 available in the Collection, unless the President  
5 submits to the Archivist a certification that—

6 (i) continued postponement is nec-  
7 essary because of an identifiable harm to  
8 the military defense, intelligence oper-  
9 ations, or conduct of foreign relations; and

10 (ii) the identifiable harm is of such  
11 gravity that it outweighs the public inter-  
12 est in disclosure.

13 (h) FEES FOR COPYING.—An Executive agency—

14 (1) shall charge a fee for copying Missing  
15 Armed Forces Personnel records; and

16 (2) may grant a waiver of such a fee in a man-  
17 ner in accordance with the standards established by  
18 the head of the Executive agency for purposes of  
19 section 552(a)(4) of title 5, United States Code.

20 **SEC. 6. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLO-**  
21 **SURE OF RECORDS.**

22 Disclosure to the public of a Missing Armed Forces  
23 Personnel record or particular information in a Missing  
24 Armed Forces Personnel record may be postponed subject

1 to the limitations under this Act if there is clear and con-  
2 vincing evidence that—

3 (1) the threat to the military defense, intel-  
4 ligence operations, or conduct of foreign relations of  
5 the United States posed by the public disclosure of  
6 the Missing Armed Forces Personnel record or infor-  
7 mation is of such gravity that it outweighs the pub-  
8 lic interest, and such public disclosure would re-  
9 veal—

10 (A) an intelligence agent whose identity re-  
11 quires continued protection;

12 (B) an intelligence source or method—

13 (i) which is in use, or reasonably ex-  
14 pected to be used, by the Federal Govern-  
15 ment;

16 (ii) which has not been officially dis-  
17 closed; and

18 (iii) the disclosure of which would  
19 interfere with the conduct of intelligence  
20 activities; or

21 (C) any other matter relating to the cur-  
22 rent military defense, intelligence operations, or  
23 conduct of foreign relations of the United  
24 States, the disclosure of which would demon-

1           strably impair the national security of the  
2           United States;

3           (2) the public disclosure of the Missing Armed  
4           Forces Personnel record would reveal the name or  
5           identity of a living person who provided confidential  
6           information to the United States and would pose a  
7           substantial risk of harm to that person; or

8           (3) the public disclosure of the Missing Armed  
9           Forces Personnel record could reasonably be ex-  
10          pected to constitute an unwarranted invasion of per-  
11          sonal privacy, and that invasion of privacy is so sub-  
12          stantial that it outweighs the public interest.

13 **SEC. 7. ESTABLISHMENT AND POWERS OF THE MISSING**  
14                   **ARMED FORCES PERSONNEL RECORDS RE-**  
15                   **VIEW BOARD.**

16          (a) **ESTABLISHMENT.**—There is established as an  
17          independent establishment in the executive branch a board  
18          to be known as the Missing Armed Forces Personnel  
19          Records Review Board.

20          (b) **MEMBERSHIP.**—

21               (1) **APPOINTMENTS.**—The President shall ap-  
22          point, by and with the advice and consent of the  
23          Senate, 5 individuals to serve as a member of the  
24          Review Board to ensure and facilitate the review,

1 transmission to the Archivist, and public disclosure  
2 of Missing Armed Forces Personnel records.

3 (2) QUALIFICATIONS.—The President shall ap-  
4 point individuals to serve as members of the Review  
5 Board—

6 (A) without regard to political affiliation;

7 (B) who are citizens of the United States  
8 of integrity and impartiality;

9 (C) who have high national professional  
10 reputation in their fields who are capable of ex-  
11 ercising the independent and objective judgment  
12 necessary to the fulfillment of their role in en-  
13 suring and facilitating the identification, loca-  
14 tion, review, transmission to the Archivist, and  
15 public disclosure of Missing Armed Forces Per-  
16 sonnel records;

17 (D) who possess an appreciation of the  
18 value of Missing Armed Forces Personnel  
19 records to scholars, the Federal Government,  
20 and the public, particularly families of Missing  
21 Armed Forces Personnel;

22 (E) not less than 1 professional historian;  
23 and

24 (F) not less than 1 attorney.

25 (3) DEADLINES.—

1           (A) IN GENERAL.—Not later than 30 days  
2           after the date of enactment of this Act, the  
3           President shall submit nominations for all  
4           members of the Review Board.

5           (B) CONFIRMATION REJECTED.—If the  
6           Senate votes not to confirm a nomination to  
7           serve as a member of the Review Board, not  
8           later than 90 days after the date of the vote the  
9           President shall submit the nomination of an ad-  
10          ditional individual to serve as a member of the  
11          Review Board.

12          (4) CONSULTATION.—The President shall make  
13          nominations to the Review Board after considering  
14          individuals recommended by the American Historical  
15          Association, the Organization of American Histo-  
16          rians, the Society of American Archivists, the Amer-  
17          ican Bar Association, veterans' organizations, and  
18          organizations representing families of Missing  
19          Armed Forces Personnel.

20          (c) SECURITY CLEARANCES.—The appropriate de-  
21          partments, agencies, and elements of the executive branch  
22          of the Federal Government shall cooperate to ensure that  
23          an application by an individual nominated to be a member  
24          of the Review Board, seeking security clearances necessary

1 to carry out the duties of the Review Board, is expedi-  
2 tiously reviewed and granted or denied.

3 (d) CONFIRMATION.—

4 (1) HEARINGS.—Not later 30 days on which  
5 the Senate is in session after the date on which not  
6 less than 3 individuals have been nominated to serve  
7 as members of the Review Board, the Committee on  
8 Homeland Security and Governmental Affairs of the  
9 Senate shall hold confirmation hearings on the nomi-  
10 nations.

11 (2) COMMITTEE VOTE.—Not later than 14 days  
12 on which the Senate is in session after the date on  
13 which the Committee on Homeland Security and  
14 Governmental Affairs holds a confirmation hearing  
15 on the nomination of an individual to serve as a  
16 member of the Review Board, the committee shall  
17 vote on the nomination and report the results to the  
18 full Senate immediately.

19 (3) SENATE VOTE.—Not later than 14 days on  
20 which the Senate is in session after the date on  
21 which the Committee on Homeland Security and  
22 Governmental Affairs reports the results of a vote on  
23 a nomination of an individual to serve as a member  
24 of the Review Board, the Senate shall vote on the  
25 confirmation of the nominee.

1 (e) VACANCY.—Not later than 60 days after the date  
2 on which a vacancy on the Review Board occurs, the va-  
3 cancy shall be filled in the same manner as specified for  
4 original appointment.

5 (f) CHAIRPERSON.—The members of the Review  
6 Board shall elect a member as Chairperson at the initial  
7 meeting of the Review Board.

8 (g) REMOVAL OF REVIEW BOARD MEMBER.—

9 (1) IN GENERAL.—A member of the Review  
10 Board shall not be removed from office, other  
11 than—

12 (A) by impeachment by Congress; or

13 (B) by the action of the President for inef-  
14 ficiency, neglect of duty, malfeasance in office,  
15 physical disability, mental incapacity, or any  
16 other condition that substantially impairs the  
17 performance of the member's duties.

18 (2) JUDICIAL REVIEW.—

19 (A) IN GENERAL.—A member of the Re-  
20 view Board removed from office may obtain ju-  
21 dicial review of the removal in a civil action  
22 commenced in the United States District Court  
23 for the District of Columbia.



1           (B) RELIEF.—The member may be rein-  
2           stated or granted other appropriate relief by  
3           order of the court.

4           (h) COMPENSATION OF MEMBERS.—

5           (1) BASIC PAY.—A member of the Review  
6           Board shall be compensated at a rate equal to the  
7           daily equivalent of the annual rate of basic pay pre-  
8           scribed for level IV of the Executive Schedule under  
9           section 5315 of title 5, United States Code, for each  
10          day (including travel time) during which the member  
11          is engaged in the performance of the duties of the  
12          Review Board.

13          (2) TRAVEL EXPENSES.—A member of the Re-  
14          view Board shall be allowed reasonable travel ex-  
15          penses, including per diem in lieu of subsistence, at  
16          rates for employees of agencies under subchapter I  
17          of chapter 57 of title 5, United States Code, while  
18          away from the member's home or regular place of  
19          business in the performance of services for the Re-  
20          view Board.

21          (i) DUTIES OF THE REVIEW BOARD.—

22          (1) IN GENERAL.—The Review Board shall con-  
23          sider and render a decision on a determination by a  
24          Government office to seek to postpone the disclosure

1 of a Missing Armed Forces Personnel record, in  
2 whole or in part.

3 (2) RECORDS.—In carrying out paragraph (1),  
4 the Review Board shall consider and render a deci-  
5 sion regarding—

6 (A) whether a record constitutes a Missing  
7 Armed Forces Personnel record; and

8 (B) whether a Missing Armed Forces Per-  
9 sonnel record, or particular information in a  
10 Missing Armed Forces Personnel record, quali-  
11 fies for postponement of disclosure under this  
12 Act.

13 (j) POWERS.—The Review Board shall have the au-  
14 thority to act in a manner prescribed under this Act, in-  
15 cluding authority to—

16 (1) direct Government offices to create identi-  
17 fication aids and organize Missing Armed Forces  
18 Personnel records;

19 (2) direct Government offices to transmit to the  
20 Archivist Missing Armed Forces Personnel records  
21 as required under this Act, including segregable por-  
22 tions of Missing Armed Forces Personnel records  
23 and substitutes and summaries of Missing Armed  
24 Forces Personnel records that can be publicly dis-  
25 closed to the fullest extent;

1           (3) obtain access to Missing Armed Forces Per-  
2           sonnel records that have been identified and orga-  
3           nized by a Government office;

4           (4) direct a Government office to make avail-  
5           able to the Review Board, and if necessary inves-  
6           tigate the facts surrounding, additional information,  
7           records, or testimony from individuals, which the  
8           Review Board has reason to believe is required to  
9           fulfill its functions and responsibilities under this  
10          Act;

11          (5) hold such hearings, sit and act at such  
12          times and places, take such testimony, receive such  
13          evidence, and administer such oaths as the Review  
14          Board considers advisable to carry out its respon-  
15          sibilities under this Act;

16          (6) hold individuals in contempt for failure to  
17          comply with directives and mandates issued by the  
18          Review Board under this Act, which shall not in-  
19          clude the authority to imprison or fine any indi-  
20          vidual;

21          (7) require any Government office to account in  
22          writing for the destruction of any records relating to  
23          the loss, fate, or status of Missing Armed Forces  
24          Personnel; and

1           (8) receive information from the public regard-  
2           ing the identification and public disclosure of Miss-  
3           ing Armed Forces Personnel records.

4           (k) WITNESS IMMUNITY.—The Review Board shall  
5 be considered to be an agency of the United States for  
6 purposes of section 6001 of title 18, United States Code.

7           (l) OVERSIGHT.—

8           (1) IN GENERAL.—The Committee on Home-  
9           land Security and Governmental Affairs of the Sen-  
10          ate and the Committee on Oversight and Govern-  
11          ment Reform of the House of Representatives shall  
12          have—

13                 (A) continuing oversight jurisdiction with  
14                 respect to the official conduct of the Review  
15                 Board and the disposition of postponed records  
16                 after termination of the Review Board; and

17                 (B) upon request, access to any records  
18                 held or created by the Review Board.

19           (2) DUTY OF REVIEW BOARD.—The Review  
20          Board shall have the duty to cooperate with the ex-  
21          ercise of oversight jurisdiction under paragraph (1).

22           (m) SUPPORT SERVICES.—The Administrator of the  
23          General Services Administration shall provide administra-  
24          tive services for the Review Board on a reimbursable basis.

1 (n) INTERPRETIVE REGULATIONS.—The Review  
2 Board may issue interpretive regulations.

3 (o) TERMINATION AND WINDING UP.—

4 (1) IN GENERAL.—Two years after the date of  
5 enactment of this Act, the Review Board shall, by  
6 majority vote, determine whether all Government of-  
7 fices have complied with the obligations, mandates,  
8 and directives under this Act.

9 (2) TERMINATION DATE.—The Review Board  
10 shall terminate on the date that is 4 years after the  
11 date of enactment of this Act.

12 (3) REPORT.—Before the termination of the  
13 Review Board under paragraph (2), the Review  
14 Board shall submit to Congress reports, including a  
15 complete and accurate accounting of expenditures  
16 during its existence, and shall complete all other re-  
17 porting requirements under this Act.

18 (4) RECORDS.—Upon termination of the Re-  
19 view Board, the Review Board shall transfer all  
20 records of the Review Board to the Archivist for in-  
21 clusion in the Collection, and no record of the Re-  
22 view Board shall be destroyed.

23 **SEC. 8. MISSING ARMED FORCES PERSONNEL RECORDS**

24 **REVIEW BOARD PERSONNEL.**

25 (a) EXECUTIVE DIRECTOR.—

1           (1) IN GENERAL.—Not later than 45 days after  
2           the initial meeting of the Review Board, the Review  
3           Board shall appoint an individual to the position of  
4           Executive Director.

5           (2) QUALIFICATIONS.—The individual ap-  
6           pointed as Executive Director of the Review  
7           Board—

8                   (A) shall be a citizen of the United States  
9                   of integrity and impartiality;

10                   (B) shall be appointed without regard to  
11                   political affiliation; and

12                   (C) shall not have any conflict of interest  
13                   with the mission of the Review Board.

14           (3) SECURITY CLEARANCE.—

15                   (A) LIMIT ON APPOINTMENT.—The Review  
16                   Board shall not appoint an individual as Execu-  
17                   tive Director until after the date on which the  
18                   individual qualifies for the necessary security  
19                   clearance.

20                   (B) EXPEDITED PROVISION.—The appro-  
21                   priate departments, agencies, and elements of  
22                   the executive branch of the Federal Government  
23                   shall cooperate to ensure that an application by  
24                   an individual nominated to be Executive Direc-  
25                   tor, seeking security clearances necessary to

1 carry out the duties of the Executive Director,  
2 is expeditiously reviewed and granted or denied.

3 (4) DUTIES.—The Executive Director shall—

4 (A) serve as principal liaison to Govern-  
5 ment offices;

6 (B) be responsible for the administration  
7 and coordination of the review of records by the  
8 Review Board;

9 (C) be responsible for the administration  
10 of all official activities conducted by the Review  
11 Board; and

12 (D) not have the authority to decide or de-  
13 termine whether any record should be disclosed  
14 to the public or postponed for disclosure.

15 (5) REMOVAL.—The Executive Director may be  
16 removed by a majority vote of the Review Board.

17 (b) STAFF.—

18 (1) IN GENERAL.—The Review Board may, in  
19 accordance with the civil service laws, but without  
20 regard to civil service law and regulation for com-  
21 petitive service as defined in subchapter 1, chapter  
22 33 of title 5, United States Code, appoint and termi-  
23 nate additional employees as are necessary to enable  
24 the Review Board and the Executive Director to per-  
25 form their duties under this Act.

1           (2) QUALIFICATIONS.—An individual appointed  
2           to a position as an employee of the Review Board—

3                   (A) shall be a citizen of the United States  
4                   of integrity and impartiality; and

5                   (B) shall not have had any previous in-  
6                   volvement with any official investigation or in-  
7                   quiry relating to the loss, fate, or status of  
8                   Missing Armed Forces Personnel.

9           (3) SECURITY CLEARANCE.—

10                   (A) LIMIT ON APPOINTMENT.—The Review  
11                   Board shall not appoint an individual as an em-  
12                   ployee of the Review Board until after the date  
13                   on which the individual qualifies for the nec-  
14                   essary security clearance.

15                   (B) EXPEDITED PROVISION.—The appro-  
16                   priate departments, agencies, and elements of  
17                   the executive branch of the Federal Government  
18                   shall cooperate to ensure that an application by  
19                   an individual who is a candidate for a position  
20                   with the Review Board, seeking security clear-  
21                   ances necessary to carry out the duties of the  
22                   position, is expeditiously reviewed and granted  
23                   or denied.

24           (c) COMPENSATION.—The Review Board shall fix the  
25           compensation of the Executive Director and other employ-



1 ees of the Review Board without regard to chapter 51 and  
2 subchapter III of chapter 53 of title 5, United States  
3 Code, relating to classification of positions and General  
4 Schedule pay rates, except that the rate of pay for the  
5 Executive Director and other employees may not exceed  
6 the rate payable for level V of the Executive Schedule  
7 under section 5316 of title 5, United States Code.

8 (d) ADVISORY COMMITTEES.—

9 (1) IN GENERAL.—The Review Board may cre-  
10 ate 1 or more advisory committees to assist in ful-  
11 filling the responsibilities of the Review Board under  
12 this Act.

13 (2) APPLICABILITY OF FACCA.—Any advisory  
14 committee created by the Review Board shall be sub-  
15 ject to the Federal Advisory Committee Act (5  
16 U.S.C. App.).

17 **SEC. 9. REVIEW OF RECORDS BY THE MISSING ARMED**  
18 **FORCES PERSONNEL RECORDS REVIEW**  
19 **BOARD.**

20 (a) CUSTODY OF RECORDS REVIEWED BY REVIEW  
21 BOARD.—Pending the outcome of the review activity of  
22 the Review Board, a Government office shall retain a  
23 Missing Armed Forces Personnel record in the custody,  
24 possession or control of the Government office for pur-  
25 poses of preservation, security, and efficiency, unless—

1           (1) the Review Board requires the physical  
2 transfer of records for reasons of conducting an  
3 independent and impartial review; or

4           (2) such transfer is necessary for an adminis-  
5 trative hearing or other official function of the Re-  
6 view Board.

7       (b) **STARTUP REQUIREMENTS.**—The Review Board  
8 shall—

9           (1) not later than 90 days after the date on  
10 which all members are appointed, publish a schedule  
11 for review of all Missing Armed Forces Personnel  
12 records in the Federal Register; and

13           (2) not later than 180 days after the date of  
14 enactment of this Act, begin reviewing of Missing  
15 Armed Forces Personnel records under this Act.

16       (c) **DETERMINATION OF THE REVIEW BOARD.**—

17           (1) **IN GENERAL.**—The Review Board shall di-  
18 rect that all records that relate, directly or indi-  
19 rectly, to the loss, fate, or status of Missing Armed  
20 Forces Personnel be transmitted to the Archivist  
21 and disclosed to the public in the Collection in the  
22 absence of clear and convincing evidence that—

23                   (A) the record is not a Missing Armed  
24 Forces Personnel record; or

1           (B) the Missing Armed Forces Personnel  
2           record, or particular information within the  
3           Missing Armed Forces Personnel record, quali-  
4           fies for postponement of public disclosure under  
5           this Act.

6           (2) POSTPONEMENT.—In approving postpone-  
7           ment of public disclosure of a Missing Armed Forces  
8           Personnel record, or information within a Missing  
9           Armed Forces Personnel record, the Review Board  
10          shall seek to—

11           (A) provide for the disclosure of segregable  
12           parts, substitutes, or summaries of the Missing  
13           Armed Forces Personnel record; and

14           (B) determine, in consultation with the  
15           originating body and consistent with the stand-  
16           ards for postponement under this Act, which of  
17           the following alternative forms of disclosure  
18           shall be made by the originating body:

19           (i) Any reasonably segregable par-  
20           ticular information in a Missing Armed  
21           Forces Personnel record.

22           (ii) A substitute record for that infor-  
23           mation which is postponed.

24           (iii) A summary of a Missing Armed  
25           Forces Personnel record.

1           (3) REPORTING.—With respect to a Missing  
2   Armed Forces Personnel record, or information  
3   within a Missing Armed Forces Personnel record,  
4   the public disclosure of which is postponed under  
5   this Act, or for which only substitutions or sum-  
6   maries have been disclosed to the public, the Review  
7   Board shall create and transmit to the Archivist a  
8   report containing—

9           (A) a description of actions by the Review  
10   Board, the originating body, or any Government  
11   office (including a justification of any such ac-  
12   tion to postpone disclosure of any record or  
13   part of any record) and of any official pro-  
14   ceedings conducted by the Review Board; and

15          (B) a statement, based on a review of the  
16   proceedings and in conformity with the deci-  
17   sions reflected therein, designating a rec-  
18   ommended specified time at which, or a speci-  
19   fied occurrence following which, the material  
20   may be appropriately disclosed to the public  
21   under this Act, which the Review Board shall  
22   disclose to the public with notice thereof, rea-  
23   sonably calculated to make interested members  
24   of the public aware of the existence of the state-  
25   ment.

1 (4) ACTIONS AFTER DETERMINATION.—

2 (A) IN GENERAL.—Not later than 14 days  
3 after the date of a determination by the Review  
4 Board that a Missing Armed Forces Personnel  
5 record shall be publicly disclosed in the Collec-  
6 tion or postponed for disclosure and held in the  
7 protected Collection, the Review Board shall no-  
8 tify the head of the originating body of the de-  
9 termination and publish a copy of the deter-  
10 mination in the Federal Register.

11 (B) OVERSIGHT NOTICE.—Simultaneous  
12 with notice under subparagraph (A), the Review  
13 Board shall provide notice of a determination  
14 concerning the public disclosure or postpone-  
15 ment of disclosure of a Missing Armed Forces  
16 Personnel record, or information contained  
17 within a Missing Armed Forces Personnel  
18 record, which shall include a written unclassi-  
19 fied justification for public disclosure or post-  
20 ponement of disclosure, including an expla-  
21 nation of the application of any standards in  
22 section 6 to the President, the Committee on  
23 Homeland Security and Governmental Affairs  
24 of the Senate, and the Committee on Oversight

1           and Government Reform of the House of Rep-  
2           representatives

3           (5) REFERRAL AFTER TERMINATION.—A Miss-  
4           ing Armed Forces Personnel record that is identi-  
5           fied, located, or otherwise discovered after the date  
6           on which the Review Board terminates shall be re-  
7           ferred to the Committee on Armed Services of the  
8           Senate and the Committee on Armed Services of the  
9           House of Representatives for review, ongoing over-  
10          sight and, as warranted, referral for possible en-  
11          forcement action relating to a violation of this Act.

12          (d) NOTICE TO PUBLIC.—Every 30 days, beginning  
13          on the date that is 60 days after the date on which the  
14          Review Board first approves the postponement of disclo-  
15          sure of a Missing Armed Forces Personnel record, the Re-  
16          view Board shall publish in the Federal Register a notice  
17          that summarizes the postponements approved by the Re-  
18          view Board, including a description of the subject, origi-  
19          nating body, length or other physical description, and each  
20          ground for postponement that is relied upon.

21          (e) REPORTS BY THE REVIEW BOARD.—

22                  (1) IN GENERAL.—Not later than 1 year after  
23          the date of enactment of this Act, and every year  
24          thereafter until the Review Board terminates, the

1       Review Board shall submit a report regarding the  
2       activities of the Review Board to—

3               (A) the Committee on Oversight and Gov-  
4               ernment Reform of the House of Representa-  
5               tives;

6               (B) the Committee on Homeland Security  
7               and Governmental Affairs of the Senate;

8               (C) the President;

9               (D) the Archivist; and

10              (E) the head of any Government office the  
11              records of which have been the subject of Re-  
12              view Board activity.

13              (2) CONTENTS.—Each report under paragraph  
14              (1) shall include the following information:

15              (A) A financial report of the expenses for  
16              all official activities and requirements of the  
17              Review Board and its employees.

18              (B) The progress made on review, trans-  
19              mission to the Archivist, and public disclosure  
20              of Missing Armed Forces Personnel records.

21              (C) The estimated time and volume of  
22              Missing Armed Forces Personnel records in-  
23              volved in the completion of the duties of the Re-  
24              view Board under this Act.

1           (D) Any special problems, including re-  
2           quests and the level of cooperation of Govern-  
3           ment offices, with regard to the ability of the  
4           Review Board to carry out its duties under this  
5           Act.

6           (E) A record of review activities, including  
7           a record of postponement decisions by the Re-  
8           view Board or other related actions authorized  
9           under this Act, and a record of the volume of  
10          records reviewed and postponed.

11          (F) Suggestions and requests to Congress  
12          for additional legislative authority needs.

13          (G) An appendix containing copies of re-  
14          ports relating to postponed records submitted to  
15          the Archivist under subsection (c)(3) since the  
16          end of the period covered by the most recent re-  
17          port under paragraph (1).

18          (3) TERMINATION NOTICE.—Not later than 90  
19          days before the Review Board expects to complete  
20          the work of the Review Board under this Act, the  
21          Review Board shall provide written notice to Con-  
22          gress of the intent of the Review Board to terminate  
23          operations at a specified date.



1 **SEC. 10. DISCLOSURE OF OTHER MATERIALS AND ADDI-**  
2 **TIONAL STUDY.**

3 (a) MATERIALS UNDER SEAL OF COURT.—

4 (1) IN GENERAL.—The Review Board may re-  
5 quest the Attorney General to petition any court of  
6 the United States or of a foreign country to release  
7 any information relevant to the loss, fate, or status  
8 of Missing Armed Forces Personnel that is held  
9 under seal of the court.

10 (2) GRAND JURY INFORMATION.—

11 (A) IN GENERAL.—The Review Board may  
12 request the Attorney General to petition any  
13 court of the United States to release any infor-  
14 mation relevant to loss, fate, or status of Miss-  
15 ing Armed Forces Personnel that is held under  
16 the injunction of secrecy of a grand jury.

17 (B) TREATMENT.—A request for disclo-  
18 sure of Missing Armed Forces Personnel mate-  
19 rials under this Act shall be deemed to con-  
20 stitute a showing of particularized need under  
21 rule 6 of the Federal Rules of Criminal Proce-  
22 dure.

23 (b) SENSE OF CONGRESS.—It is the sense of Con-  
24 gress that—

25 (1) the Attorney General should assist the Re-  
26 view Board in good faith to unseal any records that

1 the Review Board determines to be relevant and held  
2 under seal by a court or under the injunction of se-  
3 crecy of a grand jury;

4 (2) the Secretary of State should—

5 (A) contact the governments of the Rus-  
6 sian Federation, the People's Republic of  
7 China, and the Democratic People's Republic of  
8 Korea to seek the disclosure of all records in  
9 their respective custody, possession, or control  
10 relevant to the loss, fate, or status of Missing  
11 Armed Forces Personnel; and

12 (B) contact any other foreign government  
13 that may hold information relevant to the loss,  
14 fate, or status of Missing Armed Forces Per-  
15 sonnel, and seek disclosure of such information;  
16 and

17 (3) all agencies should cooperate in full with the  
18 Review Board to seek the disclosure of all informa-  
19 tion relevant to the loss, fate, or status of Missing  
20 Armed Forces Personnel consistent with the public  
21 interest.

22 **SEC. 11. RULES OF CONSTRUCTION.**

23 (a) PRECEDENCE OVER OTHER LAW.—When this  
24 Act requires transmission of a record to the Archivist or  
25 public disclosure, it shall take precedence over any other

1 law (except section 6103 of the Internal Revenue Code of  
2 1986), judicial decision construing such law, or common  
3 law doctrine that would otherwise prohibit such trans-  
4 mission or disclosure, with the exception of deeds gov-  
5 erning access to or transfer or release of gifts and dona-  
6 tions of records to the United States Government.

7 (b) FREEDOM OF INFORMATION ACT.—Nothing in  
8 this Act shall be construed to eliminate or limit any right  
9 to file requests with any Executive agency or seek judicial  
10 review of the decisions under section 552 of title 5, United  
11 States Code.

12 (c) JUDICIAL REVIEW.—Nothing in this Act shall be  
13 construed to preclude judicial review under chapter 7 of  
14 title 5, United States Code, of final actions taken or re-  
15 quired to be taken under this Act.

16 (d) EXISTING AUTHORITY.—Nothing in this Act re-  
17 vokes or limits the existing authority of the President, any  
18 Executive agency, the Senate, or the House of Representa-  
19 tives, or any other entity of the Government to publicly  
20 disclose records in its custody, possession, or control.

21 (e) RULES OF THE SENATE AND HOUSE OF REP-  
22 RESENTATIVES.—To the extent that any provision of this  
23 Act establishes a procedure to be followed in the Senate  
24 or the House of Representatives, such provision is adopt-  
25 ed—

1           (1) as an exercise of the rulemaking power of  
2           the Senate and House of Representatives, respec-  
3           tively, and is deemed to be part of the rules of each  
4           House, respectively, but applicable only with respect  
5           to the procedure to be followed in that House, and  
6           it supersedes other rules only to the extent that it  
7           is inconsistent with such rules; and

8           (2) with full recognition of the constitutional  
9           right of either House to change the rules (so far as  
10          they relate to the procedure of that House) at any  
11          time, in the same manner, and to the same extent  
12          as in the case of any other rule of that House.

13 **SEC. 12. TERMINATION OF EFFECT OF ACT.**

14          (a) PROVISIONS PERTAINING TO THE REVIEW  
15 BOARD.—The provisions of this Act that pertain to the  
16 appointment and operation of the Review Board shall  
17 cease to be effective when the Review Board and the terms  
18 of its members have terminated under section 7(o).

19          (b) OTHER PROVISIONS.—The remaining provisions  
20 of this Act shall continue in effect until such time as the  
21 Archivist certifies to the President and Congress that all  
22 Missing Armed Forces Personnel records have been made  
23 available to the public in accordance with this Act.

1 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) IN GENERAL.—There are authorized to be appro-  
3 priated such sums as are necessary to carry out this Act,  
4 to remain available until expended.

5 (b) INTERIM FUNDING.—Until such time as funds  
6 are appropriated pursuant to subsection (a), the President  
7 may use such sums as are available for discretionary use  
8 to carry out this Act.

9 **SEC. 14. SEVERABILITY.**

10 If any provision of this Act, or the application thereof  
11 to any person or circumstance, is held invalid, the remain-  
12 der of this Act and the application of that provision to  
13 other persons not similarly situated or to other cir-  
14 cumstances shall not be affected by the invalidation.