AMENDMENT TO
RULES COMMITTEE PRINT 118–10
OFFERED BY MR. PAPPAS OF NEW HAMPSHIRE

At the end of title XVIII, add the following:

Subtitle D—Bring Our Heroes
Home Act

SEC. 1861. SHORT TITLE.

This subtitle may be cited as the “Bring Our Heroes Home Act”.

SEC. 1862. FINDINGS, DECLARATIONS, AND PURPOSES.

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

(1) A vast number of records relating to Missing Armed Forces Personnel have not been identified, located, or transferred to the National Archives following review and declassification. Only in the rarest cases is there any legitimate need for continued protection of records pertaining to Missing Armed Forces Personnel who have been missing for decades.

(2) There has been insufficient priority placed on identifying, locating, reviewing, or declassifying records relating to Missing Armed Forces Personnel...
and then transferring the records to the National Archives for public access.

(3) Mandates for declassification set forth in multiple Executive orders have been broadly written, loosely interpreted, and often ignored by Federal agencies in possession and control of records related to Missing Armed Forces Personnel.

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

(5) The interest, desire, workforce, and funding of Federal agencies to assemble, review, and declassify records relating to Missing Armed Forces Personnel have been lacking.

(6) All records of the Federal Government relating to Missing Armed Forces Personnel should be preserved for historical and governmental purposes and for public research.

(7) All records of the Federal Government relating to Missing Armed Forces Personnel should carry a presumption of declassification, and all such records should be disclosed under this subtitle to enable the fullest possible accounting for Missing Armed Forces Personnel.
(8) Legislation is necessary to create an enforceable, independent, and accountable process for the public disclosure of records relating to Missing Armed Forces Personnel.

(9) Legislation is necessary because section 552 of title 5, United States Code (commonly known as the “Freedom of Information Act”), as implemented by Federal agencies, has prevented the timely public disclosure of records relating to Missing Armed Forces Personnel.

(b) PURPOSES.—The purposes of this subtitle are—

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

(2) to require the expeditious public transmission to the Archivist and public disclosure of Missing Armed Forces Personnel records, subject to narrow exceptions, as set forth in this subtitle.

SEC. 1863. DEFINITIONS.

In this subtitle:

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

(2) COLLECTION.—The term “Collection” means the Missing Armed Forces Personnel Records Collection established under section 1864(a).
(3) EXECUTIVE AGENCY.—The term “Executive agency”—

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

(B) includes any Executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Federal Government, including the Executive Office of the President, any branch of the Armed Forces, and any independent regulatory agency.

(4) EXECUTIVE BRANCH MISSING ARMED FORCES PERSONNEL RECORD.—The term “executive branch Missing Armed Forces Personnel record” means a Missing Armed Forces Personnel record of an Executive agency, or information contained in such a Missing Armed Forces Personnel record obtained by or developed within the executive branch of the Federal Government.

(5) GOVERNMENT OFFICE.—The term “Government office” means an Executive agency, the Library of Congress, or the National Archives.

(6) MISSING ARMED FORCES PERSONNEL.—
(A) DEFINITION.—The term “Missing Armed Forces Personnel” means 1 or more missing persons.

(B) INCLUSIONS.—The term “Missing Armed Forces Personnel” includes an individual who was a missing person and whose status was later changed to “missing and presumed dead”.

7) MISSING ARMED FORCES PERSONNEL RECORD.—The term “Missing Armed Forces Personnel record” means a record that relates, directly or indirectly, to the loss, fate, or status of Missing Armed Forces Personnel that—

(A) was created or made available for use by, obtained by, or otherwise came into the custody, possession, or control of—

   (i) any Government office;

   (ii) any Presidential library; or

   (iii) any of the Armed Forces; and

(B) relates to 1 or more Missing Armed Forces Personnel who became missing persons during the period—

   (i) beginning on December 7, 1941; and
(ii) ending on the date of enactment of this Act.

(8) **MISSING PERSON.**—The term “missing person” has the meaning given that term in section 1513 of title 10, United States Code.

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

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

(B) includes any component of the National Archives and Records Administration (including Presidential archival depositories established under section 2112 of title 44, United States Code).

(10) **OFFICIAL INVESTIGATION.**—The term “official investigation” means a review, briefing, inquiry, or hearing relating to Missing Armed Forces Personnel conducted by a Presidential commission, committee of Congress, or agency, regardless of whether it is conducted independently, at the request of any Presidential commission or committee of Congress, or at the request of any official of the Federal Government.

(11) **ORIGINATING BODY.**—The term “originating body” means the Government office or other
initial source that created a record or particular in-
formation within a record.

(12) PUBLIC INTEREST.—The term “public in-
terest” means the compelling interest in the prompt
public disclosure of Missing Armed Forces Personnel
records for historical and governmental purposes, for
public research, and for the purpose of fully inform-
ing the people of the United States, most impor-
tantly families of Missing Armed Forces Personnel,
about the fate of the Missing Armed Forces Per-
sonnel and the process by which the Federal Govern-
ment has sought to account for them.

(13) RECORD.—The term “record” has the
meaning given the term “records” in section 3301 of
title 44, United States Code.

(14) REVIEW BOARD.—The term “Review
Board” means the Missing Armed Forces Personnel
Records Review Board established under section
1867.

SEC. 1864. MISSING ARMED FORCES PERSONNEL RECORDS
COLLECTION AT THE NATIONAL ARCHIVES.

(a) ESTABLISHMENT OF COLLECTION.—Not later
than 90 days after the date of enactment of this Act, the
Archivist shall—
(1) commence establishment of a collection of records to be known as the “Missing Armed Forces Personnel Records Collection”;

(2) commence preparing the subject guidebook and index to the Collection; and

(3) establish criteria and acceptable formats for Executive agencies to follow when transmitting copies of Missing Armed Forces Personnel Records to the Archivist, to include required metadata.

(b) REGULATIONS.—Not later than 90 days after the date of the swearing in of the Board members, the Review Board shall promulgate rules to establish guidelines and processes for the disclosure of records contained in the Collection.

SEC. 1865. REVIEW, IDENTIFICATION, TRANSMISSION TO THE NATIONAL ARCHIVES, AND PUBLIC DISCLOSURE OF MISSING ARMED FORCES PERSONNEL RECORDS BY GOVERNMENT OFFICES.

(a) IN GENERAL.—

(1) PREPARATION.—As soon as practicable after the date of enactment of this Act, and sufficiently in advance of the deadlines established under this subtitle, each Government office shall—
(A) identify and locate any Missing Armed Forces Personnel records in the custody, possession, or control of the Government office; and

(B) prepare for transmission to the Archivist in accordance with the criteria and acceptable formats established by the Archivist a copy of any Missing Armed Forces Personnel records that have not previously been transmitted to the Archivist by the Government office.

(2) CERTIFICATION.—Each Government office shall submit to the Archivist, under penalty of perjury, a certification indicating—

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

(B) whether a copy of any Missing Armed Forces Personnel record has not been transmitted to the Archivist.

(3) PRESERVATION.—No Missing Armed Forces Personnel record shall be destroyed, altered, or mutilated in any way.
(4) Effect of Previous Disclosure.—Information that was made available or disclosed to the public before the date of enactment of this Act in a Missing Armed Forces Personnel record may not be withheld, redacted, postponed for public disclosure, or reclassified.

(5) Withheld and Substantially Redacted Records.—For any Missing Armed Forces Personnel record that is transmitted to the Archivist which a Government office proposes to substantially redact or withhold in full from public access, the head of the Government office shall submit an unclassified and publicly releasable report to the Archivist, the Review Board, and each appropriate committee of the Senate and the House of Representatives justifying the decision of the Government office to substantially redact or withhold the record by demonstrating that the release of information would clearly and demonstrably be expected to cause an articulated harm, and that the harm would be of such gravity as to outweigh the public interest in access to the information.

(b) Review.—

(1) In General.—Not later than 180 days after the date of enactment of this Act, each Gov-
ernment office shall, in accordance with the criteria
and acceptable formats established by the Archi-
vist—

(A) identify, locate, copy, and review each
Missing Armed Forces Personnel record in the
custody, possession, or control of the Govern-
ment office for transmission to the Archivist
and disclosure to the public or, if needed, re-
view by the Review Board; and

(B) cooperate fully, in consultation with
the Archivist, in carrying out paragraph (3).

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

(3) NATIONAL ARCHIVES RECORDS.—Not later
than 180 days after the date of enactment of this
Act, the Archivist shall—

(A) locate and identify all Missing Armed
Forces Personnel records in the custody of the
National Archives as of the date of enactment
of this Act that remain classified, in whole or
in part;

(B) notify a Government office if the Ar-
chivist locates and identifies a record of the
Government office under subparagraph (A); and
(C) make each classified Missing Armed Forces Personnel record located and identified under subparagraph (A) available for review by Executive agencies through the National Declassification Center established under Executive Order 13526 or any successor order.

(4) RECORDS ALREADY PUBLIC.—A Missing Armed Forces Personnel record that is in the custody of the National Archives on the date of enactment of this Act and that has been publicly available in its entirety without redaction shall be made available in the Collection without any additional review by the Archivist, the Review Board, or any other Government office under this subtitle.

(c) TRANSMISSION TO THE NATIONAL ARCHIVES.—Each Government office shall—

(1) not later than 180 days after the date of enactment of this Act, commence transmission to the Archivist of copies of the Missing Armed Forces Personnel records in the custody, possession, or control of the Government office; and

(2) not later than 1 year after the date of enactment of this Act, complete transmission to the Archivist of copies of all Missing Armed Forces Per-
sonnel records in the possession or control of the
Government office.

(d) Periodic Review of Postponed Missing
Armed Services Personnel Records.—

(1) In General.—All Missing Armed Forces
Personnel records, or information within a Missing
Armed Forces Personnel record, the public disclo-
sure of which has been postponed under the stand-
ards under this subtitle shall be reviewed by the
originating body—

    (A)(i) periodically, but not less than every
    5 years, after the date on which the Review
    Board terminates under section 1867(o); and
    (ii) at the direction of the Archivist; and
    (B) consistent with the recommendations
    of the Review Board under section
    1869(b)(3)(B).

(2) Contents.—

    (A) In General.—A periodic review of a
    Missing Armed Forces Personnel record, or in-
    formation within a Missing Armed Forces Per-
    sonnel record, by the originating body shall ad-
    dress the public disclosure of the Missing
    Armed Forces Personnel record under the
    standards under this subtitle.
(B) CONTINUED POSTPONEMENT.—If an originating body conducting a periodic review of a Missing Armed Forces Personnel record, or information within a Missing Armed Forces Personnel record, the public disclosure of which has been postponed under the standards under this subtitle, determines that continued postponement is required, the originating body shall provide to the Archivist an unclassified written description of the reason for the continued postponement that the Archivist shall highlight and make accessible on a publicly accessible website administered by the National Archives.

(C) SCOPE.—The periodic review of postponed Missing Armed Forces Personnel records, or information within a Missing Armed Forces Personnel record, shall serve the purpose stated in section 1862(b)(2), to provide expeditious public disclosure of Missing Armed Forces Personnel records, to the fullest extent possible, subject only to the grounds for postponement of disclosure under section 1866.

(D) DISCLOSURE ABSENT CERTIFICATION BY PRESIDENT.—Not later than 10 years after the date of enactment of this Act, all Missing
Armed Forces Personnel records, and information within a Missing Armed Forces Personnel record, shall be publicly disclosed in full, and available in the Collection, unless—

(i) the head of the originating body, Executive agency, or other Government office recommends in writing that continued postponement is necessary;

(ii) the written recommendation described in clause (i)—

(I) is provided to the Archivist in unclassified and publicly releasable form not later than 180 days before the date that is 10 years after the date of enactment of this Act; and

(II) includes—

(aa) a justification of the recommendation to postpone disclosure with clear and convincing evidence that the identifiable harm is of such gravity that it outweighs the public interest in disclosure; and

(bb) a recommended specified time at which or a specified
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occurrence following which the
material may be appropriately
disclosed to the public under this
subtitle;

(iii) the Archivist transmits all rec-
ommended postponements and the rec-
ommendation of the Archivist to the Presi-
dent not later than 90 days before the date
that is 10 years after the date of enact-
ment of this Act; and

(iv) the President transmits to the Ar-
chivist a certification indicating that con-
tinued postponement is necessary and the
identifiable harm, as demonstrated by clear
and convincing evidence, is of such gravity
that it outweighs the public interest in dis-
closure not later than the date that is 10
years after the date of enactment of this
Act.

SEC. 1866. GROUNDS FOR POSTPONEMENT OF PUBLIC DIS-
CLOSURE OF RECORDS.

(a) IN GENERAL.—Disclosure to the public of a Miss-

ing Armed Forces Personnel record or particular infor-
mation in a Missing Armed Forces Personnel record created

after the date that is 25 years before the date of the review
of the Missing Armed Forces Personnel record by the Archivist may be postponed subject to the limitations under this subtitle only—

1. if it pertains to—

   (A) military plans, weapons systems, or operations;

   (B) foreign government information;

   (C) intelligence activities (including covert action), intelligence sources or methods, or cryptology;

   (D) foreign relations or foreign activities of the United States, including confidential sources;

   (E) scientific, technological, or economic matters relating to the national security;

   (F) United States Government programs for safeguarding nuclear materials or facilities;

   (G) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security; or

   (H) the development, production, or use of weapons of mass destruction; and

2. the threat posed by the public disclosure of the Missing Armed Forces Personnel record or infor-
information is of such gravity that it outweighs the public interest in disclosure.

(b) OLDER RECORDS.—Disclosure to the public of a Missing Armed Forces Personnel record or particular information in a Missing Armed Forces Personnel record created on or before the date that is 25 years before the date of the review of the Missing Armed Forces Personnel record by the Archivist may be postponed subject to the limitations under this subtitle only if, as demonstrated by clear and convincing evidence—

(1) the release of the information would be expected to—

(A) reveal the identity of a confidential human source, a human intelligence source, a relationship with an intelligence or security service of a foreign government or international organization, or a nonhuman intelligence source, or impair the effectiveness of an intelligence method currently in use, available for use, or under development;

(B) reveal information that would impair United States cryptologic systems or activities;

(C) reveal formally named or numbered United States military war plans that remain in effect, or reveal operational or tactical elements
of prior plans that are contained in such active plans; or

(D) reveal information, including foreign government information, that would cause serious harm to relations between the United States and a foreign government, or to ongoing diplomatic activities of the United States; and

(2) the threat posed by the public disclosure of the Missing Armed Forces Personnel record or information is of such gravity that it outweighs the public interest in disclosure.

(c) EXCEPTION.—Regardless of the age of a Missing Armed Forces Personnel record—the date on which a Missing Armed Forces Personnel record was created—disclosure to the public of information in the Missing Armed Forces Personnel record may be postponed if—

(1) the public disclosure of the information would reveal the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to that person;

(2) the public disclosure of the information could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that inva-
sion of privacy is so substantial that it outweighs the public interest; or

(3) the public disclosure of the information could reasonably be expected to cause harm to the methods currently in use or available for use by members of the Armed Forces to survive, evade, resist, or escape.

SEC. 1867. ESTABLISHMENT AND POWERS OF THE MISSING ARMED FORCES PERSONNEL RECORDS REVIEW BOARD.

(a) Establishment.—There is established as an independent establishment in the executive branch a board to be known as the “Missing Armed Forces Personnel Records Review Board”.

(b) Membership.—

(1) Appointments.—The President shall appoint, by and with the advice and consent of the Senate, 5 individuals to serve as a member of the Review Board to ensure and facilitate the review, transmission to the Archivist, and public disclosure of Missing Armed Forces Personnel records.

(2) Qualifications.—The President shall appoint individuals to serve as members of the Review Board—

(A) without regard to political affiliation;
(B) who are citizens of the United States of integrity and impartiality;

(C) who are not an employee of an Executive agency on the date of the appointment;

(D) who have high national professional reputation in their fields who are capable of exercising the independent and objective judgment necessary to the fulfillment of their role in ensuring and facilitating the identification, location, review, transmission to the Archivist, and public disclosure of Missing Armed Forces Personnel records;

(E) who possess an appreciation of the value of Missing Armed Forces Personnel records to scholars, the Federal Government, and the public, particularly families of Missing Armed Forces Personnel;

(F) not less than 1 of whom is a professional historian; and

(G) not less than 1 of whom is an attorney.

(3) DEADLINES.—

(A) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the
President shall submit nominations for all members of the Review Board.

(B) CONFIRMATION REJECTED.—If the Senate votes not to confirm a nomination to serve as a member of the Review Board, not later than 90 days after the date of the vote the President shall submit the nomination of an additional individual to serve as a member of the Review Board.

(4) CONSULTATION.—The President shall make nominations to the Review Board after considering individuals recommended by the American Historical Association, the Organization of American Historians, the Society of American Archivists, the American Bar Association, veterans’ organizations, and organizations representing families of Missing Armed Forces Personnel.

(e) SECURITY CLEARANCES.—The appropriate departments, agencies, and elements of the executive branch of the Federal Government shall cooperate to ensure that an application by an individual nominated to be a member of the Review Board, seeking security clearances necessary to carry out the duties of the Review Board, is expeditiously reviewed and granted or denied.

(d) CONFIRMATION.—
(1) **Hearings.**—Not later than 30 days on which the Senate is in session after the date on which not less than 3 individuals have been nominated to serve as members of the Review Board, the Committee on Homeland Security and Governmental Affairs of the Senate shall hold confirmation hearings on the nominations.

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

(3) **Senate Vote.**—Not later than 14 days on which the Senate is in session after the date on which the Committee on Homeland Security and Governmental Affairs reports the results of a vote on a nomination of an individual to serve as a member of the Review Board, the Senate shall vote on the confirmation of the nominee.

(e) **Vacancy.**—Not later than 60 days after the date on which a vacancy on the Review Board occurs, the va-
cance shall be filled in the same manner as specified for
original appointment.

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

(g) REMOVAL OF REVIEW BOARD MEMBER.—
(1) IN GENERAL.—A member of the Review
Board shall not be removed from office, other
than—

(A) by impeachment by Congress; or

(B) by the action of the President for ineff-
iciency, neglect of duty, malfeasance in office,
physical disability, mental incapacity, or any
other condition that substantially impairs the
performance of the member’s duties.

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

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

(h) COMPENSATION OF MEMBERS.—
(1) **BASIC PAY.**—A member of the Review Board shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Review Board.

(2) **TRAVEL EXPENSES.**—A member of the Review Board shall be allowed reasonable travel expenses, including per diem in lieu of subsistence, at rates for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the member’s home or regular place of business in the performance of services for the Review Board.

(i) **DUTIES OF THE REVIEW BOARD.**—

(1) **IN GENERAL.**—The Review Board shall consider and render a decision on a determination by a Government office to seek to postpone the disclosure of a Missing Armed Forces Personnel record, in whole or in part.

(2) **RECORDS.**—In carrying out paragraph (1), the Review Board shall consider and render a decision regarding—
(A) whether a record constitutes a Missing Armed Forces Personnel record; and

(B) whether a Missing Armed Forces Personnel record, or particular information in a Missing Armed Forces Personnel record, qualifies for postponement of disclosure under this subtitle.

(j) POWERS.—The Review Board shall have the authority to act in a manner prescribed under this subtitle, including authority to—

(1) direct Government offices to transmit to the Archivist Missing Armed Forces Personnel records as required under this subtitle;

(2) direct Government offices to transmit to the Archivist substitutes and summaries of Missing Armed Forces Personnel records that can be publicly disclosed to the fullest extent for any Missing Armed Forces Personnel record that is proposed for postponement in full or that is substantially redacted;

(3) obtain access to Missing Armed Forces Personnel records that have been identified by a Government office;

(4) direct a Government office to make available to the Review Board, and if necessary investigate the facts surrounding, additional information,
records, or testimony from individuals, which the
Review Board has reason to believe is required to
fulfill its functions and responsibilities under this
subtitle;

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

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

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

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

(9) make a final determination regarding
whether a Missing Armed Forces Personnel record
will be disclosed to the public or disclosure of the
Missing Armed Forces Personnel record to the pub-
lic will be postponed, notwithstanding the determination of an Executive agency.

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

(l) OVERSIGHT.—

(1) IN GENERAL.—The Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Reform of the House of Representatives shall have—

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

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

(2) DUTY OF REVIEW BOARD.—The Review Board shall have the duty to cooperate with the exercise of oversight jurisdiction under paragraph (1).

(m) SUPPORT SERVICES.—The Administrator of the General Services Administration shall provide administrative services for the Review Board on a reimbursable basis.

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

(o) TERMINATION AND WINDING UP.—
(1) IN GENERAL.—Two years after the date of enactment of this Act, the Review Board shall, by majority vote, determine whether all Government offices have complied with the obligations, mandates, and directives under this subtitle.

(2) TERMINATION DATE.—The Review Board shall terminate on the date that is 4 years after the date of swearing in of the Board members.

(3) REPORT.—Before the termination of the Review Board under paragraph (2), the Review Board shall submit to Congress reports, including a complete and accurate accounting of expenditures during its existence, and shall complete all other reporting requirements under this subtitle.

(4) RECORDS.—Upon termination of the Review Board, the Review Board shall transfer all records of the Review Board to the Archivist for inclusion in the Collection, and no record of the Review Board shall be destroyed.

SEC. 1868. MISSING ARMED FORCES PERSONNEL RECORDS

REVIEW BOARD PERSONNEL.

(a) EXECUTIVE DIRECTOR.—

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

(2) QUALIFICATIONS.—The individual appointed as Executive Director of the Review Board—

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

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

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

(3) SECURITY CLEARANCE.—

(A) LIMIT ON APPOINTMENT.—The Review Board shall not appoint an individual as Executive Director until after the date on which the individual qualifies for the necessary security clearance.

(B) EXPEDITED PROVISION.—The appropriate departments, agencies, and elements of the executive branch of the Federal Government shall cooperate to ensure that an application by an individual nominated to be Executive Director, seeking security clearances necessary to carry out the duties of the Executive Director, is expeditiously reviewed and granted or denied.
(4) DUTIES.—The Executive Director shall—

(A) serve as principal liaison to Government offices;

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

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

(D) not have the authority to decide or determine whether any record should be disclosed to the public or postponed for disclosure.

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

(b) STAFF.—

(1) IN GENERAL.—The Review Board may, in accordance with the civil service laws, but without regard to civil service law and regulation for competitive service as defined in subchapter I of chapter 33 of title 5, United States Code, appoint and terminate additional employees as are necessary to enable the Review Board and the Executive Director to perform their duties under this subtitle.

(2) QUALIFICATIONS.—An individual appointed to a position as an employee of the Review Board—
(A) shall be a citizen of the United States of integrity and impartiality; and

(B) shall not have had any previous involvement with any official investigation or inquiry relating to the loss, fate, or status of Missing Armed Forces Personnel.

(3) SECURITY CLEARANCE.—

(A) LIMIT ON APPOINTMENT.—The Review Board shall not appoint an individual as an employee of the Review Board until after the date on which the individual qualifies for the necessary security clearance.

(B) EXPEDITED PROVISION.—The appropriate departments, agencies, and elements of the executive branch of the Federal Government shall cooperate to ensure that an application by an individual who is a candidate for a position with the Review Board, seeking security clearances necessary to carry out the duties of the position, is expeditiously reviewed and granted or denied.

(c) COMPENSATION.—The Review Board shall fix the compensation of the Executive Director and other employees of the Review Board without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States
Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the Executive Director and other employees may not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(d) ADVISORY COMMITTEES.—

(1) IN GENERAL.—The Review Board may create 1 or more advisory committees to assist in fulfilling the responsibilities of the Review Board under this subtitle.

(2) APPLICABILITY OF FACA.—Any advisory committee created by the Review Board shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 1869. REVIEW OF RECORDS BY THE MISSING ARMED FORCES PERSONNEL RECORDS REVIEW BOARD.

(a) STARTUP REQUIREMENTS.—The Review Board shall—

(1) not later than 90 days after the date on which all members are sworn in, publish an initial schedule for review of all Missing Armed Forces Personnel records, which the Archivist shall highlight and make available on a publicly accessible website administered by the National Archives; and
(2) not later than 180 days after the swearing
in of the Board members, begin reviewing of Missing
Armed Forces Personnel records under this subtitle.
(b) DETERMINATION OF THE REVIEW BOARD.—

(1) IN GENERAL.—The Review Board shall di-
rect that all records that relate, directly or indi-
directly, to the loss, fate, or status of Missing Armed
Forces Personnel be transmitted to the Archivist
and disclosed to the public in the Collection in the
absence of clear and convincing evidence that the
record is not a Missing Armed Forces Personnel
record.

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

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

(B) determine, in consultation with the
originating body and consistent with the stand-
ards for postponement under this subtitle,
which of the following alternative forms of dis-
closure shall be made by the originating body:
(i) Any reasonably segregable particular information in a Missing Armed Forces Personnel record.

(ii) A substitute record for that information which is postponed.

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

(3) REPORTING.—With respect to a Missing Armed Forces Personnel record, or information within a Missing Armed Forces Personnel record, the public disclosure of which is postponed under this subtitle, or for which only substitutions or summaries have been disclosed to the public, the Review Board shall create and transmit to the Archivist an unclassified and publicly releasable report containing—

(A) a description of actions by the Review Board, the originating body, or any Government office (including a justification of any such action to postpone disclosure of any record or part of any record) and of any official proceedings conducted by the Review Board; and

(B) a statement, based on a review of the proceedings and in conformity with the decisions reflected therein, designating a rec-
ommended specified time at which, or a specified occurrence following which, the material may be appropriately disclosed to the public under this subtitle, which the Review Board shall disclose to the public with notice thereof, reasonably calculated to make interested members of the public aware of the existence of the statement.

(4) ACTIONS AFTER DETERMINATION.—

(A) IN GENERAL.—Not later than 30 days after the date of a determination by the Review Board that a Missing Armed Forces Personnel record shall be publicly disclosed in the Collection or postponed for disclosure and held in the protected Collection, the Review Board shall notify the head of the originating body of the determination and highlight and make available the determination on a publicly accessible website reasonably calculated to make interested members of the public aware of the existence of the determination.

(B) OVERSIGHT NOTICE.—Simultaneous with notice under subparagraph (A), the Review Board shall provide notice of a determination concerning the public disclosure or postpone-
ment of disclosure of a Missing Armed Forces Personnel record, or information contained within a Missing Armed Forces Personnel record, which shall include a written unclassified justification for public disclosure or postponement of disclosure, including an explanation of the application of any standards in section 1866 to the President, to the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Reform of the House of Representatives.

(5) REFERRAL AFTER TERMINATION.—A Missing Armed Forces Personnel record that is identified, located, or otherwise discovered after the date on which the Review Board terminates shall be transmitted to the Archivist for the Collection and referred to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives for review, ongoing oversight and, as warranted, referral for possible enforcement action relating to a violation of this subtitle and determination as to whether declassification of the Missing Armed Forces Personnel is warranted under this subtitle.
(c) Notice to Public.—Every 30 days, beginning on the date that is 60 days after the date on which the Review Board first approves the postponement of disclosure of a Missing Armed Forces Personnel record, the Review Board shall highlight and make accessible on a publicly available website reasonably calculated to make interested members of the public aware of the existence of the postponement a notice that summarizes the postponements approved by the Review Board, including a description of the subject, originating body, length or other physical description, and each ground for postponement that is relied upon.

(d) Reports by the Review Board.—

(1) In general.—Not later than 1 year after the date of enactment of this Act, and every year thereafter until the Review Board terminates, the Review Board shall submit a report regarding the activities of the Review Board to—

(A) the Committee on Oversight and Reform of the House of Representatives;

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

(C) the President;

(D) the Archivist; and
(E) the head of any Government office the
records of which have been the subject of Re-
view Board activity.

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

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

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

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

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

(E) A record of review activities, including
a record of postponement decisions by the Re-
view Board or other related actions authorized
under this subtitle, and a record of the volume
of records reviewed and postponed.
(F) Suggestions and requests to Congress for additional legislative authority needs.

(G) An appendix containing copies of reports relating to postponed records submitted to the Archivist under subsection (b)(3) since the end of the period covered by the most recent report under paragraph (1).

(3) TERMINATION NOTICE.—Not later than 90 days before the Review Board expects to complete the work of the Review Board under this subtitle, the Review Board shall provide written notice to Congress of the intent of the Review Board to terminate operations at a specified date.

SEC. 1870. DISCLOSURE OF OTHER MATERIALS AND ADDITIONAL STUDY.

(a) MATERIALS UNDER SEAL OF COURT.—

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

(2) GRAND JURY INFORMATION.—

(A) IN GENERAL.—The Review Board may request the Attorney General to petition any
court of the United States to release any information relevant to loss, fate, or status of Missing Armed Forces Personnel that is held under the injunction of secrecy of a grand jury.

(B) TREATMENT.—A request for disclosure of Missing Armed Forces Personnel materials under this subtitle shall be deemed to constitute a showing of particularized need under rule 6 of the Federal Rules of Criminal Procedure.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Attorney General should assist the Review Board in good faith to unseal any records that the Review Board determines to be relevant and held under seal by a court or under the injunction of secrecy of a grand jury;

(2) the Secretary of State should—

(A) contact the Governments of the Russian Federation, the People’s Republic of China, and the Democratic People’s Republic of Korea to seek the disclosure of all records in their respective custody, possession, or control relevant to the loss, fate, or status of Missing Armed Forces Personnel; and
(B) contact any other foreign government that may hold information relevant to the loss, fate, or status of Missing Armed Forces Personnel, and seek disclosure of such information; and

(3) all agencies should cooperate in full with the Review Board to seek the disclosure of all information relevant to the loss, fate, or status of Missing Armed Forces Personnel consistent with the public interest.

SEC. 1871. RULES OF CONSTRUCTION.

(a) Precedence Over Other Law.—When this subtitle requires transmission of a record to the Archivist or public disclosure, it shall take precedence over any other law (except section 6103 of the Internal Revenue Code of 1986), judicial decision construing such law, or common law doctrine that would otherwise prohibit such transmission or disclosure, with the exception of deeds governing access to or transfer or release of gifts and donations of records to the United States Government.

(b) Freedom of Information Act.—Nothing in this subtitle shall be construed to eliminate or limit any right to file requests with any Executive agency or seek judicial review of the decisions under section 552 of title 5, United States Code.
(c) **JUDICIAL REVIEW.**—Nothing in this subtitle shall be construed to preclude judicial review under chapter 7 of title 5, United States Code, of final actions taken or required to be taken under this subtitle.

(d) **EXISTING AUTHORITY.**—Nothing in this subtitle revokes or limits the existing authority of the President, any Executive agency, the Senate, or the House of Representatives, or any other entity of the Government to publicly disclose records in its custody, possession, or control.

(e) **RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES.**—To the extent that any provision of this subtitle establishes a procedure to be followed in the Senate or the House of Representatives, such provision is adopted—

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

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

SEC. 1872. TERMINATION OF EFFECT OF SUBTITLE.

(a) Provisions Pertaining to the Review Board.—The provisions of this subtitle that pertain to the appointment and operation of the Review Board shall cease to be effective when the Review Board and the terms of its members have terminated under section 1867(o).

(b) Other Provisions.—The remaining provisions of this subtitle shall continue in effect until such time as the Archivist certifies to the President and Congress that all Missing Armed Forces Personnel records have been made available to the public in accordance with this subtitle.

SEC. 1873. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—There are authorized to be appropriated such sums as are necessary to carry out this subtitle, to remain available until expended.

(b) Interim Funding.—Until such time as funds are appropriated pursuant to subsection (a), the President may use such sums as are available for discretionary use to carry out this subtitle.

SEC. 1874. SEVERABILITY.

If any provision of this subtitle, or the application thereof to any person or circumstance, is held invalid, the
remainder of this subtitle and the application of that provision to other persons not similarly situated or to other circumstances shall not be affected by the invalidation.