

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

At the end of title XVIII, add the following:

1           **Subtitle D—Bring Our Heroes**  
2                           **Home Act**

3   **SEC. 1861. SHORT TITLE.**

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

6   **SEC. 1862. FINDINGS, DECLARATIONS, AND PURPOSES.**

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

9                   (1) A vast number of records relating to Miss-  
10           ing Armed Forces Personnel have not been identi-  
11           fied, located, or transferred to the National Archives  
12           following review and declassification. Only in the  
13           rarest cases is there any legitimate need for contin-  
14           ued protection of records pertaining to Missing  
15           Armed Forces Personnel who have been missing for  
16           decades.

17                   (2) There has been insufficient priority placed  
18           on identifying, locating, reviewing, or declassifying  
19           records relating to Missing Armed Forces Personnel

1 and then transferring the records to the National  
2 Archives for public access.

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

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

12 (5) The interest, desire, workforce, and funding  
13 of Federal agencies to assemble, review, and declas-  
14 sify records relating to Missing Armed Forces Per-  
15 sonnel have been lacking.

16 (6) All records of the Federal Government re-  
17 lating to Missing Armed Forces Personnel should be  
18 preserved for historical and governmental purposes  
19 and for public research.

20 (7) All records of the Federal Government re-  
21 lating to Missing Armed Forces Personnel should  
22 carry a presumption of declassification, and all such  
23 records should be disclosed under this subtitle to en-  
24 able the fullest possible accounting for Missing  
25 Armed Forces Personnel.

1           (8) Legislation is necessary to create an en-  
2           forceable, independent, and accountable process for  
3           the public disclosure of records relating to Missing  
4           Armed Forces Personnel.

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

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

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

15           (2) to require the expeditious public trans-  
16           mission to the Archivist and public disclosure of  
17           Missing Armed Forces Personnel records, subject to  
18           narrow exceptions, as set forth in this subtitle.

19          **SEC. 1863. DEFINITIONS.**

20          In this subtitle:

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

23           (2) COLLECTION.—The term “Collection”  
24           means the Missing Armed Forces Personnel Records  
25           Collection established under section 1864(a).

1           (3) EXECUTIVE AGENCY.—The term “Executive  
2           agency” —

3                   (A) means an agency, as defined in section  
4                   552(f) of title 5, United States Code; and

5                   (B) includes any Executive department,  
6                   military department, Government corporation,  
7                   Government controlled corporation, or other es-  
8                   tablishment in the executive branch of the Fed-  
9                   eral Government, including the Executive Office  
10                  of the President, any branch of the Armed  
11                  Forces, and any independent regulatory agency.

12           (4) EXECUTIVE BRANCH MISSING ARMED  
13           FORCES PERSONNEL RECORD.—The term “executive  
14           branch Missing Armed Forces Personnel record”  
15           means a Missing Armed Forces Personnel record of  
16           an Executive agency, or information contained in  
17           such a Missing Armed Forces Personnel record ob-  
18           tained by or developed within the executive branch  
19           of the Federal Government.

20           (5) GOVERNMENT OFFICE.—The term “Govern-  
21           ment office” means an Executive agency, the Li-  
22           brary of Congress, or the National Archives.

23           (6) MISSING ARMED FORCES PERSONNEL.—

1 (A) DEFINITION.—The term “Missing  
2 Armed Forces Personnel” means 1 or more  
3 missing persons.

4 (B) INCLUSIONS.—The term “Missing  
5 Armed Forces Personnel” includes an indi-  
6 vidual who was a missing person and whose sta-  
7 tus was later changed to “missing and pre-  
8 sumed dead”.

9 (7) MISSING ARMED FORCES PERSONNEL  
10 RECORD.—The term “Missing Armed Forces Per-  
11 sonnel record” means a record that relates, directly  
12 or indirectly, to the loss, fate, or status of Missing  
13 Armed Forces Personnel that—

14 (A) was created or made available for use  
15 by, obtained by, or otherwise came into the cus-  
16 tody, possession, or control of—

- 17 (i) any Government office;  
18 (ii) any Presidential library; or  
19 (iii) any of the Armed Forces; and

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

- 23 (i) beginning on December 7, 1941;  
24 and

1 (ii) ending on the date of enactment  
2 of this Act.

3 (8) MISSING PERSON.—The term “missing per-  
4 son” has the meaning given that term in section  
5 1513 of title 10, United States Code.

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

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

10 (B) includes any component of the Na-  
11 tional Archives and Records Administration (in-  
12 cluding Presidential archival depositories estab-  
13 lished under section 2112 of title 44, United  
14 States Code).

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

24 (11) ORIGINATING BODY.—The term “origi-  
25 nating body” means the Government office or other

1 initial source that created a record or particular in-  
2 formation within a 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, for  
7 public research, and for the purpose of fully inform-  
8 ing the people of the United States, most impor-  
9 tantly families of Missing Armed Forces Personnel,  
10 about the fate of the Missing Armed Forces Per-  
11 sonnel and the process by which the Federal Govern-  
12 ment has sought to account for them.

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

16 (14) REVIEW BOARD.—The term “Review  
17 Board” means the Missing Armed Forces Personnel  
18 Records Review Board established under section  
19 1867.

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

22 (a) ESTABLISHMENT OF COLLECTION.—Not later  
23 than 90 days after the date of enactment of this Act, the  
24 Archivist shall—

1           (1) commence establishment of a collection of  
2 records to be known as the “Missing Armed Forces  
3 Personnel Records Collection”;

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

6           (3) establish criteria and acceptable formats for  
7 Executive agencies to follow when transmitting cop-  
8 ies of Missing Armed Forces Personnel Records to  
9 the Archivist, to include required metadata.

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

15 **SEC. 1865. REVIEW, IDENTIFICATION, TRANSMISSION TO**  
16 **THE NATIONAL ARCHIVES, AND PUBLIC DIS-**  
17 **CLOSURE OF MISSING ARMED FORCES PER-**  
18 **SONNEL RECORDS BY GOVERNMENT OF-**  
19 **FICES.**

20       (a) IN GENERAL.—

21           (1) PREPARATION.—As soon as practicable  
22 after the date of enactment of this Act, and suffi-  
23 ciently in advance of the deadlines established under  
24 this subtitle, each Government office shall—



1 (A) identify and locate any Missing Armed  
2 Forces Personnel records in the custody, pos-  
3 session, or control of the Government office;  
4 and

5 (B) prepare for transmission to the Archi-  
6 vist in accordance with the criteria and accept-  
7 able formats established by the Archivist a copy  
8 of any Missing Armed Forces Personnel records  
9 that have not previously been transmitted to the  
10 Archivist by the Government office.

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

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

19 (B) whether a copy of any Missing Armed  
20 Forces Personnel record has not been trans-  
21 mitted to the Archivist.

22 (3) PRESERVATION.—No Missing Armed  
23 Forces Personnel record shall be destroyed, altered,  
24 or mutilated in any way.

1           (4) EFFECT OF PREVIOUS DISCLOSURE.—Infor-  
2           mation that was made available or disclosed to the  
3           public before the date of enactment of this Act in a  
4           Missing Armed Forces Personnel record may not be  
5           withheld, redacted, postponed for public disclosure,  
6           or reclassified.

7           (5) WITHHELD AND SUBSTANTIALLY RE-  
8           DACTED RECORDS.—For any Missing Armed Forces  
9           Personnel record that is transmitted to the Archivist  
10          which a Government office proposes to substantially  
11          redact or withhold in full from public access, the  
12          head of the Government office shall submit an un-  
13          classified and publicly releasable report to the Archi-  
14          vist, the Review Board, and each appropriate com-  
15          mittee of the Senate and the House of Representa-  
16          tives justifying the decision of the Government office  
17          to substantially redact or withhold the record by  
18          demonstrating that the release of information would  
19          clearly and demonstrably be expected to cause an ar-  
20          ticulated harm, and that the harm would be of such  
21          gravity as to outweigh the public interest in access  
22          to the information.

23          (b) REVIEW.—

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

1           ernment office shall, in accordance with the criteria  
2           and acceptable formats established by the Archi-  
3           vist—

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

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

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

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

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

23                   (B) notify a Government office if the Ar-  
24           chivist locates and identifies a record of the  
25           Government office under subparagraph (A); and

1           (C) make each classified Missing Armed  
2           Forces Personnel record located and identified  
3           under subparagraph (A) available for review by  
4           Executive agencies through the National De-  
5           classification Center established under Execu-  
6           tive Order 13526 or any successor order.

7           (4) RECORDS ALREADY PUBLIC.—A Missing  
8           Armed Forces Personnel record that is in the cus-  
9           tody of the National Archives on the date of enact-  
10          ment of this Act and that has been publicly available  
11          in its entirety without redaction shall be made avail-  
12          able in the Collection without any additional review  
13          by the Archivist, the Review Board, or any other  
14          Government office under this subtitle.

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

17               (1) not later than 180 days after the date of  
18               enactment of this Act, commence transmission to the  
19               Archivist of copies of the Missing Armed Forces  
20               Personnel records in the custody, possession, or con-  
21               trol of the Government office; and

22               (2) not later than 1 year after the date of en-  
23               actment of this Act, complete transmission to the  
24               Archivist of copies of all Missing Armed Forces Per-

1       sonnel records in the possession or control of the  
2       Government office.

3       (d) PERIODIC REVIEW OF POSTPONED MISSING  
4       ARMED SERVICES PERSONNEL RECORDS.—

5               (1) IN GENERAL.—All Missing Armed Forces  
6       Personnel records, or information within a Missing  
7       Armed Forces Personnel record, the public disclo-  
8       sure of which has been postponed under the stand-  
9       ards under this subtitle shall be reviewed by the  
10       originating body—

11               (A)(i) periodically, but not less than every  
12       5 years, after the date on which the Review  
13       Board terminates under section 1867(o); and

14               (ii) at the direction of the Archivist; and

15               (B) consistent with the recommendations  
16       of the Review Board under section  
17       1869(b)(3)(B).

18       (2) CONTENTS.—

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

1 (B) CONTINUED POSTPONEMENT.—If an  
2 originating body conducting a periodic review of  
3 a Missing Armed Forces Personnel record, or  
4 information within a Missing Armed Forces  
5 Personnel record, the public disclosure of which  
6 has been postponed under the standards under  
7 this subtitle, determines that continued post-  
8 ponement is required, the originating body shall  
9 provide to the Archivist an unclassified written  
10 description of the reason for the continued post-  
11 ponement that the Archivist shall highlight and  
12 make accessible on a publicly accessible website  
13 administered by the National Archives.

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 1862(b)(2), to provide expeditious  
19 public disclosure of Missing Armed Forces Per-  
20 sonnel records, to the fullest extent possible,  
21 subject only to the grounds for postponement of  
22 disclosure under section 1866.

23 (D) DISCLOSURE ABSENT CERTIFICATION  
24 BY PRESIDENT.—Not later than 10 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—

5 (i) the head of the originating body,  
6 Executive agency, or other Government of-  
7 fice recommends in writing that continued  
8 postponement is necessary;

9 (ii) the written recommendation de-  
10 scribed in clause (i)—

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

16 (II) includes—

17 (aa) a justification of the  
18 recommendation to postpone dis-  
19 closure with clear and convincing  
20 evidence that the identifiable  
21 harm is of such gravity that it  
22 outweighs the public interest in  
23 disclosure; and

24 (bb) a recommended speci-  
25 fied time at which or a specified

1 occurrence following which the  
2 material may be appropriately  
3 disclosed to the public under this  
4 subtitle;

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

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

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

22 (a) IN GENERAL.—Disclosure to the public of a Miss-  
23 ing Armed Forces Personnel record or particular informa-  
24 tion in a Missing Armed Forces Personnel record created  
25 after the date that is 25 years before the date of the review



1 of the Missing Armed Forces Personnel record by the Ar-  
2 chivist may be postponed subject to the limitations under  
3 this subtitle only—

4 (1) if it pertains to—

5 (A) military plans, weapons systems, or op-  
6 erations;

7 (B) foreign government information;

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

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

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

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

18 (G) vulnerabilities or capabilities of sys-  
19 tems, installations, infrastructures, projects,  
20 plans, or protection services relating to the na-  
21 tional security; or

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

24 (2) the threat posed by the public disclosure of  
25 the Missing Armed Forces Personnel record or infor-

1           mation is of such gravity that it outweighs the pub-  
2           lic interest in disclosure.

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

11           (1) the release of the information would be ex-  
12           pected to—

13           (A) reveal the identity of a confidential  
14 human source, a human intelligence source, a  
15 relationship with an intelligence or security  
16 service of a foreign government or international  
17 organization, or a nonhuman intelligence  
18 source, or impair the effectiveness of an intel-  
19 ligence method currently in use, available for  
20 use, or under development;

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

23           (C) reveal formally named or numbered  
24 United States military war plans that remain in  
25 effect, or reveal operational or tactical elements

1 of prior plans that are contained in such active  
2 plans; or

3 (D) reveal information, including foreign  
4 government information, that would cause seri-  
5 ous harm to relations between the United  
6 States and a foreign government, or to ongoing  
7 diplomatic activities of the United States; and

8 (2) the threat posed by the public disclosure of  
9 the Missing Armed Forces Personnel record or infor-  
10 mation is of such gravity that it outweighs the pub-  
11 lic interest in disclosure.

12 (c) EXCEPTION.—Regardless of the age of a Missing  
13 Armed Forces Personnel record—the date on which a  
14 Missing Armed Forces Personnel record was created—dis-  
15 closure to the public of information in the Missing Armed  
16 Forces Personnel record may be postponed if—

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

22 (2) the public disclosure of the information  
23 could reasonably be expected to constitute an unwar-  
24 ranted invasion of personal privacy, and that inva-

1 sion of privacy is so substantial that it outweighs the  
2 public interest; or

3 (3) the public disclosure of the information  
4 could reasonably be expected to cause harm to the  
5 methods currently in use or available for use by  
6 members of the Armed Forces to survive, evade, re-  
7 sist, or escape.

8 **SEC. 1867. ESTABLISHMENT AND POWERS OF THE MISSING**  
9 **ARMED FORCES PERSONNEL RECORDS RE-**  
10 **VIEW BOARD.**

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

15 (b) MEMBERSHIP.—

16 (1) APPOINTMENTS.—The President shall ap-  
17 point, by and with the advice and consent of the  
18 Senate, 5 individuals to serve as a member of the  
19 Review Board to ensure and facilitate the review,  
20 transmission to the Archivist, and public disclosure  
21 of Missing Armed Forces Personnel records.

22 (2) QUALIFICATIONS.—The President shall ap-  
23 point individuals to serve as members of the Review  
24 Board—

25 (A) without regard to political affiliation;

1 (B) who are citizens of the United States  
2 of integrity and impartiality;

3 (C) who are not an employee of an Execu-  
4 tive agency on the date of the appointment;

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

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

18 (F) not less than 1 of whom is a profes-  
19 sional historian; and

20 (G) not less than 1 of whom is an attor-  
21 ney.

22 (3) DEADLINES.—

23 (A) IN GENERAL.—Not later than 60 days  
24 after the date of enactment of this Act, the

1           President shall submit nominations for all  
2           members of the Review Board.

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

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

18                   (c) SECURITY CLEARANCES.—The appropriate de-  
19          partments, agencies, and elements of the executive branch  
20          of the Federal Government shall cooperate to ensure that  
21          an application by an individual nominated to be a member  
22          of the Review Board, seeking security clearances necessary  
23          to carry out the duties of the Review Board, is expedi-  
24          tiously reviewed and granted or denied.

25                   (d) CONFIRMATION.—

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

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

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

23          (e) VACANCY.—Not later than 60 days after the date  
24          on which a vacancy on the Review Board occurs, the va-

1 cancy shall be filled in the same manner as specified for  
2 original appointment.

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

6 (g) REMOVAL OF REVIEW BOARD MEMBER.—

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

10 (A) by impeachment by Congress; or

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

16 (2) JUDICIAL REVIEW.—

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

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

25 (h) COMPENSATION OF MEMBERS.—



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

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

17 (i) DUTIES OF THE REVIEW BOARD.—

18           (1) IN GENERAL.—The Review Board shall con-  
19 sider and render a decision on a determination by a  
20 Government office to seek to postpone the disclosure  
21 of a Missing Armed Forces Personnel record, in  
22 whole or in part.

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

1 (A) whether a record constitutes a Missing  
2 Armed Forces Personnel record; and

3 (B) whether a Missing Armed Forces Per-  
4 sonnel record, or particular information in a  
5 Missing Armed Forces Personnel record, quali-  
6 fies for postponement of disclosure under this  
7 subtitle.

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

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

14 (2) direct Government offices to transmit to the  
15 Archivist substitutes and summaries of Missing  
16 Armed Forces Personnel records that can be publicly  
17 disclosed to the fullest extent for any Missing Armed  
18 Forces Personnel record that is proposed for post-  
19 ponement in full or that is substantially redacted;

20 (3) obtain access to Missing Armed Forces Per-  
21 sonnel records that have been identified by a Gov-  
22 ernment office;

23 (4) direct a Government office to make avail-  
24 able to the Review Board, and if necessary inves-  
25 tigate the facts surrounding, additional information,

1 records, or testimony from individuals, which the  
2 Review Board has reason to believe is required to  
3 fulfill its functions and responsibilities under this  
4 subtitle;

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

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

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

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

22 (9) make a final determination regarding  
23 whether a Missing Armed Forces Personnel record  
24 will be disclosed to the public or disclosure of the  
25 Missing Armed Forces Personnel record to the pub-

1       lic will be postponed, notwithstanding the determina-  
2       tion of an Executive agency.

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

6       (l) OVERSIGHT.—

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

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

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

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

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

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

25       (o) TERMINATION AND WINDING UP.—

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

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

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

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

20   **SEC. 1868. MISSING ARMED FORCES PERSONNEL RECORDS**  
21                           **REVIEW BOARD PERSONNEL.**

22          (a) EXECUTIVE DIRECTOR.—

23           (1) IN GENERAL.—Not later than 45 days after  
24          the initial meeting of the Review Board, the Review

1 Board shall appoint an individual to the position of  
2 Executive Director.

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

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

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

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

12 (3) SECURITY CLEARANCE.—

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

18 (B) EXPEDITED PROVISION.—The appro-  
19 priate departments, agencies, and elements of  
20 the executive branch of the Federal Government  
21 shall cooperate to ensure that an application by  
22 an individual nominated to be Executive Direc-  
23 tor, seeking security clearances necessary to  
24 carry out the duties of the Executive Director,  
25 is expeditiously reviewed and granted or denied.

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

2 (A) serve as principal liaison to Govern-  
3 ment offices;

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

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

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

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

15 (b) STAFF.—

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

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

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

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

7 (3) SECURITY CLEARANCE.—

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

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

22 (c) COMPENSATION.—The Review Board shall fix the  
23 compensation of the Executive Director and other employ-  
24 ees of the Review Board without regard to chapter 51 and  
25 subchapter III of chapter 53 of title 5, United States



1 Code, relating to classification of positions and General  
2 Schedule pay rates, except that the rate of pay for the  
3 Executive Director and other employees may not exceed  
4 the rate payable for level V of the Executive Schedule  
5 under section 5316 of title 5, United States Code.

6 (d) ADVISORY COMMITTEES.—

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

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

15 **SEC. 1869. REVIEW OF RECORDS BY THE MISSING ARMED**  
16 **FORCES PERSONNEL RECORDS REVIEW**  
17 **BOARD.**

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

20 (1) not later than 90 days after the date on  
21 which all members are sworn in, publish an initial  
22 schedule for review of all Missing Armed Forces  
23 Personnel records, which the Archivist shall high-  
24 light and make available on a publicly accessible  
25 website administered by the National Archives; and

1           (2) not later than 180 days after the swearing  
2           in of the Board members, begin reviewing of Missing  
3           Armed Forces Personnel records under this subtitle.

4           (b) DETERMINATION OF THE REVIEW BOARD.—

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

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

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

21                 (B) determine, in consultation with the  
22                 originating body and consistent with the stand-  
23                 ards for postponement under this subtitle,  
24                 which of the following alternative forms of dis-  
25                 closure shall be made by the originating body:

1 (i) Any reasonably segregable par-  
2 ticular information in a Missing Armed  
3 Forces Personnel record.

4 (ii) A substitute record for that infor-  
5 mation which is postponed.

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

8 (3) REPORTING.—With respect to a Missing  
9 Armed Forces Personnel record, or information  
10 within a Missing Armed Forces Personnel record,  
11 the public disclosure of which is postponed under  
12 this subtitle, or for which only substitutions or sum-  
13 maries have been disclosed to the public, the Review  
14 Board shall create and transmit to the Archivist an  
15 unclassified and publicly releasable report con-  
16 taining—

17 (A) a description of actions by the Review  
18 Board, the originating body, or any Government  
19 office (including a justification of any such ac-  
20 tion to postpone disclosure of any record or  
21 part of any record) and of any official pro-  
22 ceedings conducted by the Review Board; and

23 (B) a statement, based on a review of the  
24 proceedings and in conformity with the deci-  
25 sions reflected therein, designating a rec-

1           ommended specified time at which, or a speci-  
2           fied occurrence following which, the material  
3           may be appropriately disclosed to the public  
4           under this subtitle, which the Review Board  
5           shall disclose to the public with notice thereof,  
6           reasonably calculated to make interested mem-  
7           bers of the public aware of the existence of the  
8           statement.

9           (4) ACTIONS AFTER DETERMINATION.—

10                   (A) IN GENERAL.—Not later than 30 days  
11           after the date of a determination by the Review  
12           Board that a Missing Armed Forces Personnel  
13           record shall be publicly disclosed in the Collec-  
14           tion or postponed for disclosure and held in the  
15           protected Collection, the Review Board shall no-  
16           tify the head of the originating body of the de-  
17           termination and highlight and make available  
18           the determination on a publicly accessible  
19           website reasonably calculated to make inter-  
20           ested members of the public aware of the exist-  
21           ence of the determination.

22                   (B) OVERSIGHT NOTICE.—Simultaneous  
23           with notice under subparagraph (A), the Review  
24           Board shall provide notice of a determination  
25           concerning the public disclosure or postpone-

1           ment of disclosure of a Missing Armed Forces  
2           Personnel record, or information contained  
3           within a Missing Armed Forces Personnel  
4           record, which shall include a written unclassi-  
5           fied justification for public disclosure or post-  
6           ponement of disclosure, including an expla-  
7           nation of the application of any standards in  
8           section 1866 to the President, to the Committee  
9           on Homeland Security and Governmental Af-  
10          fairs of the Senate, and the Committee on  
11          Oversight and Reform of the House of Rep-  
12          resentatives.

13           (5) REFERRAL AFTER TERMINATION.—A Miss-  
14          ing Armed Forces Personnel record that is identi-  
15          fied, located, or otherwise discovered after the date  
16          on which the Review Board terminates shall be  
17          transmitted to the Archivist for the Collection and  
18          referred to the Committee on Armed Services of the  
19          Senate and the Committee on Armed Services of the  
20          House of Representatives for review, ongoing over-  
21          sight and, as warranted, referral for possible en-  
22          forcement action relating to a violation of this sub-  
23          title and determination as to whether declassification  
24          of the Missing Armed Forces Personnel is warranted  
25          under this subtitle.

1           (c) NOTICE TO PUBLIC.—Every 30 days, beginning  
2 on the date that is 60 days after the date on which the  
3 Review Board first approves the postponement of disclo-  
4 sure of a Missing Armed Forces Personnel record, the Re-  
5 view Board shall highlight and make accessible on a pub-  
6 licly available website reasonably calculated to make inter-  
7 ested members of the public aware of the existence of the  
8 postponement a notice that summarizes the postpone-  
9 ments approved by the Review Board, including a descrip-  
10 tion of the subject, originating body, length or other phys-  
11 ical description, and each ground for postponement that  
12 is relied upon.

13           (d) REPORTS BY THE REVIEW BOARD.—

14           (1) IN GENERAL.—Not later than 1 year after  
15 the date of enactment of this Act, and every year  
16 thereafter until the Review Board terminates, the  
17 Review Board shall submit a report regarding the  
18 activities of the Review Board to—

19                   (A) the Committee on Oversight and Re-  
20 form of the House of Representatives;

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

23                   (C) the President;

24                   (D) the Archivist; and

1 (E) the head of any Government office the  
2 records of which have been the subject of Re-  
3 view Board activity.

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

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

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

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

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

21 (E) A record of review activities, including  
22 a record of postponement decisions by the Re-  
23 view Board or other related actions authorized  
24 under this subtitle, and a record of the volume  
25 of records reviewed and postponed.

1 (F) Suggestions and requests to Congress  
2 for additional legislative authority needs.

3 (G) An appendix containing copies of re-  
4 ports relating to postponed records submitted to  
5 the Archivist under subsection (b)(3) since the  
6 end of the period covered by the most recent re-  
7 port under paragraph (1).

8 (3) TERMINATION NOTICE.—Not later than 90  
9 days before the Review Board expects to complete  
10 the work of the Review Board under this subtitle,  
11 the Review Board shall provide written notice to  
12 Congress of the intent of the Review Board to termi-  
13 nate operations at a specified date.

14 **SEC. 1870. DISCLOSURE OF OTHER MATERIALS AND ADDI-**  
15 **TIONAL STUDY.**

16 (a) MATERIALS UNDER SEAL OF COURT.—

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

23 (2) GRAND JURY INFORMATION.—

24 (A) IN GENERAL.—The Review Board may  
25 request the Attorney General to petition any



1 court of the United States to release any infor-  
2 mation relevant to loss, fate, or status of Miss-  
3 ing Armed Forces Personnel that is held under  
4 the injunction of secrecy of a grand jury.

5 (B) TREATMENT.—A request for disclo-  
6 sure of Missing Armed Forces Personnel mate-  
7 rials under this subtitle shall be deemed to con-  
8 stitute a showing of particularized need under  
9 rule 6 of the Federal Rules of Criminal Proce-  
10 dure.

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

13 (1) the Attorney General should assist the Re-  
14 view Board in good faith to unseal any records that  
15 the Review Board determines to be relevant and held  
16 under seal by a court or under the injunction of se-  
17 crecy of a grand jury;

18 (2) the Secretary of State should—

19 (A) contact the Governments of the Rus-  
20 sian Federation, the People's Republic of  
21 China, and the Democratic People's Republic of  
22 Korea to seek the disclosure of all records in  
23 their respective custody, possession, or control  
24 relevant to the loss, fate, or status of Missing  
25 Armed Forces Personnel; and

1 (B) contact any other foreign government  
2 that may hold information relevant to the loss,  
3 fate, or status of Missing Armed Forces Per-  
4 sonnel, and seek disclosure of such information;  
5 and

6 (3) all agencies should cooperate in full with the  
7 Review Board to seek the disclosure of all informa-  
8 tion relevant to the loss, fate, or status of Missing  
9 Armed Forces Personnel consistent with the public  
10 interest.

11 **SEC. 1871. RULES OF CONSTRUCTION.**

12 (a) PRECEDENCE OVER OTHER LAW.—When this  
13 subtitle requires transmission of a record to the Archivist  
14 or public disclosure, it shall take precedence over any  
15 other law (except section 6103 of the Internal Revenue  
16 Code of 1986), judicial decision construing such law, or  
17 common law doctrine that would otherwise prohibit such  
18 transmission or disclosure, with the exception of deeds  
19 governing access to or transfer or release of gifts and do-  
20 nations of records to the United States Government.

21 (b) FREEDOM OF INFORMATION ACT.—Nothing in  
22 this subtitle shall be construed to eliminate or limit any  
23 right to file requests with any Executive agency or seek  
24 judicial review of the decisions under section 552 of title  
25 5, United States Code.

1           (c) JUDICIAL REVIEW.—Nothing in this subtitle shall  
2 be construed to preclude judicial review under chapter 7  
3 of title 5, United States Code, of final actions taken or  
4 required to be taken under this subtitle.

5           (d) EXISTING AUTHORITY.—Nothing in this subtitle  
6 revokes or limits the existing authority of the President,  
7 any Executive agency, the Senate, or the House of Rep-  
8 resentatives, or any other entity of the Government to  
9 publicly disclose records in its custody, possession, or con-  
10 trol.

11          (e) RULES OF THE SENATE AND HOUSE OF REP-  
12 RESENTATIVES.—To the extent that any provision of this  
13 subtitle establishes a procedure to be followed in the Sen-  
14 ate or the House of Representatives, such provision is  
15 adopted—

16           (1) as an exercise of the rulemaking power of  
17 the Senate and House of Representatives, respec-  
18 tively, and is deemed to be part of the rules of each  
19 House, respectively, but applicable only with respect  
20 to the procedure to be followed in that House, and  
21 it supersedes other rules only to the extent that it  
22 is inconsistent with such rules; and

23           (2) with full recognition of the constitutional  
24 right of either House to change the rules (so far as  
25 they relate to the procedure of that House) at any

1 time, in the same manner, and to the same extent  
2 as in the case of any other rule of that House.

3 **SEC. 1872. TERMINATION OF EFFECT OF SUBTITLE.**

4 (a) PROVISIONS PERTAINING TO THE REVIEW  
5 BOARD.—The provisions of this subtitle that pertain to  
6 the appointment and operation of the Review Board shall  
7 cease to be effective when the Review Board and the terms  
8 of its members have terminated under section 1867(o).

9 (b) OTHER PROVISIONS.—The remaining provisions  
10 of this subtitle shall continue in effect until such time as  
11 the Archivist certifies to the President and Congress that  
12 all Missing Armed Forces Personnel records have been  
13 made available to the public in accordance with this sub-  
14 title.

15 **SEC. 1873. AUTHORIZATION OF APPROPRIATIONS.**

16 (a) IN GENERAL.—There are authorized to be appro-  
17 priated such sums as are necessary to carry out this sub-  
18 title, to remain available until expended.

19 (b) INTERIM FUNDING.—Until such time as funds  
20 are appropriated pursuant to subsection (a), the President  
21 may use such sums as are available for discretionary use  
22 to carry out this subtitle.

23 **SEC. 1874. SEVERABILITY.**

24 If any provision of this subtitle, or the application  
25 thereof to any person or circumstance, is held invalid, the

- 1 remainder of this subtitle and the application of that pro-
- 2 vision to other persons not similarly situated or to other
- 3 circumstances shall not be affected by the invalidation.

