

**AMENDMENT TO RULES COMMITTEE PRINT 116-**

**57**

**OFFERED BY MR. PAPPAS OF NEW HAMPSHIRE**

At the end of subtitle C of title V (page 307, after line 3) add the following:

1 **SEC. \_\_\_\_ . BRING OUR HEROES HOME.**

2 (a) FINDINGS, DECLARATIONS, AND PURPOSES.—

3 (1) FINDINGS AND DECLARATIONS.—Congress  
4 finds and declares the following:

5 (A) A vast number of records relating to  
6 Missing Armed Forces Personnel have not been  
7 identified, located, or transferred to the Na-  
8 tional Archives following review and declas-  
9 sification. Only in the rarest cases is there any  
10 legitimate need for continued protection of  
11 records pertaining to Missing Armed Forces  
12 Personnel who have been missing for decades.

13 (B) There has been insufficient priority  
14 placed on identifying, locating, reviewing, or de-  
15 classifying records relating to Missing Armed  
16 Forces Personnel and then transferring the  
17 records to the National Archives for public ac-  
18 cess.

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

7 (D) No individual or entity has been  
8 tasked with oversight of the identification, col-  
9 lection, review, and declassification of records  
10 related to Missing Armed Forces Personnel.

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

15 (F) All records of the Federal Government  
16 relating to Missing Armed Forces Personnel  
17 should be preserved for historical and govern-  
18 mental purposes and for public research.

19 (G) All records of the Federal Government  
20 relating to Missing Armed Forces Personnel  
21 should carry a presumption of declassification,  
22 and all such records should be disclosed under  
23 this section to enable the fullest possible ac-  
24 counting for Missing Armed Forces Personnel.

1 (H) Legislation is necessary to create an  
2 enforceable, independent, and accountable pro-  
3 cess for the public disclosure of records relating  
4 to Missing Armed Forces Personnel.

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

11 (2) PURPOSES.—The purposes of this section  
12 are—

13 (A) to provide for the creation of the Miss-  
14 ing Armed Forces Personnel Records Collection  
15 at the National Archives; and

16 (B) to require the expeditious public trans-  
17 mission to the Archivist and public disclosure of  
18 Missing Armed Forces Personnel records, sub-  
19 ject to narrow exceptions, as set forth in this  
20 section.

21 (b) DEFINITIONS.—In this section:

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

1           (2) COLLECTION.—The term “Collection”  
2 means the Missing Armed Forces Personnel Records  
3 Collection established under subsection (c)(1).

4           (3) EXECUTIVE AGENCY.—The term “Executive  
5 agency”—

6                 (A) means an agency, as defined in section  
7 552(f) of title 5, United States Code; and

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

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

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

1 (6) MISSING ARMED FORCES PERSONNEL.—

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

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

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

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

18 (i) any Government office;

19 (ii) any Presidential library; or

20 (iii) any of the Armed Forces; and

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

24 (i) beginning on December 7, 1941;

25 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 subsection  
19 (f).

20 (c) MISSING ARMED FORCES PERSONNEL RECORDS  
21 COLLECTION AT THE NATIONAL ARCHIVES.—

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

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

4 (B) commence preparing the subject guide-  
5 book and index to the Collection; and

6 (C) establish criteria for Executive agen-  
7 cies to follow when transmitting copies of Miss-  
8 ing Armed Forces Personnel Records to the Ar-  
9 chivist, to include required metadata.

10 (2) REGULATIONS.—Not later than 365 days  
11 after the date of enactment of this Act, the Review  
12 Board shall promulgate rules to establish guidelines  
13 and processes for the disclosure of records contained  
14 in the Collection.

15 (d) REVIEW, IDENTIFICATION, TRANSMISSION TO  
16 THE NATIONAL ARCHIVES, AND PUBLIC DISCLOSURE OF  
17 MISSING ARMED FORCES PERSONNEL RECORDS BY GOV-  
18 ERNMENT OFFICES.—

19 (1) IN GENERAL.—

20 (A) PREPARATION.—As soon as prac-  
21 ticable after the date of enactment of this Act,  
22 and sufficiently in advance of the deadlines es-  
23 tablished under this section, each Government  
24 office shall—



1 (i) identify and locate any Missing  
2 Armed Forces Personnel records in the  
3 custody, possession, or control of the Gov-  
4 ernment office; and

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

11 (B) CERTIFICATION.—Each Government  
12 office shall submit to the Archivist, under pen-  
13 alty of perjury, a certification indicating—

14 (i) whether the Government office has  
15 conducted a thorough search for all Miss-  
16 ing Armed Forces Personnel records in the  
17 custody, possession, or control of the Gov-  
18 ernment office; and

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

22 (C) PRESERVATION.—No Missing Armed  
23 Forces Personnel record shall be destroyed, al-  
24 tered, or mutilated in any way.

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

7 (E) WITHHELD AND SUBSTANTIALLY RE-  
8 DACTED RECORDS.—For any Missing Armed  
9 Forces Personnel record that is transmitted to  
10 the Archivist which a Government office pro-  
11 poses to substantially redact or withhold in full  
12 from public access, the head of the Government  
13 office shall submit an unclassified and publicly  
14 releasable report to the Archivist, the Review  
15 Board, and each appropriate committee of the  
16 Senate and the House of Representatives justi-  
17 fying the decision of the Government office to  
18 substantially redact or withhold the record by  
19 demonstrating that the release of information  
20 would clearly and demonstrably be expected to  
21 cause an articulated harm, and that the harm  
22 would be of such gravity as to outweigh the  
23 public interest in access to the information.

24 (2) REVIEW.—

1 (A) IN GENERAL.—Not later than 2 years  
2 after the date of enactment of this Act, each  
3 Government office shall, in accordance with the  
4 criteria established by the Archivist and the  
5 rules promulgated under subparagraph (B)—

6 (i) identify, locate, copy, and review  
7 each Missing Armed Forces Personnel  
8 record in the custody, possession, or con-  
9 trol of the Government office for trans-  
10 mission to the Archivist and disclosure to  
11 the public or, if needed, review by the Re-  
12 view Board; and

13 (ii) cooperate fully, in consultation  
14 with the Archivist, in carrying out sub-  
15 paragraph (C).

16 (B) REQUIREMENT.—The Review Board  
17 shall promulgate rules for the disclosure of rel-  
18 evant records by Government offices under sub-  
19 paragraph (A).

20 (C) NATIONAL ARCHIVES RECORDS.—Not  
21 later than 2 years after the date of enactment  
22 of this Act, the Archivist shall—

23 (i) locate and identify all Missing  
24 Armed Forces Personnel records in the  
25 custody of the National Archives as of the

1 date of enactment of this Act that remain  
2 classified, in whole or in part;

3 (ii) notify a Government office if the  
4 Archivist locates and identifies a record of  
5 the Government office under clause (i);  
6 and

7 (iii) make each classified Missing  
8 Armed Forces Personnel record located  
9 and identified under clause (i) available for  
10 review by Executive agencies through the  
11 National Declassification Center estab-  
12 lished under Executive Order 13526.

13 (D) RECORDS ALREADY PUBLIC.—A Miss-  
14 ing Armed Forces Personnel record that is in  
15 the custody of the National Archives on the  
16 date of enactment of this Act and that has been  
17 publicly available in its entirety without redac-  
18 tion shall be made available in the Collection  
19 without any additional review by the Archivist,  
20 the Review Board, or any other Government of-  
21 fice under this section.

22 (3) TRANSMISSION TO THE NATIONAL AR-  
23 CHIVES.—Each Government office shall—

24 (A) not later than 2 years after the date  
25 of enactment of this Act, commence trans-

1 mission to the Archivist of copies of the Missing  
2 Armed Forces Personnel records in the custody,  
3 possession, or control of the Government office;  
4 and

5 (B) not later than 3 years after the date  
6 of enactment of this Act, complete transmission  
7 to the Archivist of copies of all Missing Armed  
8 Forces Personnel records in the possession or  
9 control of the Government office.

10 (4) PERIODIC REVIEW OF POSTPONED MISSING  
11 ARMED SERVICES PERSONNEL RECORDS.—

12 (A) IN GENERAL.—All Missing Armed  
13 Forces Personnel records, or information within  
14 a Missing Armed Forces Personnel record, the  
15 public disclosure of which has been postponed  
16 under the standards under this section shall be  
17 reviewed by the originating body—

18 (i)(I) periodically, but not less than  
19 every 5 years, after the date on which the  
20 Review Board terminates under subsection  
21 (f)(15); and

22 (II) at the direction of the Archivist;  
23 and

1 (ii) consistent with the recommenda-  
2 tions of the Review Board under sub-  
3 section (h)(2)(C)(ii).

4 (B) CONTENTS.—

5 (i) IN GENERAL.—A periodic review of  
6 a Missing Armed Forces Personnel record,  
7 or information within a Missing Armed  
8 Forces Personnel record, by the originating  
9 body shall address the public disclosure of  
10 the Missing Armed Forces Personnel  
11 record under the standards under this sec-  
12 tion.

13 (ii) CONTINUED POSTPONEMENT.—If  
14 an originating body conducting a periodic  
15 review of a Missing Armed Forces Per-  
16 sonnel record, or information within a  
17 Missing Armed Forces Personnel record,  
18 the public disclosure of which has been  
19 postponed under the standards under this  
20 section, determines that continued post-  
21 ponement is required, the originating body  
22 shall provide to the Archivist an unclassi-  
23 fied written description of the reason for  
24 the continued postponement that the Ar-  
25 chivist shall highlight and make accessible

1 on a publicly accessible website adminis-  
2 tered by the National Archives.

3 (iii) SCOPE.—The periodic review of  
4 postponed Missing Armed Forces Per-  
5 sonnel records, or information within a  
6 Missing Armed Forces Personnel record,  
7 shall serve the purpose stated in subsection  
8 (a)(2)(B), to provide expeditious public  
9 disclosure of Missing Armed Forces Per-  
10 sonnel records, to the fullest extent pos-  
11 sible, subject only to the grounds for post-  
12 ponement of disclosure under subsection  
13 (e).

14 (iv) DISCLOSURE ABSENT CERTIFI-  
15 CATION BY PRESIDENT.—Not later than  
16 10 years after the date of enactment of  
17 this Act, all Missing Armed Forces Per-  
18 sonnel records, and information within a  
19 Missing Armed Forces Personnel record,  
20 shall be publicly disclosed in full, and  
21 available in the Collection, unless—

22 (I) the head of the originating  
23 body, Executive agency, or other Gov-  
24 ernment office recommends in writing

1 that continued postponement is nec-  
2 essary;

3 (II) the written recommendation  
4 described in subclause (I)—

5 (aa) is provided to the Ar-  
6 chivist in unclassified and pub-  
7 licly releasable form not later  
8 than 180 days before the date  
9 that is 10 years after the date of  
10 enactment of this Act; and

11 (bb) includes—

12 (AA) a justification of  
13 the recommendation to post-  
14 pone disclosure with clear  
15 and convincing evidence that  
16 the identifiable harm is of  
17 such gravity that it out-  
18 weighs the public interest in  
19 disclosure; and

20 (BB) a recommended  
21 specified time at which or a  
22 specified occurrence fol-  
23 lowing which the material  
24 may be appropriately dis-



1 closed to the public under  
2 this section;

3 (III) the Archivist transmits all  
4 recommended postponements and the  
5 recommendation of the Archivist to  
6 the President not later than 90 days  
7 before the date that is 10 years after  
8 the date of enactment of this Act; and

9 (IV) the President transmits to  
10 the Archivist a certification indicating  
11 that continued postponement is nec-  
12 essary and the identifiable harm, as  
13 demonstrated by clear and convincing  
14 evidence, is of such gravity that it  
15 outweighs the public interest in dislo-  
16 sure not later than the date that is 10  
17 years after the date of enactment of  
18 this Act.

19 (e) GROUNDS FOR POSTPONEMENT OF PUBLIC DIS-  
20 CLOSURE OF RECORDS.—

21 (1) IN GENERAL.—Disclosure to the public of a  
22 Missing Armed Forces Personnel record or par-  
23 ticular information in a Missing Armed Forces Per-  
24 sonnel record created after the date that is 25 years  
25 before the date of the review of the Missing Armed

1 Forces Personnel record by the Archivist may be  
2 postponed subject to the limitations under this sec-  
3 tion only—

4 (A) if it pertains to—

5 (i) military plans, weapons systems, or  
6 operations;

7 (ii) foreign government information;

8 (iii) intelligence activities (including  
9 covert action), intelligence sources or meth-  
10 ods, or cryptology;

11 (iv) foreign relations or foreign activi-  
12 ties of the United States, including con-  
13 fidential sources;

14 (v) scientific, technological, or eco-  
15 nomic matters relating to the national se-  
16 curity;

17 (vi) United States Government pro-  
18 grams for safeguarding nuclear materials  
19 or facilities;

20 (vii) vulnerabilities or capabilities of  
21 systems, installations, infrastructures,  
22 projects, plans, or protection services relat-  
23 ing to the national security; or

24 (viii) the development, production, or  
25 use of weapons of mass destruction; and

1 (B) the threat posed by the public disclo-  
2 sure of the Missing Armed Forces Personnel  
3 record or information is of such gravity that it  
4 outweighs the public interest in disclosure.

5 (2) OLDER RECORDS.—Disclosure to the public  
6 of a Missing Armed Forces Personnel record or par-  
7 ticular information in a Missing Armed Forces Per-  
8 sonnel record created on or before the date that is  
9 25 years before the date of the review of the Missing  
10 Armed Forces Personnel record by the Archivist  
11 may be postponed subject to the limitations under  
12 this section only if, as demonstrated by clear and  
13 convincing evidence—

14 (A) the release of the information would be  
15 expected to—

16 (i) reveal the identity of a confidential  
17 human source, a human intelligence  
18 source, a relationship with an intelligence  
19 or security service of a foreign government  
20 or international organization, or a  
21 nonhuman intelligence source, or impair  
22 the effectiveness of an intelligence method  
23 currently in use, available for use, or under  
24 development;

1 (ii) reveal information that would im-  
2 pair United States cryptologic systems or  
3 activities;

4 (iii) reveal formally named or num-  
5 bered United States military war plans  
6 that remain in effect, or reveal operational  
7 or tactical elements of prior plans that are  
8 contained in such active plans; or

9 (iv) reveal information, including for-  
10 eign government information, that would  
11 cause serious harm to relations between  
12 the United States and a foreign govern-  
13 ment, or to ongoing diplomatic activities of  
14 the United States; and

15 (B) the threat posed by the public disclo-  
16 sure of the Missing Armed Forces Personnel  
17 record or information is of such gravity that it  
18 outweighs the public interest in disclosure.

19 (3) EXCEPTION.—Regardless of the age of a  
20 Missing Armed Forces Personnel record—the date  
21 on which a Missing Armed Forces Personnel record  
22 was created—disclosure to the public of information  
23 in the Missing Armed Forces Personnel record may  
24 be postponed if—

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

6 (B) the public disclosure of the informa-  
7 tion could reasonably be expected to constitute  
8 an unwarranted invasion of personal privacy,  
9 and that invasion of privacy is so substantial  
10 that it outweighs the public interest;

11 (C) the public disclosure of the information  
12 could reasonably be expected to cause harm to  
13 the methods currently in use or available for  
14 use by members of the Armed Forces to sur-  
15 vive, evade, resist, or escape; or

16 (D) the President determines that the  
17 record is subject to a valid claim of executive  
18 privilege.

19 (f) ESTABLISHMENT AND POWERS OF THE MISSING  
20 ARMED FORCES PERSONNEL RECORDS REVIEW  
21 BOARD.—

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

1 (2) MEMBERSHIP.—

2 (A) APPOINTMENTS.—The President shall  
3 appoint, by and with the advice and consent of  
4 the Senate, 5 individuals to serve as a member  
5 of the Review Board to ensure and facilitate the  
6 review, transmission to the Archivist, and public  
7 disclosure of Missing Armed Forces Personnel  
8 records.

9 (B) QUALIFICATIONS.—The President  
10 should appoint individuals to serve as members  
11 of the Review Board—

12 (i) without regard to political affili-  
13 ation;

14 (ii) who are citizens of the United  
15 States of integrity and impartiality;

16 (iii) who are not an employee of an  
17 Executive agency on the date of the ap-  
18 pointment;

19 (iv) who have high national profes-  
20 sional reputation in their fields who are ca-  
21 pable of exercising the independent and ob-  
22 jective judgment necessary to the fulfill-  
23 ment of their role in ensuring and facili-  
24 tating the identification, location, review,  
25 transmission to the Archivist, and public

1 disclosure of Missing Armed Forces Per-  
2 sonnel records;

3 (v) who possess an appreciation of the  
4 value of Missing Armed Forces Personnel  
5 records to scholars, the Federal Govern-  
6 ment, and the public, particularly families  
7 of Missing Armed Forces Personnel;

8 (vi) not less than 1 of whom is a pro-  
9 fessional historian; and

10 (vii) not less than 1 of whom is an at-  
11 torney.

12 (C) DEADLINES.—

13 (i) IN GENERAL.—Not later than 60  
14 days after the date of enactment of this  
15 Act, the President should submit nomina-  
16 tions for all members of the Review Board.

17 (ii) CONFIRMATION REJECTED.—If  
18 the Senate votes not to confirm a nomina-  
19 tion to serve as a member of the Review  
20 Board, not later than 90 days after the  
21 date of the vote the President should sub-  
22 mit the nomination of an additional indi-  
23 vidual to serve as a member of the Review  
24 Board.

1           (D) CONSULTATION.—The President  
2           should make nominations to the Review Board  
3           after considering individuals recommended by  
4           the American Historical Association, the Orga-  
5           nization of American Historians, the Society of  
6           American Archivists, the American Bar Asso-  
7           ciation, veterans' organizations, and organiza-  
8           tions representing families of Missing Armed  
9           Forces Personnel.

10          (3) SECURITY CLEARANCES.—The appropriate  
11          departments, agencies, and elements of the executive  
12          branch of the Federal Government shall cooperate to  
13          ensure that an application by an individual nomi-  
14          nated to be a member of the Review Board, seeking  
15          security clearances necessary to carry out the duties  
16          of the Review Board, is expeditiously reviewed and  
17          granted or denied.

18          (4) CONFIRMATION.—

19                (A) HEARINGS.—Not later than 30 days  
20                on which the Senate is in session after the date  
21                on which not less than 3 individuals have been  
22                nominated to serve as members of the Review  
23                Board, the Committee on Homeland Security  
24                and Governmental Affairs of the Senate shall  
25                hold confirmation hearings on the nominations.



1           (B) COMMITTEE VOTE.—Not later than 14  
2           days on which the Senate is in session after the  
3           date on which the Committee on Homeland Se-  
4           curity and Governmental Affairs holds a con-  
5           firmation hearing on the nomination of an indi-  
6           vidual to serve as a member of the Review  
7           Board, the committee shall vote on the nomina-  
8           tion and report the results to the full Senate  
9           immediately.

10           (C) SENATE VOTE.—Not later than 14  
11           days on which the Senate is in session after the  
12           date on which the Committee on Homeland Se-  
13           curity and Governmental Affairs reports the re-  
14           sults of a vote on a nomination of an individual  
15           to serve as a member of the Review Board, the  
16           Senate shall vote on the confirmation of the  
17           nominee.

18           (5) VACANCY.—Not later than 60 days after  
19           the date on which a vacancy on the Review Board  
20           occurs, the vacancy shall be filled in the same man-  
21           ner as specified for original appointment.

22           (6) CHAIRPERSON.—The members of the Re-  
23           view Board shall elect a member as Chairperson at  
24           the initial meeting of the Review Board.

25           (7) REMOVAL OF REVIEW BOARD MEMBER.—

1 (A) IN GENERAL.—A member of the Re-  
2 view Board shall not be removed from office,  
3 other than—

4 (i) by impeachment by Congress; or

5 (ii) by the action of the President.

6 (B) JUDICIAL REVIEW.—

7 (i) IN GENERAL.—A member of the  
8 Review Board removed from office may ob-  
9 tain judicial review of the removal in a civil  
10 action commenced in the United States  
11 District Court for the District of Colum-  
12 bia.

13 (ii) RELIEF.—The member may be re-  
14 instated or granted other appropriate relief  
15 by order of the court.

16 (8) COMPENSATION OF MEMBERS.—

17 (A) BASIC PAY.—A member of the Review  
18 Board shall be compensated at a rate equal to  
19 the daily equivalent of the annual rate of basic  
20 pay prescribed for level IV of the Executive  
21 Schedule under section 5315 of title 5, United  
22 States Code, for each day (including travel  
23 time) during which the member is engaged in  
24 the performance of the duties of the Review  
25 Board.

1 (B) TRAVEL EXPENSES.—A member of the  
2 Review Board shall be allowed reasonable travel  
3 expenses, including per diem in lieu of subsist-  
4 ence, at rates for employees of agencies under  
5 subchapter I of chapter 57 of title 5, United  
6 States Code, while away from the member's  
7 home or regular place of business in the per-  
8 formance of services for the Review Board.

9 (9) DUTIES OF THE REVIEW BOARD.—

10 (A) IN GENERAL.—The Review Board  
11 shall consider and render a decision on a deter-  
12 mination by a Government office to seek to  
13 postpone the disclosure of a Missing Armed  
14 Forces Personnel record, in whole or in part.

15 (B) RECORDS.—In carrying out subpara-  
16 graph (A), the Review Board shall consider and  
17 render a decision regarding—

18 (i) whether a record constitutes a  
19 Missing Armed Forces Personnel record;  
20 and

21 (ii) whether a Missing Armed Forces  
22 Personnel record, or particular information  
23 in a Missing Armed Forces Personnel  
24 record, qualifies for postponement of dis-  
25 closure under this section.

1           (10) POWERS.—The Review Board shall have  
2           the authority to act in a manner prescribed under  
3           this section, including authority to—

4                   (A) direct Government offices to transmit  
5                   to the Archivist Missing Armed Forces Per-  
6                   sonnel records as required under this section;

7                   (B) direct Government offices to transmit  
8                   to the Archivist substitutes and summaries of  
9                   Missing Armed Forces Personnel records that  
10                  can be publicly disclosed to the fullest extent  
11                  for any Missing Armed Forces Personnel record  
12                  that is proposed for postponement;

13                  (C) obtain access to Missing Armed Forces  
14                  Personnel records that have been identified by  
15                  a Government office;

16                  (D) direct a Government office to make  
17                  available to the Review Board, and if necessary  
18                  investigate the facts surrounding, additional in-  
19                  formation, records, or testimony from individ-  
20                  uals, which the Review Board has reason to be-  
21                  lieve is required to fulfill its functions and re-  
22                  sponsibilities under this section;

23                  (E) hold such hearings, sit and act at such  
24                  times and places, take such testimony, receive  
25                  such evidence, and administer such oaths as the

1 Review Board considers advisable to carry out  
2 its responsibilities under this section;

3 (F) require any Government office to ac-  
4 count in writing for the destruction of any  
5 records relating to the loss, fate, or status of  
6 Missing Armed Forces Personnel;

7 (G) receive information from the public re-  
8 garding the identification and public disclosure  
9 of Missing Armed Forces Personnel records;  
10 and

11 (H) make a final determination regarding  
12 whether a Missing Armed Forces Personnel  
13 record will be disclosed to the public or disclo-  
14 sure of the Missing Armed Forces Personnel  
15 record to the public will be postponed, notwith-  
16 standing the determination of an Executive  
17 agency.

18 (11) OVERSIGHT.—

19 (A) IN GENERAL.—The Committee on  
20 Homeland Security and Governmental Affairs  
21 of the Senate and the Committee on Oversight  
22 and Reform of the House of Representatives  
23 shall have—

24 (i) continuing oversight jurisdiction  
25 with respect to the official conduct of the

1           Review Board and the disposition of post-  
2           poned records after termination of the Re-  
3           view Board; and

4                   (ii) upon request, access to any  
5           records held or created by the Review  
6           Board.

7           (B) DUTY OF REVIEW BOARD.—The Re-  
8           view Board shall have the duty to cooperate  
9           with the exercise of oversight jurisdiction under  
10          subparagraph (A).

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

15          (13) INTERPRETIVE REGULATIONS.—The Re-  
16          view Board may issue interpretive regulations.

17          (14) TERMINATION AND WINDING UP.—

18                   (A) IN GENERAL.—Four years after the  
19          date of enactment of this Act, the Review  
20          Board shall, by majority vote, determine wheth-  
21          er all Government offices have complied with  
22          the obligations, mandates, and directives under  
23          this section.

1 (B) TERMINATION DATE.—The Review  
2 Board shall terminate on the date that is 6  
3 years after the date of enactment of this Act.

4 (C) REPORT.—Before the termination of  
5 the Review Board under subparagraph (B), the  
6 Review Board shall submit to Congress reports,  
7 including a complete and accurate accounting of  
8 expenditures during its existence, and shall  
9 complete all other reporting requirements under  
10 this section.

11 (D) RECORDS.—Upon termination of the  
12 Review Board, the Review Board shall transfer  
13 records of the Review Board maintained con-  
14 sistent with the Federal Records Act to the Ar-  
15 chivist for inclusion in the Collection.

16 (g) MISSING ARMED FORCES PERSONNEL RECORDS  
17 REVIEW BOARD PERSONNEL.—

18 (1) EXECUTIVE DIRECTOR.—

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

23 (B) QUALIFICATIONS.—The individual ap-  
24 pointed as Executive Director of the Review  
25 Board—

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

3 (ii) shall be appointed without regard  
4 to political affiliation; and

5 (iii) shall not have any conflict of in-  
6 terest with the mission of the Review  
7 Board.

8 (C) SECURITY CLEARANCE.—

9 (i) LIMIT ON APPOINTMENT.—The  
10 Review Board shall not appoint an indi-  
11 vidual as Executive Director until after the  
12 date on which the individual qualifies for  
13 the necessary security clearance.

14 (ii) EXPEDITED PROVISION.—The ap-  
15 propriate departments, agencies, and ele-  
16 ments of the executive branch of the Fed-  
17 eral Government shall cooperate to ensure  
18 that an application by an individual nomi-  
19 nated to be Executive Director, seeking se-  
20 curity clearances necessary to carry out the  
21 duties of the Executive Director, is expedi-  
22 tiously reviewed and granted or denied.

23 (D) DUTIES.—The Executive Director  
24 shall—



1 (i) serve as principal liaison to Gov-  
2 ernment offices;

3 (ii) be responsible for the administra-  
4 tion and coordination of the review of  
5 records by the Review Board;

6 (iii) be responsible for the administra-  
7 tion of all official activities conducted by  
8 the Review Board; and

9 (iv) not have the authority to decide  
10 or determine whether any record should be  
11 disclosed to the public or postponed for  
12 disclosure.

13 (E) REMOVAL.—The Executive Director  
14 may be removed by a majority vote of the Re-  
15 view Board.

16 (2) STAFF.—

17 (A) IN GENERAL.—The Review Board  
18 may, in accordance with the civil service laws,  
19 but without regard to civil service law and regu-  
20 lation for competitive service as defined in sub-  
21 chapter I of chapter 33 of title 5, United States  
22 Code, appoint and terminate additional employ-  
23 ees as are necessary to enable the Review  
24 Board and the Executive Director to perform  
25 their duties under this section.

1 (B) QUALIFICATIONS.—An individual ap-  
2 pointed to a position as an employee of the Re-  
3 view Board—

4 (i) shall be a citizen of the United  
5 States of integrity and impartiality; and

6 (ii) shall not have had any previous  
7 involvement with any official investigation  
8 or inquiry relating to the loss, fate, or sta-  
9 tus of Missing Armed Forces Personnel.

10 (C) SECURITY CLEARANCE.—

11 (i) LIMIT ON APPOINTMENT.—The  
12 Review Board shall not appoint an indi-  
13 vidual as an employee of the Review Board  
14 until after the date on which the individual  
15 qualifies for the necessary security clear-  
16 ance.

17 (ii) EXPEDITED PROVISION.—The ap-  
18 propriate departments, agencies, and ele-  
19 ments of the executive branch of the Fed-  
20 eral Government shall cooperate to ensure  
21 that an application by an individual who is  
22 a candidate for a position with the Review  
23 Board, seeking security clearances nec-  
24 essary to carry out the duties of the posi-

1                   tion, is expeditiously reviewed and granted  
2                   or denied.

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

13                  (4) ADVISORY COMMITTEES.—

14                  (A) IN GENERAL.—The Review Board may  
15                  create 1 or more advisory committees to assist  
16                  in fulfilling the responsibilities of the Review  
17                  Board under this section.

18                  (B) APPLICABILITY OF FACA.—Any advi-  
19                  sory committee created by the Review Board  
20                  shall be subject to the Federal Advisory Com-  
21                  mittee Act (5 U.S.C. App.).

22                  (h) REVIEW OF RECORDS BY THE MISSING ARMED  
23                  FORCES PERSONNEL RECORDS REVIEW BOARD.—

24                  (1) STARTUP REQUIREMENTS.—The Review  
25                  Board shall—

1           (A) not later than 90 days after the date  
2           on which all members are appointed, publish an  
3           initial schedule for review of all Missing Armed  
4           Forces Personnel records, which the Archivist  
5           shall highlight and make available on a publicly  
6           accessible website administered by the National  
7           Archives; and

8           (B) not later than 180 days after the date  
9           of enactment of this Act, begin reviewing of  
10          Missing Armed Forces Personnel records under  
11          this section.

12          (2) DETERMINATION OF THE REVIEW BOARD.—

13           (A) IN GENERAL.—The Review Board  
14           shall direct that all records that relate, directly  
15           or indirectly, to the loss, fate, or status of Miss-  
16           ing Armed Forces Personnel be transmitted to  
17           the Archivist and disclosed to the public in the  
18           Collection in the absence of clear and con-  
19           vincing evidence that—

20                   (i) the record is not a Missing Armed  
21                   Forces Personnel record; or

22                   (ii) the Missing Armed Forces Per-  
23                   sonnel record, or particular information  
24                   within the Missing Armed Forces Per-

1                   sonnel record, qualifies for postponement  
2                   of public disclosure under this section.

3                   (B) POSTPONEMENT.—In approving post-  
4                   ponement of public disclosure of a Missing  
5                   Armed Forces Personnel record, or information  
6                   within a Missing Armed Forces Personnel  
7                   record, the Review Board shall seek to—

8                   (i) provide for the disclosure of seg-  
9                   regable parts, substitutes, or summaries of  
10                  the Missing Armed Forces Personnel  
11                  record; and

12                  (ii) determine, in consultation with  
13                  the originating body and consistent with  
14                  the standards for postponement under this  
15                  section, which of the following alternative  
16                  forms of disclosure shall be made by the  
17                  originating body:

18                         (I) Any reasonably segregable  
19                         particular information in a Missing  
20                         Armed Forces Personnel record.

21                         (II) A substitute record for that  
22                         information which is postponed.

23                         (III) A summary of a Missing  
24                         Armed Forces Personnel record.

1           (C) REPORTING.—With respect to a Miss-  
2           ing Armed Forces Personnel record, or informa-  
3           tion within a Missing Armed Forces Personnel  
4           record, the public disclosure of which is post-  
5           poned under this section, or for which only sub-  
6           stitutions or summaries have been disclosed to  
7           the public, the Review Board shall create and  
8           transmit to the Archivist an unclassified and  
9           publicly releasable report containing—

10                   (i) a description of actions by the Re-  
11                   view Board, the originating body, or any  
12                   Government office (including a justification  
13                   of any such action to postpone disclosure  
14                   of any record or part of any record) and  
15                   of any official proceedings conducted by  
16                   the Review Board; and

17                   (ii) a statement, based on a review of  
18                   the proceedings and in conformity with the  
19                   decisions reflected therein, designating a  
20                   recommended specified time at which, or a  
21                   specified occurrence following which, the  
22                   material may be appropriately disclosed to  
23                   the public under this section, which the  
24                   Review Board shall disclose to the public  
25                   with notice thereof, reasonably calculated

1 to make interested members of the public  
2 aware of the existence of the statement.

3 (D) ACTIONS AFTER DETERMINATION.—

4 (i) IN GENERAL.—Not later than 14  
5 days after the date of a determination by  
6 the Review Board that a Missing Armed  
7 Forces Personnel record shall be publicly  
8 disclosed in the Collection or postponed for  
9 disclosure and held in the protected Collec-  
10 tion, the Review Board shall notify the  
11 head of the originating body of the deter-  
12 mination and highlight and make available  
13 the determination on a publicly accessible  
14 website reasonably calculated to make in-  
15 terested members of the public aware of  
16 the existence of the determination.

17 (ii) OVERSIGHT NOTICE.—Simulta-  
18 neous with notice under clause (i), the Re-  
19 view Board shall provide notice of a deter-  
20 mination concerning the public disclosure  
21 or postponement of disclosure of a Missing  
22 Armed Forces Personnel record, or infor-  
23 mation contained within a Missing Armed  
24 Forces Personnel record, which shall in-  
25 clude a written unclassified justification for

1 public disclosure or postponement of dis-  
2 closure, including an explanation of the ap-  
3 plication of any standards in subsection (e)  
4 to the President, to the Committee on  
5 Homeland Security and Governmental Af-  
6 fairs of the Senate, and the Committee on  
7 Oversight and Reform of the House of  
8 Representatives.

9 (E) REFERRAL AFTER TERMINATION.—A  
10 Missing Armed Forces Personnel record that is  
11 identified, located, or otherwise discovered after  
12 the date on which the Review Board terminates  
13 shall be transmitted to the Archivist for the  
14 Collection and referred to the Committee on  
15 Armed Services of the Senate and the Com-  
16 mittee on Armed Services of the House of Rep-  
17 resentatives for review, ongoing oversight and,  
18 as warranted, referral for possible enforcement  
19 action relating to a violation of this section and  
20 determination as to whether declassification of  
21 the Missing Armed Forces Personnel is war-  
22 ranted under this section.

23 (3) NOTICE TO PUBLIC.—Every 30 days, begin-  
24 ning on the date that is 60 days after the date on  
25 which the Review Board first approves the postpone-



1       ment of disclosure of a Missing Armed Forces Per-  
2       sonnel record, the Review Board shall highlight and  
3       make accessible on a publicly available website rea-  
4       sonably calculated to make interested members of  
5       the public aware of the existence of the postpone-  
6       ment a notice that summarizes the postponements  
7       approved by the Review Board, including a descrip-  
8       tion of the subject, originating body, length or other  
9       physical description, and each ground for postpone-  
10      ment that is relied upon.

11           (4) REPORTS BY THE REVIEW BOARD.—

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

18           (i) the Committee on Oversight and  
19       Reform of the House of Representatives;

20           (ii) the Committee on Homeland Se-  
21       curity and Governmental Affairs of the  
22       Senate;

23           (iii) the President;

24           (iv) the Archivist; and

1 (v) the head of any Government office  
2 the records of which have been the subject  
3 of Review Board activity.

4 (B) CONTENTS.—Each report under sub-  
5 paragraph (A) should include the following in-  
6 formation:

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

10 (ii) The progress made on review,  
11 transmission to the Archivist, and public  
12 disclosure of Missing Armed Forces Per-  
13 sonnel records.

14 (iii) The estimated time and volume of  
15 Missing Armed Forces Personnel records  
16 involved in the completion of the duties of  
17 the Review Board under this section.

18 (iv) Any special problems, including  
19 requests and the level of cooperation of  
20 Government offices, with regard to the  
21 ability of the Review Board to carry out its  
22 duties under this section.

23 (v) A record of review activities, in-  
24 cluding a record of postponement decisions  
25 by the Review Board or other related ac-

1 tions authorized under this section, and a  
2 record of the volume of records reviewed  
3 and postponed.

4 (vi) Suggestions and requests to Con-  
5 gress for additional legislative authority  
6 needs.

7 (vii) An appendix containing copies of  
8 reports relating to postponed records sub-  
9 mitted to the Archivist under paragraph  
10 (2)(C) since the end of the period covered  
11 by the most recent report under subpara-  
12 graph (A).

13 (C) TERMINATION NOTICE.—Not later  
14 than 90 days before the Review Board expects  
15 to complete the work of the Review Board  
16 under this section, the Review Board shall pro-  
17 vide written notice to Congress of the intent of  
18 the Review Board to terminate operations at a  
19 specified date.

20 (i) DISCLOSURE OF OTHER MATERIALS AND ADDI-  
21 TIONAL STUDY.—

22 (1) MATERIALS UNDER SEAL OF COURT.—

23 (A) IN GENERAL.—The Review Board may  
24 request the Attorney General to petition any  
25 court of the United States or of a foreign coun-

1 try to release any information relevant to the  
2 loss, fate, or status of Missing Armed Forces  
3 Personnel that is held under seal of the court.

4 (B) GRAND JURY INFORMATION.—

5 (i) IN GENERAL.—The Review Board  
6 may request the Attorney General to peti-  
7 tion any court of the United States to re-  
8 lease any information relevant to loss, fate,  
9 or status of Missing Armed Forces Per-  
10 sonnel that is held under the injunction of  
11 secrecy of a grand jury.

12 (ii) TREATMENT.—A request for dis-  
13 closure of Missing Armed Forces Personnel  
14 materials under this section shall be  
15 deemed to constitute a showing of particu-  
16 larized need under rule 6 of the Federal  
17 Rules of Criminal Procedure.

18 (2) SENSE OF CONGRESS.—It is the sense of  
19 Congress that—

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

25 (B) the Secretary of State should—

1 (i) contact the Governments of the  
2 Russian Federation, the People's Republic  
3 of China, and the Democratic People's Re-  
4 public of Korea to seek the disclosure of all  
5 records in their respective custody, posses-  
6 sion, or control relevant to the loss, fate,  
7 or status of Missing Armed Forces Per-  
8 sonnel; and

9 (ii) contact any other foreign govern-  
10 ment that may hold information relevant  
11 to the loss, fate, or status of Missing  
12 Armed Forces Personnel, and seek disclo-  
13 sure of such information; and

14 (C) all agencies should cooperate in full  
15 with the Review Board to seek the disclosure of  
16 all information relevant to the loss, fate, or sta-  
17 tus of Missing Armed Forces Personnel con-  
18 sistent with the public interest.

19 (j) RULES OF CONSTRUCTION.—

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

1           (2) JUDICIAL REVIEW.—Nothing in this section  
2 shall be construed to preclude judicial review under  
3 chapter 7 of title 5, United States Code, of final ac-  
4 tions taken or required to be taken under this sec-  
5 tion.

6           (3) EXISTING AUTHORITY.—Nothing in this  
7 section revokes or limits the existing authority of the  
8 President, any Executive agency, the Senate, or the  
9 House of Representatives, or any other entity of the  
10 Government to publicly disclose records in its cus-  
11 tody, possession, or control.

12           (4) RULES OF THE SENATE AND HOUSE OF  
13 REPRESENTATIVES.—To the extent that any provi-  
14 sion of this section establishes a procedure to be fol-  
15 lowed in the Senate or the House of Representatives,  
16 such provision is adopted—

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

1 (B) with full recognition of the constitu-  
2 tional right of either House to change the rules  
3 (so far as they relate to the procedure of that  
4 House) at any time, in the same manner, and  
5 to the same extent as in the case of any other  
6 rule of that House.

7 (k) TERMINATION OF EFFECT OF SECTION.—

8 (1) PROVISIONS PERTAINING TO THE REVIEW  
9 BOARD.—The provisions of this section that pertain  
10 to the appointment and operation of the Review  
11 Board shall cease to be effective when the Review  
12 Board and the terms of its members have termi-  
13 nated under subsection (f)(14).

14 (2) OTHER PROVISIONS.—The remaining provi-  
15 sions of this section shall continue in effect until  
16 such time as the Archivist certifies to the President  
17 and Congress that all Missing Armed Forces Per-  
18 sonnel records have been made available to the pub-  
19 lic in accordance with this section.

20 (l) AUTHORIZATION OF APPROPRIATIONS.—

21 (1) IN GENERAL.—There are authorized to be  
22 appropriated such sums as are necessary to carry  
23 out this section, to remain available until expended.  
24 Such sums include those authorized to be appro-  
25 priated to the National Archives and Records Ad-

1       ministration to implement the requirements of this  
2       section.

3           (2) INTERIM FUNDING.—Until such time as  
4       funds are appropriated pursuant to paragraph (1),  
5       the President may use such sums as are available  
6       for discretionary use to carry out this section.

7           (m) SEVERABILITY.—If any provision of this section,  
8       or the application thereof to any person or circumstance,  
9       is held invalid, the remainder of this section and the appli-  
10      cation of that provision to other persons not similarly situ-  
11      ated or to other circumstances shall not be affected by  
12      the invalidation.

