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:

SEC. ___. BRING OUR HEROES HOME.

(a) FINDINGS, DECLARATIONS, AND PURPOSES.—

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

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

(B) There has been insufficient priority placed on identifying, locating, reviewing, or declassifying records relating to Missing Armed Forces Personnel and then transferring the records to the National Archives for public access.
(C) Mandates for declassification set forth in multiple Executive orders have been broadly written, loosely interpreted, and often ignored by Federal agencies in possession and control of records related to Missing Armed Forces Personnel.

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

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

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

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

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

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

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

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

(b) DEFINITIONS.—In this section:

(1) ARCHIVIST.—The term “Archivist” means Archivist of the United States.
(2) COLLECTION.—The term “Collection” means the Missing Armed Forces Personnel Records Collection established under subsection (c)(1).

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

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

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

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

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

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

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

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

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

(i) any Government office;

(ii) any Presidential library; or

(iii) any of the Armed Forces; and

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

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

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

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

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

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

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

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

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

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

(14) **Review Board.**—The term “Review
Board” means the Missing Armed Forces Personnel
Records Review Board established under subsection
(f).

(c) **Missing Armed Forces Personnel Records
Collection at the National Archives.—**

(1) **Establishment of Collection.**—Not
later than 90 days after the date of enactment of
this Act, the Archivist shall—
(A) commence establishment of a collection of records to be known as the “Missing Armed Forces Personnel Records Collection”; (B) commence preparing the subject guidebook and index to the Collection; and (C) establish criteria for Executive agencies to follow when transmitting copies of Missing Armed Forces Personnel Records to the Archivist, to include required metadata.

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

(d) REVIEW, IDENTIFICATION, TRANSMISSION TO THE NATIONAL ARCHIVES, AND PUBLIC DISCLOSURE OF MISSING ARMED FORCES PERSONNEL RECORDS BY GOVERNMENT OFFICES.—

(1) IN GENERAL.—

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

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

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

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

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

(C) PRESERVATION.—No Missing Armed Forces Personnel record shall be destroyed, altered, or mutilated in any way.
(D) Effect of previous disclosure.—

Information that was made available or disclosed to the public before the date of enactment of this Act in a Missing Armed Forces Personnel record may not be withheld, redacted, postponed for public disclosure, or reclassified.

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

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

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

(ii) cooperate fully, in consultation with the Archivist, in carrying out subparagraph (C).

(B) REQUIREMENT.—The Review Board shall promulgate rules for the disclosure of relevant records by Government offices under subparagraph (A).

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

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

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

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

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

ice under this section.

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

(A) not later than 2 years after the date
of enactment of this Act, commence trans-
mission to the Archivist of copies of the Missing
Armed Forces Personnel records in the custody,
possession, or control of the Government office;
and
(B) not later than 3 years after the date
of enactment of this Act, complete transmission
to the Archivist of copies of all Missing Armed
Forces Personnel records in the possession or
control of the Government office.

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

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

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

(II) at the direction of the Archivist;
and
(ii) consistent with the recommendations of the Review Board under subsection (h)(2)(C)(ii).

(B) CONTENTS.—

(i) IN GENERAL.—A periodic review of a Missing Armed Forces Personnel record, or information within a Missing Armed Forces Personnel record, by the originating body shall address the public disclosure of the Missing Armed Forces Personnel record under the standards under this section.

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

(iii) Scope.—The periodic review of postponed Missing Armed Forces Personnel records, or information within a Missing Armed Forces Personnel record, shall serve the purpose stated in subsection (a)(2)(B), to provide expeditious public disclosure of Missing Armed Forces Personnel records, to the fullest extent possible, subject only to the grounds for postponement of disclosure under subsection (e).

(iv) Disclosure absent certification by President.—Not later than 10 years after the date of enactment of this Act, all Missing Armed Forces Personnel records, and information within a Missing Armed Forces Personnel record, shall be publicly disclosed in full, and available in the Collection, unless—

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

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

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

(bb) includes—

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

(BB) a recommended specified time at which or a specified occurrence following which the material may be appropriately dis-
closed to the public under this section;

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

(IV) the President transmits to the Archivist a certification indicating that continued postponement is necessary and the identifiable harm, as demonstrated by clear and convincing evidence, is of such gravity that it outweighs the public interest in disclosure not later than the date that is 10 years after the date of enactment of this Act.

(e) GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLOSURE OF RECORDS.—

(1) IN GENERAL.—Disclosure to the public of a Missing Armed Forces Personnel record or particular information in a Missing Armed Forces Personnel record created after the date that is 25 years before the date of the review of the Missing Armed
Forces Personnel record by the Archivist may be postponed subject to the limitations under this section only—

(A) if it pertains to—

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

(ii) foreign government information;

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

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

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

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

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

(viii) the development, production, or use of weapons of mass destruction; and
(B) the threat posed by the public disclosure of the Missing Armed Forces Personnel record or information is of such gravity that it outweighs the public interest in disclosure.

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

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

(i) reveal the identity of a confidential human source, a human intelligence source, a relationship with an intelligence or security service of a foreign government or international organization, or a nonhuman intelligence source, or impair the effectiveness of an intelligence method currently in use, available for use, or under development;
(ii) reveal information that would impair United States cryptologic systems or activities;

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

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

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

(3) EXCEPTION.—Regardless of the age of a Missing Armed Forces Personnel record—the date on which a Missing Armed Forces Personnel record was created—disclosure to the public of information in the Missing Armed Forces Personnel record may be postponed if—
(A) the public disclosure of the information
would reveal the name or identity of a living
person who provided confidential information to
the United States and would pose a substantial
risk of harm to that person;

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

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

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

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

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

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

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

(i) without regard to political affiliation;

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

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

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

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

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

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

(C) DEADLINES.—

(i) In general.—Not later than 60 days after the date of enactment of this Act, the President should submit nominations for all members of the Review Board.

(ii) Confirmation rejected.—If the Senate votes not to confirm a nomination to serve as a member of the Review Board, not later than 90 days after the date of the vote the President should submit the nomination of an additional individual to serve as a member of the Review Board.
(D) CONSULTATION.—The President should make nominations to the Review Board after considering individuals recommended by the American Historical Association, the Organization of American Historians, the Society of American Archivists, the American Bar Association, veterans’ organizations, and organizations representing families of Missing Armed Forces Personnel.

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

(4) CONFIRMATION.—

(A) HEARINGS.—Not later than 30 days on which the Senate is in session after the date on which not less than 3 individuals have been nominated to serve as members of the Review Board, the Committee on Homeland Security and Governmental Affairs of the Senate shall hold confirmation hearings on the nominations.
(B) COMMITTEE VOTE.—Not later than 14 days on which the Senate is in session after the date on which the Committee on Homeland Security and Governmental Affairs holds a confirmation hearing on the nomination of an individual to serve as a member of the Review Board, the committee shall vote on the nomination and report the results to the full Senate immediately.

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

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

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

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

(i) by impeachment by Congress; or

(ii) by the action of the President.

(B) JUDICIAL REVIEW.—

(i) IN GENERAL.—A member of the Review Board removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court for the District of Columbia.

(ii) RELIEF.—The member may be reinstated or granted other appropriate relief by order of the court.

(8) COMPENSATION OF MEMBERS.—

(A) BASIC PAY.—A member of the Review Board shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Review Board.
(B) Travel Expenses.—A member of the Review Board shall be allowed reasonable travel expenses, including per diem in lieu of subsistence, at rates for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the member’s home or regular place of business in the performance of services for the Review Board.

(9) Duties of the Review Board.—

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

(B) Records.—In carrying out subparagraph (A), the Review Board shall consider and render a decision regarding—

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

(ii) whether a Missing Armed Forces Personnel record, or particular information in a Missing Armed Forces Personnel record, qualifies for postponement of disclosure under this section.
(10) **Powers.**—The Review Board shall have the authority to act in a manner prescribed under this section, including authority to—

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

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

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

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

(E) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and administer such oaths as the
Review Board considers advisable to carry out its responsibilities under this section;

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

(G) receive information from the public regarding the identification and public disclosure of Missing Armed Forces Personnel records; and

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

(11) OVERSIGHT.—

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

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

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

(B) DUTY OF REVIEW BOARD.—The Review Board shall have the duty to cooperate with the exercise of oversight jurisdiction under subparagraph (A).

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

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

(14) TERMINATION AND WINDING UP.—

(A) IN GENERAL.—Four years after the date of enactment of this Act, the Review Board shall, by majority vote, determine whether all Government offices have complied with the obligations, mandates, and directives under this section.
(B) TERMINATION DATE.—The Review Board shall terminate on the date that is 6 years after the date of enactment of this Act.

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

(D) RECORDS.—Upon termination of the Review Board, the Review Board shall transfer records of the Review Board maintained consistent with the Federal Records Act to the Archivist for inclusion in the Collection.

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

(1) EXECUTIVE DIRECTOR.—

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

(B) QUALIFICATIONS.—The individual appointed as Executive Director of the Review Board—
(i) shall be a citizen of the United States of integrity and impartiality;
(ii) shall be appointed without regard to political affiliation; and
(iii) shall not have any conflict of interest with the mission of the Review Board.

(C) SECURITY CLEARANCE.—

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

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

(D) DUTIES.—The Executive Director shall—
(i) serve as principal liaison to Government offices;

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

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

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

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

(2) STAFF.—

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

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

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

(C) Security clearance.—

(i) Limit on appointment.—The Review Board shall not appoint an individual as an employee of the Review Board until after the date on which the individual qualifies for the necessary security clearance.

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

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

(4) ADVISORY COMMITTEES.—

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

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

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

(1) STARTUP REQUIREMENTS.—The Review
Board shall—
(A) not later than 90 days after the date on which all members are appointed, publish an initial schedule for review of all Missing Armed Forces Personnel records, which the Archivist shall highlight and make available on a publicly accessible website administered by the National Archives; and

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

(2) Determination of the Review Board.—

(A) In general.—The Review Board shall direct that all records that relate, directly or indirectly, to the loss, fate, or status of Missing Armed Forces Personnel be transmitted to the Archivist and disclosed to the public in the Collection in the absence of clear and convincing evidence that—

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

(ii) the Missing Armed Forces Personnel record, or particular information within the Missing Armed Forces Per-
sonnel record, qualifies for postponement of public disclosure under this section.

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

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

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

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

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

(III) A summary of a Missing Armed Forces Personnel record.
(C) REPORTING.—With respect to a Missing
1 Armed Forces Personnel record, or information
2 within a Missing Armed Forces Personnel
3 record, the public disclosure of which is post-
4 poned under this section, or for which only sub-
5 stitutions or summaries have been disclosed to
6 the public, the Review Board shall create and
7 transmit to the Archivist an unclassified and
8 publicly releasable report containing—
9
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
18 (ii) a statement, based on a review of
19 the proceedings and in conformity with the
20 decisions reflected therein, designating a
21 recommended specified time at which, or a
22 specified occurrence following which, the
23 material may be appropriately disclosed to
24 the public under this section, which the
25 Review Board shall disclose to the public
26 with notice thereof, reasonably calculated
to make interested members of the public aware of the existence of the statement.

(D) ACTIONS AFTER DETERMINATION.—

(i) IN GENERAL.—Not later than 14 days after the date of a determination by the Review Board that a Missing Armed Forces Personnel record shall be publicly disclosed in the Collection or postponed for disclosure and held in the protected Collection, the Review Board shall notify the head of the originating body of the determination and highlight and make available the determination on a publicly accessible website reasonably calculated to make interested members of the public aware of the existence of the determination.

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

(E) REFERRAL AFTER TERMINATION.—A Missing Armed Forces Personnel record that is identified, located, or otherwise discovered after the date on which the Review Board terminates shall be transmitted to the Archivist for the Collection and referred to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives for review, ongoing oversight and, as warranted, referral for possible enforcement action relating to a violation of this section and determination as to whether declassification of the Missing Armed Forces Personnel is warranted under this section.

(3) NOTICE TO PUBLIC.—Every 30 days, beginning on the date that is 60 days after the date on which the Review Board first approves the postpone-
ment of disclosure of a Missing Armed Forces Personnel record, the Review Board shall highlight and make accessible on a publicly available website reasonably calculated to make interested members of the public aware of the existence of the postponement a notice that summarizes the postponements approved by the Review Board, including a description of the subject, originating body, length or other physical description, and each ground for postponement that is relied upon.

(4) Reports by the Review Board.—

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

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

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

(iii) the President;

(iv) the Archivist; and
(v) the head of any Government office
the records of which have been the subject
of Review Board activity.

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

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

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

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

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

(v) A record of review activities, in-
cluding a record of postponement decisions
by the Review Board or other related ac-
tions authorized under this section, and a
record of the volume of records reviewed
and postponed.

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

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

(C) T ERMINATION NOTICE.—Not later
than 90 days before the Review Board expects
to complete the work of the Review Board
under this section, the Review Board shall pro-
vide written notice to Congress of the intent of
the Review Board to terminate operations at a
specified date.

(i) D ISCLOSURE OF OTHER M ATERIALS AND ADDI-
tional Study.—

(1) M ATERIALS UNDER SEAL OF COURT.—

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

(B) GRAND JURY INFORMATION.—

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

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

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

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

(B) the Secretary of State should—
(i) contact the Governments of the
Russian Federation, the People's Republic
of China, and the Democratic People's Re-
public of Korea to seek the disclosure of all
records in their respective custody, posses-
sion, or control relevant to the loss, fate,
or status of Missing Armed Forces Per-
sonnel; and

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

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

(j) Rules of Construction.—

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

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

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

(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House, and it supersedes other rules only to the extent that it is inconsistent with such rules; and
(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(k) Termination of Effect of Section.—

(1) Provisions pertaining to the review board.—The provisions of this section that pertain to the appointment and operation of the Review Board shall cease to be effective when the Review Board and the terms of its members have terminated under subsection (f)(14).

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

(l) Authorization of Appropriations.—

(1) In general.—There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended. Such sums include those authorized to be appropriated to the National Archives and Records Ad-
administration to implement the requirements of this section.

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

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