

116TH CONGRESS
2^D SESSION

S. 4806

To establish the Interagency Security Classification Appeals Panel, to provide agency and higher level reviews of classification decisions, to provide expedited review of classification decisions for members of Congress, and to provide protections for those challenging classification decisions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 19, 2020

Mr. MURPHY (for himself and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To establish the Interagency Security Classification Appeals Panel, to provide agency and higher level reviews of classification decisions, to provide expedited review of classification decisions for members of Congress, and to provide protections for those challenging classification decisions, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Transparency in Clas-
5 sification Act of 2020”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) A fundamental tenet of democracy is the
4 consent of the governed, which requires public
5 knowledge of governmental actions. As a result, few
6 government powers are more sacred than the ability
7 to decide which information should be withheld from
8 the public.

9 (2) The protection of our national security re-
10 quires that some of the work of the United States
11 Government be done such that this information is
12 protected if its disclosure could cause serious or
13 grave harm to national security and if such harm
14 does not outweigh the public's right to know.

15 (3) Although the executive branch of the Fed-
16 eral Government has a responsibility to weigh the
17 public's right to know when making classification de-
18 cisions, it does not always do so due to errors of
19 commission and omission.

20 (4) In order to ensure an informed public while
21 simultaneously protecting certain information that
22 would harm national security if divulged, checks and
23 balances are needed for the classification system.

24 (5) Congress, by virtue of its vital role in over-
25 sight, has an interest and responsibility to address

1 abuse and improper classification by the executive
2 branch of the Federal Government.

3 (6) Although section 552 of title 5, United
4 States Code (commonly known as the “Freedom of
5 Information Act”) and other public access tools, in-
6 cluding Mandatory Declassification Review pursuant
7 to section 3.5 of Executive Order 13526 (50 U.S.C.
8 3161 note; relating to classified national security in-
9 formation), provide venues for declassifying records
10 that would not harm national security if divulged,
11 the lengthy time frame for these appeals renders
12 them ineffective in nourishing vital public debate.

13 (7) An accurate and limited classification sys-
14 tem supports both the public’s right to know and
15 government effectiveness through enabling policy co-
16 ordination, reducing costs of maintaining informa-
17 tion that need not be classified, and protecting the
18 integrity of the classification system.

19 (8) The national security of the United States
20 is enhanced both by laws permitting national secu-
21 rity agencies to occasionally limit access to sensitive
22 national security information through the classifica-
23 tion system, such as Executive Order 13526 (50
24 U.S.C. 3161 note; relating to classified national se-
25 curity information), and by an open debate on deci-

1 sions that affect the national security of the United
2 States. Both are central to the proper functioning of
3 the political institutions and democracy of the
4 United States.

5 (9) Allowing limitations on access as described
6 in paragraph (8) presents a potential for abuse,
7 where embarrassing or inconvenient information
8 could be classified for reasons other than national
9 security. This is prohibited by law, including by sec-
10 tion 1.7 of Executive Order 13526 (50 U.S.C. 3161
11 note; relating to classified national security informa-
12 tion).

13 (10) Ensuring national security agencies use
14 classification powers judiciously and in accordance
15 with the laws described in paragraph (8) requires a
16 recourse for authorized classification holders, includ-
17 ing all members of Congress, to challenge classifica-
18 tions decisions of agencies and appeal agency-level
19 classification decisions to an independent body.

20 (11) Since 1995, the Interagency Security Clas-
21 sification Appeals Panel (ISCAP) has provided the
22 public and users of the classification system with a
23 valuable forum for further review of classification
24 decisions.

1 (12) Since the founding of the Interagency Se-
2 curity Classification Appeals Panel, however, the
3 work of the Panel has been constrained by a lack of
4 resources, including classified communication tech-
5 nology and dedicated staff, as well as limited
6 progress on much-needed governmentwide mod-
7 ernization of the classification system. This has cre-
8 ated a backlog of more than 1,000 cases.

9 (13) Since 2000, the Public Interest Declas-
10 sification Board (PIDB) has provided a vital role in
11 supporting the public interest in classification policy
12 and classification decisions, including the vital role
13 of responding to requests from Congress to consider
14 the classification decisions of specific records. This
15 advisory role plays a separate, complementary role
16 to the Interagency Security Classification Appeals
17 Panel, which is able to declassify records through its
18 appeal function.

19 (14) Section 2302(b)(9)(A) of title 5, United
20 States Code, prohibits the head of an agency from
21 taking or failing to take, or threatening to take or
22 fail to take, a personnel action against certain em-
23 ployees because of the exercise of an appeal, com-
24 plaint, or grievance right granted by any provision
25 of law.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) AGENCY, CLASSIFIED MATERIAL OR
4 RECORD, DECLASSIFICATION, AND NATIONAL SECUR-
5 RITY.—The terms “agency”, “classified material”,
6 “classified record”, “declassification”, and “national
7 security” have the meanings given such terms in sec-
8 tion 709 of the Public Interest Declassification Act
9 of 2000 (Public Law 106–567; 50 U.S.C. 3355g).

10 (2) AUTHORIZED USERS OF THE CLASSIFICA-
11 TION SYSTEM.—The term “authorized user of the
12 classification system” means an official or contractor
13 of the Federal Government who is authorized to ac-
14 cess classified material or records.

15 (3) CLASSIFICATION DECISION.—

16 (A) IN GENERAL.—The term “classifica-
17 tion decision”, means a decision regarding
18 whether any correspondence, memorandum,
19 book, plan, map, drawing, diagram, pictorial or
20 graphic work, photograph, film, microfilm,
21 sound recording, videotape, machine readable
22 records, and other documentary material, re-
23 gardless of physical form or characteristics, re-
24 quires protection against unauthorized disclo-
25 sure in the interests of the national security of
26 the United States.

1 (B) INCLUSION.—Such term includes the
2 following:

3 (i) An original classification decision.

4 (ii) A decision creating a derivative
5 classification.

6 (iii) A decision creating a classifica-
7 tion by compilation.

8 (iv) Any decision creating any similar
9 classification pursuant to a provision of
10 law in effect on the day before the date of
11 the enactment of this Act.

12 (4) PANEL.—The term “Panel” means the
13 Interagency Security Classification Appeals Panel
14 established under section 4(a).

15 **SEC. 4. INTERAGENCY SECURITY CLASSIFICATION AP-**
16 **PEALS PANEL.**

17 (a) ESTABLISHMENT.—There is established within
18 the executive branch of the United States a panel to be
19 known as the “Interagency Security Classification Appeals
20 Panel”.

21 (b) PURPOSES.—The purposes of the Panel are as
22 follows:

23 (1) To provide the public and authorized users
24 of the classification system, including members of
25 Congress and employees and contractors of the legis-

1 lative branch of the Federal Government who are
2 authorized users of the classification system, with a
3 forum for further review of classification decisions
4 made by the heads of agencies.

5 (2) To provide a member of Congress a mecha-
6 nism for expedited review of a classification decision
7 that is relevant to an active public policy debate.

8 (c) DUTIES.—The duties of the Panel are as follows:

9 (1) Carrying out such activities as may be nec-
10 essary for the purposes set forth under subsection
11 (b).

12 (2) Conducting reviews under section 5(b).

13 (3) Such other duties as may be identified by
14 the President.

15 (d) MEMBERSHIP.—

16 (1) COMPOSITION.—Subject to paragraphs (2)
17 and (3), the Panel shall be composed of 6 members,
18 each of whom shall be appointed by one of the fol-
19 lowing:

20 (A) The Secretary of State.

21 (B) The Secretary of Defense.

22 (C) The Attorney General.

23 (D) The Archivist of the United States.

24 (E) The Director of National Intelligence.

25 (F) The National Security Advisor.

1 (2) ADDITIONAL MEMBERS UNDER CERTAIN
2 CIRCUMSTANCES.—

3 (A) MATTERS CONCERNING THE CENTRAL
4 INTELLIGENCE AGENCY.—Subject to paragraph
5 (3), when the Panel deliberates a matter con-
6 cerning classified material or records that origi-
7 nated with the Central Intelligence Agency or
8 when dealing with a support activity associated
9 with such a classified material or record, the
10 Panel shall, at the discretion of the Director of
11 the Central Intelligence Agency, consist of 7
12 members as follows:

13 (i) The 6 members of the Panel ap-
14 pointed under paragraph (1).

15 (ii) One member appointed by the Di-
16 rector of the Central Intelligence Agency.

17 (B) MATTERS CONCERNING CONGRESS.—
18 Subject to paragraph (3)(B), when the Panel
19 deliberates a matter concerning classified mate-
20 rial or records relating to congressional requests
21 or reporting requirements, the Panel shall con-
22 sist of 8 members as follows:

23 (i) The 6 members of the Panel ap-
24 points under paragraph (1).

1 (ii) One member chosen by the Sec-
2 retary of the Senate.

3 (iii) One member chosen by the Clerk
4 of the House of Representatives.

5 (3) QUALIFICATIONS AND STATUS.—

6 (A) FEDERAL EMPLOYEE STATUS.—Each
7 member of the Panel under paragraphs (1) and
8 (2)(A) shall be a full-time or permanent em-
9 ployee of the Federal Government who is in a
10 senior-level position, such as a member of the
11 Senior Executive Service.

12 (B) SECURITY CLEARANCE.—An individual
13 may not be selected to be a member of the
14 Panel unless, as of the day before the date of
15 such selection, the individual had a security
16 clearance at a level appropriate for purposes of
17 serving as a member of the Panel.

18 (4) CHAIRPERSON.—

19 (A) IN GENERAL.—The members of the
20 Panel appointed under paragraph (1) shall des-
21 ignate a chairperson from among the members
22 of the Panel.

23 (B) REPORTING.—The chairperson of the
24 Panel shall report directly to the Director of the

1 Information Security Oversight Office of the
2 National Archives and Records Administration.

3 (e) ADMINISTRATION.—

4 (1) EXECUTIVE SECRETARY.—The Director of
5 the Information Security Oversight Office of the Na-
6 tional Archives and Records Administration shall
7 serve as the executive secretary of the Panel.

8 (2) PROGRAM AND ADMINISTRATIVE SUP-
9 PORT.—The Director shall provide program and ad-
10 ministrative support for the Panel.

11 (3) BYLAWS.—Not later than 180 days after
12 the date of the enactment of this Act, the Panel
13 shall publish bylaws that clearly show how individ-
14 uals described in section 5(b)(1)(A) may submit re-
15 quests under such section.

16 (f) PUBLIC OBSERVER.—

17 (1) IN GENERAL.—The Panel shall select a
18 highly qualified, public observer who shall—

19 (A) participate in activities and delibera-
20 tions of the Panel;

21 (B) aid in transparency and provide an ex-
22 ternal, historical perspective to inform Panel
23 deliberations; and

24 (C) be vetted and provided an interim and
25 permanent security clearance.

1 (2) QUALIFICATIONS.—The Panel shall ensure
2 that a person selected to serve as a public observer
3 under paragraph (1)—

4 (A) has significant experience in examining
5 and assessing public access to classified files or
6 decisions in an academic, historic, or advocacy
7 role;

8 (B) has a history of independence and non-
9 partisan advocacy for transparency and open
10 debate relating to government records; and

11 (C) at the time of selection is not serving
12 in a publicly elected office and has not served
13 in a partisan elected office at any time during
14 the 5-year period ending on the date of selec-
15 tion.

16 **SEC. 5. AGENCY AND HIGHER LEVEL REVIEW OF CLASSI-**
17 **FICATION DECISIONS.**

18 (a) AGENCY REVIEW OF CLASSIFICATION DECI-
19 SIONS.—

20 (1) IN GENERAL.—Each head of an agency
21 shall establish a process under which—

22 (A) an individual who is eligible to access
23 classified material or a classified record that
24 was the subject of a classification decision made

1 by such head may request a review of such clas-
2 sification decision;

3 (B) the head of the agency reviews such
4 classification decision pursuant to such request;
5 and

6 (C) the head of the agency revokes, modi-
7 fies, or sustains such classification decision.

8 (2) ELEMENTS.—Under a process established
9 by the head of an agency under paragraph (1)—

10 (A) an individual who is eligible to access
11 classified material or a classified record that
12 was the subject of a classification decision made
13 by such head shall be able to request a review
14 of such decision by submitting to the head, at
15 any time, the request in writing;

16 (B) except as provided in subparagraph
17 (C), for each request the head of the agency re-
18 ceives under subparagraph (A) regarding a clas-
19 sification decision of the head of the agency, the
20 head of the agency shall—

21 (i) not later than 60 days after the
22 date on which the head of the agency re-
23 ceives the request, respond to the request
24 by providing the requestor with—

1 (I) an acknowledgment that the
2 head of the agency received the re-
3 quest; and

4 (II) a notice estimating when the
5 head of the agency will complete a re-
6 view of the request under subpara-
7 graph (B) of paragraph (1) and act
8 on the request under subparagraph
9 (C) of such paragraph; and

10 (ii) not later than 120 days after the
11 date on which the head of the agency re-
12 ceives the request—

13 (I) complete a review of the re-
14 quest pursuant to subparagraph (B)
15 of paragraph (1); and

16 (II) pursuant to such review, act
17 on the request under subparagraph
18 (C) of such paragraph;

19 (C) the head of the agency is not required
20 to review a classification decision as described
21 in subparagraph (B) of paragraph (1) or take
22 an action under subparagraph (C) of such para-
23 graph if the classification decision was already
24 reviewed pursuant to a substantially similar re-

1 quest under this subsection during the most re-
2 cently 2-year period;

3 (D) the head of the agency may review a
4 classification decision pertaining to classified
5 material or a classified record that is subject to
6 a request under section 552 of title 5, United
7 States Code (commonly referred to as the
8 “Freedom of Information Act”);

9 (E) requests for review under this sub-
10 section and responses to such requests are not
11 themselves treated as classified material or clas-
12 sified records;

13 (F) any classified material or classified
14 record that is the subject of a request under
15 this subsection remains classified under this
16 subsection until the head of the agency changes
17 such classification under paragraph (1)(C) or
18 such classification is changed by the Panel
19 under subsection (b)(3); and

20 (G) priority is given to the review of a clas-
21 sification decision when an expedited review has
22 been requested under subsection (d)(2).

23 (b) APPEALS FOR HIGHER LEVEL REVIEW.—

24 (1) SUBMITTAL.—

1 (A) IN GENERAL.—An individual who is el-
2 igitible to access classified material or a classified
3 record that was the subject of a classification
4 decision made by the head of an agency may
5 submit to the Panel a request to review such
6 classification decision.

7 (B) MANNER.—A request submitted under
8 subparagraph (A) shall be submitted in writing.

9 (C) CONTENT.—

10 (i) IN GENERAL.—Except as provided
11 in clause (ii), a request submitted under
12 subparagraph (A) need not be more spe-
13 cific than questioning why classified mate-
14 rial or a classified record is or is not classi-
15 fied at a certain level.

16 (ii) MINIMUM INFORMATION.—A re-
17 quest submitted under subparagraph (A)
18 with respect to a classification decision
19 shall contain enough information to enable
20 the executive secretary of the Panel to ob-
21 tain pertinent documents about the request
22 and the classification decision.

23 (iii) NO CLASSIFIED INFORMATION.—

24 (I) IN GENERAL.—Except as pro-
25 vided in subclause (II), a request sub-

1 mitted under subparagraph (A) shall
2 not include any classified material or
3 records.

4 (II) ARRANGEMENTS.—If it is
5 impossible for an individual to request
6 under subparagraph (A) a review of a
7 classification decision without submit-
8 ting classified material or a classified
9 record along with the request, the
10 submitter of the request may do so
11 after first contacting the Panel and
12 making prior arrangements for sub-
13 mittal of the classified material or
14 classified record.

15 (D) ELECTRONIC SUBMISSION.—The Panel
16 shall establish and publicly announce an elec-
17 tronic mail address to which requests may be
18 submitted under subparagraph (A).

19 (E) TIMELINESS OF REQUESTS.—A re-
20 quests submitted to the Panel under subpara-
21 graph (A) shall be submitted not later than 60
22 days after—

23 (i) in a case in which the head of an
24 agency provides a response to the sub-
25 mitter of the request in accordance with

1 subsection (a)(2)(B), the date of the final
2 agency decision arrived at pursuant to a
3 review carried out pursuant to the request;
4 or

5 (ii) in a case in which the head of the
6 agency fails to respond to the request in
7 accordance with subsection (a)(2)(B), the
8 date that is 60 days after the date on
9 which the request was submitted to the
10 head of the agency.

11 (F) REJECTION OF REQUESTS.—If the ex-
12 ecutive secretary of the Panel determines that
13 a request submitted under subparagraph (A) is
14 not submitted in accordance with the require-
15 ments of this section, the executive secretary
16 shall—

17 (i) notify the submitter of the request,
18 in writing, that the request was not sub-
19 mitted in accordance with the requirements
20 of this section; and

21 (ii) explain in detail how the request
22 is deficient.

23 (2) REVIEW.—The Panel shall review the fol-
24 lowing:

1 (A) A classification decision of the head of
2 an agency pursuant to a request for review sub-
3 mitted under paragraph (1)(A), in a case in
4 which the submitter of the request—

5 (i) previously submitted a request for
6 review of the classification decision to the
7 head of the agency in accordance with the
8 process established by the head of the
9 agency under subsection (a); and

10 (ii)(I) received, pursuant to such proc-
11 ess, a final decision arrived at pursuant to
12 a review conducted pursuant to the re-
13 quest; or

14 (II) did not receive a response as re-
15 quired by subsection (a)(2)(B).

16 (B) A classification decision of the head of
17 an agency pursuant to a request for expedited
18 review for Congress submitted under subsection
19 (d)(3).

20 (3) RESOLUTION.—

21 (A) IN GENERAL.—After reviewing a clas-
22 sification decision of the head of an agency
23 under paragraph (2) and using past precedent
24 to inform and to improve the efficiency of deci-

1 sion making, the Panel may, pursuant to a vote
2 of the members of the panel—

3 (i) affirm the classification decision or
4 a decision of the head arrived at pursuant
5 to a review conducted pursuant to the
6 process established by the head under sub-
7 section (a);

8 (ii) reverse a decision described in
9 clause (i), in whole or in part; or

10 (iii) engage in dialogue with the head
11 of the agency for further consideration of
12 a decision described in clause (i).

13 (B) VOTES.—A decision to reverse under
14 subparagraph (A)(ii) shall be made with an af-
15 firmative vote of at least a majority of the
16 members of the Panel present for the vote.

17 (C) NOTIFICATION.—Not later than 2
18 business days after the Panel decides to take an
19 action under subparagraph (A) pursuant to a
20 request for a review of a classification decision
21 of the head of an agency, the executive sec-
22 retary of the Panel shall notify the submitter of
23 the request and the head of the agency in writ-
24 ing of the decision of the Panel.

25 (D) DECLASSIFICATION.—

1 (i) IN GENERAL.—Except as provided
2 in clause (ii), 10 days after the executive
3 secretary of the Panel submits notice
4 under subparagraph (C) with respect to a
5 decision of the Panel that classified mate-
6 rial or a classified record should be declas-
7 sified in whole or in part under subpara-
8 graph (A), the Panel shall publish notice of
9 the decision of the Panel and the declas-
10 sified material or record, unless the Presi-
11 dent overrules the decision of the Panel
12 under subsection (c).

13 (ii) DECLASSIFICATION PURSUANT TO
14 APPEALS FROM MEMBERS OF CONGRESS.—
15 In a case of a decision described in clause
16 (i) that is arrived at pursuant to a request
17 for expedited review for a member of Con-
18 gress submitted under subsection (d)(3),
19 the Panel shall carry out clause (i) as if
20 the reference to “10 days” were a ref-
21 erence to “2 days”.

22 (4) ADMINISTRATIVE MATTERS.—

23 (A) NOTICE TO AGENCY HEADS.—If the
24 Panel receives a request under paragraph
25 (1)(A) with respect to a classification decision

1 of the head of an agency, the executive sec-
2 retary of the Panel shall notify the head of the
3 agency of such request.

4 (B) PREPARATION OF FILES.—For each
5 request received by the Panel under paragraph
6 (1)(A) pursuant to which the Panel will review
7 a classification decision, the executive secretary
8 of the Panel shall prepare a file and present
9 pertinent portions of such file to the members
10 of the Panel before any votes are taken with re-
11 spect to the review.

12 (C) CLASSIFIED MATERIAL AND
13 RECORDS.—

14 (i) IN GENERAL.—After receiving a
15 request under paragraph (1)(A) for review
16 of a classification decision of the head of
17 an agency, the executive secretary of the
18 Panel shall arrange for the transmittal of
19 relevant classified material and records
20 from the agency.

21 (ii) COOPERATION.—Each head of an
22 agency that receives a request from the ex-
23 ecutive secretary of the Panel for classified
24 material or records that pertain to the re-
25 view of a classification decision of the head

1 pursuant to a request submitted under
2 paragraph (1)(A) or a mandatory declas-
3 sification review shall, within 3 business
4 days—

5 (I) transmit the requested classi-
6 fied material, records, and documents
7 to the executive secretary of the
8 Panel; or

9 (II) provide the executive sec-
10 retary of the Panel with access to
11 such material, records, and docu-
12 ments.

13 (D) WEBSITE.—

14 (i) IN GENERAL.—The Panel shall
15 make available to the public on the website
16 of the Panel the following:

17 (I) A log of all requests for re-
18 view submitted to the Panel under
19 paragraph (1)(A).

20 (II) The status of each request
21 logged under subclause (I).

22 (III) A log of all actions taken
23 and decisions made by the Panel
24 under paragraph (3)(A).

1 (IV) A justification for each deci-
2 sion logged under subclause (III).

3 (ii) REQUIREMENTS.—

4 (I) IN GENERAL.—The Panel
5 shall ensure that the website of the
6 Panel serves as a public record to
7 streamline decision making of the
8 Panel and assist those submitting ap-
9 peals under this section as well as
10 other functions of the Panel in effect
11 pursuant to an Executive order that
12 was in effect before the date of the
13 enactment of this, including functions
14 relating to mandatory declassification
15 review.

16 (II) TECHNICAL ACCESSI-
17 BILITY.—Information described in
18 clause (i), and such other information
19 as the Panel considers relevant, shall
20 be published under such clause in a
21 tabular format that is contempora-
22 neously updated and allows for the
23 tracking and monitoring of individual
24 requests. Such action-tracking system
25 shall support the processing of re-

1 quests and be updated with modern
2 technology and modern formats as the
3 Panel considers appropriate.

4 (5) PROTECTION OF CLASSIFIED MATERIAL
5 AND RECORDS.—Any classified material or record
6 that is the subject of a classification decision that is
7 the subject of a request for review under this sub-
8 section shall remain classified unless and until a
9 final decision is made to declassify it.

10 (6) MAINTENANCE OF FILES.—The executive
11 secretary of the Panel shall maintain the files and
12 records of the Panel pertaining to requests for re-
13 view under this subsection in accordance with chap-
14 ter 22 of title 44, United States Code (known as the
15 “Presidential Records Act”).

16 (c) REVIEW BY THE PRESIDENT.—

17 (1) PETITION FOR REVIEW.—

18 (A) IN GENERAL.—Except as provided in
19 subparagraph (B), during the 10-day period be-
20 ginning on the date on which the head of an
21 agency receives a notice under subparagraph
22 (C) of subsection (b)(3) that the Panel has de-
23 cided to take an action under subparagraph (A)
24 of such subsection with respect to a classifica-
25 tion decision or other decision of the head of

1 agency, the head of the agency may submit to
2 the President a petition to reverse or modify
3 the decision of the Panel.

4 (B) PETITION PERIOD FOR DECISIONS
5 PURSUANT TO APPEALS FROM MEMBERS OF
6 CONGRESS.—In a case of a decision to act as
7 described in subparagraph (A) that is arrived at
8 pursuant to a request for expedited review for
9 a member of Congress submitted under sub-
10 section (d)(3), subparagraph (A) shall apply as
11 if the reference to “10-day period” were a ref-
12 erence to “2-day period”.

13 (2) REVIEW AND RESOLUTION.—

14 (A) IN GENERAL.—In response to a peti-
15 tion under paragraph (1), the President may
16 overrule or modify any decision of the Panel de-
17 scribed in the petition.

18 (B) PUBLICATION.—In a case in which the
19 President acts to overrule or modify a decision
20 of the Panel under subparagraph (A), such act
21 shall be published under subsection (b)(4)(D) in
22 the same manner as an action or decision of the
23 Panel.

24 (d) REVIEW FOR MEMBERS OF CONGRESS.—

25 (1) TREATMENT OF MEMBERS OF CONGRESS.—

1 (A) AUTHORITY.—A member of Congress
2 may submit a request under subsection (a) for
3 review of a classification decision of the head of
4 an agency.

5 (B) TREATMENT.—For purposes of this
6 section and except as otherwise provided in this
7 section, a member of Congress shall be treated
8 as an individual who is eligible to access the
9 classified material or a classified record that
10 was the subject of a classification decision.

11 (2) EXPEDITED AGENCY REVIEW FOR MEMBERS
12 OF CONGRESS.—

13 (A) IN GENERAL.—When a member of
14 Congress submits a request under subsection
15 (a) for review of the classification decision of
16 the head of an agency and the member of Con-
17 gress is a member of a committee of Congress
18 that has jurisdiction over such agency, the
19 member of Congress may request that the re-
20 view be conducted on an expedited basis.

21 (B) CONTENTS.—A request submitted
22 under subparagraph (A) for expedited review of
23 a classification decision shall include the fol-
24 lowing:

1 (i) An indication that the member of
2 Congress is requesting an expedited review
3 of the classification decision.

4 (ii) A justification described in sub-
5 paragraph (C).

6 (C) JUSTIFICATION.—

7 (i) IN GENERAL.—A justification de-
8 scribed in this subparagraph regarding a
9 request for an expedited review of a classi-
10 fication decision regarding classified mate-
11 rials or records is an explanation of the
12 public interest in an expedited public re-
13 lease and access to such classified mate-
14 rials or records.

15 (ii) JUSTIFICATION REQUIRING CLAS-
16 SIFIED MATERIAL OR RECORDS.—In a case
17 in which a justification cannot be made
18 under subparagraph (B)(ii) by a member
19 of Congress without the use or presen-
20 tation of classified material or records, the
21 member of Congress shall make a prior ar-
22 rangement with the head of the agency for
23 such presentation.

24 (3) EXPEDITED HIGHER LEVEL REVIEW FOR
25 MEMBERS OF CONGRESS.—

1 (A) IN GENERAL.—Under any of the cir-
2 cumstances described in subparagraph (B), a
3 member of Congress may submit a request to
4 the Panel for expedited review of a classifica-
5 tion decision of the head of an agency or a deci-
6 sion of the head of an agency reached pursuant
7 to a review under subsection (a).

8 (B) CIRCUMSTANCES.—The circumstances
9 described in the subparagraph are the cir-
10 cumstances in which a member of Congress—

11 (i) submits to the head of an agency
12 a request for a review of the classification
13 decision of the head of the agency under
14 subsection (a);

15 (ii) the member of Congress is a
16 member of a committee of Congress that
17 has jurisdiction over such agency; and

18 (iii)(I) the member of Congress is not
19 satisfied with the response of the head of
20 the agency under such subsection;

21 (II) the member of Congress does not
22 receive a response from the head of the
23 agency in 5 or fewer business days regard-
24 ing the request for review; or

1 (III) the head of the agency does not
2 complete the requested review and decide
3 on the matter set forth in the request in
4 10 or fewer business days.

5 (C) CONTENTS.—A request submitted
6 under subparagraph (A) shall include the fol-
7 lowing:

8 (i) An indication that the member of
9 Congress is requesting an expedited review
10 of the classification decision.

11 (ii) A justification described in sub-
12 paragraph (D).

13 (D) JUSTIFICATION.—

14 (i) IN GENERAL.—A justification de-
15 scribed in this subparagraph regarding a
16 request for an expedited review of a deci-
17 sion concerning a classification decision
18 that pertains to classified materials or
19 records is an explanation of the public in-
20 terest in an expedited public release and
21 access to such classified materials or
22 records.

23 (ii) JUSTIFICATION REQUIRING CLAS-
24 SIFIED MATERIAL OR RECORDS.—In a case
25 in which a justification cannot be made

1 under subparagraph (C)(ii) by a member
2 of Congress without the use or presen-
3 tation of classified material or records, the
4 member of Congress shall make a prior ar-
5 rangement with the Panel for such presen-
6 tation.

7 (E) PRIORITY CONSIDERATION.—If the
8 Panel receives a request under subparagraph
9 (A) and determines that the justification in-
10 cluded under subparagraph (C)(ii) is valid, the
11 Panel shall prioritize review of the matters cov-
12 ered by the request over all other pending re-
13 views before the Panel.

14 (e) RIGHT TO INFORMAL INQUIRY.—

15 (1) IN GENERAL.—An individual who is eligible
16 to access classified material or a classified record
17 may informally question the classification of such
18 material or record.

19 (2) SENSE OF CONGRESS.—It is the sense of
20 Congress that an individual who is eligible to access
21 classified material or a classified record and who
22 wishes to challenge such classification should do so
23 informally before submitting a request for review
24 under subsection (a).

25 (f) PROTECTIONS.—

1 (1) DEFINITIONS.—In this subsection:

2 (A) CONTRACTOR EMPLOYEE.—The term
3 “contractor employee” means an employee of a
4 contractor, subcontractor, grantee, subgrantee,
5 or personal services contractor, of an agency.

6 (B) COVERED INDIVIDUAL.—The term
7 “covered individual” means an employee of an
8 agency or a contractor employee—

9 (i) who, under this section, is eligible
10 to request a review of a classification deci-
11 sion; and

12 (ii) for whom the protection under
13 section 2302(b)(9) of title 5, United States
14 Code, does not apply.

15 (C) PERSONNEL ACTION.—The term “per-
16 sonnel action” means, with respect to a covered
17 individual—

18 (i) an appointment;

19 (ii) a promotion;

20 (iii) an action under chapter 75 of
21 title 5, United States Code, or other dis-
22 ciplinary or corrective action;

23 (iv) a detail, transfer, or reassign-
24 ment;

25 (v) a reinstatement;

- 1 (vi) a restoration;
- 2 (vii) a reemployment;
- 3 (viii) a performance evaluation under
4 chapter 43 of title 5, United States Code,
5 or under title 38, United States Code;
- 6 (ix) a decision concerning pay, bene-
7 fits, or awards, or concerning education or
8 training if the education or training may
9 reasonably be expected to lead to an ap-
10 pointment, promotion, performance evalua-
11 tion, or other action described in this sub-
12 paragraph;
- 13 (x) a decision to order psychiatric
14 testing or examination;
- 15 (xi) the implementation or enforce-
16 ment of any nondisclosure policy, form, or
17 agreement; and
- 18 (xii) any other significant change in
19 duties, responsibilities, or working condi-
20 tions.

21 (2) PROHIBITION.—Any employee of an agency
22 or contractor employee who has authority to take,
23 direct others to take, recommend, or approve any
24 personnel action, shall not, with respect to such au-
25 thority, take or fail to take, or threaten to take or

1 fail to take, any personnel action against any cov-
2 ered individual because the covered individual—

3 (A) exercises the right of the covered indi-
4 vidual under subsection (e) to question infor-
5 mally the classification of a classified material
6 or record;

7 (B) refuses to obey an order that would re-
8 quire the covered individual to violate, with re-
9 spect to a classification decision, a law, rule, or
10 regulation; or

11 (C) exercises the right of the covered indi-
12 vidual, under this section, to request a review of
13 a classification decision.

14 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

15 There is authorized to be appropriated to carry out
16 sections 4 and 5, \$3,000,000 for fiscal year 2021.

17 **SEC. 7. SUBMITTAL OF REPORTS IN UNCLASSIFIED FORM**
18 **PURSUANT TO WAR POWERS RESOLUTION.**

19 Section 4 of the War Powers Resolution (50 U.S.C.
20 1543) is amended by adding at the end the following new
21 subsection:

22 “(d)(1) Each report submitted under subsection (a)
23 shall be submitted in unclassified form, but may include
24 a classified annex.

1 “(2) The unclassified portion of each report sub-
2 mitted under subsection (a) shall be made available to the
3 public.”.

4 **SEC. 8. RULES OF CONSTRUCTION.**

5 (a) PRESERVATION OF AUTHORITY OF PRESI-
6 DENT.—Nothing in this Act shall be construed to alter
7 the authority of the President to determine access to clas-
8 sified material and records.

9 (b) PRESERVATION.—Nothing in this Act shall be
10 construed to alter a function of the Panel that was in ef-
11 fect pursuant to an Executive order that was in effect be-
12 fore the date of the enactment of this Act and that is not
13 covered by a provision of this Act.

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