

119TH CONGRESS
1ST SESSION

S. _____

To protect integrity, fairness, and objectivity in decisions regarding access
to classified information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. WARNER (for himself and Ms. COLLINS) introduced the following bill;
which was read twice and referred to the Committee on

A BILL

To protect integrity, fairness, and objectivity in decisions
regarding access to classified information, 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. EXCLUSIVITY, CONSISTENCY, AND TRANS-**
4 **PARENCY IN SECURITY CLEARANCE PROCE-**
5 **DURES AND RIGHT TO APPEAL.**

6 (a) EXCLUSIVITY OF PROCEDURES.—Section 801 of
7 the National Security Act of 1947 (50 U.S.C. 3161) is
8 amended by adding at the end the following:

1 “(c) EXCLUSIVITY.—Except as provided in sub-
2 section (b) and subject to sections 801A and 801B, the
3 procedures established pursuant to subsection (a) shall be
4 the exclusive procedures by which decisions about access
5 to classified information are governed.”.

6 (b) TRANSPARENCY.—Such section is further amend-
7 ed by adding at the end the following:

8 “(d) PUBLICATION.—

9 “(1) IN GENERAL.—Not later than 180 days
10 after the date of the enactment of this subsection,
11 the President shall publish in the Federal Register
12 the procedures established pursuant to subsection
13 (a).

14 “(2) UPDATES.—Whenever the President
15 makes a revision to a procedure established pursuant
16 to subsection (a), the President shall publish such
17 revision in the Federal Register not later than 30
18 days before the date on which the revision becomes
19 effective.”.

20 (c) CONSISTENCY.—

21 (1) IN GENERAL.—Title VIII of the National
22 Security Act of 1947 (50 U.S.C. 3161 et seq.) is
23 amended by inserting after section 801 the fol-
24 lowing:

1 **“SEC. 801A. DECISIONS RELATING TO ACCESS TO CLASSI-**
2 **FIED INFORMATION.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) AGENCY.—The term ‘agency’ has the
5 meaning given the term ‘Executive agency’ in section
6 105 of title 5, United States Code.

7 “(2) CLASSIFIED INFORMATION.—The term
8 ‘classified information’ includes sensitive compart-
9 mented information, restricted data, restricted han-
10 dling information, and other compartmented infor-
11 mation.

12 “(3) ELIGIBILITY FOR ACCESS TO CLASSIFIED
13 INFORMATION.—The term ‘eligibility for access to
14 classified information’ has the meaning given such
15 term in the procedures established pursuant to sec-
16 tion 801(a).

17 “(b) IN GENERAL.—Each head of an agency that
18 makes a determination for eligibility for access to classi-
19 fied information shall ensure that in making the deter-
20 mination, the head of the agency or any person acting on
21 behalf of the agency—

22 “(1) does not violate any right or protection en-
23 shrined in the Constitution of the United States, in-
24 cluding rights articulated in the First, Fifth, and
25 Fourteenth Amendments;

1 “(2) does not discriminate for or against an in-
2 dividual on the basis of race, color, religion, sex, na-
3 tional origin, age, or handicap;

4 “(3) is not carrying out retaliation for political
5 activities or beliefs or a coercion or reprisal de-
6 scribed in section 2302(b)(3) of title 5, United
7 States Code; and

8 “(4) does not violate section 3001(j)(1) of the
9 Intelligence Reform and Terrorism Prevention Act
10 of 2004 (50 U.S.C. 3341(j)(1)).”.

11 (2) CLERICAL AMENDMENT.—The table of con-
12 tents in the matter preceding section 2 of the Na-
13 tional Security Act of 1947 (50 U.S.C. 3002) is
14 amended by inserting after the item relating to sec-
15 tion 801 the following:

“Sec. 801A. Decisions relating to access to classified information.”.

16 (d) RIGHT TO APPEAL.—

17 (1) IN GENERAL.—Such title, as amended by
18 subsection (c), is further amended by inserting after
19 section 801A the following:

20 **“SEC. 801B. RIGHT TO APPEAL.**

21 “(a) DEFINITIONS.—In this section:

22 “(1) AGENCY.—The term ‘agency’ has the
23 meaning given the term ‘Executive agency’ in section
24 105 of title 5, United States Code.

1 “(2) COVERED PERSON.—The term ‘covered
2 person’ means a person, other than the President
3 and Vice President, currently or formerly employed
4 by, detailed to, assigned to, or issued an authorized
5 conditional offer of employment for a position that
6 requires access to classified information by an agen-
7 cy, including the following:

8 “(A) A member of the Armed Forces.

9 “(B) A civilian.

10 “(C) An expert or consultant to an agency.

11 “(D) Counsel or other representative re-
12 tained by a covered person.

13 “(E) Any other category of person who
14 acts for or on behalf of an agency as deter-
15 mined by the head of the agency.

16 “(3) ELIGIBILITY FOR ACCESS TO CLASSIFIED
17 INFORMATION.—The term ‘eligibility for access to
18 classified information’ has the meaning given such
19 term in the procedures established pursuant to sec-
20 tion 801(a).

21 “(4) NEED FOR ACCESS.—The term ‘need for
22 access’ has such meaning as the President may de-
23 fine in the procedures established pursuant to sec-
24 tion 801(a).

1 “(5) SECURITY EXECUTIVE AGENT.—The term
2 ‘Security Executive Agent’ means the Director of
3 National Intelligence acting as the Security Execu-
4 tive Agent in accordance with Executive Order
5 13467 (73 Fed. Reg. 38103; 50 U.S.C. 3161 note;
6 relating to reforming processes related to suitability
7 for government employment, fitness for contractor
8 employees, and eligibility for access to classified na-
9 tional security information), or as otherwise defined
10 in a subsequent provision of law.

11 “(b) AGENCY REVIEW.—

12 “(1) IN GENERAL.—Not later than 180 days
13 after the date of the enactment of this section, each
14 head of an agency shall, consistent with the interest
15 of national security, establish and make publicly
16 available a process by which a covered person to
17 whom eligibility for access to classified information
18 was denied or revoked by the agency can appeal that
19 denial or revocation within the agency.

20 “(2) ELEMENTS.—The process required by
21 paragraph (1) shall include the following:

22 “(A) In the case of a covered person to
23 whom eligibility for access to classified informa-
24 tion is denied or revoked by an agency, the fol-
25 lowing:

1 “(i) The head of the agency shall pro-
2 vide the covered person with a written—

3 “(I) detailed explanation of the
4 basis for the denial or revocation as
5 the head of the agency determines is
6 consistent with the interests of na-
7 tional security and as permitted by
8 other applicable provisions of law; and

9 “(II) notice of the right of the
10 covered person to a hearing and ap-
11 peal under this subsection.

12 “(ii) Not later than 30 days after re-
13 ceiving a request from the covered person
14 for copies of the documents that formed
15 the basis of the agency’s decision to revoke
16 or deny, including the investigative file, the
17 head of an agency shall provide to the cov-
18 ered person copies of such documents as—

19 “(I) the head of the agency de-
20 termines is consistent with the inter-
21 ests of national security; and

22 “(II) permitted by other applica-
23 ble provisions of law, including—

24 “(aa) section 552 of title 5,
25 United States Code (commonly

1 known as the ‘Freedom of Infor-
2 mation Act’);

3 “(bb) section 552a of such
4 title (commonly known as the
5 ‘Privacy Act of 1974’); and

6 “(cc) such other provisions
7 of law relating to the protection
8 of confidential sources and pri-
9 vacy of individuals.

10 “(iii)(I) The covered person shall have
11 the opportunity to retain counsel or other
12 representation at the covered person’s ex-
13 pense.

14 “(II) Upon the request of the covered
15 person, and a showing that the ability to
16 review classified information is essential to
17 the resolution of an appeal under this sub-
18 section, counsel or other representation re-
19 tained under this clause shall be considered
20 for access to classified information for the
21 limited purposes of such appeal.

22 “(iv)(I) The head of the agency shall
23 provide the covered person an opportunity,
24 at a point in the process determined by the
25 agency head—

1 “(aa) to appear personally before
2 an adjudicative or other authority,
3 other than the investigating entity,
4 and to present to such authority rel-
5 evant documents, materials, and infor-
6 mation, including evidence that past
7 problems relating to the denial or rev-
8 ocation have been overcome or suffi-
9 ciently mitigated; and

10 “(bb) to call and cross-examine
11 witnesses before such authority, un-
12 less the head of the agency determines
13 that calling and cross-examining wit-
14 nesses is not consistent with the inter-
15 ests of national security.

16 “(II) The head of the agency shall
17 make, as part of the security record of the
18 covered person, a written summary, tran-
19 script, or recording of any appearance
20 under item (aa) of subclause (I) or calling
21 or cross-examining of witnesses under item
22 (bb) of such subclause.

23 “(v) On or before the date that is 30
24 days after the date on which the covered
25 person receives copies of documents under

1 clause (ii), the covered person may request
2 a hearing of the decision to deny or revoke
3 by filing a written appeal with the head of
4 the agency.

5 “(B) A requirement that each review of a
6 decision under this subsection is completed on
7 average not later than 180 days after the date
8 on which a hearing is requested under subpara-
9 graph (A)(v).

10 “(3) AGENCY REVIEW PANELS.—

11 “(A) IN GENERAL.—Each head of an
12 agency shall establish an independent panel to
13 hear and review appeals under this subsection.

14 “(B) MEMBERSHIP.—

15 “(i) COMPOSITION.—Each inde-
16 pendent panel established by the head of
17 an agency under subparagraph (A) shall be
18 composed of at least three employees of the
19 agency selected by the head, two of whom
20 shall not be members of the security field.

21 “(ii) TERMS.—A term of service on an
22 independent panel established by the head
23 of an agency under subparagraph (A) shall
24 not exceed 2 years.

25 “(C) DECISIONS.—

1 “(i) WRITTEN.—Each decision of a
2 panel established under subparagraph (A)
3 shall be in writing and contain a justifica-
4 tion of the decision.

5 “(ii) CONSISTENCY.—Each head of an
6 agency that establishes a panel under sub-
7 paragraph (A) shall ensure that each deci-
8 sion of the panel is consistent with the in-
9 terests of national security and applicable
10 provisions of law.

11 “(iii) FINALITY.—Each decision of a
12 panel established under subparagraph (A)
13 shall be final but subject to appeal and re-
14 view under subsection (c).

15 “(D) ACCESS TO CLASSIFIED INFORMA-
16 TION.—The head of an agency that establishes
17 a panel under subparagraph (A) shall afford ac-
18 cess to classified information to the members of
19 the panel as the head determines—

20 “(i) necessary for the panel to hear
21 and review an appeal under this sub-
22 section; and

23 “(ii) consistent with the interests of
24 national security.

25 “(4) CORRECTIVE ACTION.—

1 “(A) IN GENERAL.—If, in the course of
2 proceedings under this subsection, the head of
3 an agency or a panel established by the head
4 under paragraph (3) decides that a covered per-
5 son’s eligibility for access to classified informa-
6 tion was improperly denied or revoked by the
7 agency, the agency shall take corrective action
8 to return the covered person, as nearly as prac-
9 ticable and reasonable, to the position such cov-
10 ered person would have held had the improper
11 denial or revocation not occurred.

12 “(B) COMPENSATION.—Corrective action
13 under subparagraph (A) may include compensa-
14 tion, in an amount not to exceed \$300,000, for
15 any loss of wages or benefits suffered, or ex-
16 penses otherwise incurred, by reason of such
17 improper denial or revocation.

18 “(5) PUBLICATION OF DECISIONS.—

19 “(A) IN GENERAL.—Each head of an
20 agency shall publish each final decision on an
21 appeal under this subsection.

22 “(B) REQUIREMENTS.—In order to ensure
23 transparency, oversight by Congress, and mean-
24 ingful information for those who need to under-

1 stand how the clearance process works, each
2 publication under subparagraph (A) shall be—

3 “(i) made in a manner that is con-
4 sistent with section 552 of title 5, United
5 States Code, as amended by the Electronic
6 Freedom of Information Act Amendments
7 of 1996 (Public Law 104–231);

8 “(ii) published to explain the facts of
9 the case, redacting as appropriate personal
10 identifiable information or sensitive pro-
11 gram information; and

12 “(iii) made available on a website that
13 is searchable by members of the public.

14 “(6) PUBLICATION OF PROCESSES.—Each head
15 of an agency shall publish in the Federal Register
16 the process established by the head pursuant to
17 paragraph (1).

18 “(c) HIGHER LEVEL REVIEW.—

19 “(1) PANEL.—

20 “(A) ESTABLISHMENT.—Not later than
21 180 days after the date of the enactment of this
22 section, the Security Executive Agent shall es-
23 tablish a panel to review decisions made on ap-
24 peals pursuant to the processes established
25 under subsection (b).

1 “(B) SCOPE OF REVIEW AND JURISDIC-
2 TION.—The panel established under subpara-
3 graph (A) shall review such decisions only—

4 “(i) as they relate to violations of sec-
5 tion 801A(b); or

6 “(ii) to the extent to which an agency
7 properly conducted a review of an appeal
8 under subsection (b).

9 “(C) COMPOSITION.—The panel estab-
10 lished pursuant to subparagraph (A) shall be
11 composed of three individuals selected by the
12 Security Executive Agent for purposes of the
13 panel, of whom at least one shall be an attor-
14 ney.

15 “(2) APPEALS AND TIMELINESS.—

16 “(A) APPEALS.—

17 “(i) INITIATION.—On or before the
18 date that is 30 days after the date on
19 which a covered person receives a written
20 decision on an appeal under subsection (b),
21 the covered person may initiate oversight
22 of that decision by filing a written appeal
23 with the Security Executive Agent.

24 “(ii) FILING.—A written appeal filed
25 under clause (i) relating to a decision of an

1 agency shall be filed in such form, in such
2 manner, and containing such information
3 as the Security Executive Agent may re-
4 quire, including—

5 “(I) a description of—

6 “(aa) any alleged violations
7 of section 801A(b) relating to the
8 denial or revocation of the cov-
9 ered person’s eligibility for access
10 to classified information; and

11 “(bb) any allegations of how
12 the decision may have been the
13 result of the agency failing to
14 properly conduct a review under
15 subsection (b); and

16 “(II) supporting materials and
17 information for the allegations de-
18 scribed under subclause (I).

19 “(B) TIMELINESS.—The Security Execu-
20 tive Agent shall ensure that, on average, review
21 of each appeal filed under this subsection is
22 completed not later than 180 days after the
23 date on which the appeal is filed.

24 “(3) DECISIONS AND REMANDS.—

1 “(A) IN GENERAL.—If, in the course of re-
2 viewing under this subsection a decision of an
3 agency under subsection (b), the panel estab-
4 lished under paragraph (1) decides that there is
5 sufficient evidence of a violation of section
6 801A(b) to merit a new hearing or decides that
7 the decision of the agency was the result of an
8 improperly conducted review under subsection
9 (b), the panel shall vacate the decision made
10 under subsection (b) and remand to the agency
11 by which the covered person shall be eligible for
12 a new appeal under subsection (b).

13 “(B) WRITTEN DECISIONS.—Each decision
14 of the panel established under paragraph (1)
15 shall be in writing and contain a justification of
16 the decision.

17 “(C) CONSISTENCY.—The panel under
18 paragraph (1) shall ensure that each decision of
19 the panel is consistent with the interests of na-
20 tional security and applicable provisions of law.

21 “(D) FINALITY.—

22 “(i) IN GENERAL.—Except as pro-
23 vided in clause (ii), each decision of the
24 panel established under paragraph (1)
25 shall be final.

1 “(ii) OVERTURN.—The Security Exec-
2 utive Agent may overturn a decision of the
3 panel if, not later than 30 days after the
4 date on which the panel issues the deci-
5 sion, the Security Executive Agent person-
6 ally exercises the authority granted by this
7 clause to overturn such decision.

8 “(E) NATURE OF REMANDS.—In remand-
9 ing a decision under subparagraph (A), the
10 panel established under paragraph (1) may not
11 direct an outcome of any further appeal under
12 subsection (b).

13 “(F) NOTICE OF DECISIONS.—For each
14 decision of the panel established under para-
15 graph (1) regarding a covered person, the Secu-
16 rity Executive Agent shall provide the covered
17 person with a written notice of the decision that
18 includes a detailed description of the reasons
19 for the decision, consistent with the interests of
20 national security and applicable provisions of
21 law.

22 “(4) REPRESENTATION BY COUNSEL.—

23 “(A) IN GENERAL.—The Security Exec-
24 utive Agent shall ensure that, under this sub-
25 section, a covered person appealing a decision

1 under subsection (b) has an opportunity to re-
2 tain counsel or other representation at the cov-
3 ered person's expense.

4 “(B) ACCESS TO CLASSIFIED INFORMA-
5 TION.—

6 “(i) IN GENERAL.—Upon the request
7 of the covered person, and a showing that
8 the ability to review classified information
9 is essential to the resolution of an appeal
10 under this subsection, the Security Execu-
11 tive Agent shall ensure the counsel or
12 other representation retained under this
13 paragraph is considered for access to clas-
14 sified information for the limited purposes
15 of such appeal.

16 “(ii) EXTENT OF ACCESS.—Counsel
17 or another representative who is cleared
18 for access under this subparagraph may be
19 afforded access to relevant classified mate-
20 rials to the extent consistent with the in-
21 terests of national security.

22 “(iii) WRONGFUL DENIAL OF AC-
23 CESS.—Wrongful denial of access of rel-
24 evant materials to a counsel or other rep-
25 resentative who is cleared for access under

1 this subparagraph shall be reviewed, and
2 remedied where necessary, by the panel es-
3 tablished under paragraph (1).

4 “(5) ACCESS TO DOCUMENTS AND EMPLOY-
5 EES.—

6 “(A) AFFORDING ACCESS TO MEMBERS OF
7 PANEL.—The Security Executive Agent shall
8 afford access to classified information to the
9 members of the panel established under para-
10 graph (1)(A) as the Security Executive Agent
11 determines—

12 “(i) necessary for the panel to review
13 a decision described in such paragraph;
14 and

15 “(ii) consistent with the interests of
16 national security.

17 “(B) AGENCY COMPLIANCE WITH RE-
18 QUESTS OF PANEL.—Each head of an agency
19 shall comply with each request by the panel for
20 a document and each request by the panel for
21 access to employees of the agency necessary for
22 the review of an appeal under this subsection,
23 to the degree that doing so is, as determined by
24 the head of the agency and permitted by appli-

1 cable provisions of law, consistent with the in-
2 terests of national security.

3 “(6) PUBLICATION OF DECISIONS.—

4 “(A) IN GENERAL.—For each final deci-
5 sion on an appeal under this subsection, the
6 head of the agency with respect to which the
7 appeal pertains and the Security Executive
8 Agency shall each publish the decision.

9 “(B) REQUIREMENTS.—In order to ensure
10 transparency, oversight by Congress, and mean-
11 ingful information for those who need to under-
12 stand how the clearance process works, each
13 publication under subparagraph (A) shall be—

14 “(i) made in a manner that is con-
15 sistent with section 552 of title 5, United
16 States Code;

17 “(ii) published in an appropriately re-
18 dacted form, the facts of the appeal; and

19 “(iii) made available on a website that
20 is searchable by members of the public.

21 “(d) PERIOD OF TIME FOR THE RIGHT TO AP-
22 PEAL.—

23 “(1) IN GENERAL.—Except as provided in para-
24 graph (2), any covered person who has been the sub-
25 ject of a decision made by the head of an agency to

1 deny or revoke eligibility for access to classified in-
2 formation shall retain all rights to appeal under this
3 section until the conclusion of the appeal process
4 under this section.

5 “(2) WAIVER OF RIGHTS.—

6 “(A) PERSONS.—Any covered person may
7 voluntarily waive the covered person’s right to
8 appeal under this section and such waiver shall
9 be conclusive.

10 “(B) AGENCIES.—The head of an agency
11 may not require a covered person to waive the
12 covered person’s right to appeal under this sec-
13 tion for any reason.

14 “(e) RELATIONSHIP TO SUITABILITY.—No person
15 may use a determination of suitability under part 731 of
16 title 5, Code of Federal Regulations, or successor regula-
17 tion, for the purpose of denying a covered person the re-
18 view proceedings of this section where there has been a
19 denial or revocation of eligibility for access to classified
20 information.

21 “(f) PRESERVATION OF ROLES AND RESPONSIBIL-
22 ITIES UNDER EXECUTIVE ORDER 10865 AND OF THE DE-
23 FENSE OFFICE OF HEARINGS AND APPEALS.—Nothing in
24 this section shall be construed to diminish or otherwise
25 affect the procedures in effect on the day before the date

1 of the enactment of this Act for denial and revocation pro-
2 cedures provided to individuals by Executive Order 10865
3 (50 U.S.C. 3161 note; relating to safeguarding classified
4 information within industry), or successor order, including
5 those administered through the Defense Office of Hear-
6 ings and Appeals of the Department of Defense under De-
7 partment of Defense Directive 5220.6, or successor direc-
8 tive.”.

9 (2) CLERICAL AMENDMENT.—The table of con-
10 tents in the matter preceding section 2 of the Na-
11 tional Security Act of 1947 (50 U.S.C. 3002), as
12 amended by subsection (c), is further amended by
13 inserting after the item relating to section 801A the
14 following:

“Sec. 801B. Right to appeal.”.