To amend the Foreign Intelligence Surveillance Act of 1978 to modify procedures relating to orders for surveillance and searches for foreign intelligence purposes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Counterintelligence Reform Act of 2000”.

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SEC. 2. CIRCUMSTANCES ESTABLISHING PROBABLE CAUSE FOR ISSUANCE OF ORDERS FOR ELECTRONIC SURVEILLANCE UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) Past Activities.—Section 105 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) is amended—

(1) by redesignating subsections (b), (c), (d), (e), (f), and (g) as subsections (c), (d), (e), (f), (g), and (h), respectively; and

(2) by inserting after subsection (a) the following new subsection (b):

“(b) In determining whether or not probable cause exists for purposes of an order under subsection (a)(3), a judge may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target.”.

(b) Conforming Amendment.—Subsection (d) of that section, as redesignated by subsection (a)(1) of this section, is amended by striking “subsection (b)(1)” and inserting “subsection (c)(1)”.

SEC. 3. ORDERS FOR ELECTRONIC SURVEILLANCE UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) Description of Intelligence or Law-Enforcement Activities of Certain Targets.—Section
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104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (8), (9), (10), and (11) as paragraphs (9), (10), (11), and (12), respectively; and

(B) by inserting after paragraph (7) the following new paragraph (8):

“(8) in the case of an application covering a target described in section 101(b)(2), a detailed description of—

“(A) any current relationship between the target and any Federal intelligence, intelligence-related, or law enforcement activity; and

“(B) any prior relationship between the target and any Federal intelligence, intelligence-related, or law enforcement activity that is relevant to a determination of probable cause under section 105;”; and

(2) in subsection (b), by striking “(8), and (11)” and inserting “(9), and (12)”.

(b) ADDITIONAL REQUIREMENTS REGARDING CERTAIN APPLICATIONS.—That section is further amended by adding at the end the following new subsection:
“(e)(1)(A) Upon written request of the Director of the Federal Bureau of Investigation, the Secretary of Defense, the Secretary of State, or the Director of Central Intelligence, the Attorney General shall personally review under subsection (a) an application under that subsection for a target described in section 101(b)(2).

“(B) An official referred to in subparagraph (A) may not delegate the authority to make a request referred to in that subparagraph.

“(2)(A) If as a result of a request under paragraph (1) the Attorney General determines not to approve an application under the second sentence of subsection (a) for purposes of making the application under this section, the Attorney General shall provide written notice of the determination to the official making the request for the review of the application under that paragraph. The Attorney General may not delegate the responsibility set forth in the preceding sentence.

“(B) Notice with respect to an application under subparagraph (A) shall set forth the modifications, if any, of the application that are necessary in order for the Attorney General to approve the application under the second sentence of subsection (a) for purposes of making the application under this section.
“(C) Upon review of any modifications of an application set forth under subparagraph (B), the official notified of the modifications under this paragraph shall modify the application if such official determines that such modification is warranted. Such official shall supervise the making of any modification under this subparagraph. Such official may not delegate the responsibility set forth in the preceding sentence.”.

SEC. 4. ORDERS FOR PHYSICAL SEARCHES UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) Description of Intelligence or Law-Enforcement Activities of Certain Targets.—Subsection (a) of section 303 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1823) is amended—

(1) by redesignating paragraphs (8) and (9) as paragraphs (9) and (10), respectively; and

(2) by inserting after paragraph (7) the following new paragraph (8):

“(8) in the case of an application covering a target described in section 101(b)(2), a detailed description of—

“(A) any current relationship between the target and any Federal intelligence, intelligence-related, or law enforcement activity; and
“(B) any prior relationship between the
target and any Federal intelligence, intelligence-
related, or law enforcement activity that is rel-
evant to a determination of probable cause
under section 304;”.

(b) ADDITIONAL REQUIREMENTS REGARDING CERT-
AIN APPLICATIONS.—That section is further amended by
adding at the end the following new subsection:

“(d)(1)(A) Upon written request of the Director of
the Federal Bureau of Investigation, the Secretary of De-
fense, the Secretary of State, or the Director of Central
Intelligence, the Attorney General shall personally review
under subsection (a) an application under that subsection
for a target described in section 101(b)(2).

“(B) An official referred to in subparagraph (A) may
not delegate the authority to make a request referred to
in that subparagraph.

“(2)(A) If as a result of a request under paragraph
(1) the Attorney General determines not to approve an
application under the second sentence of subsection (a) for
purposes of making the application under this section, the
Attorney General shall provide written notice of the deter-
mination to the official making the request for the review
of the application under that paragraph. The Attorney
General may not delegate the responsibility set forth in the preceding sentence.

“(B) Notice with respect to an application under subparagraph (A) shall set forth the modifications, if any, of the application that are necessary in order for the Attorney General to approve the application under the second sentence of subsection (a) for purposes of making the application under this section.

“(C) Upon review of any modifications of an application set forth under subparagraph (B), the official notified of the modifications under this paragraph shall modify the application if such official determines that such modification is warranted. Such official shall supervise the making of any modification under this subparagraph. Such official may not delegate the responsibility set forth in the preceding sentence.”.

SEC. 5. DISCLOSURE FOR LAW ENFORCEMENT PURPOSES OF INFORMATION ACQUIRED UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) Regulations Relating to Disclosure.—Not later than 180 days after the date of the enactment of this Act, the Attorney General shall prescribe in regulations the following:
(1) The circumstances under which information acquired pursuant to title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall be disclosed for law enforcement purposes under section 106(b) of that Act (50 U.S.C. 1806(b)).

(2) The circumstances under which information acquired pursuant to title III of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1821 et seq.) shall be disclosed for law enforcement purposes under section 305(c) of that Act (50 U.S.C. 1825(c)).

(3) The circumstances under which information acquired pursuant to title IV of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1841 et seq.) shall be disclosed for law enforcement purposes under section 405(b) of that Act (50 U.S.C. 1845(b)).

(b) SUBMITTAL TO CONGRESS.—The Attorney General shall submit to the Committees on the Judiciary of the Senate and House of Representatives the regulations prescribed by the Attorney General under subsection (a).
SEC. 6. COORDINATION OF COUNTERINTELLIGENCE WITH
THE FEDERAL BUREAU OF INVESTIGATION.

(a) Treatment of Certain Subjects of Investigation.—Subsection (c) of section 811 of the Intelligence Authorization Act for Fiscal Year 1995 (50 U.S.C. 402a) is amended—

(1) in paragraphs (1) and (2), by striking “paragraph (3)” and inserting “paragraph (5)”;

(2) by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (5), (6), (7), and (9), respectively;

(3) by inserting after paragraph (2) the following new paragraph (3):

“(3)(A) The Director of the Federal Bureau of Investigation shall notify in writing the head of the department or agency concerned of a finding by the Federal Bureau of Investigation that the subject of an investigation under paragraph (1) should be left in place for investigative purposes.

“(B) Not later than 30 days after receiving written notification under subparagraph (A), the head of the department or agency so notified shall submit to the Director a plan to minimize the unauthorized disclosure of classified information by the subject concerned.

“(C) A plan under this paragraph may be modified if the Director and the head of the department or agency
concerned jointly determine that the modification is warranted. A modification under this subparagraph may include a decision that the subject of an investigation no longer be left in place for investigative purposes.

“(D) A disagreement regarding an element of a plan under subparagraph (A), including a proposed modification of the plan under subparagraph (C), shall be resolved by the Board.”; and

(4) in paragraph (5), as so redesignated, by striking “paragraph (1) or (2)” and inserting “paragraph (1), (2), or (3)”.

(b) TIMELY PROVISION OF INFORMATION AND CONSULTATION ON ESPIONAGE INVESTIGATIONS.—Paragraph (2) of that subsection is further amended—

(1) by inserting “in a timely manner” after “through appropriate channels”; and

(2) by inserting “in a timely manner” after “are consulted”.

(c) INTERFERENCE WITH FULL FIELD ESPIONAGE INVESTIGATIONS.—That subsection is further amended by inserting after paragraph (3), as amended by subsection (a) of this section, the following new paragraph (4):

“(4)(A) The Federal Bureau of Investigation shall notify appropriate officials within the executive branch, including the head of the department or agency concerned,
of the commencement of a full field espionage investiga-
tion with respect to an employee within the executive
branch.

“(B)(i) A department or agency may not conduct a
polygraph examination, interrogate, or otherwise take any
action that is likely to alert an employee covered by a no-
tice under subparagraph (A) of an investigation described
in that subparagraph without prior coordination with the
Federal Bureau of Investigation.

“(ii) Any examination, interrogation, or other action
taken under clause (i) shall be taken in consultation with
the Federal Bureau of Investigation.”.

(d) COORDINATION OF INFORMATION ON ESPIONAGE
INVESTIGATIONS.—That subsection is further amended by
inserting after paragraph (7), as redesignated by sub-
section (a)(2) of this section, the following new paragraph
(8):

“(8) The Director of the Federal Bureau of Invest-
tigation shall be responsible for coordinating all informa-
tion relating to espionage investigations, including inform-
ation on any prior or current relationship between the
subjects of such investigations and any Federal intel-
ligence or intelligence-related activity, within the intel-
ligence community and within and among Federal law en-
forcement agencies.”.
(c) Requests for Technical Assistance.—That section is further amended by adding at the end the following new subsection (d):

“(d) Requests for Technical Assistance.—The Director of the Federal Bureau of Investigation and the Director of the National Security Agency shall establish procedures to ensure the timely evaluation and determinations regarding requests from the Federal Bureau of Investigation for technical assistance in counterintelligence activities covered by this section.”.

SEC. 7. SEVERABILITY.

If any provision of this Act (including an amendment made by this Act), or the application thereof, to any person or circumstance, is held invalid, the remainder of this Act (including the amendments made by this Act), and the application thereof, to other persons or circumstances shall not be affected thereby.