

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 4349  
OFFERED BY MR. GREEN OF TEXAS**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Department of Home-  
3 land Security Office for Civil Rights and Civil Liberties  
4 Authorization Act”.

**5 SEC. 2. OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES.**

6 (a) IN GENERAL.—Section 705 of the Homeland Se-  
7 curity Act of 2002 (6 U.S.C. 345) is amended—

8 (1) in the section heading, by striking “**ESTAB-**  
9 **LISHMENT OF**”; and

10 (2) by striking subsections (a) and (b) and in-  
11 serting the following new subsections:

12 “(a) ESTABLISHMENT.—

13 “(1) IN GENERAL.—There is established within  
14 the Department an Office for Civil Rights and Civil  
15 Liberties (referred to in this section as the ‘Office’).  
16 The head of the Office is the Officer for Civil Rights  
17 and Civil Liberties (referred to in this section as the  
18 ‘Officer’), who shall report directly to the Secretary.

1           “(2) DUTIES.—The Secretary and the head of  
2 each component shall—

3           “(A) ensure that the Officer for Civil  
4 Rights and Civil Liberties of the Department  
5 and the Officer for Civil Rights and Civil Lib-  
6 erties of such component—

7           “(i) have the information, materials,  
8 and resources necessary to carry out the  
9 functions of the Office;

10           “(ii) are consulted in advance of new  
11 or proposed changes to policies, programs,  
12 initiatives, and activities impacting civil  
13 rights and civil liberties; and

14           “(iii) are given full and complete ac-  
15 cess to all materials and personnel nec-  
16 essary to carry out the functions of the Of-  
17 fice; and

18           “(B) consider advice and recommendations  
19 from the Officer for Civil Rights and Civil Lib-  
20 erties of the Department in the development  
21 and implementation of policies, programs, ini-  
22 tiatives, and activities impacting civil rights and  
23 civil liberties.

24           “(b) RESPONSIBILITIES.—The Officer shall carry out  
25 the following responsibilities:

1           “(1) Oversee compliance with constitutional,  
2           statutory, regulatory, policy, and other requirements  
3           relating to the civil rights and civil liberties of indi-  
4           viduals affected by the policies, programs, initiatives,  
5           and activities of the Department.

6           “(2) Review and assess information concerning  
7           abuses of civil rights and civil liberties, and profiling  
8           on the basis of race, ethnicity, or religion, by em-  
9           ployees and officials of the Department.

10           “(3) Integrate civil rights and civil liberties pro-  
11           tections into all policies, programs, initiatives, and  
12           activities of the Department.

13           “(4) Conduct civil rights and civil liberties im-  
14           pact assessments, as appropriate, including such as-  
15           sessments prior to the implementation of new De-  
16           partment regulations, policies, programs, initiatives,  
17           and activities.

18           “(5) Conduct periodic reviews and assessments  
19           of policies, programs, initiatives, and activities of the  
20           Department relating to civil rights and civil liberties,  
21           including reviews and assessments initiated by the  
22           Officer.

23           “(6) Provide policy advice, recommendations,  
24           and other technical assistance relating to civil rights  
25           and civil liberties to the Secretary, and the heads of

1 components, and other personnel within the Depart-  
2 ment.

3 “(7) Review, assess, and investigate complaints,  
4 including complaints filed by members of the public,  
5 and information indicating possible abuses of civil  
6 rights or civil liberties at the Department, unless the  
7 Inspector General of the Department determines  
8 that any such complaint should be investigated by  
9 the Inspector General.

10 “(8) Initiate reviews, investigations, and assess-  
11 ments of the administration of the policies, pro-  
12 grams, initiatives, and activities of the Department  
13 relating to civil rights and civil liberties.

14 “(9) Coordinate with the Privacy Officer to en-  
15 sure that—

16 “(A) policies, programs, initiatives, and ac-  
17 tivities involving civil rights, civil liberties, and  
18 privacy considerations are addressed in an inte-  
19 grated and comprehensive manner; and

20 “(B) Congress receives appropriate reports  
21 regarding such policies, programs, initiatives,  
22 and activities.

23 “(10) Lead the equal employment opportunity  
24 programs of the Department, including complaint

1 management and adjudication, workforce diversity,  
2 and promotion of the merit system principles.

3 “(11) Make publicly available through acces-  
4 sible communications channels, including the website  
5 of the Department—

6 “(A) information on the responsibilities  
7 and functions of, and how to contact, the Of-  
8 fice;

9 “(B) summaries of the investigations car-  
10 ried out pursuant to paragraphs (7) and (8)  
11 that result in recommendations; and

12 “(C) summaries of impact assessments and  
13 periodic reviews and assessments carried out  
14 pursuant to paragraphs (4) and (5), respec-  
15 tively, that are issued by the Officer.

16 “(12) Engage with individuals, stakeholders,  
17 and communities the civil rights and civil liberties of  
18 which may be affected by the policies, programs, ini-  
19 tiatives, and activities of the Department, including  
20 by—

21 “(A) informing such individuals, stake-  
22 holders, and communities concerning such poli-  
23 cies, programs, initiatives, and activities;

24 “(B) providing information for how to re-  
25 port and access redress processes; and

1           “(C) providing Department leadership and  
2           other personnel within the Department feed-  
3           back from such individuals, stakeholders, and  
4           communities on the civil rights and civil lib-  
5           erties impacts of such policies, programs, initia-  
6           tives, and activities, and working with State,  
7           local, Tribal, and territorial homeland security  
8           partners to enhance the Department’s policy-  
9           making and program implementation.

10           “(13) Lead a language access program for the  
11           Department to ensure the Department effectively  
12           communicates with all individuals impacted by pro-  
13           grams and activities of the Department, including  
14           those with limited English proficiency.

15           “(14) Participate in the hiring or designation of  
16           a civil rights and civil liberties officer within each  
17           component and participate in the performance re-  
18           view process for such officer.

19           “(c) AUTHORITY TO INVESTIGATE.—

20           “(1) IN GENERAL.—For the purposes of sub-  
21           section (b), the Officer shall—

22           “(A) have access to all materials and per-  
23           sonnel necessary to carry out the functions of  
24           the Office under this subsection;

1           “(B) make such investigations and reports  
2 relating to the administration of the programs  
3 and operations of the Department as are nec-  
4 essary or appropriate;

5           “(C) subject to the approval of the Sec-  
6 retary, require by subpoena the production, by  
7 any person other than a Federal agency, of all  
8 materials and personnel necessary to the per-  
9 formance of the responsibilities of the Officer  
10 under this section; and

11           “(D) administer to or take from any per-  
12 son an oath, affirmation, or affidavit, whenever  
13 necessary to performance of the responsibilities  
14 of the Officer under this section.

15           “(2) ENFORCEMENT OF SUBPOENAS.—Any sub-  
16 poena issued under paragraph (1)(C) shall, in the  
17 case of contumacy or refusal to obey, be enforceable  
18 by order of any appropriate United States district  
19 court.

20           “(3) EFFECT OF OATHS.—Any oath, affirma-  
21 tion, or affidavit administered or taken pursuant to  
22 paragraph (1)(D) by or before an employee of the  
23 Office designated for that purpose by the Officer  
24 shall have the same force and effect as if adminis-

1           tered or taken by or before an officer having a seal  
2           of office.

3           “(d) NOTIFICATION REQUIREMENT.—In the case of  
4 a complaint made concerning allegations of abuses of civil  
5 rights and civil liberties under paragraph (7) of subsection  
6 (b), the Officer shall—

7                   “(1) provide to the individual who made the  
8 complaint notice of the receipt of such complaint  
9 within 30 days of receiving the complaint; and

10                   “(2) inform the complainant of the determina-  
11 tion of the Office regarding—

12                           “(A) the initiation of a review, assessment,  
13 or investigation by the Office;

14                           “(B) a referral to the Inspector General of  
15 the Department; or

16                           “(C) any other action taken.

17           “(e) COORDINATION WITH INSPECTOR GENERAL.—

18                   “(1) IN GENERAL.—

19                           “(A) REFERRAL.—Before initiating an in-  
20 vestigation initiated by the Officer pursuant to  
21 paragraph (7) or (8) of subsection (b), the Offi-  
22 cer shall refer the matter at issue to the Inspec-  
23 tor General of the Department.

24                           “(B) DETERMINATIONS AND NOTIFICA-  
25 TIONS BY INSPECTOR GENERAL.—Not later

1 than seven days after the receipt of a matter at  
2 issue under subparagraph (A), the Inspector  
3 General shall—

4 “(i) make a determination regarding  
5 whether the Inspector General intends to  
6 initiate an investigation of such matter;  
7 and

8 “(ii) notify the Officer of such deter-  
9 mination.

10 “(C) INVESTIGATIONS.—If the Secretary  
11 determines that a complaint warrants both the  
12 Officer and the Inspector General conducting  
13 investigations concurrently, jointly, or in some  
14 other manner, the Secretary may authorize the  
15 Officer to conduct an investigation in such  
16 manner as the Secretary directs.

17 “(D) NOTIFICATION BY THE OFFICER.—If  
18 the Officer does not receive notification of a de-  
19 termination pursuant to subparagraph (B)(ii),  
20 the Officer shall notify the Inspector General of  
21 whether the Officer intends to initiate an inves-  
22 tigation into the matter at issue.

23 “(f) RECOMMENDATIONS; RESPONSE.—

24 “(1) IN GENERAL.—In the case of an investiga-  
25 tion initiated by the Officer pursuant to paragraph

1 (7) or (8) of subsection (b), if such an investigation  
2 results in the issuance of recommendations, the Offi-  
3 cer shall produce a report that—

4 “(A) includes the final findings and rec-  
5 ommendations of the Officer;

6 “(B) is made publicly available in sum-  
7 mary form;

8 “(C) does not include any personally iden-  
9 tifiable information; and

10 “(D) may include a classified annex.

11 “(2) TRANSMISSION.—The Officer shall trans-  
12 mit to the Secretary and the head of the relevant  
13 component a copy of each report under paragraph  
14 (1).

15 “(3) RESPONSE.—

16 “(A) IN GENERAL.—Not later than 45  
17 days after the date on which the Officer trans-  
18 mits to the head of a component a copy of a re-  
19 port pursuant to paragraph (2), such head shall  
20 submit to the Secretary and the Officer a re-  
21 sponse to such report.

22 “(B) RULE OF CONSTRUCTION.—In the re-  
23 sponse submitted pursuant to subparagraph  
24 (A), each recommendation contained in the re-  
25 port transmitted pursuant to paragraph (2)

1 with which the head of the component at issue  
2 concurs shall be deemed an accepted rec-  
3 ommendation of the Department.

4 “(C) NONCONCURRENCE; APPEAL.—If the  
5 head of a component does not concur with a  
6 recommendation contained in the report trans-  
7 mitted pursuant to paragraph (2), or if such  
8 head does not respond to a recommendation  
9 within 45 days in accordance with subpara-  
10 graph (A), the Officer may appeal to the Sec-  
11 retary.

12 “(D) RESULT.—If the Officer appeals to  
13 the Secretary pursuant to subparagraph (C),  
14 the Secretary shall, not later than 60 days after  
15 the date on which the Officer appeals—

16 “(i) accept the Officer’s recommenda-  
17 tion, which recommendation shall be  
18 deemed the accepted recommendation of  
19 the Department; or

20 “(ii) accept the nonconcurrence of the  
21 head of the component at issue if trans-  
22 mitted in accordance with subparagraph  
23 (A).

24 “(g) REPORTING.—

1           “(1) IN GENERAL.—In the case of an investiga-  
2           tion initiated by the Officer pursuant to paragraph  
3           (7) or (8) of subsection (b), if such an investigation  
4           resulted in the issuance of recommendations, the Of-  
5           ficer shall, on an annual basis, make publicly avail-  
6           able through accessible communications channels, in-  
7           cluding the website of the Department—

8                   “(A) a summary of investigations that are  
9                   completed, consistent with section 1062(f)(1) of  
10                  the Intelligence Reform and Terrorism Preven-  
11                  tion Act of 2004 (42 U.S.C. 2000ee–1(f)(2));

12                   “(B) the accepted recommendations of the  
13                  Department, if any; and

14                   “(C) a summary of investigations that re-  
15                  sult in final recommendations that are issued  
16                  by the Officer.

17           “(2) PROHIBITION.—Materials made publicly  
18           available pursuant to paragraph (1) may not include  
19           any personally identifiable information related to any  
20           individual involved in the investigation at issue.

21           “(h) COMPONENT CIVIL RIGHTS AND CIVIL LIB-  
22           ERTIES OFFICERS.—

23                   “(1) IN GENERAL.—Any component that has an  
24                  Officer for Civil Rights and Civil Liberties of such  
25                  component shall ensure that such Officer for Civil

1 Rights and Civil Liberties of such component shall  
2 coordinate with and provide information to the Offi-  
3 cer for Civil Rights and Civil Liberties of the De-  
4 partment on matters related to civil rights and civil  
5 liberties within each such component.

6 “(2) OFFICERS OF OPERATIONAL COMPO-  
7 NENTS.—The head of each operational component,  
8 in consultation with the Officer for Civil Rights and  
9 Civil Liberties of the Department, shall hire or des-  
10 ignate a career appointee (as such term is defined  
11 in section 3132 of title 5, United States Code) from  
12 such component as the Officer for Civil Rights and  
13 Civil Liberties of such operational component.

14 “(3) RESPONSIBILITIES.—Each Officer for Civil  
15 Rights and Civil Liberties of each component—

16 “(A) shall have access in a timely manner  
17 to the information, materials, and information  
18 necessary to carry out the functions of such of-  
19 ficer;

20 “(B) shall be consulted in advance of new  
21 or proposed changes to component policies, pro-  
22 grams, initiatives, and activities impacting civil  
23 rights and civil liberties;

24 “(C) shall be given full and complete ac-  
25 cess to all component materials and component

1 personnel necessary to carry out the functions  
2 of such officer;

3 “(D) may, to the extent the Officer for  
4 Civil Rights and Civil Liberties of the Depart-  
5 ment determines necessary, and subject to the  
6 approval of the Secretary, administer to or take  
7 from any person an oath, affirmation, or affi-  
8 davit, whenever necessary in the performance of  
9 the responsibilities of each such component Of-  
10 ficer under this section; and

11 “(E) may administer any oath, affirma-  
12 tion, or affidavit, and such oath, affirmation,  
13 shall have the same force and effect as if ad-  
14 ministered or taken by or before an officer hav-  
15 ing a seal of office.

16 “(i) ANNUAL REPORT.—Not later than March 31 of  
17 each year, the Officer shall submit to the Committee on  
18 Homeland Security of the House of Representatives, the  
19 Committee on Homeland Security and Governmental Af-  
20 fairs of the Senate, and any other Committee of the House  
21 of Representatives or the Senate, as the case may be, the  
22 Officer determines relevant, a report on the implementa-  
23 tion of this section during the immediately preceding fiscal  
24 year. Each such annual report shall be prepared and sub-  
25 mitted for supervisory review and appropriate comment or

1 amendment by the Secretary prior to submission to such  
2 committees, and the Officer shall consider and incorporate  
3 any comments or amendments as a result of such review.  
4 Each such report shall include, for the year covered by  
5 such report, the following:

6           “(1) A list of Department regulations, policies,  
7           programs, initiatives, and activities for which civil  
8           rights and civil liberties impact assessments were  
9           conducted, or policy advice, recommendations, or  
10          other technical assistance was provided.

11          “(2) An assessment of the efforts of the De-  
12          partment to effectively communicate with all individ-  
13          uals impacted by programs and activities of the De-  
14          partment, including those with limited English pro-  
15          ficiency through the language access program re-  
16          ferred to in subsection (b)(13).

17          “(3) A summary of recommendations issued  
18          pursuant to subsection (f) regarding investigations  
19          under paragraph (7) or (8) of subsection (b), to-  
20          gether with information on the status of the imple-  
21          mentation of such recommendations by the compo-  
22          nent at issue.

23          “(4) Information on the diversity and equal em-  
24          ployment opportunity activities of the Department,  
25          including information on complaint management and

1 adjudication of equal employment opportunity com-  
2 plaints, and efforts to ensure compliance throughout  
3 the Department with equal employment opportunity  
4 requirements.

5 “(5) A description of any efforts, including pub-  
6 lic meetings, to engage with individuals, stake-  
7 holders, and communities the civil rights and civil  
8 liberties of which may be affected by policies, pro-  
9 grams, initiatives, and activities of the Department.

10 “(6) Information on total staffing for the Of-  
11 fice, including—

12 “(A) the number of full-time, part-time,  
13 and contract support personnel; and

14 “(B) information on the number of em-  
15 ployees whose primary responsibilities include  
16 supporting the Officer in carrying out para-  
17 graph (10) of subsection (b).

18 “(7) If required, a classified annex.

19 “(j) DEFINITION.—In this section, the term ‘compo-  
20 nent’ means any operational component, non-operational  
21 component, directorate, or office of the Department.”.

22 (b) CLERICAL AMENDMENT.—The item relating to  
23 section 705 in section 1(b) of the Homeland Security Act  
24 of 2002 is amended to read as follows:

“Sec. 705. Officer for Civil Rights and Civil Liberties”.

1 (c) REPORTING TO CONGRESS.—Section  
2 1062(f)(1)(A)(i) of the Intelligence Reform and Terrorism  
3 Prevention Act of 2004 (42 U.S.C. 2000ee–1(f)(1)(A)(i))  
4 is amended by striking “the Committee on Oversight and  
5 Government Reform of the House of Representatives” and  
6 inserting “the Committee on Homeland Security of the  
7 House of Representatives, the Committee on Oversight  
8 and Reform of the House of Representatives”.

9 **SEC. 3. COMPTROLLER GENERAL REVIEW.**

10 Not later than two years after the date of the enact-  
11 ment of this Act, the Comptroller General of the United  
12 States shall submit to Congress a report on the implemen-  
13 tation of subsection (b)(12) of section 705 of the Home-  
14 land Security Act of 2002 (6 U.S.C. 345), as amended  
15 by section 2.

