

## Union Calendar No.

116<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 4713

**[Report No. 116-]**

To amend the Homeland Security Act of 2002 to make certain improvements in the Office for Civil Rights and Civil Liberties of the Department of Homeland Security, and for other purposes.

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OCTOBER 17, 2019

Mr. GREEN of Texas (for himself and Mr. THOMPSON of Mississippi) introduced the following bill; which was referred to the Committee on Homeland Security

NOVEMBER --, 2019

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on October 17, 2019]

# **A BILL**

To amend the Homeland Security Act of 2002 to make certain improvements in the Office for Civil Rights and Civil Liberties of the Department of Homeland Security, 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 “Department of Home-*  
5 *land Security Office of Civil Rights and Civil Liberties Au-*  
6 *thorization Act”.*

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

8       *(a) IN GENERAL.—Section 705 of the Homeland Secu-*  
9 *rity Act of 2002 (6 U.S.C. 345) is amended—*

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

12           *(2) by striking subsections (a) and (b) and in-*  
13 *serting the following new subsections:*

14       *“(a) IN GENERAL.—There is established within the De-*  
15 *partment an Office for Civil Rights and Civil Liberties. The*  
16 *head of such Office is the Officer for Civil Rights and Civil*  
17 *Liberties, who shall report directly to the Secretary.*

18       *“(b) RESPONSIBILITIES.—The Officer for Civil Rights*  
19 *and Civil Liberties shall carry out the following responsibil-*  
20 *ities:*

21           *“(1) Oversee compliance with constitutional,*  
22 *statutory, regulatory, policy, and other requirements*  
23 *relating to the civil rights and civil liberties of indi-*  
24 *viduals affected by the programs and activities of the*  
25 *Department.*

1           “(2) *Integrate civil rights and civil liberties pro-*  
2           *tections into all programs and activities of the De-*  
3           *partment.*

4           “(3) *Conduct civil rights and civil liberties im-*  
5           *pect assessments, as appropriate.*

6           “(4) *Conduct periodic reviews of policies, proce-*  
7           *dures, and activities of the Department relating to*  
8           *civil rights and civil liberties.*

9           “(5) *Provide policy advice, recommendations,*  
10          *and other technical assistance relating to civil rights*  
11          *and civil liberties to the Secretary and to heads of*  
12          *components, directorates, and offices and other per-*  
13          *sonnel within the Department.*

14          “(6) *Review, assess, and investigate complaints,*  
15          *including complaints filed by members of the public,*  
16          *and information indicating possible abuses of civil*  
17          *rights or civil liberties at the Department, unless the*  
18          *Inspector General of the Department determines that*  
19          *any such complaint or information should be inves-*  
20          *tigated by the Inspector General.*

21          “(7) *Initiate reviews, assessments, inspections,*  
22          *and investigations of the administration of the pro-*  
23          *grams and activities by the Department relating to*  
24          *civil rights and civil liberties, as the Officer deter-*  
25          *mines necessary.*

1           “(8) *Coordinate with the Privacy Officer to en-*  
2           *sure that—*

3                   “(A) *programs, policies, and procedures in-*  
4                   *volving civil rights, civil liberties, and privacy*  
5                   *considerations are addressed in an integrated*  
6                   *and comprehensive manner; and*

7                   “(B) *Congress receives appropriate reports*  
8                   *regarding such programs, policies, and proce-*  
9                   *dures.*

10           “(9) *Lead the equal employment opportunity*  
11           *programs of the Department, including complaint*  
12           *management and adjudication, and promote work-*  
13           *force diversity and merit system principles.*

14           “(10) *Make publicly available through accessible*  
15           *communications channels, including the website of the*  
16           *Department—*

17                   “(A) *information on the responsibilities and*  
18                   *functions of, and how to contact, the Officer; and*

19                   “(B) *reports that are issued by the Officer*  
20                   *upon completion of investigations carried out*  
21                   *pursuant to paragraph (6) or (7).*

22           “(11) *Engage with individuals and communities*  
23           *whose civil rights and civil liberties may be affected*  
24           *by programs and activities of the Department, includ-*  
25           *ing by informing such individuals and communities*

1       *about report and redress processes and advising the*  
2       *Secretary and heads of components, directorates, of-*  
3       *fices, and other personnel within the Department of*  
4       *any concerns raised by such individuals and commu-*  
5       *nities.*

6       “(c) *COORDINATION WITH INSPECTOR GENERAL.*—

7               “(1) *AUTHORITY TO INVESTIGATE POSSIBLE*  
8       *ABUSES.*—*The Officer for Civil Rights and Civil Lib-*  
9       *erties may investigate any matter referred to in para-*  
10       *graph (6) or (7) of subsection (b) after fulfilling the*  
11       *coordination requirements under paragraph (2) with*  
12       *respect to such matter.*

13              “(2) *COORDINATION REQUIREMENTS.*—

14                      “(A) *REFERRAL OF MATTERS TO INSPECTOR*  
15       *GENERAL.*—*Before initiating any investigation*  
16       *described under paragraph (1), the Officer for*  
17       *Civil Rights and Civil Liberties shall refer the*  
18       *matter and all related complaints, allegations,*  
19       *and information to the Inspector General of the*  
20       *Department.*

21                      “(B) *INSPECTOR GENERAL RESPONSIBIL-*  
22       *ITIES.*—

23                              “(i) *DETERMINATION AND NOTIFICA-*  
24       *TION.*—*Not later than 30 days after the re-*

1                   *ceipt of a matter referred under subpara-*  
2                   *graph (A), the Inspector General shall—*

3                   *“(I) make a determination re-*  
4                   *garding whether the Inspector General*  
5                   *intends to initiate an audit or inves-*  
6                   *tigation of the matter referred under*  
7                   *subparagraph (A); and*

8                   *“(II) notify the Officer of such de-*  
9                   *termination.*

10                  *“(ii) AUDITS AND INVESTIGATIONS.—If*  
11                  *the Inspector General notifies the Officer for*  
12                  *Civil Rights and Civil Liberties that the In-*  
13                  *spector General intends to initiate an audit*  
14                  *or investigation, the Inspector General*  
15                  *shall—*

16                  *“(I) initiate such audit or inves-*  
17                  *tigate by not later than 90 days after*  
18                  *providing such notification; or*

19                  *“(II) not later than three days*  
20                  *after the end of the 90-day period spec-*  
21                  *ified in subclause (I), notify the Officer*  
22                  *that such audit or investigation was*  
23                  *not initiated.*

24                  *“(C) PROVISION OF ASSISTANCE.—At the*  
25                  *request of the Inspector General, the Officer for*

1           *Civil Rights and Civil Liberties may provide as-*  
2           *stance to the Inspector General on any inves-*  
3           *tigation or audit initiated by the Inspector Gen-*  
4           *eral based on a referral under subparagraph (A).*

5           “(D) *INVESTIGATION BY OFFICER.*—*The Of-*  
6           *ficer for Civil Rights and Civil Liberties may in-*  
7           *vestigate a matter referred to the Inspector Gen-*  
8           *eral under subparagraph (A) only if—*

9                   “(i) *the Inspector General notifies the*  
10                   *Officer for Civil Rights and Civil Liberties*  
11                   *that the Inspector General does not intend*  
12                   *to initiate an audit or investigation relat-*  
13                   *ing to that matter; or*

14                   “(ii) *the Inspector General provides*  
15                   *notification under subparagraph (B)(i)(II)*  
16                   *that an audit or investigation was not ini-*  
17                   *tiated.*

18           “(d) *TRANSPARENCY.*—

19                   “(1) *COMPLAINTS.*—*In the case of a complaint*  
20                   *made concerning allegations of abuses of civil rights*  
21                   *and civil liberties under paragraph (6) of subsection*  
22                   *(b), the Officer for Civil Rights and Civil Liberties*  
23                   *shall—*

24                   “(A) *provide to the individual who made*  
25                   *the complaint notice of the receipt of such com-*



1           *plaint within 30 days of receiving the complaint;*  
2           *and*

3           “(B) *inform the complainant of the deter-*  
4           *mination of the Officer regarding the initiation*  
5           *of a review, assessment, or investigation within*  
6           *the Office, a referral to the Inspector General of*  
7           *the Department, or any other action taken.*

8           “(2) *INVESTIGATIONS.—In the case of an inves-*  
9           *tigation initiated by the Officer pursuant to para-*  
10          *graph (6) or (7) of subsection (b), upon the conclusion*  
11          *of the investigation, the Officer shall produce a report*  
12          *on the investigation which—*

13                  “(A) *shall include the findings and rec-*  
14                  *ommendations of the Officer;*

15                  “(B) *shall be made publicly available;*

16                  “(C) *shall not include any personally iden-*  
17                  *tifiable information related to any individual*  
18                  *involved in such investigation; and*

19                  “(D) *may include a classified appendix, as*  
20                  *the Officer determines appropriate.*

21           “(3) *SUBMITTAL TO HEADS OF OPERATIONAL*  
22          *COMPONENTS.—The Officer shall transmit a copy of*  
23          *each report produced under paragraph (2) to the Sec-*  
24          *retary and to the relevant head of each relevant oper-*  
25          *ational component of the Department.*

1           “(4) *REPORTS TO CONGRESS.*—Upon the conclu-  
2           sion of any investigation conducted by the Officer for  
3           Civil Rights and Civil Liberties under paragraph (6)  
4           or (7) of subsection (b), the Officer shall submit to  
5           Congress a report on the investigation, which shall be  
6           prepared and submitted without any prior comment  
7           or amendment by the Secretary, Deputy Secretary, or  
8           any other officer or employee of the Department, un-  
9           less the Officer seeks such comment.

10          “(e) *COMPONENT CIVIL RIGHTS AND CIVIL LIBERTIES*  
11         *OFFICER.*—The head of each of the operational components  
12         of the Department shall designate a career appointee (as  
13         such term is defined in section 3132 of title 5, United States  
14         Code) from such component as the Officer for Civil Rights  
15         and Civil Liberties of that component. The Officer for Civil  
16         Rights and Civil Liberties of each such component shall co-  
17         ordinate with and provide information to the Officer for  
18         Civil Rights and Civil Liberties of the Department on mat-  
19         ters related to civil rights and civil liberties within the com-  
20         ponents.

21          “(f) *ACCESS TO INFORMATION.*—The Officer for Civil  
22         Rights and Civil Liberties of the Department—

23                 “(1) shall have access to all records, reports, au-  
24                 dits, reviews, documents, papers, recommendations,  
25                 and other materials available to the Department that

1       *relate to programs and operations with respect to the*  
2       *responsibilities of the Officer under subsection (b);*  
3       *and*

4               “(2) *may, to the extent the Officer determines*  
5       *necessary, and subject to the approval of the Sec-*  
6       *retary—*

7               “(A) *issue a subpoena to require the produc-*  
8       *tion, by any person other than a Federal agency,*  
9       *of all information, documents, reports, answers,*  
10       *records, accounts, papers, and other documentary*  
11       *evidence necessary in the performance of the re-*  
12       *sponsibilities of the Officer under this section;*  
13       *and*

14               “(B) *administer to or take from any person*  
15       *an oath, affirmation, or affidavit, whenever nec-*  
16       *essary in the performance of the responsibilities*  
17       *of the Officer under this section.*

18       “(g) *ANNUAL REPORT.—Not later than March 31 of*  
19       *each year, the Officer for Civil Rights and Civil Liberties*  
20       *of the Department shall submit directly to the President,*  
21       *the President of the Senate, the Speaker of the House of*  
22       *Representatives, and the appropriate committees and sub-*  
23       *committees of Congress, a report on the implementation of*  
24       *this section during the year preceding the year during*

1 *which the report is submitted. Each such report shall in-*  
2 *clude, for the year covered by the report—*

3           “(1) *any allegations of abuse described under*  
4 *subsection (b)(6) and any actions by the Department*  
5 *or a component, directorate, or office of the Depart-*  
6 *ment that the Officer identifies as responsive to such*  
7 *allegations;*

8           “(2) *a list of Department programs and activi-*  
9 *ties for which civil rights and civil liberties impact*  
10 *assessments were conducted, or policy advice, rec-*  
11 *ommendations, or other technical assistance was pro-*  
12 *vided;*

13           “(3) *any recommendations issued by the Officer*  
14 *to the Secretary or the head of a component, direc-*  
15 *torate, or office, together with information on the sta-*  
16 *tus of the implementation of such recommendations;*

17           “(4) *information on the diversity and equal em-*  
18 *ployment opportunity activities of the Department,*  
19 *including information on complaint management and*  
20 *adjudication of equal employment opportunity com-*  
21 *plaints and efforts to ensure compliance throughout*  
22 *the Department with equal employment opportunity*  
23 *requirements;*

24           “(5) *a description of any efforts to engage with*  
25 *individuals and communities whose civil rights and*

1 *civil liberties may be affected by activities carried out*  
2 *by the Department, including public meetings; and*

3 *“(6) information on total staffing for the Office*  
4 *of Civil Rights and Civil Liberties, including—*

5 *“(A) the number of full-time, part-time and*  
6 *contract support personnel; and*

7 *“(B) information on the number of employ-*  
8 *ees whose primary responsibilities include sup-*  
9 *porting the Officer in carrying out paragraph*  
10 *(9) of subsection (b).”.*

11 *(b) CLERICAL AMENDMENT.—The item relating to sec-*  
12 *tion 705 in section 1(b) of the Homeland Security Act of*  
13 *2002 is amended to read as follows:*

*“Sec. 705. Officer for civil rights and civil liberties.”.*

14 **SEC. 3. COMPTROLLER GENERAL REVIEW.**

15 *Not later than 180 days after the date of the enactment*  
16 *of this Act, the Comptroller General of the United States*  
17 *shall submit to Congress a report on subsection (b)(11) of*  
18 *section 705 of the Homeland Security Act of 2002 (6 U.S.C.*  
19 *345), as amended by section 2.*