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REPORT
109–259

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2007

MAY 25, 2006.—Ordered to be printed

Mr. ROBERTS, from the Select Committee on Intelligence, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 3237]

The Select Committee on Intelligence (SSCI or Committee), having considered the original bill (S. 3237), to authorize appropriations for fiscal year 2007 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, reports an original bill without amendment favorably thereon and recommends that the bill do pass.

CLASSIFIED SUPPLEMENT TO THE COMMITTEE REPORT

The classified nature of United States intelligence activities precludes disclosure by the Committee of details of its budgetary recommendations in this Report. The Committee has prepared a classified supplement to this Report that contains (a) the Classified Annex to this Report and (b) the classified Schedule of Authorizations. The Schedule of Authorizations is incorporated by reference in the Act and has the same legal status as public law. The Classified Annex to this Report explains the full scope and intent of the Committee's actions in the classified Schedule of Authorizations. The Classified Annex has also been incorporated by reference in Section 103. As such, the Intelligence Community is required to comply with any directions or requirements contained therein as it would any other statutory requirement.

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The classified supplement to the Report is available for review by any Member of the Senate, subject to the provisions of Senate Resolution 400 of the 94th Congress, as amended by Senate Resolution 445 of the 108th Congress.

The classified supplement is made available to the Committees on Appropriations of the Senate and the House of Representatives, to the Permanent Select Committee on Intelligence of the House of Representatives, and to the President. The President shall provide for appropriate distribution within the Executive Branch.

SECTION-BY-SECTION ANALYSIS AND EXPLANATION

The following is a section-by-section analysis and explanation of the Intelligence Authorization Act for Fiscal Year 2007, as reported herein. Following the section-by-section analysis and explanation there are Committee comments on other matters. The report also includes additional views offered by Committee Members regarding this legislation and other matters.

TITLE I—INTELLIGENCE ACTIVITIES

Section 101. Authorization of appropriations

Section 101 lists the United States government departments, agencies, and other elements for which the Act authorizes appropriations for intelligence and intelligence-related activities for fiscal year 2007.

Section 102. Classified schedule of authorizations

Section 102 makes clear that the details of the amounts authorized to be appropriated for intelligence and intelligence-related activities and the applicable personnel ceilings covered under this title for fiscal year 2007 are contained in a classified Schedule of Authorizations. The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President.

Section 103. Incorporation of classified annex

Section 103 incorporates into law the Classified Annex to this Report. Unless otherwise specifically stated, the amounts authorized in the Classified Annex are not in addition to amounts authorized to be appropriated by other provisions of the Act or by the classified Schedule of Authorizations.

The Committee has taken the step of incorporating the Classified Annex because the Executive Branch, in the past, has refused to treat with equal weight the language in the classified annexes and the text of recent authorization acts and their accompanying classified schedules of authorizations. This Committee, and Congress, will not permit the Executive Branch to ignore the clear instructions of Congress merely because the directives are contained, by necessity of classification, in an annex accompanying the report associated with intelligence authorizing legislation. The Committee directs the Executive Branch to comply fully with any directed transfers, temporary limitations on use (fences), or other limitations or instructions contained in the Classified Annex to this Report.

Section 104. Personnel ceiling adjustments

Section 104 authorizes the Director of National Intelligence (DNI), with the approval of the Director of the Office of Management and Budget (OMB), in fiscal year 2007 to authorize employment of civilian personnel in excess of the personnel ceilings applicable to the elements of the Intelligence Community under Section 102 by an amount not to exceed 2 percent of the total of the ceilings applicable under Section 102. The DNI may exercise this authority only if necessary to the performance of important intelligence functions. Any exercise of this authority must be reported to the intelligence committees of the Congress.

Section 105. Intelligence Community Management Account

Section 105 authorizes appropriations for the Intelligence Community Management Account (CMA) of the DNI and sets the personnel end-strength for the elements within the CMA for fiscal year 2007.

Subsection (a) authorizes appropriations of $648,952,000 for fiscal year 2007 for the activities of the CMA of the DNI. Subsection (a) also authorizes funds identified for advanced research and development to remain available for two years.

Subsection (b) authorizes 1,575 full-time personnel for elements within the CMA for fiscal year 2007 and provides that such personnel may be permanent employees of a CMA element or detailed from other elements of the United States government.

Subsection (c) authorizes additional appropriations and personnel for the CMA as specified in the classified Schedule of Authorizations and permits the additional funding for research and development to remain available through September 30, 2008.

Subsection (d) requires that, except as provided in Section 113 of the National Security Act of 1947, personnel from another element of the United States government shall be detailed to an element of the CMA on a reimbursable basis, except that for temporary functions such personnel may be detailed on a non-reimbursable basis for periods of less than one year.

Section 106. Incorporation of reporting requirements

Section 106 incorporates into the Act by reference each requirement to submit a report contained in the Joint Explanatory Statement to accompany the Conference Report or in the Classified Annex accompanying the Conference Report.

Section 107. Availability to public of certain intelligence funding information

Section 107 would require the President to disclose the aggregate amount of funds requested for the National Intelligence Program in the annual budget submission for the program. The section would also require Congress to disclose the aggregate amount of funds authorized to be appropriated, and the aggregate amount appropriated, for the National Intelligence Program. It also directs the DNI to conduct a study to assess the advisability of publicly disclosing the aggregate amount of funding requested, authorized, and appropriated for each of the 16 elements of the Intelligence Community. The report must be submitted to Congress within 180 days of enactment of this Act.

Section 108. Response of Intelligence Community to requests from Congress for intelligence documents and information

Section 108 provides for certain procedural requirements related to the ability of Congress to gain access, through the intelligence committees and other committees of jurisdiction, to intelligence reports, assessments, estimates, legal opinions, and other intelligence information. The provision states that elements of the Intelligence Community must provide to the intelligence committees any intelligence documents or information requested by the Chairman or Vice Chairman (or Ranking Minority Member) of such committees. The statutory requirement applies only to existing intelligence documents and information and would not apply to requests to generate new intelligence assessments, reports, estimates, legal opinions, or other information.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Section 201. Authorization of appropriations

Section 201 authorizes appropriations in the amount of $256,400,000 for fiscal year 2007 for the Central Intelligence Agency Retirement and Disability Fund.

TITLE III—INTELLIGENCE AND GENERAL INTELLIGENCE COMMUNITY MATTERS

Section 301. Increase in employee compensation and benefits authorized by law

Section 301 provides that funds authorized to be appropriated by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

Section 302. Restriction on conduct of intelligence activities

Section 302 provides that the authorization of appropriations by the Act shall not be deemed to constitute authority for the conduct of any intelligence activity that is not otherwise authorized by the Constitution or laws of the United States.

Section 303. Clarification of definition of Intelligence Community under the National Security Act of 1947

Section 303 amends Section 3(4)(L) of the National Security Act of 1947 (50 U.S.C. 401a(4)(L)) to permit the designation as "elements of the intelligence community" of other elements of departments and agencies of the United States government not listed in Section 3(4).

Section 304. Improvement of notification of Congress regarding intelligence activities of the United States Government

Section 304 amends the requirements for notifications to Congress under Sections 502 and 503 of the National Security Act of 1947 (50 U.S.C. 413a & 413b). First, Section 304 amends the definition of "congressional intelligence committees" in Section 3(7) of the National Security Act of 1947 (50 U.S.C. 401a(7)), specifically

including "each member" of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives within such definition. Second, Section 304 requires that, in the event that the DNI or the head of an Intelligence Community element does not provide to all Members of the "congressional intelligence committees" the notification required by Section 502 (relating to intelligence activities other than covert actions) or Section 503 (relating to covert actions) of the National Security Act of 1947, that all Members will be provided with a notification of this fact and will be provided with a summary of the intelligence activity or covert action in a manner sufficient to permit such Members to assess the legality, benefits, costs, and advisability of the intelligence activity or covert action. Third, Section 304 extends requirements in Section 502 of the National Security Act of 1947 on the form and contents of reports to the "congressional intelligence committees" on intelligence activities other than covert actions to the requirements for notifications to Congress under Section 503 of that Act (relating to covert actions). Fourth, the section requires that any change to a covert action finding under Section 503 of that Act must be reported to the committees, rather than the existing requirement to report any "significant" change.

Section 305. Delegation of authority for travel on common carriers for intelligence collection personnel

Section 116 of the National Security Act of 1947 (50 U.S.C. 404k) allows the DNI to authorize travel on any common carrier when it is consistent with Intelligence Community mission requirements or, more specifically, is required for cover purposes, operational needs, or other exceptional circumstances. As presently written, the DNI may only delegate this authority to the Principal Deputy DNI (PDDNI) or, with respect to Central Intelligence Agency (CIA) employees, to the Director of the CIA.

Section 305 of this bill provides that the DNI may delegate the authority in Section 116 of the National Security Act of 1947 to the head of any element of the Intelligence Community. This expansion is consistent with the view of the Committee that the DNI should be able to delegate authority throughout the Intelligence Community when such delegation serves the overall interests of the Community.

Section 305 also provides that the head of an Intelligence Community element to whom travel authority has been delegated is also empowered to delegate the authority to senior officials of the element as specified in guidelines issued by the DNI. This allows for administrative flexibility, consistent with the guidance of the DNI, for the entire Community. To facilitate Congressional oversight, the DNI shall submit the guidelines to the intelligence committees of the Congress.

Section 306. Modification of availability of funds for different intelligence activities

Section 306 conforms the text of Section 504(a)(3)(B) of the National Security Act of 1947 (50 U.S.C. 414(a)(3)(B) (governing the funding of intelligence activities)) with the text of Section 102A(d)(5)(A)(ii) of that Act (50 U.S.C. 403–1(d)(5)(A)(ii)), as

amended by Section 1011(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. No. 108–458 (Dec. 17, 2004)) (governing the transfer and reprogramming by the DNI of certain intelligence funding). In particular, this conforming amendment replaces the "unforeseen requirements" standard in Section 504(a)(3)(B) with a clearer standard to govern reprogrammings and transfers of funds authorized for a different intelligence or intelligence-related activity. Under the new standard, a reprogramming or transfer would be authorized if, in addition to the other requirements of Section 504(a)(3), the new use of funds would "support an emergent need, improve program effectiveness, or increase efficiency." This modification brings the standard for reprogrammings or transfers of intelligence funding into conformity with the standards applicable to reprogrammings and transfers under Section 102A of the National Security Act of 1947. The modification preserves Congressional oversight of proposed reprogrammings and transfers while enhancing the Intelligence Community's ability to carry out missions and functions vital to national security.

Section 307. Additional limitation on availability of funds for intelligence and intelligence-related activities

Section 307 specifies that appropriated funds may be obligated or expended for an intelligence or intelligence-related activity only if the "congressional intelligence committees" have been "fully and currently informed" of that activity, or if all Members have been provided a summary of the activity, consistent with the requirements of Sections 502(b) and 503(c)(5) of the National Security Act of 1947 (50 U.S.C. 413a(b) & 413b(c)(5)), as amended by Section 304 of this Act.

Section 308. Increase in penalties for disclosure of undercover intelligence officers and agents

Section 308 amends Section 601 of the National Security Act (50 U.S.C. 421) to increase the criminal penalties for individuals with authorized access to classified information who intentionally disclose any information identifying a covert agent, if those individuals know that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States. Currently, the maximum sentence for disclosure by someone who has had "authorized access to classified information that identifies a covert agent" is 10 years. Subsection (a) increases that maximum sentence to 15 years. Currently, the maximum sentence for disclosure by someone who "as a result of having authorized access to classified information, learns of the identity of a covert agent" is 5 years. Subsection (b) increases that maximum sentence to 10 years.

Section 309. Retention and use of amounts paid as debts to elements of the Intelligence Community

Section 309 adds a new Section 1103 to the National Security Act of 1947, authorizing Intelligence Community elements to accept, retain, and—for certain purposes—use amounts received from private parties as repayment of debts owed to such element.

Each year some property purchased with appropriated funds is damaged beyond use or is lost through the negligence of a private

party or an employee of the Intelligence Community. The damaged or lost property may have been used to support wartime activities or other national intelligence missions and, thus, waiting for additional funds to be provided through the next annual appropriation cycle inhibits the Intelligence Community's ability to quickly and efficiently support the war fighter and other national intelligence missions.

Section 309 addresses this shortcoming by authorizing elements of the Intelligence Community to accept and retain reimbursement, outside of the annual appropriations cycle, from a private party, including a Federal employee, who has been found to have negligently lost or damaged property. As a result, elements of the Intelligence Community will be able to expeditiously repair or replace lost or damaged property without waiting for the next appropriation cycle. Similarly, this new section also authorizes elements of the Intelligence Community to retain funds paid by Intelligence Community employees or former employees as repayment of a default on the terms and conditions of scholarship, fellowship, or other educational assistance provided by the Community to the employee. The section authorizes crediting payments only to the current appropriation account related to the debt and limits the subsequent use of the funds.

Section 310. Pilot program on disclosure of records under the Privacy Act relating to certain intelligence activities

As a result of reporting requirements in the Intelligence Authorization Act for Fiscal Year 2004 (Pub. L. No. 108–177 (Dec. 13, 2003)) intended to improve information access, the Intelligence Community, Department of Defense (DoD), Department of Homeland Security, and Federal law enforcement agencies formed the Information Sharing Working Group (ISWG) to, inter alia, identify impediments to information access in existing laws and in Intelligence Community and DoD policies. The ISWG issued its report in December 2004.

In the report, the ISWG noted that certain provisions of the Privacy Act could prevent the sharing of intelligence information within the Executive Branch. Generally, the Privacy Act (5 U.S.C. 552a) precludes the dissemination of information regarding U.S. persons stored within a system of records maintained by the United States government without the consent of that individual. There are, however, twelve exceptions to this general rule. For example, one exception permits the sharing of information to support a civil or criminal law enforcement activity under certain prescribed circumstances. There is no exception permitting Intelligence Community elements and other United States government agencies to share foreign intelligence or counterintelligence information (including information concerning international terrorism or proliferation of weapons of mass destruction) between or with elements of the Intelligence Community.

To address this shortcoming, Section 310 creates a pilot program to study a narrow intelligence exception to the Privacy Act. Specifically, the provision allows transfers under three circumstances. First, the provision permits elements of the Intelligence Community to share with other elements of the Intelligence Community information covered by the Privacy Act pertaining to an identifiable

individual when that information is relevant to a lawful and authorized foreign intelligence or counterintelligence activity. To share such foreign intelligence or counterintelligence information under this provision pertaining to other than an identifiable individual would require the authorization of the DNI or his designee. Second, the provision permits the head of an element of the Intelligence Community to request in writing from another United States government agency Privacy Act records relevant to a lawful and authorized activity of that element to protect against international terrorism or the proliferation of weapons of mass destruction. Third, the provision authorizes heads of non-Intelligence Community agencies to share Privacy Act records with an element of the Intelligence Community if the record constitutes "terrorism information" (as defined in Section 1016(a)(4) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. No. 108–458 (Dec. 17, 2004)) or information concerning the proliferation of weapons of mass destruction, if the receiving element of the Intelligence Community is lawfully authorized to collect or analyze the information to protect against international terrorism or proliferation. When necessary to determine whether a record held by a non-Intelligence Community agency constitutes terrorism information or information concerning the proliferation of weapons of mass destruction, the head of such agency may consult the DNI or the Attorney General. Section 310 also extends to the pilot program an exemption from certain records access and disclosure accounting requirements. In order to protect intelligence sources and methods from unauthorized disclosure, this exemption is similar to the exemption extended to the DNI under Section 416 of this Act.

Section 310 will not be effective until the DNI and the Attorney General issue guidelines governing the implementation and exercise of the authorities granted by the section. The guidelines will ensure that Section 310 is implemented in a manner designed to protect the constitutional rights of U.S. persons and consistent with existing law, regulations, and Executive orders governing the conduct of intelligence activities.

It is important to note that Section 310 facilitates the sharing only of intelligence information already lawfully collected and maintained within United States government record systems and relevant to a lawful and authorized foreign intelligence or counterintelligence activity (with a particular focus on sharing by non-Intelligence Community elements of information concerning international terrorism and the proliferation of weapons of mass destruction). The provision expressly states that the new authority to share already collected information does not permit the collection or retention of foreign intelligence or counterintelligence information not otherwise authorized by law.

To ensure that the exception to the Privacy Act permits necessary sharing of critical foreign intelligence and counterintelligence information while providing appropriate protections for the privacy and civil liberties of U.S. persons, Section 310 establishes a three-year pilot program. The exception to the Privacy Act will expire three years after the DNI and the Attorney General issue the guidelines discussed above, unless renewed. During the course of the program, the DNI and the Attorney General, in consultation with the Privacy and Civil Liberties Oversight Board, are required

to submit to the intelligence committees annual reports on the status and implementation of the pilot program. Additionally, six months prior to the expiration of the program, the DNI and the Attorney General, in coordination with the Privacy and Civil Liberties Oversight Board, will submit a final report to the intelligence committees, including any recommendations regarding continued authorization of the exception. Similarly, the Privacy and Civil Liberties Oversight Board will submit to the intelligence committees a separate report providing the Board's advice and counsel on the development and implementation of the authorities provided under this Section.

Section 310 includes modifications proposed by the Armed Services Committee, the Homeland Security and Governmental Affairs Committee, and individual Members of the Senate. Both the Office of the DNI and the Department of Justice (DoJ) have expressed their support for this provision. Specifically, in a letter to the Committee dated December 1, 2005, referring to a provision similar to Section 310 in the Committee-passed Intelligence Authorization Act for Fiscal Year 2006, the DNI wrote, the "Administration strongly supports this provision because it would facilitate the type of information sharing mandated by the [Intelligence Reform and Terrorism Prevention Act of 2004], consistent with the need to protect privacy and civil liberties." Similarly, in a separate letter to the Committee dated November 28, 2005, the Assistant Attorney General for Legislative Affairs wrote, "We support section 307 [of the Committee-passed Intelligence Authorization Act for Fiscal Year 2006]. * * * We believe that this provision would help in resolving some of the concerns that some agencies have expressed about sharing information with the FBI for counterterrorism purposes." In fact, the DNI included a Privacy Act exception similar to Section 310 in this year's annual request for legislative authorities.

Section 311. Extension to Intelligence Community of authority to delete information about receipt and disposition of foreign gifts and decorations

Current law requires that certain Federal "employees"—a term that generally applies to all officials and personnel of the Intelligence Community and certain contractors, spouses, dependents, and others—file reports with their "employing" agency regarding the receipt of gifts or "decorations" from foreign governments. See 5 U.S.C. 7342. Following compilation of these reports, the "employing" agency is required to annually file with the Secretary of State detailed information about the receipt of foreign gifts and decorations reported by its employees, including the source of the gift. See 5 U.S.C. 7342(f). The Secretary of State is then required to publish a comprehensive list of the agency reports in the Federal Register. See id. With respect to the activities of the Intelligence Community, the public disclosure of such gifts or decorations in the Federal Register has the potential to compromise intelligence sources (e.g., the confirmation of an intelligence relationship with a foreign government) and could undermine national security. Recognizing this potential concern, the Director of Central Intelligence (DCI) was granted a limited exemption from reporting certain specified information about such foreign gifts or decorations where the publication of the information could adversely affect United States intel-

ligence sources. See Pub. L. No. 95–105, Sec. 515(a) (Aug. 17, 1977). Section 1079 of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108–458 (Dec. 17, 2004) ("Intelligence Reform Act"), extended a similar exemption to the DNI (in addition to amending the existing exemption to apply to the Director of the CIA).

Section 311 amends existing law to provide to the heads of each Intelligence Community element the same limited exemption from specified public reporting requirements that is currently authorized for the DNI and the Director of the CIA. The national security concerns that prompted the initial DCI exemption, and the subsequent exemptions for the DNI and Director of the CIA, apply with equal weight to other Intelligence Community elements—the publication of certain information relating to foreign gifts or decorations provided to employees of all Intelligence Community agencies could adversely affect United States intelligence sources. Section 311 provides the exemption necessary to protect national security, but mandates that the information not provided to the Secretary of State be provided to the DNI to ensure continued independent oversight of the receipt by Intelligence Community "employees" of foreign gifts or decorations.

Section 312. Availability of funds for travel and transportation of personal effects, household goods, and automobiles

Section 312 provides the CIA and the Office of the DNI the same authority that is granted to the Department of State by Section 2677 of Title 22, United States Code, when travel and transportation authorized by valid travel orders begins in one fiscal year, but may not be completed during that same fiscal year. The Committee believes this authority will relieve the administrative burden of charging the eligible costs to two fiscal years' appropriations and adjusting associated accounts.

Section 313. Director of National Intelligence report on compliance with the Detainee Treatment Act of 2005

Section 313 requires the DNI to submit a classified report to the intelligence committees on all measures taken by the Office of the DNI, and by any element of the Intelligence Community with relevant responsibilities, on compliance with two provisions of the Detainee Treatment Act of 2005. The report is to be submitted no later than September 1, 2006.

The Detainee Treatment Act of 2005 provides, in part, that no individual in the custody or under the physical control of the United States, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment. The report required by Section 313 shall include a description of any detention or interrogation methods that have been determined to comply with this prohibition or have been discontinued pursuant to it.

The Detainee Treatment of Act of 2005 also provides, in part, for the protection, against civil or criminal liability, for United States Government personnel who had engaged in officially authorized interrogations that were determined to be lawful at the time. Section 313 requires the DNI to report on actions taken to implement that provision.

The report required by Section 313 shall also include an appendix containing all guidelines on the application of the Detainee Treatment Act of 2005 to the detention or interrogation activities, if any, of any element of the Intelligence Community. The appendix shall also include all legal opinions of the DoJ about the meaning of the Detainee Treatment Act of 2005 or its application to detention or interrogation activities, if any, of any element of the Intelligence Community.

Section 314. Report on alleged clandestine detention facilities for individuals captured in the global war on terrorism

Section 314 requires the DNI to submit a classified, detailed report to the Members of the intelligence committees that provides a full accounting on each clandestine prison or detention facility, if any, currently or formerly operated by the United States Government, regardless of location, at which detainees in the global war on terrorism are or have been held. Section 314 sets forth required elements of this report: the location and size of each such prison or facility, its disposition if no longer operated by the United States Government, plans for the ultimate disposition of detainees currently held, a description of interrogation procedures used or formerly used, and whether those procedures are or were in compliance with United States obligations under the Geneva Conventions and the Convention Against Torture. The classified report is to be submitted no later than 60 days after enactment of this Act.

TITLE IV—MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE COMMUNITY

Subtitle A—Office of the Director of National Intelligence

Section 401. Additional authorities of the Director of National Intelligence on intelligence information sharing

Section 401 amends the National Security Act of 1947 to provide the DNI statutory authority to use National Intelligence Program funds to quickly address deficiencies or needs that arise in intelligence information access or sharing capabilities. The new Section 102A(g)(1)(G) of the National Security Act of 1947 authorizes the DNI to provide to a receiving agency or component—for that agency or component to accept and use—funds that have been authorized and appropriated to address intelligence information access or sharing needs. In the alternative, the DNI may provide to a receiving agency necessary or associated services and equipment procured with funds from the National Intelligence Program. The new Section 102A(g)(1)(H) of the National Security Act of 1947 also grants the DNI the authority to provide funds to non-National Intelligence Program activities for the purpose of addressing critical gaps in intelligence information access or sharing capabilities. Without the authority, the development and implementation of necessary capabilities could be delayed by an agency's lack of authority to accept or utilize systems funded from the National Intelligence Program, inability to use or identify current-year funding, or concerns regarding the augmentation of appropriations. These new DNI authorities are similar to authority granted to the National Geospatial-Intelligence Agency (NGA) with respect to im-

agery and imagery-related systems. See Section 105(b)(2)(D)(ii) of the National Security Act of 1947 (50 U.S.C. 403–5).

Section 402. Modification of limitation on delegation by the Director of National Intelligence of the protection of intelligence sources and methods

Section 402 amends the National Security Act of 1947 to modify the limitation on delegation by the DNI of the authority to protect intelligence sources and methods from unauthorized disclosure. The provision permits the DNI to delegate the authority to the Deputy Directors of National Intelligence or the Chief Information Officer of the Intelligence Community. A previous provision in the National Security Act of 1947 had vested the power to protect sources and methods in the DCI, but did not constrain further delegation of the authority.

Section 403. Authority of the Director of National Intelligence to manage access to human intelligence information

Section 403 provides the DNI with the authority to ensure the dissemination of intelligence information collected through human sources, including the underlying operational data necessary to understand that reporting, to appropriately cleared analysts or other intelligence officers throughout the Intelligence Community. Recent intelligence failures—particularly related to pre-war intelligence assessments on Iraq—have demonstrated the importance of rebuilding and improving the nation's human intelligence capabilities. While the Intelligence Community is making some progress in this regard, a great deal remains to be done, particularly in the area of access to intelligence gathered through human intelligence operations.

The Committee's review of the Intelligence Community's pre-war assessments on Iraq highlighted the impact of unnecessary restrictions on access by intelligence analysts to human intelligence information. In its Report of the Select Committee on Intelligence on the U.S. Intelligence Community's Pre-War Intelligence Assessments on Iraq, the Committee concluded that the Intelligence Community's failure to provide cleared analysts with a legitimate "need-to-know" broader access to human intelligence reporting, including the operational data underlying that reporting, contributed to the flawed intelligence assessments on Iraq's weapons of mass destruction programs. Access to this data—controlled by the agencies that collected the information—would have provided analysts with a better understanding of the reliability of the sources of the reporting, as well as other significant intelligence information required for their work.

The Intelligence Reform Act provides the DNI with a number of tools to foster greater information access within the Community. Section 403 builds on these tools by providing the DNI with the specific authority to ensure analysts and other Intelligence Community officers are provided with improved access to human intelligence reporting, consistent with the DNI's determinations regarding the protection of intelligence sources and methods. Although the Committee expects that individual elements will continue to retain human intelligence operational data, access decisions will be made by the DNI as a neutral arbiter of need-to-know. No longer

will these access decisions be left to individual agencies with a parochial—and understandable—desire to protect sources at all costs. Access to human intelligence reporting, and underlying operational reporting, must be balanced against real threats to sources and methods. Under Section 403, the Committee expects the DNI to perform the necessary balancing. Section 403 also provides the DNI with full and regular access to the information necessary to "manage and direct * * * the tasking of, collection, analysis, production, and dissemination of national intelligence by elements of the intelligence community." See Section 102A(f)(1)(A)(ii) of the National Security Act of 1947 (50 U.S.C. 403–1(f)(1)(A)(ii)).

To effectively implement Section 403, the DNI should standardize security clearance processes across Intelligence Community elements to resolve issues that have hampered information access in the past. The Committee does not believe that working in a particular agency makes one Intelligence Community officer inherently more trustworthy than a counterpart with the same security clearance and a legitimate "need-to-know" at another element. Resolution of disparate clearance standards and processes, however, should provide Intelligence Community elements with an additional degree of comfort that, while information from sources for which those agencies are responsible has received greater distribution, the recipients of that information are appropriately cleared consistent with DNI standards. Based on the authorities provided to the DNI in the Intelligence Reform Act and this section, the Committee is confident that the DNI can implement the protections necessary for intelligence sources and methods, while making human intelligence information more readily available to appropriately cleared intelligence officers who need the information for the conduct of their duties.

Section 404. Additional administrative authority of the Director of National Intelligence

From an organizational standpoint, the DNI should be able to rapidly focus the Intelligence Community on a particular intelligence issue through a coordinated effort that uses all available resources. The ability of the DNI to respond with flexibility and to coordinate the Intelligence Community response to an emerging threat should not depend on the time-sensitive vagaries of the budget cycle and should not be constrained by general limitations found in appropriations law (e.g., 31 U.S.C. 1532) or the annual limitation set forth in the "General Provisions" of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act. See, e.g., Consolidated Appropriations Act, 2005, Division H—Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005, Section 610, Pub. L. No. 108–447 (Dec. 8, 2004); see also, e.g., In re: Veterans Administration Funding of Federal Executive Boards, 65 Comp. Gen. 689 (July 1, 1986) (discussing history of prohibition on interagency financing of boards, commissions, councils, committees, or similar groups).

To provide this needed operational and organizational flexibility, Section 404 grants the DNI the authority—notwithstanding certain specified provisions of general appropriations law—to approve interagency financing of national intelligence centers (authorized

under Section 119B of the National Security Act of 1947 (50 U.S.C. 404o–2)) and of other boards, commissions, councils, committees, or similar groups established by the DNI (e.g., "mission managers," as recommended by the Commission on the Intelligence Capabilities of the United States regarding Weapons of Mass Destruction (WMD Commission)). Under Section 404, the DNI could authorize the pooling of resources from various Intelligence Community and non-Intelligence Community agencies to finance national intelligence centers or other organizational groupings designed to address identified intelligence matters. Once approved by the DNI, the provision also expressly permits other United States government departments and agencies, including Intelligence Community elements, to fund, or participate in the funding of, the authorized activities.

The Committee recognizes the need for coordinated responses to national security threats and intelligence problems. To better understand how the DNI intends to utilize the authority provided under Section 404, the Committee directs the DNI to provide an annual report—through the end of fiscal year 2010—providing details on how this authority has been exercised, what amount of appropriated funds attributable to each interagency contributor has been accessed to finance each national intelligence center or other organizational grouping under this section, and whether the National Intelligence Program or other budget account has been modified to provide specific funding for such national intelligence centers or other organizational groupings or whether funding will continue to be provided under the authority of Section 404.

Section 405. Clarification of limitation on co-location of the Office of the Director of National Intelligence

Section 405 clarifies that the ban on co-location of the Office of the DNI with any other Intelligence Community element, which is slated to take effect as of October 1, 2008, applies to the co-location of the headquarters of the Office of the DNI with the headquarters of any other Intelligence Community agency or element. This provision provides flexibility to ensure that components of the Office of the DNI may be located in the most appropriate facility or facilities, including co-location with components of Intelligence Community agencies or elements. The Committee is aware that the DNI intends to find a headquarters that is separate and apart from the headquarters of the various Intelligence Community elements, consistent with the expressed intent of Congress.

Section 406. Additional duties of the Director of Science and Technology of the Office of the Director of National Intelligence

As part of the restructuring of the nation's intelligence infrastructure in the Intelligence Reform Act, Congress created a Director of Science and Technology within the Office of the DNI. Under the Act, the Director of Science and Technology serves as the DNI's chief representative for science and technology, assisting the DNI in formulating a long-term strategy for scientific advances in the field of intelligence and on the science and technology elements of the intelligence budget. Additionally, the Director of Science and Technology chairs the DNI's Science and Technology Committee—responsible for coordinating advances in intelligence-related research and development.

The House-passed version of the Intelligence Authorization Act for Fiscal Year 2007, H.R. 5020 (109th Cong., 2d Sess.), contains a provision (Section 403) that further expounds on the role of the Director of Science and Technology. Section 403 in H.R. 5020 would require the Director of Science and Technology to systematically identify the Intelligence Community's most significant challenges requiring technical solutions and to develop options to enhance research and development efforts to meet requirements in a timely manner. Section 403 would also require the DNI to submit to Congress a report detailing the strategy for development and use of technology throughout the Intelligence Community through 2021. The report is to identify the Community's highest priority intelligence gaps that may be resolved by the use of technology; identify goals for advanced research and development; explain how advanced research and development projects funded under the National Intelligence Program address the identified gaps; specify current and projected research and development projects; and provide a plan for incorporating technology from research and development projects into National Intelligence Program acquisition programs.

Section 406 incorporates additional requirements into a provision otherwise similar to Section 403 of H.R. 5020.

The Committee supports the House provision, but also believes that such a provision should make clear that it is the responsibility of the Director of Science and Technology to assist the DNI in ensuring that the Intelligence Community's research and development priorities and projects are consistent with national intelligence requirements; that a priority be placed on addressing identified deficiencies in the collection, processing, analysis, or dissemination of national intelligence; that the research and development priorities and projects account for program development and acquisition funding constraints; and that such priorities and projects address system requirements from collection to final dissemination.

The Committee further requires the Director of Science and Technology, at the direction of the DNI, to develop and maintain an integrated Technical Standards System for major acquisitions. The Technical Standards System should improve the availability of technical standards for the design, development, and operation of Intelligence Community programs and projects; reduce duplication of effort and improve interoperability within the Intelligence Community, with the private sector, and with international partners; and enhance awareness of standardization in the Intelligence Community. Under this provision, the Director of Science and Technology will develop standards that document uniform engineering and technical requirements for processes, procedures, practices, and methods, including requirements for selection, application, and design criteria of particular items. The Committee encourages the DNI to consult, as appropriate, with the heads of other United States government departments and agencies (e.g., the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, Secretary of Homeland Security) when developing standards and specifications under this provision.

Section 407. Appointment and title of Chief Information Officer of the Intelligence Community

Section 407 converts the position of Chief Information Officer (CIO) of the Intelligence Community from an appointment by the President, by and with the advice and consent of the Senate, to an appointment by the DNI. The provision also expressly designates the position as CIO of the Intelligence Community. The modification to the title of the position of CIO is consistent with the position's overall responsibilities as outlined in Section 103G(b) of the National Security Act of 1947 (50 U.S.C. 403–3g(b)). Section 407 shall apply with respect to any appointment of an individual to serve as CIO of the Intelligence Community that is made on or after the date of enactment of this Act.

The CIO of the Intelligence Community has reorganized his office to reflect his legislative responsibilities. The reorganized office consists of the following units: (1) Intelligence Community Governance; (2) Intelligence Community Enterprise Architecture; (3) Information Sharing and Customer Outreach; (4) Intelligence Community Information Technology Management; and (4) Enterprise Services. The CIO of the Intelligence Community has also established a CIO Council that is composed of program managers from several key Intelligence Community elements. The CIO of the Intelligence Community also plans on establishing a "board of governors" consisting of officials from the various agencies who will work together to resolve issues.

The creation of a CIO of the Intelligence Community (Section 303 of the Intelligence Authorization Act for Fiscal Year 2005 (Pub. L. No. 108–487 (Dec. 23, 2004))), combined with the budgetary authorities and information technology responsibilities of the DNI (see, e.g., Section 1011 of the Intelligence Reform Act), laid an important foundation for improvements in the information technology infrastructure of the Intelligence Community. The Committee believes that the CIO of the Intelligence Community must provide direction and guidance to all elements of the Intelligence Community to ensure that information technology research and development, security, and acquisition programs support information access throughout the Intelligence Community. The modification to the manner in which the CIO of the Intelligence Community is appointed should not be construed to diminish the authorities or responsibilities of the position.

Section 408. Inspector General of the Intelligence Community

Section 1078 of the Intelligence Reform Act authorizes the DNI to establish an Office of Inspector General if the DNI determines that an Inspector General "would be beneficial to improving the operations and effectiveness of the Office of the DNI." It further provides that the DNI may grant to the Inspector General "any of the duties, responsibilities, and authorities" set forth in the Inspector General Act of 1978. The DNI has now appointed an Inspector General and has granted the Inspector General certain authorities pursuant to Director of National Intelligence Instruction No. 2005–10 (Sept. 7, 2005). The duties, responsibilities, and authorities of the Inspector General, and his ability to exercise his authorities across all elements of the Community, remain ambiguous, however. In H.R. Rep. 109–411 (April 6, 2006) (report of the Permanent Se-

lect Committee on Intelligence of the House of Representatives (HPSCI) to accompany H.R. 5020, the Intelligence Authorization Act for Fiscal Year 2007), the HPSCI has also expressed concerns that "[the Office of the Inspector General] is currently chartered in a way that does not ensure the maximum utility of that office to act as a coordinating organization for all Intelligence Community Inspector Generals [sic], specifically with regard to keeping the Committee informed of its activities and findings."

The problems expressed by the HPSCI report and the concerns identified in the Committee's oversight must be addressed by an empowered and effective Inspector General to serve the DNI and the Intelligence Community. A strong Inspector General is vital to achieving the goal, set forth in the Intelligence Reform Act, of improving the operations and effectiveness of the Intelligence Community. It is also vital to achieving the broader goal of identifying problems and deficiencies wherever they may be found in the Intelligence Community, including the manner in which elements of the Community interact with each other in such matters as providing access to information and undertaking joint or cooperative activities. To that end, by way of a proposed new Section 103H of the National Security Act of 1947, Section 408 of this Act establishes an Inspector General of the Intelligence Community.

The office will be established within the Office of the DNI. The Inspector General will keep both the DNI and the intelligence committees fully and currently informed about problems and deficiencies in Intelligence Community programs and operations and the need for corrective actions. The Inspector General will be appointed by the President, with the advice and consent of the Senate, and will report directly to the DNI. To bolster the Inspector General's independence within the Intelligence Community, the Inspector General may be removed only by the President, who must then communicate the reasons for the Inspector General's removal to the intelligence committees.

The DNI may prohibit the Inspector General from conducting an investigation, inspection, or audit if the DNI determines that such action is necessary to protect vital national security interests. If the DNI exercises the authority to prohibit an investigation, the DNI must provide the reasons for taking such action to the intelligence committees within seven days. The Inspector General may, as necessary, provide a response to the intelligence committees regarding the actions of the DNI.

The Inspector General will have direct and prompt access to the DNI and any Intelligence Community employee, or employee of a contractor, whose testimony is needed. The Inspector General will also have direct access to all records that relate to programs and activities for which the Inspector General has responsibility. Failure to cooperate will be grounds for appropriate administrative action.

The Inspector General will have subpoena authority; however, information within the possession of the United States government must be obtained through other procedures. Subject to the DNI's concurrence, the Inspector General may request information from any United States government department, agency, or element. Upon receiving such a request from the Inspector General, heads of United States government departments, agencies, and elements,

insofar as practicable and not in violation of law or regulation, must provide the requested information to the Inspector General.

The Inspector General must submit semiannual reports to the DNI that include a description of significant problems relating to Intelligence Community programs and operations and to the relationships between Intelligence Community elements. The reports must include a description of Inspector General recommendations and a statement whether corrective action has been completed. Within 30 days of receiving the report from the Inspector General, the DNI must submit each semiannual report to Congress.

The Inspector General must immediately report to the DNI particularly serious or flagrant violations. Within seven days, the DNI must transmit those reports to the intelligence committees, together with any comments. In the event the Inspector General is unable to resolve differences with the DNI, the Inspector General is authorized to report the serious or flagrant violation directly to the intelligence committees. Reports to the intelligence committees are also required with respect to investigations concerning high-ranking Intelligence Community officials.

Intelligence Community employees, or employees of contractors, who intend to report to Congress an "urgent concern"—such as a violation of law or Executive order, a false statement to Congress, or a willful withholding from Congress—may report such complaints and supporting information to the Inspector General. Following a review by the Inspector General to determine the credibility of the complaint or information, the Inspector General must transmit such complaint and information to the DNI. On receiving the complaints or information from the Inspector General (together with the Inspector General's credibility determination), the DNI must transmit such complaint or information to the intelligence committees. If the Inspector General does not find a complaint or information to be credible, the reporting individual may submit the matter directly to the intelligence committees by following appropriate security practices outlined by the DNI. Reprisals or threats of reprisal against reporting individuals constitute reportable "urgent concerns." The Committee will not tolerate actions by the DNI, or by any Intelligence Community element, constituting a reprisal for reporting an "urgent concern" or any other matter to Congress. Nonetheless, reporting individuals should ensure that the complaint and supporting information are provided to Congress consistent with appropriate procedures designed to protect intelligence sources and methods and other sensitive matters.

For matters within the jurisdiction of both the Inspector General of the Intelligence Community and an Inspector General for another Intelligence Community element (or a parent department or agency), the Inspectors General must expeditiously resolve who will undertake the investigation, inspection, or audit. For investigations, inspections, or audits commenced by an Inspector General of an Intelligence Community element prior to the enactment of this Act, the Inspector General of the Intelligence Community should exercise his authority in a manner that does not disrupt the timely completion of such investigations, inspections, or audits or result in unnecessary duplication of effort. An Inspector General for an Intelligence Community element must share the results of any inspection, investigation, or audit with any other Inspector General,

including the Inspector General of the Intelligence Community, who otherwise would have had jurisdiction over the investigation.

Consistent with existing law, the Inspector General must report to the Attorney General any information, allegation, or complaint received by the Inspector General relating to violations of Federal criminal law.

Section 408 includes modifications proposed by the Armed Services Committee of the Senate during its sequential consideration of S. 1803, the Intelligence Authorization Act for Fiscal Year 2006. In addition to technical modifications, these proposed modifications: (1) removed the authority of the Inspector General of the Intelligence Community to serve as the final arbiter of jurisdictional disputes among Intelligence Community Inspectors General; (2) exempted initial investigations, inspections, or audits of the DoD Inspector General, or any other Inspectors General within the DoD, from the authority of the Inspector General of the Intelligence Community to conduct a subsequent investigation, inspection, or audit of the same matter if the initial investigation, inspection, or audit was deemed deficient; and (3) deleted a requirement that Intelligence Community Inspectors General must comply fully with requests for information or assistance from the Inspector General of the Intelligence Community. Compare S. 1803, Section 408, as reported by the Committee (S. Rep. 109–142 (Sept. 29, 2005) (adding proposed subsection (g)(1), (g)(3), and (h)(3)(C) of new Section 103H of the National Security Act of 1947)) with S. 1803, Section 408, as reported by the Armed Services Committee (S. Rep. 109–173 (Oct. 27, 2005) (modifying proposed subsection (g)(1), (g)(3), and (h)(3)(C))).

Section 409. Leadership and location of certain offices and officials

Section 409 expressly establishes four new officers within the Office of the DNI: (1) the CIO of the Intelligence Community; (2) the Inspector General of the Intelligence Community; (3) the Director of the National Counterterrorism Center; and (4) the Director of the National Counter Proliferation Center (NCPC). It also provides that the DNI shall appoint the Director of the NCPC.

The establishment of a Director of the NCPC is consistent with Section 1022 of the Intelligence Reform Act. Section 1022 added a new Section 119A of the National Security Act of 1947, which provides that the President shall establish an NCPC. Under the Act, the NCPC has seven missions and objectives and should serve as the primary organization within the United States government for analyzing and integrating all intelligence pertaining to proliferation. Among its other powers, the NCPC is authorized to coordinate the counter proliferation plans and activities of all United States government departments and agencies. Section 119A also provided that the NCPC should conduct "strategic operational planning" for the United States government to prevent the spread of weapons of mass destruction, delivery systems, and materials and technologies.

Congress provided the President with the authority to waive any, or all, of the requirements of Section 119A if it was determined that they did not materially improve the nonproliferation ability of the United States. At the time Congress enacted the Intelligence Reform Act, the WMD Commission had not completed its work. Congress provided that the President, after receiving the WMD

Commission report, should submit to Congress his views on the establishment of the NCPC.

In its March 31, 2005, report, the WMD Commission recommended that the President establish a relatively small NCPC that manages and coordinates analysis and collection across the Intelligence Community on nuclear, biological, and chemical weapons. The WMD Commission supported the concept of "strategic operational planning," but recommended that it not be performed by the NCPC.

On June 29, 2005, the White House announced that the President had endorsed the establishment of an NCPC. The statement provided that the NCPC would exercise "strategic oversight" of the Intelligence Community's weapons of mass destruction activities. The DNI would ensure that the NCPC establishes strategic intelligence collection and analysis requirements regarding WMD that are consistent with United States policies. Under the President's plan, the NCPC would be established within the Office of the DNI, and the DNI would appoint the Director of the NCPC who would then report to the DNI. On August 8, 2005, the DNI announced the appointment of the first Director of the NCPC. This appointment represented an important first step in the establishment of the NCPC.

Section 409 does not amend any other procedural or substantive provision of Section 119A of the National Security Act of 1947. If the President determines not to assign to the NCPC any power provided by Section 119A, notice must be provided to Congress in writing as required by that section.

Section 410. National Space Intelligence Center

The United States maintains a very large investment in satellites, and this investment has grown dramatically in recent years. These satellites serve the commercial and national security needs of the nation. As such, a loss of any or all of these assets could do tremendous harm to our economy and security.

At the same time, our investment in intelligence collection concerning threats to our interests in space has declined markedly as a function of our overall investment in space systems. Despite this significant investment, some estimates indicate that we commit only 10 percent of what we did nearly 25 years ago to the analysis of threats to space systems. Recent international events have only served to highlight this problem.

In an effort to better understand the future threats to our space assets, as well as potential threats to the United States from space, Section 410 establishes a National Space Intelligence Center (NSIC). It is not the intent of the Committee that the NSIC be a physical consolidation of existing intelligence entities with responsibilities for various types of intelligence related to space. Rather, the Committee believes that the first function of the NSIC is to coordinate all collection, analysis, and dissemination of intelligence related to space, as well as participate in Intelligence Community analyses of requirements for space systems. The NSIC augments the existing efforts of the National Air and Space Intelligence Center (NASIC) and Missile and Space Intelligence Center (MSIC); it is not designed to replace them. Indeed, the Committee intends that the NSIC work closely with NASIC and MSIC to ensure a co-

ordinated Intelligence Community response to issues that intersect the responsibilities of all three organizations.

The Director of the NSIC shall be the National Intelligence Officer for Science and Technology, and the Committee encourages the appointment of an Executive Director from the Senior Intelligence Service. Further details related to the mission of the NSIC can be found in the Classified Annex accompanying this Act.

Section 411. Operational files in the Office of the Director of National Intelligence

Section 411 adds a new Section 700 to the National Security Act of 1947. It ensures that protected operational files provided by elements of the Intelligence Community to the Office of the DNI carry with them any exemption such files had from Freedom of Information Act (FOIA) requirements for search, review, publication, or disclosure.

In the CIA Information Act, Congress authorized the DCI to exempt operational files of the CIA from several requirements of the FOIA, particularly those requiring search and review in response to FOIA requests. In a series of enactments codified in Title VII of the National Security Act of 1947, Congress has extended the exemption to the operational files of the NGA, the National Security Agency (NSA), the National Reconnaissance Office (NRO), and the Defense Intelligence Agency (DIA). It has also provided that the files of the Office of the National Counterintelligence Executive (NCIX) should be treated as operational files of the CIA (to the extent they meet the criteria for CIA operational files).

The components of the Office of the DNI, including the National Counterterrorism Center (NCTC), require access to information contained in operational files. The purpose of Section 411 is to make clear that the operational files of any component of the Intelligence Community, for which an operational files exemption is applicable, retain their exemption from FOIA search, review, disclosure, or publication.

The new Section 700 of the National Security Act of 1947 provides several limitations. The exemption does not apply to information disseminated beyond the Office of the DNI. Also, as Congress has provided in the operational files exemptions for the CIA and other Intelligence Community elements, Section 700 provides that the exemption from search and review does not apply to requests by United States citizens or permanent residents for information about themselves (although other FOIA exemptions, such as appropriate classification, may continue to protect such files from public disclosure). The search and review exemption would not apply to the subject matter of Congressional or Executive Branch investigations into improprieties or violations of law.

In the DNI's annual request to the Committee for legislative authorities during the fiscal year 2006 legislative cycle, the Office of the DNI asked for a broader exemption from the FOIA than currently provided in Section 411. The Committee considers it likely that the operations of the Office of the DNI, in particular the activities of the NCTC and the NCPC, may require an operational files exemption. Before acting on such a request, the DNI, through the CIO of the Intelligence Community or other appropriate officers, should systematically study and report to the intelligence

committees regarding the application of the FOIA to the Office of the DNI.

As part of this review, the DNI should report on the responsibility assigned by Congress in the Intelligence Reform Act concerning operational file exemptions. Congress amended each operational file statute to provide that the exemption should be made only with the coordination of the DNI. Congress also provided that the decennial review of the exemptions in force must be undertaken with the DNI. These decennial reviews must include consideration of the historical value or other public interest in categories of files and the potential for declassifying a significant amount of the material in them. The DNI should advise the intelligence committees on the benefits of coordinating the five decennial reviews which now occur at different times.

Section 412. Eligibility for incentive awards of personnel assigned to the Office of the Director of National Intelligence

Section 412 updates Section 402 of the Intelligence Authorization Act for Fiscal Year 1984 (Pub. L. No. 98–215 (Dec. 9, 1983)) to reflect and incorporate organizational changes made by the Intelligence Reform Act. Section 412 also makes other technical and stylistic amendments and strikes a subsection of the law that applied only during fiscal year 1987.

Section 413. Repeal of certain authorities relating to the Office of the National Counterintelligence Executive

Section 413 amends the authorities and structure of the Office of the NCIX to eliminate certain independent administrative authorities that had been vested in the NCIX when that official was appointed by, and reported to, the President. Those authorities are unnecessary, redundant, and anomalous now that the NCIX is to be appointed by, and under the authority, direction, and control of the DNI.

Section 414. Inapplicability of Federal Advisory Committee Act to advisory committees of the Office of the Director of National Intelligence

Congress enacted the Federal Advisory Committee Act (FACA) (5 U.S.C. App.) to regulate the use of advisory committees throughout the Federal Government. The FACA sets forth the responsibilities of Congress and the Executive Branch with regard to such committees and outlines procedures and requirements for such committees. As originally enacted in 1972, the FACA expressly exempted advisory committees utilized by the CIA and the Federal Reserve System. Section 414 amends the FACA to extend this exemption to those advisory committees established or used by the Office of the DNI.

Section 415. Membership of the Director of National Intelligence on the Transportation Security Oversight Board

Section 415 substitutes the DNI, or the DNI's designee, as a Member of the Transportation Security Oversight Board established under Section 115(b)(1) of Title 49, United States Code, in place of the Director of the CIA, or the Director of the CIA's designee.

Section 416. Applicability of the Privacy Act to the Director of National Intelligence and Office of the Director of National Intelligence

The Privacy Act (5 U.S.C. 552a) has long contained a provision under which the Director of the CIA could promulgate rules to exempt any system of records within the CIA from certain disclosure requirements under the Act. The provision was designed to ensure that the CIA could provide adequate and appropriate safeguards for certain sensitive information in its records systems. In assuming the leadership of the Intelligence Community, the DNI similarly requires the ability to safeguard sensitive information in records systems within the Office of the DNI. Section 416 extends to the DNI the authority to promulgate rules under which certain records systems of the Office of the DNI may be exempted from certain Privacy Act disclosure requirements.

Subtitle B—Central Intelligence Agency

Section 421. Director and Deputy Director of the Central Intelligence Agency

The Intelligence Reform Act established the positions of the DNI and the PDDNI and abolished the positions of DCI and Deputy Director of Central Intelligence as those positions had previously existed. The DNI and PDDNI are responsible for leading the entire Intelligence Community, which includes many components from the DoD. Moreover, the DNI and PDDNI must ensure that the war fighter continues to receive timely, actionable intelligence. Accordingly, the Intelligence Reform Act continued the tradition of permitting a commissioned officer to serve as either the leader or principal deputy of the Intelligence Community, so long as both positions are not filled by commissioned officers at the same time.

In establishing the positions of DNI and PDDNI, the Act separated the leadership of the Intelligence Community from the leadership of the CIA. Although the Act explicitly provided for a Director of the CIA, it did not provide for a statutory deputy to the Director.

Section 421 establishes the position of Deputy Director of the CIA. The Deputy Director will be appointed by the President, by and with the advice and consent of the Senate, and will assist the Director of the CIA in carrying out the duties and responsibilities of that office. In the event of a vacancy in the position of Director of the CIA, or during the absence or disability of the Director, the Deputy Director will act for, and exercise the powers of, the Director. The DNI will recommend a nominee to the President to fill any vacancy in this position.

With the amendments made by Section 421, the Presidential nomination of both the Director and Deputy Director of the CIA must be confirmed by the advice and consent of the Senate. Given the sensitive operations of the CIA, nominees for the positions of Director and Deputy Director of the CIA merit close scrutiny by Congress to examine the nominees' qualifications prior to their assumption of the duties of these offices. With respect to the Deputy Director of the CIA, the requirement for Senate confirmation also provides assurance that, in the event of a vacancy in the position of Director of the CIA, or during the absence or disability of the

Director, Congress will have previously expressed its confidence in the ability of the nominee to assume those additional duties.

Section 421 also requires that both the Director and Deputy Director of the CIA be appointed "from civilian life." The considerations that encourage appointment of a military officer to the position of DNI or PDDNI do not apply to the leadership of the CIA. Indeed, given the CIA's establishment in 1947 as an independent civilian intelligence agency with no direct military or law enforcement responsibilities, the Committee does not believe that a similar construct of military leadership is appropriate at that agency. Accordingly, the Committee recommends that both the Director and Deputy Director of the CIA should be appointed from civilian life. To preserve the important liaison relationship between the military and the CIA, the Committee recognizes the important role played by the Associate Director of the CIA for Military Support and continues to support the appointment of a current military officer to that position.

Unlike the requirement that the Secretary of Defense be appointed "from civilian life" (see 10 U.S.C. 113(a)), Section 421 does not contain any limitation on how long a nominee must have been "from civilian life" prior to appointment. The only restriction is that an active duty officer must first retire or resign his or her commission and return to civilian life prior to being appointed as either the Director or Deputy Director of the CIA. Thus, the President retains the flexibility to nominate candidates with significant military experience for either or both positions.

Given the nomination by the President of General Michael V. Hayden to serve as Director of the CIA, and this Committee's favorable reporting of that nomination to the full Senate, the Committee has included a provision that will make the requirement that the Director of the CIA be appointed "from civilian life" applicable to the nomination of the successor to the Director of the CIA in office on the date of enactment of this Act.

With respect to the Deputy Director of the CIA, the Committee has also included a provision that will make the nomination and confirmation requirements of Section 421 applicable to the successor to the individual administratively performing the duties of the Deputy Director of the CIA on the date of enactment of this Act. The prohibition on an active duty commissioned officer serving as the Deputy Director of the CIA and the requirement that the position be filled by a Presidential nominee confirmed by the Senate will not take effect until the earlier of the date the President nominates an individual to serve in such position or the date the individual presently performing the duties of that office leaves the post.

To insulate an officer serving as the Director or Deputy Director of the CIA from undue military influence, Section 421 provides that so long as the individual continues to perform the duties of the Director or Deputy Director of the CIA, he may continue to receive military pay and allowances, but he is not subject to the supervision or control of the Secretary of Defense or any of the military or civilian personnel of the DoD.

Section 422. Enhanced protection of Central Intelligence Agency intelligence sources and methods from unauthorized disclosure

Section 422 amends the National Security Act of 1947 to provide the Director of the CIA the authority to protect CIA intelligence sources and methods from unauthorized disclosure, consistent with any direction from the President or the DNI. Prior to the Intelligence Reform Act, the authority to protect intelligence sources and methods had been assigned to the DCI, as head of the Intelligence Community. The CIA relied on the DCI's sources and methods authority as the CIA's primary statutory basis for protecting a range of CIA information, including its human sources, from public or unauthorized disclosure in a wide range of contexts and proceedings. This authority proved critical for assuring current and potential human intelligence sources that CIA could, and would, keep the fact of their association with the United States government secret, whether in civil litigation, administrative proceedings, or other arenas. In Section 102A(i) of the National Security Act, as added by the Intelligence Reform Act, Congress transferred this DCI authority to the DNI.

In the DNI's annual request to the Committee for legislative authorities during the fiscal year 2006 legislative cycle, the DNI asked that a provision similar to Section 422 be enacted to supplement the grant of authority to the DNI with a comparable grant to the Director of the CIA, subject to the direction of the President or DNI. It is intended to underscore for intelligence sources that the CIA has explicit statutory authority to protect its sources and methods. The revision to Section 104A(d) of the National Security Act of 1947 is not intended to, and does not, authorize the Director of the CIA to withhold from the DNI any CIA information to which the DNI is entitled by statute, Executive order, Presidential directive, or other applicable law or regulation.

Section 422 also makes conforming changes to Section 6 of the CIA Act of 1949.

Section 423. Additional exception to foreign language proficiency requirement for certain senior level positions in the Central Intelligence Agency

Section 423 modifies statutory provisions pertaining to foreign language proficiency for certain senior officials in the CIA. Currently, Section 104A(g) of the National Security Act of 1947 (Section 421 of the Committee's bill results in the re-designation of Section 104A(g) as 104A(h)) provides that an individual cannot be appointed to a position in the Senior Intelligence Service in the CIA's Directorate of Intelligence (DI) or Directorate of Operations (DO) (now the National Clandestine Service) unless the individual demonstrates at least a specified level of professional speaking and reading proficiency in a foreign language. Current law also grants the Director of the CIA limited authority to waive this requirement with respect to a position or class of positions with notification to the intelligence committees.

Section 423 enhances CIA management flexibility by authorizing the Director of the CIA to waive the foreign language proficiency requirement, not just with respect to positions or categories of positions, but also as to individual officers or categories of individual officers—subject to the Director of the CIA's determination that

such proficiency is not necessary for the successful performance of the duties and responsibilities involved. The section also adds a "grandfather" clause to the language proficiency requirement, creating a transition period that will allow CIA leadership to more effectively manage the senior Agency workforce during a critical period of change. Section 423 also updates an outdated reference to the DO, now the "National Clandestine Service." Finally, Section 423 makes appropriate conforming changes to the report on waivers currently required by Section 104A(g).

The Committee expects the CIA to move forward in its commitment to enhance its overall language capabilities. The personnel flexibility granted by Section 423 will allow the Director of the CIA to better integrate requirements for language skills into leadership training, promotion, and retention decisions and to plan for the projected influx of new DI and National Clandestine Service officers.

Section 424. Additional functions and authorities for protective personnel of the Central Intelligence Agency

Section 424 amends Section 5(a)(4) of the CIA Act of 1949 (50 U.S.C. 403f(a)(4)) which authorizes protective functions by designated security personnel who serve on CIA protective details.

Arrest authority

Section 424 authorizes protective detail personnel, when engaged in the performance of protective functions, to make arrests in two circumstances. Under this section, protective detail personnel may make arrests without a warrant for any offense against the United States—whether a felony, misdemeanor, or infraction—that is committed in their presence. They may also make arrests without a warrant if they have reasonable grounds to believe that the person to be arrested has committed or is committing a felony, but not other offenses, under the laws of the United States.

Regulations, approved by the Director of the CIA and the Attorney General, will provide safeguards and procedures to ensure the proper exercise of this authority. The provision specifically does not grant any authority to serve civil process or to investigate crimes.

By granting CIA protective detail personnel limited arrest authority, the provision mirrors statutes applicable to certain Federal law enforcement agencies that are authorized to perform protective functions. The authority provided under this section is consistent with those of other Federal elements with protective functions, such as the Secret Service (see 18 U.S.C. 3056(c)(1)(c)), the State Department's Diplomatic Security Service (see 22 U.S.C. 2709(a)(5)), and the Capitol Police (see 2 U.S.C. 1966(c)). Arrest authority will contribute significantly to the ability of CIA protective detail personnel to fulfill their responsibilities to protect officials against serious threats without being dependent on the response of Federal, State, or local law enforcement officers. The grant of arrest authority under this amendment is supplemental to all other authority that CIA protective detail personnel have by virtue of their statutory responsibility to perform the protective functions set forth in the CIA Act of 1949.

Protection of personnel of the Office of the DNI

Section 424 also authorizes the Director of the CIA, on request of the DNI, to make CIA protective detail personnel available to the DNI and to other personnel within the Office of the DNI. The DNI, in consultation with the Director of the CIA and the Attorney General, should advise the intelligence committees within 180 days of enactment of this Act on whether this arrangement meets the protective needs of the Office of the DNI or whether other statutory authority is needed.

Section 425. Director of National Intelligence report on retirement benefits for former employees of Air America

Section 425 provides for a report by the DNI on the advisability of providing federal retirement benefits to United States citizens who were employees of Air America or an associated company prior to 1977, during the time that the company was owned or controlled by the United States and operated by the CIA. There are bills in the Senate and House (S. 651 and H.R. 1276) that would provide federal retirement benefits for those employees. By including Section 425 in this authorization bill, the Committee takes no position on the merits of that legislation. The sole purpose of Section 425 is to direct the DNI to undertake a study about Air America, its relationship to the CIA, the missions it performed, and casualties its employees suffered, as well as the retirement benefits that had been contracted for, or promised to, the employees and what they received. The DNI shall make recommendations on the advisability of legislative action and include any views that the Director of the CIA may have on the matters covered by the report. On the request of the DNI, the Comptroller General shall assist in the preparation of the report in a manner consistent with the protection of classified information.

Subtitle C—Defense Intelligence Components

Section 431. Enhancements of National Security Agency training program

Section 16 of the NSA Act of 1959 (50 U.S.C. 402 note) authorizes the NSA to establish and maintain an undergraduate training program to facilitate the recruitment of individuals with skills critical to the NSA's mission. Under the program, the government has always had the right to recoup the educational costs expended for the benefit of employees whose employment with NSA is "terminated"—either voluntarily by the employee or by the NSA for misconduct.

Section 431 amends Section 16(d) of the NSA Act of 1959 to clarify that "termination of employment" includes situations in which employees fail to maintain satisfactory academic performance as defined by the Director of NSA. Such employees shall be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, shall be liable for repayment. Failure to maintain satisfactory academic performance has always been grounds for default resulting in the right of the government to recoup the educational costs expended for the benefit of the defaulting employee. Thus, this provision is a clarification of that obligation.

In addition, Section 431 permits the Director of NSA to protect intelligence sources and methods by deleting a requirement that the NSA publicly identify to educational institutions which students are NSA employees. Deletion of this disclosure requirement will enhance the ability of NSA to protect personnel and prospective personnel and to preserve the ability of training program participants to undertake future clandestine or other sensitive assignments for the Intelligence Community. The Committee recognizes that nondisclosure is appropriate when disclosure would threaten intelligence sources or methods, would endanger the life or safety of the student, or would limit the employee's or prospective employee's ability to perform intelligence activities in the future. Despite the deletion of the disclosure requirement, the Committee expects the NSA to continue to prohibit participants in the training program from engaging in any intelligence functions at the institutions they attend under the program. See H.R. Rep. 99–690, Part I (July 17, 1986) ("NSA employees attending an institution under the program will have no intelligence function whatever to perform at the institution.").

Section 432. Codification of authorities of National Security Agency protective personnel

Section 432 amends the NSA Act of 1959 (50 U.S.C. 402 note) by adding a new Section 20, to clarify and enhance the authority of protective details for the NSA.

New Section 20(a) would authorize the Director of the NSA to designate NSA personnel to perform protective detail functions for the Director and other personnel of the NSA who are designated from time to time by the Director of the NSA as requiring protection. Section 11 of the NSA Act of 1959 presently provides that the Director of NSA may authorize agency personnel to perform certain security functions at NSA headquarters, at certain other facilities, and around the perimeter of those facilities. The new authority for protective details would enable the Director of the NSA to provide security when the Director or other designated personnel require security away from those facilities.

New Section 20(b) would provide that NSA personnel, when performing protective detail functions, may exercise the same arrest authority that Section 424 provides for CIA protective detail personnel. The arrest authority for NSA protective detail personnel would be subject to guidelines approved by the Director of the NSA and the Attorney General. The purpose and extent of that arrest authority, and the limitations on it, are described in the section-by-section explanation for Section 424. That analysis applies equally to the arrest authority provided to NSA protective detail personnel by Section 20(b).

While this bill provides separately for authority for CIA and NSA protective details, the DNI should advise the intelligence committees whether overall policies, procedure, and authority should be provided for protective services, when necessary, for other elements or personnel (or their immediate families) of the Intelligence Community.

Section 433. Inspector general matters

The Inspector General Act of 1978 (Pub. L. No. 95–452 (Oct. 12, 1978)) established a government-wide system of Inspectors General, some appointed by the President with the advice and consent of the Senate and others "administratively appointed" by the heads of their respective Federal entities. These Inspectors General were authorized to "conduct and supervise audits and investigations relating to the programs and operations" of the government and "to promote economy, efficiency, and effectiveness in the administration of, and * * * to prevent and detect fraud and abuse in, such programs and operations." See 5 U.S.C. App. 2. These Inspectors General also perform an important reporting function, "keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of * * * programs and operations and the necessity for and progress of corrective action." Id. The investigative authorities exercised by Inspectors General, and their relative independence from the government operations they audit and investigate, provide an important mechanism to ensure that the operations of the government are conducted as efficiently and effectively as possible.

The Inspectors General of the CIA and the Departments of Defense, Energy, Homeland Security, Justice, State, and Treasury are appointed by the President, with the advice and consent of the Senate. These Inspectors General—authorized by either the Inspectors General Act of 1978 or Section 17 of the CIA Act of 1949—enjoy a degree of independence from all but the head of their respective departments or agencies. These Inspectors General also have explicit statutory authority to access information from their respective departments or agencies or other United States government departments and agencies and may use subpoenas to access information (e.g., from a department or agency contractor) necessary for them to carry out their authorized functions.

The NRO, DIA, NSA, and NGA have established their own "administrative" Inspectors General. Because they are not identified in Section 8G of the Inspector General Act of 1978, however, these Inspectors General lack the explicit statutory authorization to access information relevant to their audits or investigations, or to compel the production of such information via subpoena. This lack of authority has impeded access to information—in particular, information from contractors—that is necessary for these Inspectors General to perform their important function. These Inspectors General also lack the indicia of independence necessary for the Government Accountability Office to recognize the annual financial statement audits of these Inspectors General as compliant with the Chief Financial Officers Act of 1990 (Pub. L. No. 101–576 (Nov. 15, 1990)). This lack of independence also prevents the DoD Inspector General, and would prevent the Inspector General of the Intelligence Community, from relying on the results of NRO, DIA, NSA, or NGA Inspector General audits or investigations that must meet "generally accepted government auditing standards."

To provide an additional level of independence and to ensure prompt access to the information necessary for these Inspectors General to perform their audits and investigations, Section 433 amends Section 8G(a)(2) of the Inspector General Act of 1978 to include the NRO, DIA, NSA, and NGA as "designated federal enti-

ties." As so designated, the heads of these Intelligence Community elements will be required by statute to administratively appoint Inspectors General for these agencies. As designated Inspectors General under the Inspector General Act of 1978, these Inspectors General will be responsible to the heads of the NRO, DIA, NSA, and NGA. The removal or transfer of these Inspectors General from their post by the heads of their respective office or agency must be promptly reported to the intelligence committees. These Inspectors General will also be able to exercise other investigative authorities, including those governing access to information and the issuance of subpoenas, utilized by other Inspectors General under the Inspector General Act of 1978.

To protect vital national security interests, Section 433 permits the DNI or the Secretary of Defense to prohibit the Inspectors General of the NRO, DIA, NSA, and NGA from initiating, carrying out, or completing any audit or investigation they are otherwise authorized to conduct. This authority-similar to the authority of the Director of the CIA under Section 17 of the CIA Act of 1949 with respect to the Inspector General of the CIA and the authority of the Secretary of Defense under Section 8 of the Inspector General Act of 1978 with respect to the DoD Inspector General-provides the President, through the DNI or the Secretary of Defense, a mechanism to protect extremely sensitive intelligence sources and methods or other vital national security interests. The Committee expects that this authority will be exercised rarely by the DNI or the Secretary of Defense.

Section 434. Confirmation of appointment of heads of certain components of the Intelligence Community

Under present law and practice, the directors of the NSA, NGA, and NRO—each with a distinct and significant role in the national intelligence mission—are not confirmed by the Senate in relation to their leadership positions at these agencies. Presently, the President appoints the Directors of NSA and NGA, and the Secretary of Defense appoints the Director of the NRO. None of the appointments must be confirmed by the Senate, unless a military officer is promoted or transferred into the position. Under such circumstances, Senate confirmation of the officer's promotion or assignment to that position is the responsibility of the Committee on Armed Services. The review of the Committee on Armed Services, however, relates to the military promotion or assignment and not specifically to the assumption by the individual of the leadership of these critical Intelligence Community elements.

Section 434 provides, expressly and uniformly, that the heads of each of these entities shall be nominated by the President and that such nominations will be confirmed by the advice and consent of the Senate. The NSA, NGA, and NRO play a critical role in the national intelligence mission of the United States government. The spending of these agencies comprises a significant portion of the entire intelligence budget of the United States, and a substantial portion of the National Intelligence Program. Through advice and consent, the Senate can enable the Congress to fulfill more completely its responsibility for providing oversight to the intelligence activities of the U.S. Government. Section 434 does not alter the

role of the Committee on Armed Services in reviewing and approving the promotion or assignment of military officers.

Section 434(b) provides that the amendments made by Section 434 apply prospectively. Therefore, the Directors of NSA, NGA, and NRO as of the date of the enactment of this Act will not be affected by the amendments, which will apply initially to the appointment and confirmation of their successors.

Section 435. Clarification of national security missions of National Geospatial-Intelligence Agency for analysis and dissemination of certain intelligence information

The National Imagery and Mapping Agency Act of 1996 (Pub. L. No. 104–201 (Sept. 23, 1996) (NIMA Act)) formally merged the imagery analysis and mapping efforts of the DoD and the CIA. In the NIMA Act, Congress cited a need "to provide a single agency focus for the growing number and diverse types of customers for imagery and geospatial information resources within the Government * * * to harness, leverage, and focus rapid technological developments to serve the imagery, imagery intelligence, and geospatial information customers." See Section 1102(1) of the NIMA Act. Since then, there have been rapid developments in airborne and commercial imagery platforms, new imagery and geospatial phenomenology, full motion video, and geospatial analysis tools.

Section 921 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. No. 108–136 (Nov. 24, 2003)) changed the name of the National Imagery and Mapping Agency to the National Geospatial-Intelligence Agency. The name change was intended to introduce the term "geospatial intelligence" to better describe the unified activities of the NGA related to the "analysis and visual representation of characteristics of the earth and activity on its surface." See S. Rep 108–46 (May 13, 2003) (accompanying The National Defense Authorization Act for Fiscal Year 2004, S. 1050, 108th Cong., 1st Sess.).

Though the NGA has made significant progress toward unifying the traditional imagery analysis and mapping missions of the CIA and the DoD, it has been slow to embrace other facets of "geospatial intelligence" that have recently been enabled by advances in technology, including the processing, storage, and dissemination of full motion video (FMV) and ground-based photography. The NGA's current library of geospatial products reflects its heritage—predominantly overhead imagery and mapping products. While the NGA is beginning to incorporate more airborne and commercial imagery, its products are nearly devoid of FMV and ground-based photography.

The Committee believes that these new products (including FMV and ground-based photography) should be included, with available positional data, in NGA libraries for retrieval on DoD and Intelligence Community networks. Current mission planners and military personnel are well-served with traditional imagery products and maps, but FMV of the route to and from a facility or photographs of what a facility would look like to a foot soldier—rather than from an aircraft—would be of immense value to our military personnel and intelligence officers. Ground-based photography is amply available from open sources, as well as other government sources such as military units, U.S. embassy personnel, Defense

AttachEs, Special Operations Forces, foreign allies, and clandestine officers. These products should be better incorporated into NGA data libraries.

To address these concerns, Section 435 adds an additional national security mission to the responsibilities of the NGA. To fulfill this new mission, the NGA would be required, as directed by the DNI, to "analyze, disseminate, and incorporate into the National System for Geospatial-Intelligence, likenesses, videos, or presentations produced by ground-based platforms, including handheld or clandestine photography taken by or on behalf of human intelligence collection organizations or available as open-source information." Section 435 also makes clear that this new responsibility "does not include the authority to manage or direct the tasking of, set requirements and priorities for, set technical requirements related to, or modify any classification or dissemination limitations related to the collection of, handheld or clandestine photography taken by or on behalf or human intelligence collection organizations." Although Section 435 does not give the NGA direct authority to set technical requirements for the collection of "handheld or clandestine photography," the Committee encourages the NGA to engage Intelligence Community partners on these technical requirements to ensure that their output can be incorporated into the National System for Geospatial-Intelligence.

Section 435 does not modify the definition of "imagery" found in Section 467(2)(A) of Title 10, United States Code, or alter any of the existing national security missions of the NGA. Section 435 stresses the merits of FMV and ground-based photography and clarifies that the NIMA Act's exclusion of "handheld or clandestine photography taken by or on behalf of human intelligence organizations" from the definition of "imagery" does not prevent the exploitation, dissemination, and archiving of that photography. In other words, the NGA would still not dictate how human intelligence agencies collect ground-based photography, have authority to modify the classification or dissemination limitations applicable to such photography, or manage collection requirements for such photography. Rather, the NGA should simply avail itself of this photography, regardless of the source, but within the security handling guidelines consistent with the photography's classification as determined by the collecting organization.

Section 436. Security clearances in the National Geospatial-Intelligence Agency

Although the NSA and the NGA have much in common as technical intelligence agencies administratively linked with the DoD, their present authorities for handling security clearances differ significantly. The Secretary of Defense has delegated to the NSA authority for contracting out background investigations and performing adjudications on individuals doing work for the agency—both for government employees and contractors. In contrast, the NGA must rely on the Defense Security Service (DSS) or the Office of Personnel Management (OPM) for background investigations and on the DIA for adjudication. The consequences for processing times are dramatic, particularly regarding contractor clearances. According to information provided by the DNI's Special Security Center, the average end-to-end processing times for contractors in

July 2005 was 73 days for NSA and 540 days for NGA. The NSA and the NGA processing times for contractors in the first quarter of fiscal year 2006 showed that this significant discrepancy is continuing. Moreover, the ability of the DSS to mitigate the problem suffered a setback on April 25, 2006, when the DSS temporarily suspended its acceptance of new contractor security clearance applications.

The NGA's long backlog for contractor clearances is deleterious for both the agency and the contractors that support it. For the NGA, the backlog drives up financial costs and makes it more difficult to compete for talent. The backlog also distorts efficiencies and good business practices in the private sector, as contractors adjust to the realities of significantly different agency clearance timelines.

The Committee calls upon the DNI to follow closely the progress made by the NGA in reducing processing times and to monitor the variation between the processing times of other intelligence agencies with similar requirements. The Committee anticipates that the arrangement created by Section 436 will be a temporary measure, pending the consistent attainment of reduced processing times by the OPM, the DIA, and the DSS.

Subtitle D—Other Elements

Section 441. Foreign language incentive for certain non-special agent employees of the Federal Bureau of Investigation

Section 441 authorizes the Director of the Federal Bureau of Investigation (FBI) to pay a cash award, up to 5 percent of basic pay, to any FBI employee who uses or maintains foreign language skills in support of FBI analyses, investigations, or operations to protect against international terrorism or clandestine intelligence activities. Such awards are subject to the joint guidance of the Attorney General and the DNI.

The Committee believes that the guidance of the Attorney General and DNI should reward FBI employees who are using one or more foreign languages in the regular performance of their official duties or maintaining proficiency in an obscure language that is of occasional operational significance. An employee should not automatically receive a 5 percent award for proficiency in any language. An FBI employee working in support of the FBI's counterintelligence mission who is fluent in French, German, or Spanish should not be eligible for a foreign language incentive, unless that employee is using those language skills in the regular performance of his or her official duties. However, the joint guidance should recognize that there are certain languages of operational significance that are not used on a routine basis, but for which a significant incentive should be awarded to maintain the necessary proficiency so that the employee can use the skill for operational purposes when the need arises. Finally, the joint guidelines should also provide for enhanced language incentive awards for those employees who use multiple languages in the performance of their duties, provided that no language incentive award can exceed the cap of 5 percent of basic pay.

Section 442. Authority to secure services by contract for the Bureau of Intelligence and Research of the Department of State

Section 442 authorizes the Secretary of State, in certain circumstances, to enter into personal services contracts to support the mission of the Department's Bureau of Intelligence and Research (INR). The authority, which is similar to that provided to the DoD (see 10 U.S.C. 129b), will enable INR to obtain the services of personal services contractors to respond to unanticipated surge requirements prompted by emergent events or crises or under unique circumstances (e.g., to provide temporary backup that will permit full-time employees to seek needed training). Personal services contractors, particularly those with previous INR experience, would also be valuable to train and mentor new INR personnel.

Section 443. Clarification of inclusion of Coast Guard and Drug Enforcement Administration as elements of the Intelligence Community

Section 443 restores, with respect to the United States Coast Guard, the prior definition of "intelligence community" in the National Security Act of 1947 applicable to that service. See 50 U.S.C. 401a. Section 1073 of the Intelligence Reform Act modified the definition of "intelligence community," inadvertently limiting the Coast Guard's inclusion in the Intelligence Community to the Office of Intelligence or those portions of the Coast Guard concerned with the analysis of intelligence. Section 444 clarifies that all of the Coast Guard's intelligence elements are included within the definition of "intelligence community."

Section 443 also codifies the joint decision of the DNI and Attorney General to designate an office within the Drug Enforcement Administration as an element of the Intelligence Community.

Section 444. Clarifying amendments relating to Section 105 of the Intelligence Authorization Act for Fiscal Year 2004

Section 444 clarifies that the establishment of the Office of Intelligence and Analysis within the Department of the Treasury (Section 105 of the Intelligence Authorization Act for Fiscal Year 2004 (Pub. L. No. 108–177 (Dec. 13, 2003))), and its reorganization within the Office of Terrorism and Financial Intelligence (Section 222 of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Division H, Pub. L. No. 108–447 (Dec. 8, 2004))), do not affect the authorities and responsibilities of the DNI with respect to the Office of Intelligence and Analysis as an element of the Intelligence Community.

TITLE V—OTHER MATTERS

Section 501. Technical amendments to the National Security Act of 1947

Section 501 corrects several inadvertent technical anomalies in the National Security Act of 1947 arising from the amendments made to that Act by the Intelligence Reform Act.

Section 502. Technical clarification of certain references to Joint Military Intelligence Program and Tactical Intelligence and Related Activities

Section 502 makes technical clarifications to Section 102A of the National Security Act of 1947 to preserve the participation of the DNI in the development of the annual budget for the Military Intelligence Program (MIP), the successor program of the Joint Military Intelligence Program and Tactical Intelligence and Related Activities. Section 502 also preserves the requirement for consultation by the Secretary of the Defense with the DNI in the reprogramming or transfer of MIP funds.

Section 503. Technical amendments to the Intelligence Reform and Terrorism Prevention Act of 2004

Section 503 corrects a number of inadvertent technical errors in the specified sections of the Intelligence Reform Act.

Section 504. Technical amendments to Title 10, United States Code, arising from enactment of the Intelligence Reform and Terrorism Prevention Act of 2004

Section 504 corrects a number of inadvertent technical errors in Title 10, United States Code, arising from enactment of the Intelligence Reform Act.

Section 505. Technical amendment to the Central Intelligence Agency Act of 1949

Section 505 amends Section 5(a)(1) of the CIA Act of 1949 by striking or updating outdated references to the National Security Act of 1947. The Intelligence Reform Act significantly restructured and renumbered multiple sections of the National Security Act of 1947, leaving references in Section 5(a)(1) of the CIA Act to provisions that no longer exist or that are no longer pertinent.

Section 506. Technical amendments relating to the multiyear National Intelligence Program

Section 506 updates the "multiyear national foreign intelligence program" provision to incorporate and reflect organizational and nomenclature changes made by the Intelligence Reform Act.

Section 507. Technical amendments to the Executive Schedule

Section 507 makes several technical corrections to the Executive Schedule. This section substitutes the "Director of the Central Intelligence Agency" for the previous reference in Executive Schedule Level II to the "Director of Central Intelligence." See 5 U.S.C. 5313. Section 507 also strikes outdated references to Deputy Directors of Central Intelligence from Executive Schedule Level III. See 5 U.S.C. 5314. The provision also corrects the erroneous reference to the "General Counsel to the National Intelligence Director" in Executive Schedule Level IV. See 5 U.S.C. 5315.

Section 508. Technical amendments relating to redesignation of the National Imagery and Mapping Agency as the National Geospatial-Intelligence Agency

Section 508 makes several technical and conforming changes to existing law to bring these provisions in line with the change in

name of the National Imagery and Mapping Agency to the NGA, as provided for in Section 921(b) of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. No. 108–136 (Nov. 24, 2003)).

COMMITTEE COMMENTS

Information access: "Data-level" information

Since September 11, 2001, information sharing at the level of finished intelligence reporting has improved greatly within the Intelligence Community. Intelligence Community officers are sensitized to the need to notify others whenever potentially significant information comes to their attention. Communications and liaison among agencies are also much improved.

Despite these much needed advances, the Committee is concerned that information access at the "raw" or "data level"—where information has not yet been evaluated or minimized to protect U.S. person information—continues to lag behind Committee expectations. This "raw" or "data-level" information includes everything from "raw" intelligence (e.g., operational details in a human intelligence report) to partly processed and analyzed information (e.g., metadata, stored text, stored cable traffic, translated and transcribed audio files). "Connecting the dots" is only possible if appropriately cleared analysts, with a "need-to-know," have access to those "dots." Finished reporting often fails to contain all information relevant to a particular topic or issue of importance to an analyst or collection officer. These oversights are not surprising; the perspective of a reports officer is often quite different than that of an analyst or collection officer who may be interested in different pieces of information relevant to their target. In other words, data that may seem insignificant or unimportant to a reports officer may fill in a missing puzzle piece for an analyst or expose a critical weakness for a collection officer to exploit. For that reason, this Committee has continued to support greater "raw" or "data-level" access.

Agencies and organizations often resist providing access to "raw" or "data-level" information on security or privacy grounds—concerns that are significantly mitigated when those with access are appropriately cleared, have an established "need-to-know," and are bound by control mechanisms to ensure appropriate protections for security and privacy. The Committee has also found, however, that a misplaced sense of "ownership" by the collecting agency often inhibits information access programs.

To begin addressing concerns with "data-level" access, Section 317 of the Intelligence Authorization Act for Fiscal Year 2004 (Pub. L. No. 108–177 (Dec. 13, 2003)) mandated that the DCI and Secretary of Defense establish a pilot program to assess the "feasibility and advisability of permitting intelligence analysts of various elements of the intelligence community to access and analyze intelligence from the databases of other elements of the intelligence community." To implement this provision, a pilot program was established that granted the DIA Joint Intelligence Task Force—Combating Terrorism (JITF–CT) access to signals intelligence information in NSA databases. The NSA/DIA pilot program ran for approximately one year, ending in February 2005. According to re-

ports from both agencies, the pilot successfully established the value of sharing "data-level" information, the feasibility of non-NSA analysts gaining access to "raw" signals intelligence, and the means and procedures necessary to protect privacy in the process.

Although the database access and liaison relationships formed during the pilot program have been sustained at NSA and DIA, the Committee is concerned that database access has not been expanded, despite an ardent desire on the part of the JITF-CT. The Committee is also concerned that negotiations on a Memorandum of Agreement (MOA) designed to extend NSA database access to other DIA analysts outside of the JITF–CT have not been completed, despite a year of negotiations on the topic.

The Committee directs the NSA and the DIA to complete negotiations on the MOA by the end of August 2006. The Committee strongly encourages the direct involvement of the Office of the DNI in these negotiations. If disputes cannot be resolved by the NSA and the DIA directly, the DNI must exercise his responsibility "to ensure maximum availability of and access to intelligence information within the intelligence community." See Section 102A(g) of the National Security Act of 1947 (50 U.S.C. 403–1(g)). If the MOA is not finished by this deadline, the Committee will seek stronger measures in conference with the House on the Intelligence Authorization Act for Fiscal Year 2007 to ensure timely completion.

Once completed, this MOA should be posted on Intelink, and the NSA and DIA should also post a generic set of procedures, derived from the MOA and their experience with the pilot program, to inform other interested intelligence organizations of the requirements for access to NSA and DIA data. The DNI should establish a process for reviewing and approving access to other Intelligence Community databases based on the model provided by the NSA/DIA MOA. If other Intelligence Community elements have a demonstrated need for access to information, they should work with the DNI, or his designee within the Office of the DNI, to draft similar information access MOAs. The DNI should process all requests for database access and, in a timely manner, inform requesting organizations of the decision of the Office of the DNI, provide an explanation of the bases for any rejections, and establish a mechanism to appeal access denials.

Finally, the Committee directs the CIO of the Intelligence Community, the Deputy Director of National Intelligence for Analysis, the Deputy Director of National Intelligence for Customer Outcomes, and the Program Manager for the Information Sharing Environment to carefully examine proposals to standardize interfaces among NSA legacy databases. These databases were typically designed with a unique interface. These unique interfaces have inhibited the development and application of advanced analytic tools at the NSA. If a standard interface can be developed and advanced analytic tools made available to NSA analysts, these same analytic tools can be made available to other Intelligence Community elements with a demonstrated need to access NSA "data-level" information. A standardized approach to database interface could also be applied to other Intelligence Community databases. Properly designed and implemented, this technology could allow cross-agency "federated queries," broader database access for analysts, and much greater ease of access to important intelligence information.

Information access: Communities of interest

The NSA/DIA pilot program on information sharing—and other information access activities throughout the Intelligence Community—introduced an additional concept to help support information access: sharing information freely among analysts from different agencies and disciplines who are assigned to a common mission, which establishes their "need to know" and forms the basis for close collaboration, virtually or through physical co-location. For ease of reference, this concept can be summarized as full and equal access within a "community of interest." This "community of interest" would operate by providing "raw" or "data-level" access to intelligence analysts and collection managers working on common missions across agencies and disciplines and by co-locating these analysts and collectors. Experts in single disciplines would help all-source analysts and collection managers understand and interpret the information they access.

Evaluation of the NSA/DIA pilot program led DIA to conclude that there would be tremendous value in organizing "communities of interest" with equal access to all relevant data "at the first point of usability." Having experts on hand from each discipline would help all-source analysts better understand the information provided by the collection agencies, and all-source analysts would help the analysts from the collection agencies understand context and requirements.

The Committee strongly encourages the creation of "communities of interest" organized in this way. These "communities of interest" would not be a substitute for broad information access programs, but a mechanism for deriving the full benefit from such programs. The Committee directs the DNI, in collaboration with the Directors of NSA, CIA, DIA, and NGA, to develop a pilot program to permit all-source analysts from across the Intelligence Community to work directly with experts from the intelligence collection disciplines (human, signal, imagery, and open source intelligence). The pilot program should be conducted on a non-terrorism related, high-priority intelligence target. The collaboration can be achieved by co-location or by virtual collaboration. The assigned analysts should have common access to all data relevant to the designated target from across the collection disciplines. The pilot program should be initiated by January 1, 2007, and should continue for at least one year. Following completion of the pilot program, the DNI should report back to the intelligence committees concerning any findings or recommendations relevant to the pilot program, including any recommendations for further legislation or funding to further promote information access.

Report on the creation of an Intelligence Community reserve account

Since its creation, the CIA has utilized a "reserve for contingencies" that permitted the DCI (now, the Director of the CIA) to transfer funds, with appropriate notification to Congress, to address significant intelligence needs that arise during a fiscal year and that must be addressed outside the normal budget process. The CIA Reserve has proven crucial in permitting the flexibility required to address operational realities as they arise.

As the Committee continues to examine the budgetary and management authorities of the DNI, it may be appropriate to provide

the DNI with a "reserve for contingencies" for use across the Intelligence Community to address emergency needs or operational exigencies. Any grant of authority would require legislative action outlining specific limitations on use, requirements for notification to the intelligence committees, and strong control by the DNI. Under extremely limited circumstances and with prior notification to Congress, it may also be appropriate to permit the DNI to transfer certain limited categories of funds to this reserve account for use without fiscal year limitation. The flexibility of a reserve and the ability to transfer funds to a reserve for later use would require a strong commitment from the DNI to eliminate waste in budget requests and to fully comply with the requirement to produce independent cost estimates for major systems, as required by Section 506A of the National Security Act of 1947. In addition, the DNI would need to closely examine how the reserve account is used so that excessive balances were not maintained in the account over extended periods of time.

To aid the Committee as it considers possible legislative action on this topic, the Committee directs the DNI to provide a report to the intelligence committees within 90 days of release of this Report concerning the possible creation of a "reserve for contingencies" for the Intelligence Community and whether the reserve would provide needed budgetary and operational flexibility. The DNI should also report to the intelligence committees regarding the management of existing reserve accounts, including steps the Office of the DNI will take to ensure that excessive balances are not maintained in these reserves for extended periods. The DNI should also provide any additional information deemed appropriate related to this topic, including any specific recommendations regarding the creation or construction of a "reserve for contingencies" for the Intelligence Community or other authorities needed to provide needed budgetary flexibility.

Central Intelligence Agency non-official cover operations

The Committee remains concerned that the CIA has not yet fully addressed concerns about the use of non-official cover (NOC): operational security for NOC officers, support for NOC operations, and the extent to which the National Clandestine Service is committed to doing what is needed to ensure that NOC operations are successful. The Committee is also concerned with the training and use of NOC officer candidates and the overuse of certain NOC cover vehicles, at the expense of investing time and resources in creating new and innovative methodologies.

The Committee therefore directs that the CIA provide a classified report by December 31, 2006, providing details on the status of their non-official operations initiatives, including the use of NOC officers and non-official platforms; steps taken by the CIA to ensure operational security for NOC officers; an assessment of the emerging threats posed by technological developments to NOC operations; and the steps that the CIA has taken to expand the non-official methodologies available for operational use. The report should also highlight areas that need improvement and offer recommendations for any legislative or resource initiatives that would enhance human intelligence collection and covert action through the use of NOC operations.

Intelligence Community personnel growth

Shortly after September 11, 2001, the Intelligence Community began an aggressive campaign to recruit and hire both government and contractor personnel to support the war on terrorism. According to the Administration's current projections, the number of Intelligence Community personnel will continue to increase at a steady pace over the next several years. In February 2005, the Committee initiated an audit to examine the full scope of activities and resources necessary to support the Administration's proposed personnel growth, as well as the underlying requirements and projected mission impact. The results of the audit indicate that the Intelligence Community faces significant challenges implementing the proposed growth.

The Committee is concerned that the up-front processes necessary to support personnel growth, including recruiting, screening, hiring, and training programs are already overburdened and that additional new employees could cripple the system. As more seasoned employees retire and new employees enter the workforce, the Intelligence Community will also face significant challenges finding sufficiently experienced officers to mentor and manage these new hires. Even at current personnel levels, the Intelligence Community has indicated that it lacks adequate secure space for cleared employees. Despite proposed growth, the Intelligence Community has been unable to quantify the facility requirements associated with new hires. Despite the plainly obvious lack of preparedness, the Intelligence Community continues to implement the hiring process associated with the proposed growth.

The Committee is also concerned that the full scope of the proposed personnel growth is ill defined. There are no specific documented requirements for the additional personnel. Indeed, the generic "more is better" argument appears to be the driving force behind the proposals. The Intelligence Community also cannot quantify future contractor requirements and is unable to determine whether the number of contractors will increase or decrease as more personnel are hired. The Committee has seen no metrics that would link the additional proposed personnel to improvements in the Intelligence Community's ability to detect, predict, analyze, and counter current and future threats to the United States.

Given the identified deficiencies associated with the proposed personnel growth and the significant funding problems already facing the Intelligence Community, the Committee is concerned that the Administration's proposal may not be achievable. Due to the significant funding requirements projected from fiscal year 2007 through fiscal year 2011, the proposed personnel growth will rival, if not surpass, the costs associated with a major system acquisition. As with any other major and costly acquisition program, the Intelligence Community must take immediate steps to define the mission needs, relate those mission needs to specific, validated requirements, and provide detailed plans for funding the proposed growth. To address the aforementioned concerns, the Committee is fencing funds related to such growth and directs the DNI to provide a comprehensive personnel growth strategy, as outlined in the classified annex.

Intelligence Community document and media exploitation audit

The Committee, through its Audit and Evaluation Staff, is currently reviewing the Intelligence Community's document and media exploitation (DOCEX) activities. The Committee is concerned that current DOCEX activities are uncoordinated and that too many disparate efforts exist, with little transparency among Intelligence Community elements. The Committee is encouraged by the broader role for the National Media Exploitation Center (NMEC) outlined in a December 2005 letter from the PDDNI to the Director of the DIA concerning Intelligence Community centers. Indeed, the Committee believes that the NMEC should serve to integrate all of the Intelligence Community's DOCEX elements, not merely those of the DIA. Without Intelligence Community-wide leadership on this issue, there will be unnecessary duplication of effort and insufficient access to information obtained by, or through, DOCEX activities.

The Committee is also concerned about several funding issues. Funding for DOCEX activities currently resides in several different budget accounts. This segregation makes it exceedingly difficult to assess aggregate Intelligence Community DOCEX expenditures and to coordinate Intelligence Community investment strategies. There also appears to be significant redundancy in the funding of translation tools, technology, and research and development initiatives. Intelligence Community elements have also failed to leverage existing technology and translation capabilities to improve DOCEX activities. Based on these redundant capabilities and inability to leverage existing capabilities, the Intelligence Community appears to be funding duplicative technology development efforts.

The Committee believes that current efforts to provide access to information derived by, or through, DOCEX activities are inadequate. Unless this information is readily accessible to the intelligence collectors and analysts who need it, these DOCEX efforts will be largely fruitless. For example, the HARMONY database is intended to be the Intelligence Community's centralized national repository for foreign military, technical, and open-source documents, including documents and media captured or collected to support the global war on terrorism and Operation Iraqi Freedom. While HARMONY is accessible to most intelligence officers, it is not widely used outside the DoD. Moreover, some Intelligence Community elements maintain their own, separate DOCEX databases, limiting access to only employees of that element. The Committee also notes, with concern, that a significant amount of intelligence information from documents and media is never posted to HARMONY because the Intelligence Community lacks standards for what constitutes a "document exploitation" activity or any common processes to ensure proper dissemination of the information. The Committee believes that documents and media that do not constitute sensitive information should be accessible throughout the Intelligence Community via a single database that truly functions as a national repository for DOCEX. Regardless of the manner in which documents and media are acquired—whether discovered in a cave in Afghanistan, captured during a raid in Iraq, or collected through human intelligence operations—the Committee believes that such information should be governed by standardized rules for DOCEX and that the information contained in the documents and

media should be accessible to appropriately cleared officers with a "need-to-know."

To address the identified DOCEX concerns, the Committee encourages the DNI to appoint a program manager for National Intelligence Program DOCEX efforts. The DNI should also develop a national DOCEX strategy. The strategy should include clear "lanes in the road" that delineate responsibilities for DOCEX activities; preclude duplication of effort; institute Community-wide DOCEX standards and procedures; establish a single, common DOCEX database; and provide for an aggregate annual budget for all National Intelligence Program-funded DOCEX activities. To ensure the expeditious completion of a national DOCEX strategy, the Committee has fenced DOCEX-related funds as outlined in the classified annex.

The Committee also believes that the DNI should form a DOCEX technology investments board to guide and develop a coordinated, Community-wide research and development strategy. The DOCEX technology investments board should include representatives from the offices of the CIO of the Intelligence Community, the Director of Science and Technology, the Deputy Director of National Intelligence for Analysis, and representatives from other DOCEX stakeholders. The Director of NMEC should chair the board. The board should assist the DNI in managing investments in DOCEX research and development to alleviate redundant proposals for future technologies. The board should also work to ensure existing DOCEX capabilities are appropriately shared and that redundant capabilities are eliminated.

With respect to non-National Intelligence Program DOCEX activities, the DNI must engage the Secretary of Defense to coordinate and deconflict the activities of the Intelligence Community and DoD, whether such activities are funded by the Military Intelligence Program or otherwise. Such coordination should include coordination of research and development for technology related to DOCEX activities.

Finally, the Committee is impressed with the language expertise resident at the Combined Media Processing Center in Doha, Qatar, and believes that maintaining this capability in the future could address some of the critical shortages in language-proficient intelligence officers. The Committee encourages the DNI to seek ways to retain this vital resource once the current surge in processing documents from Operation Iraqi Freedom ceases.

All-source intelligence analysis by the National Geospatial-Intelligence Agency

The Committee continues to question the NGA's production of all-source intelligence. The NGA will be challenged in the foreseeable future to master new geospatial phenomena, to provide geospatial intelligence support to its growing customer base, and to exploit the increasing volumes of geospatial data being collected by airborne and commercial platforms. These are sufficient challenges for the NGA's analytic cadre without the diversion of effort to all-source intelligence analysis.

Geospatial intelligence, like signals and human intelligence, is a singular intelligence discipline which, when combined with all other sources of information, forms a basis for all-source intel-

ligence products. The Intelligence Community already consists of a number of all-source intelligence elements: the CIA; the DIA; the State Department's INR; national intelligence centers such as the NCTC and NCPC; intelligence elements of the Departments of Homeland Security, Energy, and Treasury; the FBI's National Security Branch; the armed services' science and technology centers, such as NASIC, MSIC, and the Office of Naval Intelligence; the Combatant Command Joint Intelligence Centers; and hundreds of intelligence staffs in joint task forces, combined task forces, and tactical units. The NGA is the single entity tasked to provide geospatial intelligence support to all of these all-source entities. The NGA should focus on providing geospatial-intelligence support to these entities rather than duplicating their all-source analytic missions.

Analysts at the NGA are by no measure simple photographic interpreters. Their expertise in certain areas is well known. They should, and do, access all-source information to help focus their imagery exploitation and to facilitate collaboration with their Intelligence Community partners. They should not, however, let that all-source information, or the tendency to develop independent assessments, influence their interpretation of imagery signatures, as apparently occurred during interpretations of otherwise ambiguous signatures at suspected Iraqi WMD facilities.

The intended consolidation of NGA facilities into a single campus may have an unintended consequence of encouraging a "go it alone" mentality within the NGA. NGA must avoid the temptation to develop assessments independent of their all-source intelligence customers. By permitting "mission creep" from geospatial-intelligence analysis to all-source intelligence analysis, the NGA leadership has failed to heed a cautionary note sounded in Section 1111(d) of the NIMA Act of 1996, which states, "In managing the establishment of [the NIMA], the Secretary of Defense, in consultation with the Director of Central Intelligence, shall ensure that imagery intelligence support provided to all-source analysis and production is in no way degraded or compromised."

The Committee will remain watchful of this issue and urges the DNI to provide appropriate guidance to the NGA to ensure the most efficient use of the NGA's skilled workforce, while not duplicating all-source intelligence efforts throughout the Intelligence Community or diluting the geospatial-intelligence support provided by the NGA to those same entities.

Intelligence Community financial management

The Committee is concerned about the overall lack of sound financial management within the Intelligence Community. Despite significant increases in funding for national intelligence activities over the last five years, the state of the Intelligence Community's finances has not improved. Funding for major system acquisitions and major policy initiatives is realigned each year to compensate for programmatic content in excess of programmed fiscal resources. The Committee is concerned that the Intelligence Community has failed to fund several major system acquisitions to the level identified in the independent cost estimate applicable to such acquisition. Indeed, the Committee is concerned that many independent cost estimates are prepared by the element responsible for the proposed

acquisition, and merely adopted by the Intelligence Community Cost Analysis and Improvement Group.

In addition to the lack of sound programmatic judgment, the Committee is concerned that the CIA, NSA, NGA, DIA, NRO, and the Office of the DNI are unable to produce auditable financial statements, and are therefore unable to verify to the Committee how they are spending their appropriated funds. These same institutions are developing unique, customized financial management software systems, and the DNI currently does not have a plan to integrate or consolidate any of these systems. These problems are compounded by the development of unique budget formulation systems. Finally, because personnel are transferred in and out of the financial discipline every two or three years, the Intelligence Community is unable to retain a cadre of experienced financial professionals.

To address these issues, the Committee directs the DNI and the Director of OMB to develop a plan to transform Intelligence Community financial management. Specifically, the Committee directs the DNI and Director of OMB to submit a strategic plan that outlines how the existing systems of CIA, NSA, NGA, DIA, NRO, and the Office of the DNI will be used, upgraded or replaced, and subsequently integrated in a single financial management system. The plan should identify the associated system acquisitions, deployment schedule, agency roles and responsibilities, key steps and milestones, resource requirements (both financial- and personnel-related), and performance measures. The plan should address all steps necessary to produce a single, consolidated financial statement for the National Intelligence Program for fiscal year 2009. The plan should address the development of a common accounting code and standard business processes for the Intelligence Community. The plan should leverage costs already incurred to develop budget formulation systems, such as IRIS, to ensure that the financial management and budget formulation systems can seamlessly integrate data. Finally, the Committee directs the above mentioned plan to include a comprehensive financial management human resources policy that outlines how financial expertise can be strengthened in each Intelligence Community element. To ensure the expeditious completion of this plan, the Committee has fenced certain funding as outlined in the classified annex.

Department of Energy counterintelligence

On March 9, 2006, the Deputy Secretary of Energy approved the consolidation of the Office of Intelligence and Office of Counterintelligence under the leadership of the Department's Senior Intelligence Officer. The name of the new organization is the Office of Intelligence and Counterintelligence. The Office of the DNI concurred in the appointment of one individual to serve as both the Director of the Office of Intelligence and as the Director of the Office of Counterintelligence. The Committee did not receive advance notice of this reorganization, although it appears to have been a significant anticipated intelligence activity for which the Committee should have received prior notice in accordance with Section 502 of the National Security Act (50 U.S.C. 413a).

The Committee recognizes the authority of the Secretary of the Energy, under current law (42 U.S.C. 7253), to consolidate organi-

zational units or components within the Department as he may deem necessary or appropriate. Such reorganization authority, however, does not "extend to the abolition of organizational units or components established by this chapter, or to the transfer of functions vested by this chapter in any organizational unit or component." See 42 U.S.C. 7253(a). The Committee considers it an open question whether this reorganization amounts to a "transfer of functions" vested separately in the Department's Office of Intelligence and Office of Counterintelligence. Current law arguably requires a separate Office of Intelligence and Office of Counterintelligence, each with a director who reports directly to the Secretary of Energy. See 42 U.S.C. 7144b & 7144c. Presumably, the Senior Intelligence Officer will assume the responsibilities for establishing Departmental policy for counterintelligence programs and activities. If this amounts to a "transfer of function" from the Office of Counterintelligence or the Office of Intelligence to a new layer of bureaucracy within the Office of Intelligence and Counterintelligence, then the Deputy Secretary's consolidation effort is arguably inconsistent with current law. See 42 U.S.C. 7253.

Another troubling aspect of this reorganization is its inconsistency with Presidential Decision Directive 61 (PDD–61), which requires that: (1) the Office of Counterintelligence and Office of Intelligence be established as two separate independent offices reporting directly to the Secretary of Energy; (2) the Director of the Office of Counterintelligence be a senior executive from the FBI; and (3) the Director of the Office of Counterintelligence have direct access to the Secretary of Energy, the DNI, and the Director of the FBI. See White House Fact Sheet, U.S. Department of energy Counterintelligence Program Presidential Decision Directive 61. It is the Committee's understanding that PDD–61 has not been rescinded. Under the current reorganization, the offices are no longer separate and independent. Also, the current Senior Intelligence Officer, who is now serving as both the Director for the Office of Intelligence and the Office of Counterintelligence, is not a senior executive from the FBI.

It is uncertain whether the "synergies" obtained as a result of this consolidation will justify the added layer of bureaucracy. The Committee believes that the policies behind the current statutes and PDD–61 still strike the right balance for the Department of Energy (DoE). They provide a mechanism to ensure that counterintelligence concerns have an independent advocate within the DoE and to provide the Secretary of Energy with immediate access to the perspective of a senior FBI counterintelligence executive with respect to DoE counterintelligence threats. The Committee is concerned that the current reorganization effort may undermine these important policy considerations and constitute a return to past failed practices. The Committee will continue to monitor this reorganization effort and expects to be briefed in advance of further developments.

Support to the Committee on Foreign Investment in the United States

Recent high profile foreign acquisitions of United States firms have highlighted the important role the Intelligence Community plays in supporting the government review of these transactions.

The Committee on Foreign Investment in the United States (CFIUS) relies on various elements of the Intelligence Community to assess risks associated with any such acquisition. The Committee understands that the Office of the DNI has taken steps to better coordinate the preparation of these risk assessments and other support to CFIUS. The Committee strongly endorses the DNI's effort.

The Intelligence Community risk assessments must be conducted and finalized quickly in order to comply with the short time frames provided under the CFIUS review process. With the volume of CFIUS filings increasing that pressure is even greater. The Committee adopted an amendment offered by Senators Rockefeller and Wyden to the Classified Annex to this Report to provide additional resources to enable the Office of the DNI to carry out this mission.

COMMITTEE ACTION

Motion to close

On May 23, 2006, on the motion of Chairman Roberts, the Committee agreed, by voice vote, to close the markup because matters under consideration at the meeting would require the discussion of information necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States.

Motion to report committee bill favorably subject to amendments

On May 23, 2006, on the motion of Senator Bond, by a vote of 15 ayes and 0 noes, the Committee voted to report the bill favorably, subject to amendment. The votes in person or by proxy were as follows: Chairman Roberts—aye; Senator Hatch—aye; Senator DeWine—aye; Senator Bond—aye; Senator Lott—aye; Senator Snowe—aye; Senator Hagel—aye; Senator Chambliss—aye; Vice Chairman Rockefeller—aye; Senator Levin—aye; Senator Feinstein—aye; Senator Wyden—aye; Senator Bayh—aye; Senator Mikulski—aye; Senator Feingold—aye.

Amendments to committee bill

On May 23, 2006, by a vote of 9 ayes and 6 noes, the Committee agreed to an amendment by Senator Feinstein to modify certain requirements for notifications to Congress under Sections 502 and 503 of the National Security Act of 1947 (50 U.S.C. 413a & 413b) and to place an additional limitation on the availability of funds for intelligence and intelligence-related activities under Section 504 of the National Security Act of 1947 (50 U.S.C. 414). See Sections 304 and 307 of the Act. The votes in person or by proxy were as follows: Chairman Roberts—no; Senator Hatch—no; Senator DeWine—no; Senator Bond—no; Senator Lott—no; Senator Snowe—aye; Senator Hagel—aye; Senator Chambliss—no; Vice Chairman Rockefeller—aye; Senator Levin—aye; Senator Feinstein—aye; Senator Wyden—aye; Senator Bayh—aye; Senator Mikulski—aye; Senator Feingold—aye.

On May 23, 2006, by unanimous consent, the Committee agreed to an amendment by Senator Mikulski requiring the Secretary of Defense to delegate certain security clearance responsibilities to

the Director of the NGA until December 31, 2007. See Section 436 of the Act.

On May 23, 2006, by a vote of 9 ayes and 6 noes, the Committee agreed to an amendment by Senator Levin to require a report by the DNI on compliance by the Intelligence Community with the Detainee Treatment Act of 2005 (Pub. L. No. 109–148, Div. A, Title X (Dec. 30, 2005)). See Section 313 of the Act. The votes in person or by proxy were as follows: Chairman Roberts—no; Senator Hatch—no; Senator DeWine—no; Senator Bond—no; Senator Lott—no; Senator Snowe—aye; Senator Hagel—aye; Senator Chambliss—no; Vice Chairman Rockefeller—aye; Senator Levin—aye; Senator Feinstein—aye; Senator Wyden—aye; Senator Bayh—aye; Senator Mikulski—aye; Senator Feingold—aye.

On May 23, 2006, by a vote of 9 ayes and 6 noes, the Committee agreed to an amendment by Senator Wyden to increase the penalties applicable to certain violations of Section 601 of the National Security Act of 1947 (50 U.S.C. 421), relating to the unauthorized disclosure of the identity of a covert agent. See Section 308 of the Act. The votes in person or by proxy were as follows: Chairman Roberts—no; Senator Hatch—no; Senator DeWine—no; Senator Bond—no; Senator Lott—no; Senator Snowe—aye; Senator Hagel—aye; Senator Chambliss—no; Vice Chairman Rockefeller—aye; Senator Levin—aye; Senator Feinstein—aye; Senator Wyden—aye; Senator Bayh—aye; Senator Mikulski—aye; Senator Feingold—aye.

On May 23, 2006, by a vote of 8 ayes and 7 noes, the Committee agreed to an amendment by Senator Levin (for himself and Senator Hagel) that would require certain officials to provide to Congress requested intelligence documents and information within 15 days, unless the President refuses to provide the documents or information based on an assertion of a privilege pursuant to the Constitution. See Section 108 of the Act. The votes in person or by proxy were as follows: Chairman Roberts—no; Senator Hatch—no; Senator DeWine—no; Senator Bond—no; Senator Lott—no; Senator Snowe—no; Senator Hagel—aye; Senator Chambliss—no; Vice Chairman Rockefeller—aye; Senator Levin—aye; Senator Feinstein—aye; Senator Wyden—aye; Senator Bayh—aye; Senator Mikulski—aye; Senator Feingold—aye.

On May 23, 2006, by a vote of 9 ayes and 6 noes, the Committee agreed to an amendment by Senator Levin to require the DNI to submit a classified, detailed report to the Members of the intelligence committees concerning each clandestine prison or detention facility, if any, currently or formerly operated by the United States Government, regardless of location, at which detainees in the global war on terrorism are or have been held. See Section 314 of the Act. The votes in person or by proxy were as follows: Chairman Roberts—no; Senator Hatch—no; Senator DeWine—no; Senator Bond—no; Senator Lott—no; Senator Snowe—aye; Senator Hagel—aye; Senator Chambliss—no; Vice Chairman Rockefeller—aye; Senator Levin—aye; Senator Feinstein—aye; Senator Wyden—aye; Senator Bayh—aye; Senator Mikulski—aye; Senator Feingold—aye.

On May 23, 2006, by a vote of 9 ayes and 6 noes, the Committee agreed to an amendment by Senator Wyden to mandate the public disclosure of the aggregate amount of funding requested, authorized, and appropriated for the National Intelligence Program for each fiscal year after fiscal year 2007. See Section 107 of the Act.

The votes in person or by proxy were as follows: Chairman Roberts—no; Senator Hatch—no; Senator DeWine—no; Senator Bond—no; Senator Lott—no; Senator Snowe—aye; Senator Hagel—aye; Senator Chambliss—no; Vice Chairman Rockefeller—aye; Senator Levin—aye; Senator Feinstein—aye; Senator Wyden—aye; Senator Bayh—aye; Senator Mikulski—aye; Senator Feingold—aye.

On May 23, 2006, by a vote of 7 ayes and 8 noes, the Committee rejected an amendment by Senator Feingold to require a report on past intelligence activities not previously notified to all Members serving on the intelligence committees at the time the activities were undertaken. The votes in person or by proxy were as follows: Chairman Roberts—no; Senator Hatch—no; Senator DeWine—no; Senator Bond—no; Senator Lott—no; Senator Snowe—aye; Senator Hagel—no; Senator Chambliss—no; Vice Chairman Rockefeller—aye; Senator Levin—aye; Senator Feinstein—aye; Senator Wyden—aye; Senator Bayh—aye; Senator Mikulski—no; Senator Feingold—aye.

ESTIMATE OF COSTS

Pursuant to paragraph 11(a)(3) of rule XXVI of the Standing Rules of the Senate, the Committee deems it impractical to include an estimate of the costs incurred in carrying out the provisions of this report due to the classified nature of the operations conducted pursuant to the legislation. On May 25, 2006, the Committee transmitted this bill to the Congressional Budget Office and requested that it conduct an estimate of the costs incurred in carrying out the provisions of this bill.

EVALUATION OF REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee finds that no substantial regulatory impact will be incurred by implementing the provisions of this legislation.

CHANGES IN EXISTING LAWS

In the opinion of the Committee, it is necessary to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

ADDITIONAL VIEWS OF SENATORS ROCKEFELLER, LEVIN, FEINSTEIN, WYDEN, BAYH, MIKULSKI, AND FEINGOLD

Thirty years ago this month, the Senate passed Senate Resolution 400, establishing the Select Committee on Intelligence and charging the Committee with providing "vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States." The Committee is marking this anniversary by reporting legislation that takes significant steps toward reinvigorating our oversight responsibilities.

Current practice limits some Executive Branch briefings about major intelligence programs to the so-called "Gang of Eight," which consists of the four House and Senate leaders and the two chairmen and two senior minority party members of each intelligence committee. This limitation can hobble efforts by the full Intelligence Committees to carry out effective oversight. Sections 304 and 307 of the Committee's bill would clarify that it is the obligation of the Intelligence Community to fully and currently inform all members of the congressional intelligence committees about intelligence activities.

Effective oversight also depends on members of Congress having timely access to intelligence information. But too often, members of Congress, even those of us who are members of committees of jurisdiction, do not have timely access to the intelligence information necessary to carry out our oversight responsibilities. Section 108 of the Committee bill requires the Intelligence Community to provide, upon request from Congressional committees of jurisdiction or the Chairman or Vice Chairman of the Senate Intelligence Committee or Chairman or Ranking Member of the House Intelligence Committee, timely access to existing intelligence assessments, reports, estimates, legal opinions, or other intelligence information.

The Committee's bill not only takes important steps toward improving oversight generally, but advances our oversight of particular matters. Section 313 of the Committee's bill requires a report from the Director of National Intelligence relative to the requirement of the Detainee Treatment Act of 2005, also known as the McCain Amendment, that no person in the custody or under the physical control of the United States shall be subject to cruel, inhuman, or degrading treatment. While the report itself will be classified, this provision requiring the DNI report to the Congress on compliance with the McCain Amendment is publicly stated in this bill. Similarly, Section 314 of the Committee's bill requires the DNI to submit a classified report on any clandestine detention facilities operated by the United States Government. These public law requirements reflect the determination by the Committee to undertake serious oversight of any Intelligence Community detention, interrogation, and rendition practices.

In recent years, overly restrictive requests by the Executive Branch to limit access to sensitive material have hampered the Committee's ability to conduct effective oversight. The Committee is calling on the President, the Director of National Intelligence and the Director of the National Security Agency to work with the Committee to establish the mechanisms necessary to review all the operational, legal and budgetary aspects of the President's warrantless surveillance program. The Committee is also calling for greater staff access to information about programs related to fighting international terrorism, especially in light of the role of intelligence in this long-term national priority.

In addition, the Committee's bill strengthens oversight by requiring that the Directors of the National Security Agency, the National Geospatial-Intelligence Agency, and the National Reconnaissance Office each be appointed by the President with the advice and consent of the Senate. These agencies' budgets comprise a significant portion of the entire intelligence budget of the United States and it is appropriate that the President's choices to head these agencies be subject to Senate confirmation.

The Committee bill also establishes, within the Office of the DNI, an Inspector General of the Intelligence Community. The Inspector General will have authorities, including responsibilities to Congress, that are commensurate with those of the CIA Inspector General but are applicable across the Intelligence Community. The creation of an Inspector General of the Intelligence Community will strengthen accountability throughout the Intelligence Community by permitting independent examinations of serious problems, abuses, or deficiencies not only within elements of the Community, but in any lack of cooperation among those elements.

Section 107 of the Committee's bill declassifies the aggregate amount of money requested by the President and authorized or appropriated by the Congress. The public ought to know how much money the government is spending on intelligence activities and the Senate has long sought this sensible reform. We believe declassifying the aggregate amount of money the nation spends on intelligence would not harm the nation's security.

Collectively, the provisions in the Committee bill will strengthen efforts at Congressional oversight. We look forward to the leadership's scheduling of the Committee's bill for floor action as promptly as possible after the Committee on Armed Services considers the bill, given the imperative that the Senate not allow another year to pass without enactment of an intelligence authorization bill. We cannot defeat today's threats without the strongest and most cost-effective Intelligence Community, and we believe these enhanced oversight requirements support both goals.

JOHN D. ROCKEFELLER IV.
CARL LEVIN.
DIANNE FEINSTEIN.
RON WYDEN.
EVAN BAYH.
BARBARA A. MIKULSKI.
RUSSELL D. FEINGOLD.

ADDITIONAL VIEWS OF SENATOR FEINGOLD

The Fiscal Year 2007 Intelligence Authorization bill, along with the accompanying classified annex, is a critically important piece of legislation. It provides our Intelligence Community with the resources to combat terrorist organizations, protect America, and serve American interests overseas. It also reflects the importance of congressional oversight, a principle that has been challenged by the current Administration's failure to keep the congressional intelligence committees fully and currently informed of all intelligence activities.

Despite the belated briefing conducted for all members of the Committee on May 17, 2006, the Administration is still impeding the Committee from conducting thorough, ongoing oversight of the NSA's illegal warrantless surveillance program. I was pleased, therefore, that the Committee accepted my amendment to the classified annex calling on the Administration to work with the Committee to establish the mechanisms necessary to review all the operational, legal and budgetary aspects of the program.

I was also pleased that the Committee accepted my amendment to the annex calling for greater staff access to programs related to fighting terrorism. Just as our nation must adopt a strategic, global approach to this struggle, those responsible for oversight need to assess whether our policies and priorities are serving our overall national security interests. When the Administration seeks to restrict access to important intelligence programs, it undermines the Committee's ability to take a comprehensive approach to oversight.

The National Security Act requires that the congressional intelligence committees be kept fully and currently informed of all intelligence activities. The law provides for briefings for less than the full membership of the committees only in cases of covert action and, even then, only if the President determines that it is essential to limit access to meet extraordinary circumstances affecting vital interests of the United States. Given the Administration's failure to comply with this law with regard to the warrantless surveillance program, I strongly support the Committee's actions to further clarify these legal obligations, and to ensure that the full committee is at least offered an indication of which intelligence activities are not briefed to the full membership. I also believe, however, that the Committee must know the full extent of how these limited briefings have been conducted in the recent past. The Administration should inform the members of the Committee with regard to programs they have not been notified about so that members can begin to assess whether the practice of briefing the so-called "Gang of Eight" has, indeed, complied with the law. In addition, an accounting of previously unknown intelligence activities will allow members of the Committee to consider the impact of these activities on current

national security policies, as well as learn the lessons of past successes and failures.

I was pleased that the Committee accepted an amendment to the annex that I offered, along with Senator Rockefeller, calling for more intelligence resources to be directed toward Africa. The continent presents a wide range of threats, such as terrorist havens and the transnational movements of terrorist organizations, while corruption, authoritarianism and poverty allow these conditions to fester. Armed conflict, genocide and humanitarian disasters are all critical challenges to our national security, and require greater information and understanding. Of particular concern is Somalia, where the Committee encouraged the Intelligence Community to work with other agencies of the U.S. government on a comprehensive strategic plan for stability.

I am concerned about sections of the bill containing temporary modifications to the Privacy Act. While it is imperative that our intelligence agencies effectively share information with each other, I am concerned about the removal of Privacy Act limitations on the ability of intelligence agencies to obtain information from other government agencies that are not part of the Intelligence Community. While circumstances may arise in which intelligence agencies need access to ordinary government information like student loan data or government benefits information, the exemption provided by the bill may be broader than necessary. I am also concerned that, while the bill appropriately involves the Privacy and Civil Liberties Board, this important institution is still not fully up and running.

I am also concerned about broad new arrest authorities being granted to CIA and NSA protective personnel. These personnel should be granted all the authority they need to safeguard those they have been assigned to protect. But the broad language in the bill effectively authorizes the arrest of any person committing any crime, even if he or she is in no way threatening agency personnel or property, as well as persons who have committed an unrelated felony in the past. Without a compelling reason why current law is insufficient, I am reluctant to extend broad new authorities.

Finally, I believe we must reform the financial management practices of the Intelligence Community to include more reporting and greater accountability for cost overruns related to the acquisition of major systems. We can keep America safe while also serving the U.S. taxpayer. I look forward to working with my colleagues on important reform legislation.

RUSSELL D. FEINGOLD.

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