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INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2008

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 1538]

The Select Committee on Intelligence, having considered an original bill (S. 1538) to authorize appropriations for fiscal year 2008 for the 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 favorably thereon and recommends that the bill do pass.

CLASSIFIED ANNEX TO THE COMMITTEE REPORT

The classified nature of United States intelligence activities precludes disclosure by the Committee of details of its budgetary recommendations. The Committee has prepared a classified annex to this report that contains a classified Schedule of Authorizations. The Schedule of Authorizations is incorporated by reference in the Act and has the legal status of public law. The classified annex is made available to the Committees of Appropriations of the Senate and the House of Representatives and to the President. It is also available for review by any Member of the Senate subject to the provisions of Senate Resolution 400 of the 94th Congress (1976).

59–010

SECTION-BY-SECTION ANALYSIS AND EXPLANATION

The following is a section-by-section analysis and explanation of the Intelligence Authorization Act for Fiscal Year 2008 that is being reported by the Committee. Following that analysis and explanation, the report sets forth Committee comments on other matters. The report also includes additional views offered by Members of the Committee.

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 2008.

Section 102. Classified schedule of authorizations

Section 102 provides that the details of the amounts authorized to be appropriated for intelligence and intelligence-related activities and the applicable personnel levels (expressed as full-time equivalent positions) for fiscal year 2008 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.

Although prior intelligence authorization acts have not defined Intelligence Community (IC) personnel limits in terms of full-time equivalent positions, the Committee has determined it would be consistent with general governmental practice to do so. This will enable IC elements to count two half-time employees as holding the equivalent of one full-time position, rather than counting them as two employees against a ceiling.

In the Administration's request for legislative authorities as part of the Intelligence Authorization Act for Fiscal Year 2008, the Director of National Intelligence (DNI) has asked for broad authority to manage the IC within the limits of available funds but without legislatively-fixed civilian end-strength personnel limits. The DNI's submission to the Committee states that statutory ceilings have led to increased use of contractors and have hindered the IC's civilian joint duty, student employment, and National Intelligence Reserve Corps programs. The Committee will continue to study this recently received proposal. In the meantime, the flexibility provided in this section by the use of full-time equivalents as a measure of personnel levels and the additional flexibility provided in Section 103 should help to address the concerns raised by the DNI.

Section 103. Personnel level adjustments

Section 103(a) provides that the DNI, with approval of the Director of the Office of Management and Budget (OMB), may authorize employment of civilian personnel in fiscal year 2008 in excess of the number of authorized full-time equivalent positions by an amount not exceeding 5 percent (rather than 2 percent in prior law) of the total limit applicable to each IC element under Section 102. The DNI may do so only if necessary to the performance of important intelligence functions. Any exercise of this authority

must be reported in advance to the congressional intelligence committees.

Section 103(b) provides additional flexibility when the heads of IC elements determine that work currently performed by contractors should be performed by government employees. It does so by authorizing the DNI, with OMB's approval, to authorize employment of additional full-time equivalent personnel in a number equal to the number of contractor employees currently performing that work. Any exercise of this authority also must be reported in advance to the congressional intelligence committees.

Any exercise of the personnel level flexibility should be implemented in accordance with a plan that includes adequate support for personnel. This matter is addressed in Section 315.

Section 104. Intelligence Community Management Account

Section 104 authorizes appropriations for the Intelligence Community Management Account (CMA) of the DNI and sets the full-time equivalent personnel end-strength for the elements within the CMA for fiscal year 2008.

Subsection (a) authorizes appropriations of $715,076,000 for fiscal year 2008 for the activities of the CMA. Subsection (a) also authorizes funds identified for advanced research and development to remain available for two years. Subsection (b) authorizes 1,768 full-time equivalent personnel for elements within the CMA for fiscal year 2008 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) provides that personnel level flexibility available to the DNI under Section 103 is also available to the DNI in adjusting personnel levels within the CMA. Subsection (d) 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, 2009.

Section 105. Incorporation of reporting requirements

Section 105 incorporates into the Act each requirement to submit a report to the congressional intelligence committees contained in the joint explanatory statement to accompany the conference report or in the classified annex accompanying the conference report.

Section 106. Development and acquisition program

Section 106 requires the DNI to transfer not less than an amount specified in the classified annex to the Office of the DNI (ODNI) to fund the development and acquisition of a program specified in the classified annex. The Committee supports immediate development and acquisition of an innovative program. Further details concerning this matter are provided in the classified annex.

Section 107. Availability to public of certain intelligence funding information

Section 107 requires the President to disclose to the public the aggregate amount of funds requested for the National Intelligence Program for each fiscal year. It also requires Congress to disclose to the public the aggregate amount authorized to be appropriated

and the aggregate amount appropriated for the National Intelligence Program.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Section 201. Authorization of appropriations

Section 201 authorizes appropriations in the amount of $262,500,000 for fiscal year 2008 for the Central Intelligence Agency (CIA) Retirement and Disability Fund.

Section 202. Technical modification to mandatory retirement provision of CIA Retirement Act

Section 202 updates the CIA Retirement Act to reflect the Agency's use of pay levels rather than pay grades within the Senior Intelligence Service.

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 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 elements of departments and agencies of the United States Government whether or not those departments and agencies are listed in Section 3(4).

Section 304. 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 IC 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 CIA employees, to the Director of the CIA.

Section 304 provides that the DNI may delegate the authority in Section 116 of the National Security Act of 1947 to the head of any IC element. This expansion is consistent with the view of the Committee that the DNI should be able to delegate authority through-

out the IC when such delegation serves the overall interests of the IC.

Section 304 also provides that the head of an IC element to which travel authority has been delegated is also empowered to delegate it 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 IC. To facilitate oversight, the DNI shall submit the guidelines to the congressional intelligence committees.

Section 305. Modification of availability of funds for different intelligence activities

Section 305 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).

The amendment replaces the "unforeseen requirements" standard in Section 504(a)(3)(B) with a more flexible 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 is 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 IC's ability to carry out missions and functions vital to national security.

Section 306. Increase in penalties for disclosure of undercover intelligence officers and agents

Section 306 amends Section 601 of the National Security Act of 1947 (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 the 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 307. Extension to intelligence community of authority to delete information about receipt and disposition of foreign gifts and decorations

Current law (5 U.S.C. 7342) requires that certain federal "employees"—a term that generally applies to all IC officials and personnel and certain contractors, spouses, dependents, and others—file reports with their employing agency regarding receipt of gifts or decorations from foreign governments. Following compilation of these reports, the employing agency is required to file annually with the Secretary of State detailed information about the receipt of foreign gifts and decorations by its employees, including the source of the gift. The Secretary of State is required to publish a comprehensive list of the agency reports in the Federal Register.

With respect to IC activities, public disclosure of gifts or decorations in the Federal Register has the potential to compromise intelligence sources (e.g., confirmation of an intelligence relationship with a foreign government) and could undermine national security. Recognizing this concern, the Director of Central Intelligence (DCI) was granted a limited exemption from reporting certain information about such foreign gifts or decorations where the publication of the information could adversely affect United States intelligence sources. 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 applying the existing exemption to the CIA Director.

Section 307 provides to the heads of each IC element the same limited exemption from specified public reporting requirements that is currently authorized for the DNI and CIA Director. The national security concerns that prompt those exemptions apply equally to other IC elements. Section 307 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 IC personnel of foreign gifts or decorations.

Section 308. Public Interest Declassification Board

As described in its report on activities in the 109th Congress (S. Rep. No. 110–57, at p. 26), in September 2006, the Committee released two reports on prewar intelligence regarding Iraq. In the introduction to one, the Committee expressed disagreement with the IC's decision to classify portions of the report. Members of the Committee wrote to the then recently constituted Public Interest Declassification Board to request that it review the material and make recommendations about its classification. The Board responded that it might not be able to do so without White House authorization. In December 2006, the Board wrote to Congress to request that the statute establishing the Board be clarified to enable it to begin, without White House approval, a declassification review requested by Congress.

Section 308 authorizes the Public Interest Declassification Board, upon receiving a congressional request, to conduct a review and make recommendations regardless of whether the review is requested by the President. It further provides that any recommendations submitted by the Board to the President shall also be submitted to the chairman and ranking minority member of the

requesting committee. Finally, it extends the life of the Board for four years until the end of 2012.

Section 309. Enhanced flexibility in non-reimbursable details to elements of the intelligence community

Section 309 expands from one year to up to three years the length of time that United States Government personnel may be detailed to the ODNI on a non-reimbursable basis under which the employee continues to be paid by the sending agency. To utilize this authority, the joint agreement of the DNI and head of the detailing element is required. As explained by the DNI, this authority will provide flexibility for the ODNI to receive support from other elements of the IC for community-wide activities where both the sending agency and the ODNI would benefit from the detail.

Section 310. Director of National Intelligence report on compliance with the Detainee Treatment Act of 2005 and related provisions of the Military Commissions Act of 2006

Section 310 requires the DNI to submit a classified report to the congressional intelligence committees on all measures taken by the ODNI and by any IC element with relevant responsibilities on compliance with detention and interrogation provisions of the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006. The report is to be submitted no later than September 1, 2007.

The Detainee Treatment Act provides 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. Congress reaffirmed this mandate in Section 6 of the Military Commissions Act, adding an implementation mechanism that requires the President to take action to ensure compliance including through administrative rules and procedures. Section 6 further provides not only that grave breaches of Common Article 3 of the Geneva Conventions are war crimes under Title 18 of the United State Code, but also that the President has authority for the United States to promulgate higher standards and administrative regulations for violations of U.S. treaty obligations. It requires the President to issue those interpretations by Executive Order published in the Federal Register.

The report shall include a description of any detention or interrogation methods that have been determined to comply with the prohibitions of the Detainee Treatment Act and the Military Commissions Act or have been discontinued pursuant to them.

The Detainee Treatment Act also provides 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 310 requires the DNI to report on actions taken to implement that provision.

The report shall also include an appendix containing all guidelines on the application of the Detainee Treatment Act and the Military Commissions Act to the detention or interrogation activities, if any, of any IC element. The appendix shall also include all legal justifications of the Department of Justice about the meaning of the Acts with respect to detention or interrogation activities, if any, of any IC element.

Section 311. Terms of service of Program Manager for the Information Sharing Environment and the Information Sharing Council

The Intelligence Reform Act established two important instruments for promoting information sharing, a Program Manager for the Information Sharing Environment and an Information Sharing Council. The Act limited the duration of the Program Manager and Council to two years. In recognition of the need for continued management of the Information Sharing Environment, Section 311 enables the President to continue the tenure of the Program Manager and the Information Sharing Council beyond that two-year period.

Section 312. Improvement of notification of Congress regarding intelligence activities of the United States Government

Section 312 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 312 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, the committees will be provided with a notification of this fact and will be provided with a description of the main features of the intelligence activity or covert action. The provision specifies that no restriction shall be placed on the access to this notification by any member of the committees. Second, Section 312 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). Third, 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 313. Additional limitation on availability of funds for intelligence and intelligence-related activities

Section 313 adds to the requirements of Section 504 of the National Security Act of 1947 (50 U.S.C. 414), which specify 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. Section 313 adds that, for intelligence activities or covert actions covered under Section 312, the committees should be considered to have been "fully and currently informed" only if a notification providing the main features of the activity or covert action has been provided as required by Section 313.

Section 314. Vulnerability assessments of major systems

Section 314 adds a new oversight mechanism to the National Security Act of 1947 (50 U.S.C. 442 et seq.) that requires the DNI to conduct regular vulnerability assessments throughout the life-span of every major system in the National Intelligence Program. Major systems are significant programs of an element of the IC with pro-

jected total development and program costs exceeding $500 million in current fiscal year dollars. (50 U.S.C. 415a–1(e)(3)). The intent of the provision is to provide Congress and the DNI with an accurate assessment of the unique vulnerabilities and risks associated with each National Intelligence Program major system to allow a determination of whether funding for a particular major system should be modified or discontinued. The vulnerability assessment process will also require the various elements of the Intelligence Community responsible for implementing major systems to give due consideration to the risks and vulnerabilities associated with such implementation.

The need for this oversight mechanism has been demonstrated by the failure of a number of major systems within the National Intelligence Program. For example, there have been major systems that have not been able to perform the missions for which they were originally designed. Also, there have been major systems that were essentially obsolete by the time they were finally deployed. The Committee believes that the use of the vulnerability assessment tool should greatly enhance the IC's ability to manage successfully its current and future major systems.

Section 314 requires the DNI to conduct an initial vulnerability assessment on every major system proposed for the National Intelligence Program. The minimum requirements of the initial vulnerability assessment are fairly broad and intended to provide the DNI with significant flexibility in crafting an assessment tailored to the proposed major system. Thus, the DNI is required to use an analysis-based approach to identify applicable vulnerabilities, define exploitation potential, examine the system's potential effectiveness, determine overall vulnerability, and make recommendations for risk reduction. The DNI is obviously free to adopt a more rigorous methodology for the conduct of initial vulnerability assessments.

Vulnerability assessment should continue through the life of a major system. Numerous factors and considerations can affect the viability of a given major system. For example, technologies will change, countermeasures can be developed, priorities can shift, new threats can emerge, secrets can be stolen, production schedules can slip, and costs can increase unexpectedly. For that reason, Section 314 provides the DNI with the flexibility to set a schedule of subsequent vulnerability assessments for each major system when the DNI submits the initial vulnerability assessment to the congressional intelligence committees. The time period between assessments should depend upon the unique circumstances of a particular major system. For example, a new major system that is implementing some experimental technology might require annual assessments while a more mature major system might not need such frequent re-assessment. The DNI is also permitted to adjust a major system's assessment schedule when the DNI determines that a change in circumstances warrants the issuance of a subsequent vulnerability assessment. Section 314 also provides that a congressional intelligence committee may request the DNI to conduct a subsequent vulnerability assessment of a major system.

The minimum requirements for a subsequent vulnerability assessment are almost identical to those of an initial vulnerability assessment. There are only two additional requirements. First, if ap-

plicable to the given major system during its particular phase of development or production, the DNI must also use a testing-based approach to assess the system's vulnerabilities. Obviously, common sense needs to prevail here. For example, the testing approach is not intended to require the "crash testing" of a satellite system. However, the vulnerabilities of a satellite's items of supply might be exposed by a rigorous testing regime. Second, the subsequent vulnerability assessment is required to monitor the exploitation potential of the major system. Thus, a subsequent vulnerability assessment should monitor ongoing changes to vulnerabilities and understand the potential for exploitation. Since new vulnerabilities can become relevant and the characteristics of existing vulnerabilities can change, it is necessary to monitor both existing vulnerabilities and their characteristics, and to check for new vulnerabilities on a regular basis.

Section 314 requires the DNI to give due consideration to the vulnerability assessments prepared for the major systems within the National Intelligence Program. It also requires that the vulnerability assessments be provided to the congressional intelligence committees within ten days of their completion.

Finally, the section contains definitions for the terms "items of supply," "major system," and "vulnerability assessment."

Section 315. Annual personnel level assessments for the intelligence community

Section 315 adds a new oversight mechanism to the National Security Act of 1947 (50 U.S.C. 442 et seq.) that requires the DNI to conduct, in consultation with the head of the element of the Intelligence Community concerned, an annual personnel level assessment for each of the elements within the Intelligence Community and provide those assessments to the congressional intelligence committees no later than January 31st of each year.

The assessment consists of three parts. First, the assessment must provide basic personnel and contractor information for the concerned element of the Intelligence Community. It requires that the data be compared against current fiscal year and historical five-year numbers and funding levels. Second, the assessment must include a written justification for the requested funding levels. This requirement is necessary to ensure that any personnel cost cuts or increases are fully documented and justified. Finally, the assessment must contain a statement by the Director of National Intelligence that based upon current and projected funding the concerned element will have the internal infrastructure, training resources, and sufficient funding to support the administrative and operational activities of the requested personnel and contractor levels.

The Committee believes that the personnel level assessment tool is necessary for the Executive branch and Congress to fully understand the consequences of modifying the Intelligence Community's personnel levels. This assessment process is essential to the adoption and continuation of the personnel level flexibility authority provided in Section 103. In the aftermath of the terrorist attacks on September 11, 2001, the Administration undertook sharp increases in personnel for the Intelligence Community under the assumption that the intelligence deficiencies leading up to the at-

tacks resulted from personnel shortfalls. Various external reviews have also recommended more personnel. Since the attacks, Intelligence Community personnel end strength has grown by about 20 percent.

The Committee originally supported personnel growth as a way to strengthen intelligence collection, analysis, and dissemination, but now questions its previous position for four reasons: (1) the recent history of large scale personnel growth indicates that personnel increases do not improve performance commensurate with the cost; (2) the Administration is not adequately funding the personnel growth it has planned; (3) hiring additional personnel diverts fiscal resources from both current mission and modernization needs; and (4) personnel costs always increase, while budgets do not. Therefore, when overall budgets do not keep pace with inflation and decline in real terms, personnel costs as a percentage of the budget increase each year and divert funds from operations and modernization.

In February 2005, the Committee initiated an audit to examine the full scope of activities and resources necessary to support the Administration's projections for Intelligence Community personnel growth during fiscal years 2006–2011. As a result of this review and further study of the issue, the Committee has concluded that increasing personnel without a plan for enabling those personnel to work productively neither prevents intelligence failures, nor guarantees enhanced performance. The Committee has also concluded that the Administration has not adequately funded its personnel growth plan and that resources provided for personnel growth in some cases are done so at the expense of other programs.

Another concern of the Committee is the Intelligence Community's increasing reliance upon contractors to meet mission requirements. It has been estimated that the average annual cost of a United States Government civilian employee is $126,500, while the average annual cost of a "fully loaded" (including overhead) core contractor is $250,000. Given this cost disparity, the Committee believes that the Intelligence Community should strive in the long-term to reduce its dependence upon contractors. The Committee believes that the annual personnel assessment tool will assist the Director of National Intelligence and the congressional intelligence committees in arriving at an appropriate balance of contractors and permanent government employees.

Section 316. Business enterprise architecture and business system modernization for the intelligence community

One of the greatest challenges facing the IC today is the modernization of its business information systems. Guidance from the Office of Management and Budget has called for all business information systems in government organizations to become integrated into a business enterprise architecture. A business enterprise architecture incorporates an agency's financial, personnel, procurement, acquisition, logistics, and planning systems into one interoperable system. Currently, each IC element is building unique, stovepiped systems that do not leverage the investments of other elements of the IC. Section 314 gives the DNI a structure for creating a coherent business enterprise architecture that will be use-

ful for the intelligence professional, as well as cost-effective for the taxpayer.

Section 316 requires the DNI to create a business enterprise architecture that defines all IC business systems, as well as the functions and activities supported by those business systems, in order to guide with sufficient detail the implementation of interoperable IC business system solutions. Section 316 also requires the submission of a preliminary draft of the transition plan for implementing the business enterprise architecture. The business enterprise architecture and transition plan are to be submitted to the congressional intelligence committees by March 1, 2008.

Section 316 will provide the congressional oversight committees the assurance that business systems that cost more than a million dollars and that receive more than 50 percent of their funding from the National Intelligence Program will be efficiently and effectively coordinated. It will also provide a list of all "legacy systems" that will be either terminated or transitioned into the new architecture. Further, this section will require the DNI to report to the Committee no less often than annually, for five years, on the progress being made in successfully implementing the new architecture.

Section 317. Reports on the acquisition of major systems

The Committee is concerned with the growing costs associated with major system acquisitions. Cost overruns and schedule delays prevent the IC from fielding essential systems. For example, with respect to a particular intelligence community agency, it was found that of a sample of thirty historical major system acquisitions, twenty-one had cost overruns of 30 percent or more. With respect to current IC space acquisitions, half have experienced cost growth of 50 percent or more. This is unacceptable.

In order to address the cause and impact of cost increases and schedule delays, the Committee has created a mechanism in Section 317 that requires the DNI to submit annual reports for each major system acquisition by an element of the IC. These reports must include, among other items, information about the current total anticipated acquisition cost for such system, the development schedule for the system including an estimate of annual development costs until development is completed, the current anticipated procurement schedule for the system, including the best estimate of the DNI of the annual costs and units to be procured until procurement is completed, a full life-cycle cost analysis for such system, and the result of any significant test and evaluation of such major system as of the date of the submittal of such report.

Section 318. Excessive cost growth of major systems

Section 318 requires that, in addition to the annual report under Section 317, the Director of National Intelligence must review cost increases of the acquisition of a major system to determine whether such increases are at least 20 percent from the baseline cost. This section mirrors the Nunn-McCurdy provision in Title 10 of the United States Code that applies to major defense acquisition programs. The Committee believes that a framework similar to Nunn-McCurdy would be beneficial to IC acquisitions. The Committee envisions that this determination will be done as needed and should not wait until the time that the annual report is filed. In other

words, the Committee expects that the DNI will be advised on a regular basis by elements of the IC about the progress and associated costs of a major system acquisition.

If the cost growth is at least 20 percent, the DNI must prepare a notification and submit a new independent cost estimate to the congressional intelligence committees, and also certify that the acquisition is essential to national security, there are no other alternatives that will provide equal or greater intelligence capability at equal or lesser cost, the new estimates of the full life-cycle cost for such major system are reasonable, and the structure for the acquisition of such major system is adequate to manage and control full life-cycle cost of such major system. The program may then be allowed to continue.

If, however, the DNI determines that the cost growth is at least 40 percent, then the President must certify the four factors previously certified by the DNI. The Committee does not envision the certification process to be a rubber-stamp. Rather, considerable care and judgment should be exercised in making, or deciding not to make, the certification.

If the required certification, at either the 20 percent or 40 percent level, is not submitted to the congressional intelligence committees, Section 318 creates a mechanism in which funds cannot be obligated for a period of time. If Congress does not act during that period, then the acquisition may continue.

By making the DNI, and indeed the President, an integral part of this process, the Committee hopes that the President, the DNI, and the elements of the IC will recognize that the Committee expects the DNI to assert, and be allowed to assert, the DNI's statutory authority over the IC, particularly with respect to budgetary matters including major systems acquisitions.

The Committee believes that these initial steps are necessary given the current state of cost overruns and the reluctance of certain elements of the IC to assert needed control over such acquisitions. The Committee not only has the responsibility of maintaining appropriate oversight of the IC and its acquisitions, but bears the obligation to ensure that taxpayer funds are being spent responsibly and without waste or delay. Our warfighters and policymakers depend on accurate and timely intelligence to do their jobs. If systems that have been deemed at one point to be essential are allowed to take years or even decades to complete, then their usefulness is significantly diminished, particularly given the rapidly-changing pace of technology.

The Committee believes that this provision is necessary due to the severe damage that a multi-billion dollar cost overrun can have in an IC budget. With approximately a $500 billion budget, the DoD can more readily absorb unanticipated program increases. The National Intelligence Program is a small fraction of the amount provided to DoD. Absorption of large cost overruns within the National Intelligence Program can cause disproportionate problems within the Intelligence Community.

Section 319. Submittal to Congress of certain court orders under the Foreign Intelligence Surveillance Act of 1978

Section 319 requires the Attorney General to provide to the congressional intelligence and judiciary committees copies of decisions,

orders, or opinions of the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that include significant construction or interpretation of the Foreign Intelligence Surveillance Act (FISA), as well as associated pleadings, within 45 days. The amendment further requires that any such decisions, orders or opinions, and associated pleadings from the previous five years which were not previously included in FISA semi-annual reports be submitted to the committees. Finally, the amendment requires that orders that include significant construction or interpretation of FISA be included in semi-annual reports, along with decisions and opinions.

Section 319 addresses three issues that have hampered the Congress in its oversight and legislative responsibilities with regard to FISA. First, under the current semi-annual report provision of FISA, significant constructions or interpretations of FISA are not required to be provided to the Congress if they are contained in orders, as opposed to decisions or opinions. This section closes that loophole. Second, there are times when the most important discussions of legal interpretations are included in pleadings. This section requires that pleadings be provided to the Congress as well. Third, under the current semi-annual reporting requirement, Congress's access to the Court's interpretations of law can be significantly delayed. Section 319 ensures that Congress will have the ability to review those interpretations in a timely fashion.

Section 320. Submittal to Congress of certain President's Daily Briefs on Iraq

Section 320 requires the DNI to submit to the congressional intelligence committees any President's Daily Brief (PDB), or any portion of a PDB, of the Director of Central Intelligence (DCI) during the period beginning on January 20, 1997, and ending March 19, 2003, that refers to Iraq or otherwise addresses Iraq in any fashion.

Section 321. National intelligence estimate on global climate change

Section 321 requires the DNI to submit to Congress a National Intelligence Estimate (NIE) within 270 days on the impact to U.S. national security of the geopolitical effects brought about by global climate change. The Committee notes that the National Intelligence Council (NIC) is presently writing such an assessment, which will either be produced as a National Intelligence Assessment or an NIE on an unclassified basis. Section 321 allows the DNI to determine whether the requirement to produce an NIE would be duplicative of the current NIC effort if both products would have the same drafting and review procedures.

Section 321 directs the DNI to use as the baseline for the NIE the mid-range projections of the fourth assessment report of the Intergovernmental Panel on Climate Change. The IC would therefore have no requirement to assess the underlying science of global climate change or predict its immediate effects. Rather, the NIE would focus on the direct impact from global climate change on U.S. national security and strategic economic interests. Changes resulting from global climate change present potentially wide-ranging threats to the United States that may require military, diplomatic, financial, and other national responses. It is the IC's responsibility

to prepare Executive and Legislative branch policymakers for such possibilities.

The Committee does not anticipate that producing an NIE will require the diversion of any collection or analytic resources away from other key priorities. In response to input from the DNI, Section 321 specifically directs that other entities within the federal government assist the Director of National Intelligence in the production of the NIE as appropriate. The Committee expects this assistance will likely come in the contribution of knowledge of environmental and energy issues, resulting competition for resources or human migration, the nature of military deployments that may be required to address such impacts, or similar contributions. The Director is also authorized to obtain nongovernmental assistance, through contractor support, commissioned studies, or otherwise, as appropriate to carry out this section.

Section 322. Repeal of certain reporting requirements

The Committee frequently requests information from the Intelligence Community in the form of reports, the contents of which are specifically defined by statute. The reports prepared pursuant to these statutory requirements provide this Committee with an invaluable source of information about specific matters of concern.

The Committee recognizes, however, that congressional reporting requirements, and particularly recurring reporting requirements, can place a significant burden on the resources of the Intelligence Community. It is therefore important for the Congress to reconsider these reporting requirements on a periodic basis to ensure that the reports it has requested are the best mechanism for the Congress to receive the information it seeks. In some cases, annual reports can be replaced with briefings or notifications that provide the Congress with more timely information and offer the Intelligence Community a direct line of communication to respond to congressional concerns.

In response to a request from the Director of National Intelligence, the Committee examined some of these recurring reporting requirements. Section 322 therefore eliminates certain reports that were particularly burdensome to the Intelligence Community when the information in the reports could be obtained through other means. It also eliminates reports whose usefulness has diminished either because of changing events or because the information contained in those reports is duplicative of information already obtained through other avenues.

Because the vast majority of recurring reports provide critical information relevant to the many challenges facing the Intelligence Community today, the Committee ultimately eliminated only seven statutory reporting requirements, a very small percentage of the many recurring reports currently requested. The Committee believes that elimination of these reports will help the Intelligence Community to allocate its resources properly towards areas of greatest congressional concern.

TITLE IV—MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE COMMUNITY

Subtitle A—Office of the Director of National Intelligence

Section 401. Requirements for accountability reviews by the Director of National Intelligence

Section 401 provides the Director of National Intelligence with a new authority to conduct accountability reviews of significant failures or deficiencies within the Intelligence Community. Such accountability reviews may be conducted on elements of the Intelligence Community or their personnel. This process is intended to be separate and distinct from any accountability reviews being conducted internally by the elements of the Intelligence Community or their Inspectors General, and is not intended to limit the authorities of the Director of National Intelligence with respect to his supervision of the Central Intelligence Agency.

Section 401 requires that the Director of National Intelligence, in consultation with the Attorney General, must formulate guidelines and procedures that will govern accountability reviews. The Committee envisions that these guidelines will govern the process by which the Director of National Intelligence can collect sufficient information from the Intelligence Community to assess accountability for a given incident.

This enhancement to the authority of the Director of National Intelligence is warranted given the apparent reluctance of various elements of the Intelligence Community to hold their agencies or personnel accountable for significant failures or deficiencies. Recent history provides several examples of serious failures to adhere to sound analytic tradecraft. In its reviews of both the September 11, 2001 terrorist attacks and the faulty Iraq prewar assessments on weapons of mass destruction, the Committee found specific examples of these failures yet no one within the Intelligence Community has been held accountable. Other examples of a lack of accountability within the Intelligence Community can be found by examining the history of certain major system acquisition programs. Despite clear management failures that resulted in significant cost overruns and unreasonable scheduling delays, these programs continue to stumble along without any imposition of accountability.

The Committee hopes that this modest increase in the Director of National Intelligence's authorities will encourage elements within the Intelligence Community to put their houses in order by imposing accountability for significant failures and deficiencies. Section 401 will enable the Director of National Intelligence to get involved in the accountability process in the event that an element of the Intelligence Community cannot or will not take appropriate action.

Section 402. Additional authorities of the Director of National Intelligence on intelligence information sharing

Section 402 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) authorizes the DNI to provide to a receiving agency or component, and for that agency or component to accept and use, funds or systems (which would include services or equipment) related to the collection, processing, analysis, exploitation, and dissemination of intelligence information.

The new Section 102A(g)(1)(H) grants the DNI authority to provide funds to non-National Intelligence Program (NIP) activities for the purpose of addressing critical gaps in intelligence information access or sharing capabilities. Without this authority, development and implementation of necessary capabilities could be delayed by an agency's lack of authority to accept or utilize systems funded from the NIP, inability to use or identify current-year funding, or concerns regarding the augmentation of appropriations.

These are similar to authorities granted to the National Geospatial-Intelligence Agency (NGA) for developing and fielding systems of common concern relating to imagery intelligence and geospatial intelligence. See Section 105(b)(2)(D)(ii) of the National Security Act of 1947 (50 U.S.C. 403–5).

Section 403. Modification of limitation on delegation by the Director of National Intelligence of the protection of intelligence sources and methods

Section 403 amends Section 102A(i)(3) of the National Security Act of 1947 to modify the limitation on delegation by the DNI (which now extends only to the Principal Deputy DNI) of the authority to protect intelligence sources and methods from unauthorized disclosure. It permits the DNI to delegate the authority to any Deputy DNI, the Chief Information Officer of the IC, or the head of any IC element.

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

The DNI should be able to rapidly focus the IC on an intelligence issue through a coordinated effort that uses all available resources. The ability to coordinate the IC response to an emerging threat should not depend on the budget cycle and should not be constrained by general limitations in appropriations law (e.g., 31 U.S.C. 1346) or other prohibitions on interagency financing of boards, commissions, councils, committees, or similar groups.

To provide this flexibility, Section 404 grants the DNI the authority to approve interagency financing of national intelligence centers established under Section 119B of the National Security Act of 1947. The section also authorizes interagency funding for boards, commissions, councils, committees, or similar groups established by the DNI for a period not to exceed two years. This would include the interagency funding of "mission managers," such as recommended by the Commission on the Intelligence Capabilities of the United States regarding Weapons of Mass Destruction. Under Section 404, the DNI could authorize the pooling of resources from various IC agencies to finance national intelligence centers or other organizational groupings designed to address identified intelligence matters. The provision also expressly permits IC elements, upon the request of the DNI, to fund or participate in these interagency activities.

To better understand how the DNI utilizes the authority of Section 404, the Committee requests that the DNI provide a report by February 1st annually through the end of fiscal year 2010 providing details on how this authority has been exercised.

Section 405. Enhancement of authority of the Director of National Intelligence for flexible personnel management among the elements of the intelligence community

Section 405 adds three subsections to Section 102A of the National Security Act of 1947, all intended to promote the DNI's ability to manage all the elements of the IC as a single cohesive community.

Subsection 102A(t) enables the DNI, with concurrence of a department or agency head, to convert competitive service positions and incumbents within an IC element to excepted positions. In requesting this authority, the DNI points out that because of their unique intelligence, investigative and national security missions, most IC elements are in the excepted civil service. However, civilian employees in several smaller IC elements are still covered under competitive service rules. The ability to convert those to the excepted service will enable the IC to maintain a system throughout the Intelligence Community that is responsive to the needs of the IC both for secrecy and the ability to quickly respond to personnel requirements. Subsection (t) additionally allows the DNI to establish the classification and ranges of rates of basic pay for positions so converted.

Subsection 102A (u) provides enhanced pay authority for critical positions in portions of the IC where that authority does not now exist. It allows the DNI to authorize the head of a department or agency with an IC element to fix a rate of compensation in excess of applicable limits with respect to a position that requires an extremely high level of expertise and is critical to accomplishing an important mission. A rate of pay higher than Executive Level II would require written approval of the DNI. A rate of pay higher than Executive Level I would require written approval of the President in response to a DNI request.

Subsection 102A(v) grants authority to the DNI to authorize IC elements, with concurrence of the concerned department or agency head and in coordination with the Director of the Office of Personnel Management, to adopt compensation, performance management, and scholarship authority that have been authorized for any other IC element.

Section 406. Clarification of limitation on co-location of the Office of the Director of National Intelligence

Section 406 clarifies that the ban on co-location of the Office of the DNI with any other IC element, which is slated to take effect on 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.

Section 407. Additional duties of the Director of Science and Technology of the Office of the Director of National Intelligence

The Director of Science and Technology serves as the DNI's chief representative for science and technology, assisting the DNI in for-

mulating a long-term strategy for scientific advances in the field of intelligence and among the science and technology elements of the intelligence budget. Section 407 sets forth additional duties for the Director of Science and Technology and for the DNI's Science and Technology Committee.

Section 408. Title of Chief Information Officer of the Intelligence Community

Section 408 expressly designates the position of Chief Information Officer in the Office of the Director of National Intelligence as Chief Information Officer of the Intelligence Community. The modification to this title is consistent with the position's overall responsibilities as outlined in Section 103G of the National Security Act of 1947 (50 U.S.C. 403–3g).

Section 409. Reserve for Contingencies of the Office of the Director of National Intelligence

Section 409 establishes a Reserve for Contingencies of the Office of the Director of National Intelligence. The reserve will be an additional means of enabling the DNI to determine, oversee, and implement the National Intelligence Program. As described by the DNI to the Committee, the reserve will enable the DNI to address emergency requirements, operational exigencies, and opportunities that arise outside of the budget formulation cycle and cannot be addressed in a timely way through existing budget procedures. In contrast to reprogramming authority, it will not require that the DNI take funds from another authorized program to meet new needs.

Funds placed in the reserve as a result of an appropriation or a transfer shall be available for expenditure in the fiscal year of the deposit or transfer and the following fiscal year. The DNI's declared intention is to limit the size of the reserve to $50,000,000, although, of course, that is subject to congressional appropriations and a continuing evaluation of the use of the reserve. Section 409 will limit the use of the funds to purposes for support of emergent needs, improvements to program effectiveness, or increased efficiency.

In order for reserve funds to be made available for a program or activity, the DNI, consistent with the provisions of Sections 502 and 503 of the National Security Act of 1947 (50 U.S.C. 413a–413b), must notify the congressional intelligence committees, at least 15 days before the funds are made available, of the intention to utilize the reserve for the particular program or activity. Additionally, the Director of the Office of Management and Budget must approve the use of the reserve for any program or activity not previously authorized by Congress. Pursuant to Section 504 of the National Security Act of 1947 (50 U.S.C. 414), funds may not be made available for any intelligence or intelligence-related activity for which funds were denied by Congress.

The use of any amounts in the reserve shall be subject to the direction and approval of the DNI or the DNI's designee and be subject to procedures that the DNI prescribes. The DNI should provide these regulations and related guidance to the congressional intelligence committees.

The Central Intelligence Agency has a similar reserve for contingencies. The DNI should report to the congressional intelligence committees, no later than the submission of the President's fiscal year 2009 budget, on whether the CIA's reserve and the reserve established under Section 409 should be integrated into a single Intelligence Community reserve.

The Committee intends that the Reserve for Contingencies be used as an alternative for the DNI's budgetary reprogramming authorities on a limited basis. The reserve should not be used for programmatic needs that could have been planned for or anticipated. Reprogramming is to be preferred, when it can be used, in that it entails a decision to cut spending elsewhere, when that is possible.

Section 410. 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 (IG) 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 appointed an Inspector General and has granted certain authorities pursuant to DNI Instruction No. 2005–10 (Sept. 7, 2005).

As this Committee urged in reports on proposed authorization acts for fiscal years 2006 and 2007, a strong IG 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 IC, with respect to matters within the responsibility and authority of the DNI, including the manner in which elements of the IC interact with each other in providing access to information and undertaking joint or cooperative activities. By way of a new Section 103I of the National Security Act of 1947, Section 410 of this Act establishes an Inspector General of the Intelligence Community in order to provide to the DNI and through reports to the Congress, the benefits of an IG with full statutory authorities and the requisite independence.

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

Under the new Subsection 103I(e), the DNI may prohibit the IG from conducting an investigation, inspection, or audit if the DNI determines that is necessary to protect vital national security interests. If the DNI exercises the authority to prohibit an investigation, the DNI must provide the reasons to the intelligence committees within seven days. The IG may submit comments in response to the congressional intelligence committees.

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

The IG 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 IG may request information from any United States Government department, agency, or element. They must provide the information to the IG insofar as is practicable and not in violation of law or regulation.

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

The IG 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 IG is unable to resolve any differences with the DNI affecting the duties or responsibilities of the IG or the IG conducts an investigation, inspection, or audit that focuses on certain high-ranking officials, the IG is authorized to report directly to the intelligence committees.

IC 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 IG. Following a review by the IG to determine the credibility of the complaint or information, the IG must transmit such complaint and information to the DNI. On receiving the complaints or information from the IG (together with the IG's credibility determination), the DNI must transmit the complaint or information to the intelligence committees. If the IG finds a complaint or information not to be credible, the reporting individual may still submit the matter directly to the 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 IC 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 IG of the Intelligence Community and an Inspector General for another IC element (or for a parent department or agency), the Inspectors General shall expeditiously resolve who will undertake the investigation, inspection, or audit. In attempting to resolve that question, the Inspectors General may request the assistance of the Intelligence Community Inspectors General Forum (a presently func-

tioning body whose existence is ratified by Section 410). In the event that the Inspectors General are still unable to resolve the question, they shall submit it to the DNI for resolution.

An IG for an IC element must share the results of any investigation, inspection, or audit with any other IG, including the Inspector General of the Intelligence Community, who otherwise would have had jurisdiction over the investigation, inspection, or audit.

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 411. Leadership and location of certain offices and officials

Section 411 confirms in statute that various offices are within the Office of the DNI: (1) the Chief Information Officer 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 expressly provides in statute that the DNI shall appoint the Director of the NCPC, which is what has been done by administrative delegation from the President.

Section 412. National Space Intelligence Office

The United States maintains a 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 would 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 in relation to our overall investment in space systems. Despite this significant overall 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 future threats to our space assets, as well as potential threats to the United States from space, Section 412 establishes a National Space Intelligence Office (NSIO). It is not the intent of the Committee that the NSIO be a physical consolidation of existing intelligence entities with responsibilities for various types of intelligence related to space. Rather, the functions of NSIO, among others delineated in Section 412, will be to coordinate and provide policy direction for the management of space-related intelligence assets as well as to prioritize collection activities consistent with the DNI's National Intelligence Collection Priorities. The NSIO is to augment 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. The Committee intends that NSIO work closely with NASIC and MSIC to ensure a coordinated IC response to issues that intersect the responsibilities of all three organizations.

The NSIO Director shall be the National Intelligence Officer for Science and Technology. The Committee encourages appointment of an Executive Director from the Senior Intelligence Service.

Section 413. Operational files in the Office of the Director of National Intelligence

In the CIA Information Act, Congress authorized the DCI to exempt operational files of the CIA from several requirements of the Freedom of Information Act (FOIA), particularly those requiring search and review in response to FOIA requests. In a series of amendments to Title VII of the National Security Act of 1947, Congress has extended the exemption to the operational files of the National Geo-Spatial Intelligence Agency (NGA), the National Security Agency (NSA), the National Reconnaissance Office (NRO), and the Defense Intelligence Agency (DIA). It has also provided that 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).

Section 413 adds a new Section 706 to the National Security Act of 1947. Components of the ODNI, including the National Counterterrorism Center (NCTC), require access to information contained in CIA and other operational files. The purpose of Section 413 is to make clear that the operational files of any IC component, for which an operational files exemption is applicable, retain their exemption from FOIA search, review, disclosure, or publication.

Section 413 provides several limitations. The exemption does not apply to information disseminated beyond the ODNI. Also, as Congress has provided in the operational files exemptions for the CIA and other IC elements, Section 413 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.

Section 413 also provides for a decennial review by the DNI to determine whether exemptions may be removed from any category of exempted files. It provides that this review shall include consideration of the historical value or other public interest in the subject matter of those categories and the potential for declassifying a significant part of the information contained in them. The Committee underscores the importance of this requirement, which applies to the other operational exemptions in Title VII, and also reiterates its interest in being advised by the DNI about the benefits of coordinating the five decennial reviews presently required by Title VII.

Section 414. Repeal of certain authorities relating to the Office of the National Counterintelligence Executive

Section 414 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 now that the NCIX is to be appointed by and is under the authority of the DNI.

Section 415. 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. FACA sets forth the responsibilities of the Executive branch with regard to such committees and outlines procedures and requirements for them. As originally enacted in 1972, FACA expressly exempted advisory committees utilized by the CIA and the Federal Reserve System. Section 415 amends FACA to extend this exemption to advisory committees established or used by the ODNI. The DNI should inform the intelligence committees periodically about the composition and use by the ODNI of advisory committees.

Section 416. Membership of the Director of National Intelligence on the Transportation Security Oversight Board

Section 416 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 CIA Director or CIA Director's designee.

Section 417. 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 DCI and then (after enactment of the Intelligence Reform Act) the CIA Director 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 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 ODNI. Section 417 extends to the DNI the authority to promulgate rules under which records systems of the ODNI 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

In abolishing the positions of DCI and Deputy DCI, the Intelligence Reform Act provided for a Director of the CIA but did not provide for a statutory deputy to the Director.

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

With the amendment made by Section 421, the presidential nomination of both the Director and Deputy Director of the CIA must be confirmed by the Senate. Given the sensitive operations of the CIA, nominees for both positions merit close scrutiny by Congress to examine their qualifications prior to their assumption of office. With respect to the Deputy Director, the requirement for Senate confirmation also provides assurance that, in the event of a vacancy in the position of Director, 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 not more than one of the individuals serving in the positions of Director and Deputy Director may be a commissioned officer of the Armed Forces in active status. This is similar to the bar in the Intelligence Reform Act on the simultaneous service by active duty officers as DNI and Principal Deputy DNI.

With respect to the CIA Deputy Director, 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 who is administratively performing the duties of the Deputy Director of the CIA on the date of enactment of this Act. 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 (except that the Deputy who had been appointed administratively may continue until the advice and consent Deputy assumes the position) or the date the individual presently performing the duties of that office leaves the post.

To insulate an officer serving as CIA Director or Deputy Director from undue military influence, Section 421 provides that so long as the individual continues to perform the duties of CIA Director or Deputy Director, that person is not subject to the supervision or control of the Secretary of Defense or any of the military or civilian personnel of the Department of Defense.

Section 422. Inapplicability to the Director of the Central Intelligence Agency for annual report requirement on progress in auditable financial statements

Section 422 relieves the CIA Director from the requirement in Section 114A of the National Security Act of 1947 to submit to the intelligence committees an annual report describing the activities being taken to ensure that financial statements of the CIA can be audited in accordance with applicable law and the requirements of OMB. As discussed in the Committee Comments, the Committee remains concerned that CIA has had minimal success in achieving unqualified opinions on its financial statements. The report required by Section 114A, however, is unnecessary as the Committee now receives annual audits of CIA's financial statements from the CIA Inspector General. The requirements of Section 114A continue to apply to the Directors of NSA, DIA, and NGA.

Section 423. Additional functions and authorities for protective personnel of the Central Intelligence Agency

Section 423 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.

Section 423 authorizes protective detail personnel, when engaged in the performance of protective functions, to make arrests in two circumstances. 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. The provision specifically does not grant any authority to serve civil process or to investigate crimes.

Section 423 provides that the CIA Director and the Attorney General will issue regulations or guidelines that will provide safeguards and procedures to ensure the proper exercise of this authority. These shall be provided to the intelligence committees.

The authority provided by this section is consistent with those of other Federal elements with protective functions, such as the Secret Service (18 U.S.C. 3056(c)(1)(C)), the State Department Diplomatic Security Service (22 U.S.C. 2709(a)(5)), and the United States Capitol Police (2 U.S.C. 1966(c)). The grant of arrest authority is supplemental to all other authority CIA protective detail personnel have by virtue of their statutory responsibility to perform the protective functions set forth in the CIA Act of 1949.

In requesting that the Congress extend this authority to the CIA, the DNI has represented that this "arrest authority will contribute significantly to the ability of CIA protective detail personnel to fulfill their responsibility to protect officials against serious threats without being dependent on the response of federal, state, or local law enforcement officers." It is essential, in the regulations or guidelines approved by the CIA Director and the Attorney General, and in the supervision and training of protective duty personnel, that the use of the authority is firmly kept to its purpose, namely, protecting officials and any other covered persons against serious threats.

Section 423 also authorizes the CIA Director on the request of the DNI to make CIA protective detail personnel available to the DNI and to other personnel within the ODNI.

The CIA Director should provide to the congressional intelligence committees regulations or guidelines that are approved by the Director and the Attorney General. The Director should also keep the congressional intelligence committees fully and currently informed about any use of this authority.

Section 424. Technical amendments relating to titles of certain Central Intelligence Agency positions

Section 424 replaces out-of-date titles for CIA positions with the current titles of the successors of those positions in a provision of the Central Intelligence Agency Act of 1949 on the obligation of the CIA Inspector General to notify the congressional intelligence com-

mittees about investigations, inspections, or audits concerning high-ranking CIA officials.

Section 425. Availability of the Executive Summary of the report on Central Intelligence Agency accountability regarding the terrorist attacks of September 11, 2001

Section 425 provides that by September 1, 2007, the CIA Director shall prepare and make available to the public a version of the Executive Summary of a report by the CIA Inspector General that is declassified to the maximum extent possible consistent with national security. The underlying document is the Office of Inspector General Report on Central Intelligence Agency Accountability Regarding Findings and Conclusions of the Joint Inquiry Into Intelligence Community Activities Before and After September 11, 2001. The CIA Director is to submit to the intelligence committees a classified annex that explains why any redacted material in the Executive Summary was withheld from the public.

The Committee's efforts to obtain this measure of public accountability are detailed in its report on the Committee's activities in the 109th Congress, S. Rep. No. 110–57, at pp. 24–26 (2007). The full Senate has endorsed this effort by including an identical provision in S. 4, Improving America's Security Act of 2007.

Section 426. Director of National Intelligence report on retirement benefits for former employees of Air America

Section 426 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 were bills in the Senate and House (S. 651 and H.R. 1276) during the 109th Congress that would have provided federal retirement benefits for those employees. By including Section 426 in this authorization bill, the Committee takes no position on the merits of that legislation.

The sole purpose of Section 426 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 Air America employees and what they received. The DNI should submit any recommendations on the advisability of legislative action and include any views that the CIA Director 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 National Security Agency Act of 1959 (50 U.S.C. 402 note) authorizes the National Security Agency (NSA) to establish an undergraduate training program to facilitate recruitment of individuals with skills critical to its 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 the NSA is "terminated" whether voluntarily by the employee or by NSA for misconduct.

Section 431(a) amends Section 16(d) of the NSA Act to clarify that "termination of employment" includes situations in which employees fail to maintain satisfactory academic performance as defined by the Director of the 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 United States Government to recoup the educational costs expended for the benefit of the defaulting employee. Thus, this provision is a clarification of that obligation.

Section 431(b) permits the NSA Director to protect intelligence sources and methods by deleting a requirement that NSA publicly identify to educational institutions students who are NSA employees or training program participants. 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. Notwithstanding the deletion of the disclosure requirement, the Committee expects 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. No. 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 NSA.

New Section 20(a) would authorize the Director of NSA to designate NSA personnel to perform protective detail functions for the Director and other personnel of NSA who are designated from time to time by the Director 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 423 provides for CIA protective detail personnel. The arrest authority for NSA protective detail personnel would be subject to guidelines approved by the Director of NSA and

the Attorney General. The purpose and extent of that arrest authority, the limitations on it, and reporting expectations about it are described in the section-by-section explanation for Section 423. That analysis and explanation 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, procedures, and authority should be provided for protective services, when necessary, for other IC elements or personnel (or their immediate families).

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 IGs 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." 5 U.S.C. App. 2. They 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 IGs of the CIA and Departments of Defense, Energy, Homeland Security, Justice, State, and Treasury are appointed by the President with the advice and consent of the Senate. These IGs—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. They also have explicit statutory authority to access information from their departments or agencies or other United States Government departments and agencies and may use subpoenas to access information (e.g., from an agency contractor) necessary to carry out their authorized functions.

The National Reconnaissance Office, the Defense Intelligence Agency, the National Security Agency and the National Geospatial-Intelligence Agency have established their own "administrative" Inspectors General. However, because they are not identified in Section 8G of the Inspector General Act of 1978, they lack explicit statutory authorization to access information relevant to their audits or investigations, or to compel the production of information via subpoena. This lack of authority has impeded access to information, in particular, information from contractors that is necessary for them to perform their important function. These Inspectors General also lack the indicia of independence necessary for the Government Accountability Office to recognize their annual financial statement audits as being in compliance with the Chief Finan-

cial Officers Act of 1990 (Pub. L. No. 101–576 (Nov. 15, 1990)). The lack of independence also prevents the DoD IG, 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 IGs to perform their audits and investigations, Section 433 amends Section 8G(a)(2) of the Inspector General Act of 1978 to include NRO, DIA, NSA, and NGA as "designated federal entities." As so designated, the heads of these IC elements will be required by statute to administratively appoint Inspectors General for these agencies.

Also, 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 any of these IG by the head of their office or agency must be promptly reported to the congressional 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 is similar to the authority of the CIA Director 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. It will provide 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 of 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 that circumstance, Senate confirmation of the promotion or assignment is the responsibility of the Committee on Armed Services. That committee's review, however, relates to the military promotion or assignment and not specifically to the assumption by the individual of the leadership of a critical IC element.

Section 434 provides, expressly and uniformly, that the heads of each of these entities shall be nominated by the President and that the nominations will be confirmed by the Senate. NSA, NGA, and

NRO play a critical role in the national intelligence mission. Their spending 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 United States 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 on 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 Department of Defense 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." 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 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 DoD, it has been slow to embrace other facets of "geospatial intelligence," including the processing, storage, and dissemination of full motion video (FMV) and ground-based photography. Rather, the NGA's geospatial products repositories—containing predominantly overhead imagery and mapping products—continue to reflect its heritage. While the NGA is belatedly beginning to incorporate more airborne and commercial imagery, its data holdings and products are nearly devoid of FMV and ground-based photography.

The Committee believes that FMV and ground-based photography should be included, with available positional data, in NGA data repositories for retrieval on DoD and IC 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 military personnel and intelligence officers. Ground-based photography is amply available from open sources, as well as other government sources such as military units, United States embassy personnel, Defense Attachés, Special Operations Forces, foreign allies, and clandestine officers. These products should be better incorporated into NGA data holdings.

To address these concerns, Section 435 adds an additional national security mission to the responsibilities of the NGA. To fulfill this new mission, NGA would be required, as directed by the DNI, to develop a system to facilitate the analysis, dissemination, and incorporation of 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 into the national system for geospatial intelligence.

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 of human intelligence collection organizations. Although Section 435 does not give the NGA direct authority to set technical requirements for collection of handheld or clandestine photography, the Committee encourages the NGA to engage IC 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. With Section 435, the Committee stresses the merits of FMV and ground-based photography and clarifies that the exclusion of "handheld or clandestine photography taken by or on behalf of human intelligence organizations" from the definition of "imagery" under the NIMA Act does not prevent the exploitation, dissemination, and archiving of that photography. In other words, NGA would still not dictate how human intelligence agencies collect such ground-based photography, have authority to modify its classification or dissemination limitations, or manage the collection requirements for such photography. Rather, NGA should simply avail itself of this ground-based photography, regardless of the source, but within the security handling guidelines consistent with the photography's classification as determined by the appropriate authority.

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 Department of Defense, 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 at the NGA for processing times are dramatic, particularly regarding contractor clearances. As the Committee noted in its report on its Fiscal Year 2007 bill, 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. NSA and NGA processing times for contractors in the first quarter of fiscal year 2006 showed that this significant discrepancy continued. 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 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.

Section 436 therefore provides that the Secretary of Defense will delegate to the Director of the NGA personnel security authority with respect to the NGA that is identical to the personnel security authority delegated to the Director of the NSA with respect to the NSA. The Committee calls upon the DNI to follow closely the progress made by the NGA in reducing processing times and to monitor the variation among 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. Clarification of inclusion of Coast Guard and Drug Enforcement Administration as elements of the intelligence community

Section 441 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 441 clarifies that all of the Coast Guard's intelligence elements are included within the definition of the "intelligence community."

Section 441 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 442. Clarifying amendments relating to section 105 of the Intelligence Authorization Act for Fiscal Year 2004

Section 442 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)).

Section 509. Other technical amendments relating to the responsibilities of the Director of National Intelligence as head of the intelligence community

Section 509 makes several technical and conforming changes to the Public Interest Declassification Act of 2000 (50 U.S.C. 435 note) to substitute the "Director of National Intelligence" for the "Director of Central Intelligence."

COMMITTEE COMMENTS

CIA Detention and Interrogation Program

The fiscal year 2008 intelligence authorization bill is the first passed by the Committee in which all members were briefed on the CIA's detention and interrogation program. While the program has been briefed from its outset to the Committee's Chairman and Vice Chairman, the Administration's decision to withhold the program's existence from the full Committee membership for five years was unfortunate in that it unnecessarily hindered congressional oversight of the program.

Significant legal issues about the CIA detention and interrogation program remain unresolved. The Department of Justice has not produced a review of aspects of the program since the Supreme Court's *Hamdan* decision and the passage into law of the Detainee Treatment Act in 2005 and the Military Commissions Act of 2006. The Committee urges prompt completion of such a legal review as soon as possible, regardless of whether the program is currently being used. The Committee expects that such review will be pro-

vided to the Committee as a part of its ongoing oversight of the program.

The Committee recognizes that the program was born in the aftermath of the attacks of September 11, when follow-on attacks were expected. The Committee acknowledges that individuals detained in the program have provided valuable information that has led to the identification of terrorists and the disruption of terrorist plots. More than five years after the decision to start the program, however, the Committee believes that consideration should be given to whether it is the best means to obtain a full and reliable intelligence debriefing of a detainee. Both Congress and the Administration must continue to evaluate whether having a separate CIA detention program that operates under different interrogation rules than those applicable to military and law enforcement officers is necessary, lawful, and in the best interests of the United States.

Moreover, the Committee believes that the demonstrated value of the program should be weighed against both the complications it causes to any ultimate prosecution of these terrorists, and the damage the program does to the image of the United States abroad.

Foreign Intelligence Surveillance Act Modernization and Liability Defense

The Committee remains committed to giving careful consideration to the issues involved in the Administration's legislative proposal to amend the Foreign Intelligence Surveillance Act and the proposal to provide liability protection to telecommunications companies who are alleged to have assisted the Intelligence Community in carrying out the President's surveillance program.

The Committee's review of the Administration's proposals and possible alternatives cannot be completed, however, until it receives key documents at the heart of the surveillance program: the President's orders authorizing the warrantless surveillance and the Department of Justice opinions on the legality of the program. The Administration's refusal to satisfy these document requests span over a year and hampers the Committee's ability to move forward on the legislation before it.

The Committee is also concerned about continued Administration requests to limit access by Committee staff to information related to the program. Limited staff access impedes congressional oversight as well as the Committee's ability to consider legislation related to the Foreign Intelligence Surveillance Act. Access to the program should therefore be expanded to the Committee's professional staff, including all Members' designees.

Oversight of major acquisition programs

A major concern of the Committee is the need for significant reform of the processes that govern the creation and continuation of major acquisition programs. When Congress and the President created the DNI, it gave the DNI milestone decision authority for all major systems acquisitions funded exclusively within the National Intelligence Program and shared milestone decision authority with the Secretary of Defense for major systems acquisitions within the Department of Defense.

The Committee is concerned that there is an inadequate management structure within the ODNI to prioritize national require-

ments, consider possible alternatives for proposed systems, and determine mission-based requirements as they relate to major systems acquisition programs. In essence, it appears that there is a lack of rigor in the planning, development, and management of such programs.

Although the bill does not contain a provision that addresses the management structure with respect to such programs, the Committee intends to continue to explore issues relating to major acquisition programs. Accordingly, the Committee requests that the DNI review the current management structure within the Intelligence Community relating to the approval of major acquisition programs, including all requirements, priorities, and procedures for approval. Particular attention should be given to the desirability of creating an Intelligence Resources Oversight Council within the ODNI to assist the DNI in exercising his authority over such programs. A report with any conclusions and recommendations on this concept should be forwarded to the Committee no later than December 1, 2007.

In addition, the Intelligence Reform Act contained a requirement for the DNI to provide the Congress with a report on the status of major intelligence systems funded within the National Intelligence Program. Specifically, the DNI was required to ensure the development and implementation of a program management plan for each major system acquisition. The plans were to contain cost, schedule and performance goals, and program milestone criteria.

The Committee received the DNI's first report, titled 2006 Annual Report to Congress, Intelligence Community Program Management Plans, in February 2007, and applauds the effort of the Office of the DNI in producing this document. For the first time there is a single source for information on the status of the Intelligence Community's major systems acquisitions. The report contains not only details on the status of individual programs, but valuable summary information on the acquisition shortcomings of the individual agencies. For example, the report highlights the lack of meaningful baseline data for a number of NSA programs and the NRO's need to more prudently align program baselines with anticipated budget resources. It is likely that the availability of such information in prior years would have helped prevent or contain cost overruns and schedule delays.

The 2006 report was used by the Committee in preparing this authorization bill. It will be used for further inquiry by the Committee's budget and audit staffs and will be a baseline that allows the Congress and DNI to derive trend data from future reports. The Committee supports plans to expand the report's coverage to include additional major systems, significant programs that do not meet the threshold to be categorized as major systems, and joint Intelligence Community and Department of Defense programs. The Committee suggests that the DNI consider using these reports to identify both positive acquisition practices that should employed throughout the Intelligence Community and unsuccessful practices that should be eliminated.

The Committee also believes that the report could be improved by adding more information on accountability. Future versions of the report should present greater detail on the DNI's perspective, propose solutions to the issues raised in the report, and identify

specific actions to be taken in response to the failure to meet the milestones conveyed in prior reports.

The Committee has also adopted two statutory requirements for assessments and reporting to Congress on major systems acquisition. In Section 314 of the bill, the Committee requires the DNI to conduct an initial vulnerability assessments of major systems proposed for inclusion in the National Intelligence Program and subsequent assessments under certain circumstances. The Committee also has created a mechanism for IC major system acquisitions similar to the Nunn-McCurdy process that applies to major defense acquisition programs in Sections 317 and 318.

Intelligence Community personnel growth and contractor support

The Committee in Section 103 recommends that the DNI have greater flexibility in determining personnel levels for elements of the Intelligence Community in order to allow the DNI to better manage the balance of government and contractor employees. The Committee, however, continues to have concerns over the lack of hard data on the IC's personnel structure, size, and cost over the short, medium, and long terms. It is essential that the DNI be able to explain what criteria should be used to determine the proper mix of government and contractor employees within the Intelligence Community. The Committee continues to emphasize that the best analysis and collection will not be attained by simply increasing the quantity of analysts and collectors, but by also increasing the quality of analysts, collectors and their support networks. The DNI must also be able to explain the trade-offs that occur with hiring more people, as opposed to using the same appropriations to purchase other capabilities.

The Committee supports the DNI's efforts to survey and better understand the use of contractors in the Intelligence Community, and was encouraged that the April 2007 report entitled IC Core Contractor Inventory provided a preliminary snapshot of the total number of full time equivalent (FTE) contractors by expenditure center. The report is a good first step, but still more needs to be done.

A Committee audit of Intelligence Community personnel found that end strength has grown by about 20 percent since the attacks of September 11, 2001; unfortunately, significant shortages in training capacity and secure office space, along with inadequate planning for administrative, logistical, and technical support have accompanied that growth. The Committee in its audit has recommended that no future personnel growth should take place until the challenges experienced in implementing the past growth have been addressed. The Committee continues to be concerned about the rate of growth in total personnel costs as a percentage of the overall intelligence budget and the lack of planning being done by the Executive branch to control that growth for the future.

In Section 315, the Committee addresses the need for additional information on personnel and contractor levels with the requirement for the DNI to prepare an annual personnel level assessment for each element of the Intelligence Community by January of each year.

Auditable financial statements

For a number of years, the Committee has encouraged the Intelligence Community to modernize its financial system architecture to allow for auditable financial statements. The Committee was pleased that the DNI's United States Intelligence Community 100 Day Plan for Integration and Collaboration of April 2007 included a serious commitment to improving financial management. The Committee is also encouraged by the hard work the ODNI put into the report Financial Statement Auditability Plan, also of April 2007. The report outlines the current state of the IC's financial management systems and explains the challenges to achieving clean audits. The report fails, however, to provide certain key pieces of information, including timelines on when and how independent audit assessments of important milestones will be conducted, when the IC will reach the proposed architecture, and whether the retention of outside experts would help address workforce competency shortfalls at certain agencies.

Further, the Committee remains concerned that the proposal for unqualified audit opinions, referred to as clean audits, by 2012 does not convey the urgent nature of the challenges facing our country's intelligence elements when it comes to managing and accounting for their resources efficiently and effectively. The NGA, NRO, NSA, CIA, and DIA all have been given ample opportunity, first with the President's relevant guidance in 1997 and again with the Committee's fiscal year 2002 intelligence authorization bill, to address this issue using their current authorities. Unfortunately, other than the NRO using first year estimates to receive a one-time clean audit opinion, these organizations have repeatedly failed to achieve tangible results on this important topic.

The Committee now turns to the DNI to provide much needed leadership. Such leadership will be essential in conducting the follow-on study on the "way ahead" required in the Financial Statement Auditability Plan in a meaningful way. The Committee expects this study to evaluate impartially not only the objectives stated in the report, but also:

- The authority of the Director of National Intelligence on this topic;
- The role and responsibilities of the IC's Chief Information Officer in overseeing the integration of the business enterprise architecture;
- Financial considerations, including the most cost effective system solution based on the future direction of the software industry;
- Operational considerations and change management issues related to the workforce "unlearning" and "relearning" critical skills;
- Risk considerations and the counterintelligence implications from foreign ownership of software providers;
- Ideal system integrator structure and software upgrade considerations, including dates when the IC will have interface and business process standards for major feeder systems, and accounting code standards;
- The findings of IC information technology assessments and Inspector General reports completed over the last five years; and

- Intellectual property rights concerns.

This study should also examine whether it would be best for the IC to outsource the oversight of implementing the chosen "way ahead" to the experts currently working in the Department of Defense's Business Transformation Agency, or if the IC should immediately hire its own "highly qualified employees" or "special advisors" to oversee the future implementation.

Additionally, based on the Committee's research with private sector experts and key personnel from the Business Transformation Agency, and a review of the best of breed model found at the Department of Transportation, the Committee is not convinced that the two-system approach outlined in the Financial Services Auditability Plan report is the most cost effective and efficient path. The Committee is concerned that the two-system solution rests too heavily on past decisions and sunk costs of the individual agencies, and does not fully embrace the shared service model endorsed by the OMB. Therefore, by December 1, 2007, the Committee requests that the DNI, in coordination with the Director of OMB, provide the Committee with the follow-on plan that includes the information described above and offers a specific timeframe and critical milestones for the IC to move to a single shared services financial system that will be used by the NGA, NRO, NSA, CIA, DIA, and the Office of the DNI.

The follow-on plan should help inform the implementation of Section 316 of the bill for a proposed Business Enterprise Architecture to be provided to the oversight committees by March 1, 2008. These documents will assist in the goal of executing a realistic plan to achieve sustainable, clean audits and provide the added benefit of integrating the IC's business management systems. Such integrated systems will build on the positive steps the Office of the DNI has already taken by creating the IC's single Human Resources Information System and single budget system called the Intelligence Resource Information System. This business architecture will minimize expensive and complex system interfaces and provide a cost-conscious solution that will promptly provide valuable data for future Directors of National Intelligence and agency heads. Also, this course of action will leverage the best private sector practices and allow the IC to benefit from the research and development dollars industry has already invested in these business management tools.

Finally, the Committee believes that both the Congress and the DNI would benefit from the creation of a consolidated National Intelligence Program financial statement. Such a statement would provide valuable macro-level data and, once established, offer insight into financial trends within the Intelligence Community. Therefore, the Committee requests that the DNI begin preparing a consolidated financial statement for the National Intelligence Program beginning with fiscal year 2010. In accordance with the DNI's Financial Statement Auditability Plan, by fiscal year 2012, this consolidated financial statement should be based on the fully auditable data provided by each of the Intelligence Community agencies. As such, a separate audit will not be required for the consolidated statement.

Intelligence Community contracting

The Committee is concerned about apparent conflicts of interest within the intelligence acquisition community. Despite provisions in the Federal Acquisition Regulation intended to preclude such conflicts, the Committee is concerned that organizational conflicts of interest may have adversely impacted major acquisitions.

The Executive Branch is relying increasingly on contractors to assist in managing or integrating complex acquisitions. Contractor advisory and assistance service (CAAS) and systems, engineering, and technical assistance (SETA) contracts are often used to perform what would otherwise be inherently governmental functions. There are merits to the government utilizing the technical and program management expertise which exists in the private sector. Close relationships, however, between CAAS/SETA contractors and their parent, affiliate, or subsidiary companies could bias those contractors in providing advice to the government.

Where a program's prime contractor has a contractor affiliate working in the program office setting program requirements, assisting in source selections, and determining award and incentive fees for the same program, there is strong potential for conflicts of interest. An Inspector General report from an element of the Intelligence Community expressed concern about such apparent conflicts which were negatively impacting the interests of that particular element. Indeed, the Committee notes that several major prime contractors have corporate affiliates supporting government program offices in the management of major Intelligence Community acquisitions. The Committee believes this practice is undesirable, and should be fully addressed by the Inspectors General of the respective elements of the Intelligence Community, including the Office of the Director of National Intelligence.

Supplemental budgeting

The Committee remains concerned over the Administration's continued use of supplemental appropriations bills to request funding for intelligence operations. Since the terrorist attacks of September 11, 2001, the Intelligence Community has expended significant resources in supplemental funding on the effort to defeat al Qa'ida and related terrorist groups, and on intelligence operations in support of the conflict in Iraq. While initially the costs associated with these two efforts may have been unforeseen or unknowable, the Committee believes the Intelligence Community has for some time been able to anticipate and budget effectively on an annual basis for its operations against terrorists and in Iraq, yet this has not been reflected in the regular budget requests. The Committee is further concerned that the Executive branch has misused the supplemental process to request funding for long-term acquisition and research and development programs, as well as numerous projects of questionable value.

The Committee supports the Administration's decision to request more funding for the Global War on Terrorism and Iraq requirements in the fiscal year 2008 budget request. The Committee, however, has many concerns regarding the continued use of supplemental funding outside the regular budget process to fund some counterterrorism operations. The conflict against al Qa'ida and its supporters has proceeded for more than five years, and many ana-

lysts and observers have concluded that it may span a generation or more before it is over. Due to the likely length of this effort, the Committee believes the Intelligence Community should plan, budget, and fund its counterterrorism operations for the long-term. This is not possible if supplemental funding continues. Supplemental requests introduce uncertainty into funding plans. Instead of encouraging discipline, supplemental requests present opportunity for gamesmanship. Instead of allowing for steady employment of experienced personnel, supplemental requests force the use of more expensive and more transient contractor employees. The Committee believes that the practice of budgeting by supplementals must end to better enable the Intelligence Community to protect our citizens at home and defeat those that threaten United States interests both here and abroad.

The Committee expects the Presidential request funds for all counterterrorism operations in the base budget beginning with the fiscal year 2009 request.

Al Qa'ida

The Committee is concerned with recent assessments that indicate al-Qa'ida has regenerated and resumed its operational planning against western targets from its relative safe-haven in the tribal areas of Pakistan. Despite the apprehension and death of key leaders, al-Qa'ida continues to train operatives and expand its reach, as evidenced by the 2007 North Africa attacks by the newly named "al-Qa'ida in the Maghreb."

The resurgence of al-Qa'ida, nearly six years after the terrorist attacks of September 11, 2001, suggests the Intelligence Community should reevaluate its current strategy to defeat the al-Qa'ida network. The Committee addresses this issue further in the classified annex.

Long-term strategic planning for the FBI National Security Branch

The Committee remains concerned that the Federal Bureau of Investigation (FBI) is not properly conducting long-term strategic planning, especially in regard to the growth of the National Security Branch (NSB) and the transformation of the NSB into an intelligence-driven organization.

Many of the reforms required to appropriately transform the NSB into a premier intelligence organization that can effectively meet the intelligence needs of our post 9/11 world within the United States remain in the planning and implementation phases, when those reforms should be in the evaluation and refinement stages.

The FBI is the premier law enforcement agency of the nation and it has a strong foundation on which to build the NSB; however, the Committee believes more should be done to define and focus the intelligence mission of the NSB. This effort should not impede information sharing or create new stove pipes within the FBI, but rather recognize the sophistication, unique training, and cultural change required to effectively address the current threat environment.

The FBI has provided the Committee with an unclassified five-page "Counterterrorism Strategy," but it fails to adequately ad-

dress the transformation that must take place at the FBI, or the urgency by which that change needs to occur.

A long-term strategic plan should be developed in conjunction with the ODNI that examines: (1) NSB growth; (2) how that growth is threat aligned; (3) how the NSB plans to recruit personnel with intelligence expertise; (4) how the NSB will identify training needs, implement training programs, and measure the success of training; (5) how the NSB will manage career paths—including a transparent career ladder—and elevate the Intelligence Analyst position; and (6) how the NSB will develop and utilize benchmarks and metrics to measure the growth and success of all NSB programs and personnel.

Furthermore, the plan should describe what will drive the NSB's allocation of analytical resources at headquarters and across FBI field offices and evaluate the impact that the National Intelligence Program (NIP) and non-NIP appropriations have on the NSB.

Additionally, the plan should comprehensively address how the FBI will use the increased funding authorized by the bill for Counterterrorism Division (CTD) training and travel. The increased funding is intended for Supervisory Special Agents, Intelligence Analysts, and other Professional Staff in those CTD units that provide oversight, management support, and guidance to FBI field offices addressing international terrorism and related matters.

Therefore, the Committee requests a comprehensive National Security Branch long-term strategic plan be completed by the FBI in conjunction with the ODNI that includes, but is not limited to, the requirements above. The plan should be unclassified, and if necessary, contain a classified annex. The plan should be provided to the intelligence committees by March 1, 2008.

Department of the Treasury intelligence activities

The Committee is concerned that the roles and responsibilities of the various components of the Office of Terrorism and Financial Intelligence (TFI) at the Department of Treasury are not sufficiently delineated in the area of intelligence analysis. The Committee requests that by no later than February 1, 2008, the Secretary of the Treasury, in coordination with the Director of National Intelligence, submit a report to the congressional intelligence committees on intelligence analysis within the TFI.

The report should include a description of the roles of the Office of Intelligence and Analysis (OIA), the Office of Foreign Assets Control (OFAC), and the Financial Crimes Enforcement Network (FinCEN) with regard to analysis of intelligence information and analytic support for sanctions, designations, and assistance to law enforcement conducted pursuant to the authorities of the Department.

The report should also include the guidelines and policies governing analysts at the OIA, OFAC and FinCEN related to access to intelligence information, specifically: (1) sharing of intelligence information within TFI; (2) direct sharing of intelligence information between OFAC and FinCEN and the Intelligence Community; and (3) sharing of intelligence information by the TFI with federal agencies outside of the Intelligence Community, as well as with state and local authorities and law enforcement.

In addition, the report should include a description of databases of financial information and information on financial transactions maintained by the TFI and the Intelligence Community. The report should include: (1) the legal authorities governing the collection, maintenance and use of such databases; (2) the purpose of such databases; (3) authorities and policies governing direct access to such databases as well as search parameters and the use of analytical tools; (4) authorities and policies governing dissemination of information from such databases as well as minimization requirements; (5) authorities and policies related to the use of such databases in coordination with each other; and (6) issues related to privacy and United States person information with respect to these databases.

Science and technology leadership

The Intelligence Community Chief Technology Officer (IC CTO), known in statute as the Director for Science and Technology (S&T), is the chief S&T advisor for the Director of National Intelligence. After the reorganization announced by the DNI in April 2007, the IC CTO reports indirectly, through two other positions, to the DNI, whereas other chief advisor positions such as the Chief Information Officer and Chief Financial Officer are empowered to report directly to the DNI. Though the Committee appreciates the potential benefits of having the IC CTO report to the DNI's acquisition leadership to improve technology transition, the Committee notes that the IC CTO has a broad portfolio of important responsibilities beyond those directly related to acquisition. The Committee continues to see a significant need for an IC CTO to directly influence IC policy and strategy regarding S&T issues, as originally set forth in the Intelligence Reform Act. Though the Committee understands that the DNI is still working on the details of his organization plan, there is concern that S&T may not be able to get the attention it deserves in the Office of the DNI.

One of the IC CTO's principal responsibilities is to guide IC research and development, and one of the CTO's major achievements to date is the establishment of the Intelligence Advanced Research Projects Activity (IARPA). The IARPA has been well-represented in the DNI's 100 Day Plan and in the DNI's statements supporting community research and development. Studies by distinguished independent advisory groups such as the Intelligence Science Board and the Committee's Technical Advisory Group emphasize the need for an IARPA. In strongly supporting the establishment of the IARPA, created with some of the best practices of the Defense Advanced Research Projects Agency (DARPA) in mind, the Committee intends to nurture high-priority (and sometimes high-risk and long-term) community research and development activities by allowing an independent organization to manage and sustain them over time, insulated from agency-specific operational pressures that frequently threaten research and development resources.

The IARPA Director is expected to face significant challenges inherent to the position in areas such as budget control, relationships with the ODNI and IC leadership, and translation of mission requirements into research and development priorities. Further, the first IARPA Director, as head of a new community research and development activity, is expected to face significant challenges from

the entrenched bureaucracy and the operations-focused agencies. It is critical that the DNI hire a uniquely qualified person to fill this position. The Committee is concerned, however, that the IARPA will not be able to attract the best candidates for Director if the position is deeply buried in the Office of the DNI organization. In the DARPA model, the DARPA Director reports to the Secretary of Defense's deputy for research and engineering, who reports to the Secretary of Defense. The Committee is concerned that the DNI's new organizational plan does not follow a similar model empowering the IARPA Director to report to the DNI's CTO who would report to the DNI, and instead places the IARPA under officials with other priorities. The Committee encourages the IC leadership to take full advantage of the rare opportunity created by the establishment of the IARPA and to strengthen S&T leadership at all levels.

Another of the IC CTO's responsibilities is to improve coordination and integration of S&T activities across the IC, and to that end the IC CTO must ensure that IARPA activities are well-coordinated with IC agency activities. The Committee requests that the IC CTO and the National Intelligence Science and Technology Committee (composed of the principal S&T officers of the National Intelligence Program) present by October 1, 2007 a unified plan clearly describing the division of research and development responsibilities and the processes for effective coordination among the agencies and the IARPA. Section 407 of the bill addresses additional duties that the Committee believes the Director of Science and Technology and the National Intelligence Science and Technology Committee should address.

Further, following the recommendations that were made by the Committee's Technical Advisory Group, the Committee requests that the IARPA present by October 1, 2007 a concept of operations to include how research ideas will be solicited and selected for funding; a strategy for technology insertion into operational organizations in the IC; and a plan for flexible hiring of the necessary S&T experts from industry and academia, with particular attention to additional authorities or resources that may be required.

Civil Liberties Protection Officer

The Intelligence Reform Act mandated the creation of a Civil Liberties Protection Officer, with significant statutory responsibilities. While the current Civil Liberties Protection Officer has made a commendable effort to carry out these responsibilities since his appointment, he has been unnecessarily hampered by a lack of staff and resources, as well as a lack of relevant security clearances.

The Committee is recommending an increase in resources for the Civil Liberties Protection Office in the classified annex to this Act. The Committee also urges the DNI to ensure that the Civil Liberties Protection Officer and his staff have adequate access to all intelligence activities that have the potential to impact the privacy and civil liberties of United States persons, so that the Office is able to fulfill its mandate.

The Armed Forces Medical Intelligence Center

The Armed Forces Medical Intelligence Center (AFMIC) is the only medical intelligence organization in the United States and is without peer worldwide. AFMIC is the recognized expert on infectious disease and the consequences of pandemic outbreaks and weapons of mass destruction (WMD) incidents. For this reason, the AFMIC has significant new responsibilities for supporting the Department of Homeland Security, just as it has taken on a significant share of the lead for the United States Government in assisting other nations in efforts to prepare for and respond to potential pandemic disease outbreaks or large-scale WMD incidents.

Although the commanders and chief executives of AFMIC historically have been officers of exceptional skill and undeniable quality, at the rank of colonel, the Committee believes AFMIC's new interagency responsibilities and growing international visibility suggest the need for a more senior level of leadership. Should there be a catastrophic biological or chemical attack or the spread of a pandemic disease, the leader of AFMIC will need to have the rank to serve as a principal advisor at the most senior levels of the government.

Therefore, the Committee requests that the Under Secretary of Defense for Intelligence, the Director of the Defense Intelligence Agency, and the Director of National Intelligence develop a plan for installing a senior executive service officer or military officer of flag rank to lead AFMIC and report to the congressional oversight committees on such a plan by September 1, 2007.

Senior Defense Intelligence Officers

The Committee believes intelligence personnel serving within the Department of Defense should provide direct and continuous expert intelligence information and advice to senior Department officials, specifically those of the Office of the Under Secretary of Defense for Policy [USD(P)]. The Committee believes building trust and confidence in intelligence requires time and contact with policymakers.

At present, the Defense Intelligence Agency has identified senior intelligence officers to support the policy apparatus, but these personnel are based at DIA facilities at Bolling A.F.B., not at the Pentagon. Comparatively junior officers with little or no standing with the senior officials they support are detailed to distribute finished intelligence to policy makers through their policy staff. These officers attend meetings as back-benchers and take carefully-crafted notes, which are passed up to the offices of the DIA Director through a bureaucratic network. The Committee does not believe this is an optimum way to manage the interaction of intelligence and policy.

Policymakers need ready access to dedicated, senior-level, expert intelligence advisors who are guided, managed and empowered by the Under Secretary of Defense of Intelligence [USD(I)] and the Director of the DIA to speak for the defense intelligence community. These experts should be fully integrated and routinely available to address policymaker questions regarding current intelligence, intelligence community capabilities, threat concerns, strategic warning, outstanding requests for intelligence, collection requirements and a myriad of issues that require more than what finished intelligence

products delivered by action officers and routine community briefings can provide.

The Committee believes defense policy makers should not be expected to maintain an expert understanding of the complex organization and evolving capabilities of the Intelligence Community. Similarly, they cannot be expected to become aware of regional intelligence through briefings and intelligence products alone. The Committee believes a senior intelligence officer with standing within the Intelligence Community should be present during the early stages of a crisis or the development of a critical issue. Furthermore, senior intelligence officers who establish appropriate professional relationships with senior policymakers are a valuable source of insight and feedback to the USD(I) and DIA Director. This effort is of mutual benefit, in the Committee's view.

Therefore, the Committee requests that the USD(I) and Director of DIA develop a plan and report to the congressional oversight committees by January 1, 2008, to provide senior defense policymakers with intelligence support from senior defense intelligence community officers, appropriate to their responsibilities and position. The Committee recommends USD(I) work with the DIA to draw on the existing capabilities within the Senior Intelligence Executive Service and the assets of the DIA Executive Support Office, the DIA International Engagements Office, and the Joint Chiefs of Staff J2.

The USD(I) and the Director of the DIA should draw on the history of and lessons learned from the Defense Intelligence Officer (DIO) program. The Committee believes the DIO program was a viable enterprise, which was more in need of an overhaul than complete elimination. While the threat environment and intelligence community have changed dramatically since the DIOs were created, the Committee believes the DIO program was sound and could be a model for the future.

Space Radar

The Committee opposes the Space Radar program of record. The Committee is skeptical of the program's mission utility and objects to its expected costs. In addition, the Committee questions the validity of more stringent requirements being levied upon the program. Therefore, the Committee recommends that the Space Radar program be terminated and directs that no National Intelligence Program funds be spent on the program.

Space Radar—formerly known as Space Based Radar (SBR)—is a joint effort between the Department of Defense (DoD) and the IC. In January 2005, the DoD and the IC committed to pursuing a single space radar capability. According to a recent Government Accountability Office (GAO) report, however, a cost-share agreement between DoD and the IC has yet to be formalized.

Initial plans for SBR called for a constellation of many satellites. However, fiscal realities intervened, leading to a reduction in the number of intended satellites. This has only served to drive unit costs far higher while meeting only a fraction of the original requirements.

The GAO report criticized the DoD for beginning more space and weapons programs than it could afford, which led to pressure to underestimate costs and over-promise capabilities. The Committee

believes that the IC has the same problem; thus, beginning another major acquisition at this time, especially one so costly and technically complex, is imprudent.

DoD's space acquisition programs continue to face substantial cost and schedule overruns. At times, cost growth has come close to or exceeded 100 percent. The GAO noted that, over the next five years, there will be approximately $12 billion less available for new systems as well as for the discovery of promising new technologies because of cost growth. Many programs are also experiencing significant schedule delays—as much as six years—that postpone delivery of promised capabilities to the warfighter and the IC.

A former head of the Air Force Space Command has commented that SBR will be developed "in a way that we don't ask it to do too much, too fast." Yet according to the GAO, Space Radar and the Transformational Communications Architecture Satellite (TSAT) are expected to be the most ambitious, expensive, and complex space systems ever. Despite the efforts of the Space Radar program office, there is still significant inherent risk with integrating critical technologies onboard the satellites and developing the software to achieve the satellites' capabilities. Further, the DoD has a history of adding requirements to a program, even well into the acquisition.

Basic questions about the Space Radar architecture are unanswered. The cost of supporting communications systems remains unclear. According to the Congressional Budget Office (CBO), communications bandwidth comparable to that of the Air Force's planned TSAT or some other high-capacity communications system is likely to be necessary to relay Space Radar data to ground stations in a timely fashion. However, most Space Radar cost estimates do not include those expenses since the final architecture has yet to be defined.

According to the GAO, preliminary estimates of the combined cost of Space Radar and the TSAT are about $40 billion. The Committee believes, however, that the cost and schedule estimates for Space Radar will follow typical space acquisition patterns and be much higher. The CBO estimates the cost of a nine-satellite space radar constellation will cost between $34.6 billion to $77.1 billion, depending on design trades.

The Committee does not oppose a space-based radar capability developed jointly by the DoD and the IC, but believes there are other means to achieve it. The Committee considers the alternatives espoused by the Constellation Architecture Panel to offer a less risky, less costly, and more flexible acquisition strategy.

COMMITTEE ACTION

Vote to report the committee bill

On May 23, 2007, a quorum for reporting being present, the Committee voted to report the bill favorably, subject to amendment, by a vote of 12 ayes and 3 noes. The votes in person or by proxy were as follows: Chairman Rockefeller—aye; Senator Feinstein—aye; Senator Wyden—aye; Senator Bayh—aye; Senator Mikulski—aye; Senator Feingold—aye; Senator Nelson—aye; Senator Whitehouse—aye; Vice Chairman Bond—aye; Senator Warner—

aye; Senator Hagel—aye; Senator Chambliss—no; Senator Hatch—no; Senator Snowe—aye; Senator Burr—no.

Votes on amendments to committee bill and this report

On May 17, 2007, by a voice vote, the Committee agreed to an amendment by Chairman Rockefeller and Vice Chairman Bond to include in this report a Committee Comment concerning the CIA detention and interrogation program.

On May 17, 2007, after rejecting by a vote of 5 ayes to 10 noes a second degree amendment by Vice Chairman Bond, the Committee agreed by voice vote to an amendment by Chairman Rockefeller to include in this report a Committee Comment on the Committee's consideration of legislation on FISA modernization and liability defense. The second degree amendment would have substituted the following for the second paragraph of the Comment: "The Committee believes that receiving the President's orders authorizing the warrantless surveillance and the legal justifications embodied in the Department of Justice opinions on the legality of the program is important to the Committee's review of the Administration's proposals and possible alternatives." The votes on the second degree amendment in person or by proxy were as follows: Chairman Rockefeller—no; Senator Feinstein—no; Senator Wyden—no; Senator Bayh—no; Senator Mikulski—no; Senator Feingold—no; Senator Nelson—no; Senator Whitehouse—no; Vice Chairman Bond—aye; Senator Warner—aye; Senator Hagel—no; Senator Chambliss—aye; Senator Hatch—aye; Senator Snowe—no; Senator Burr—aye.

On May 17, 2007, by a vote of 10 ayes to 5 noes, the Committee adopted an amendment of Chairman Rockefeller to add a section to the bill (Section 320) that requires the submittal to Congress of portions of the President's Daily Brief from January 20, 1997, through March 19, 2003, that address Iraq. The votes on the amendment in person or by proxy were as follows: Chairman Rockefeller—aye; Senator Feinstein—aye; Senator Wyden—aye; Senator Bayh—aye; Senator Mikulski—aye; Senator Feingold—aye; Senator Nelson—aye; Senator Whitehouse—aye; Vice Chairman Bond—no; Senator Warner—no; Senator Hagel—aye; Senator Chambliss—no; Senator Hatch—no; Senator Snowe—aye; Senator Burr—no.

On May 17, 2007, by a voice vote, the Committee adopted an amendment by Vice Chairman Bond, Chairman Rockefeller, Senator Burr, Senator Hatch, Senator Wyden and Senator Feingold (Section 401) that requires the Director of National Intelligence to conduct accountability reviews of elements of the Intelligence Community and the personnel of such elements, if appropriate.

On May 17, 2007, on a motion by Vice Chairman Bond and Senator Mikulski, after rejecting by a vote of 6 ayes to 9 noes a second degree amendment by Senator Feinstein, the Committee agreed by voice vote to an amendment (Section 106) on the development and acquisition of a program specified in the classified annex. The second degree amendment offered by Senator Feinstein was to reduce the funding level of the underlying amendment and to limit expenditures to pre-production studies and development in conjunction with other planning being done under the auspices of the relevant element of the Intelligence Community. Further details are

in the classified annex. The votes in person or by proxy on the second degree amendment were as follows: Chairman Rockefeller—aye; Senator Feinstein—aye; Senator Wyden—no; Senator Bayh—aye; Senator Mikulski—no; Senator Feingold—aye; Senator Nelson—aye; Senator Whitehouse—aye; Vice Chairman Bond—no; Senator Warner—no; Senator Hagel—no; Senator Chambliss—no; Senator Hatch—no; Senator Snowe—no; Senator Burr—no.

On May 23, 2007, by a voice vote, the Committee adopted an amendment by Vice Chairman Bond, Senator Burr and Senator Feingold (Sections 317 and 318) requiring an annual report by the Director of National Intelligence on the acquisition of major systems and establishing a procedure concerning cost overruns.

On May 23, 2007, by a voice vote, the Committee adopted an amendment by Senator Feinstein, Senator Hagel, Senator Warner, Senator Whitehouse, Senator Snowe and Senator Mikulski (Section 321) to require that the Director of National Intelligence submit to Congress a National Intelligence Estimate on the anticipated geopolitical effects of global climate change.

On May 23, 2007, by a vote of 10 ayes and 5 noes, the Committee adopted an amendment by Senator Feinstein and Senator Feingold (Sections 312 and 313) on (a) notifications to the congressional intelligence committees under Sections 502 and 503 of the National Security Act of 1947 and (b) the availability of funds under Section 504 of that Act. The votes in person or by proxy were as follows: Chairman Rockefeller—aye; Senator Feinstein—aye; Senator Wyden—aye; Senator Bayh—aye; Senator Mikulski—aye; Senator Feingold—aye; Senator Nelson—aye; Senator Whitehouse—aye; Vice Chairman Bond—no; Senator Warner—no; Senator Hagel—aye; Senator Chambliss—no; Senator Hatch—no; Senator Snowe—aye; Senator Burr—no.

On May 23, 2007, by a vote of 4 ayes and 11 noes, the Committee rejected an amendment by Senator Chambliss to strike Section 107 on the availability to the public of the aggregate amount requested by the President and authorized and appropriated by Congress for the National Intelligence Program. The votes in person or by proxy were as follows: Chairman Rockefeller—no; Senator Feinstein—no; Senator Wyden—no; Senator Bayh—no; Senator Mikulski—no; Senator Feingold—no; Senator Nelson—aye; Senator Whitehouse—no; Vice Chairman Bond—no; Senator Warner—no; Senator Hagel—no; Senator Chambliss—aye; Senator Hatch—aye; Senator Snowe—no; Senator Burr—aye.

On May 23, 2007, by a vote of 10 ayes and 5 noes, the Committee adopted an amendment by Senator Feingold (Section 319) on the provision to the Intelligence and Judiciary Committees of opinions and orders of the Foreign Intelligence Surveillance Court, and associated pleadings, that include a significant construction or interpretation of the Foreign Intelligence Surveillance Act. The votes in person or by proxy were as follows: Chairman Rockefeller—aye; Senator Feinstein—aye; Senator Wyden—aye; Senator Bayh—aye; Senator Mikulski—aye; Senator Feingold—aye; Senator Nelson—aye; Senator Whitehouse—aye; Vice Chairman Bond—no; Senator Warner—no; Senator Hagel—aye; Senator Chambliss—no; Senator Hatch—no; Senator Snowe—aye; Senator Burr—no.

On May 23, 2007, by a vote of 9 ayes and 6 noes, the Committee adopted an amendment by Senator Feingold and Senator Wyden to

add to a Committee Comment on FISA modernization and liability defense a paragraph on expanded staff access to information. The votes in person or by proxy were as follows: Chairman Rockefeller—aye; Senator Feinstein—aye; Senator Wyden—aye; Senator Bayh—aye; Senator Mikulski—aye; Senator Feingold—aye; Senator Nelson—aye; Senator Whitehouse—aye; Vice Chairman Bond—no; Senator Warner—no; Senator Hagel—no; Senator Chambliss—no; Senator Hatch—no; Senator Snowe—aye; Senator Burr—no.

On May 23, 2007, by a vote of 7 ayes and 8 noes, the Committee rejected an amendment by Senator Whitehouse and Senator Feinstein to add a section that would have barred, absent a determination by the President that a national exigency exists and that an individual has information about a specific and imminent threat, the use of appropriated funds for interrogation methods by the CIA or other U.S. agencies that are not explicitly authorized by the U.S. Army Field Manual on Human Intelligence Collector Operations. The votes in person or by proxy were as follows: Chairman Rockefeller—aye; Senator Feinstein—aye; Senator Wyden—aye; Senator Bayh—aye; Senator Mikulski—aye; Senator Feingold—aye; Senator Nelson—no; Senator Whitehouse—aye; Vice Chairman Bond—no; Senator Warner—no; Senator Hagel—no; Senator Chambliss—no; Senator Hatch—no; Senator Snowe—no; Senator Burr—no.

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 this legislation. On May 24, 2007, the Committee transmitted this bill to the Congressional Budget Office and requested it to conduct an estimate of the costs incurred in carrying out its provisions.

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 VICE CHAIRMAN BOND AND SENATORS CHAMBLISS, HATCH, AND BURR

The most important means that the Senate Select Committee on Intelligence has for conducting effective oversight of the Intelligence Community is the annual intelligence authorization bill. Unfortunately, Congress has been unable to pass an authorization bill for either fiscal year 2006 or 2007. In an effort to break this cycle, the Committee worked hard to include in its Chairman/Vice Chairman mark for our fiscal year 2008 intelligence authorization bill only those provisions that had strong bi-partisan support. We were able to amend the Chairman/Vice Chairman mark with a number of other provisions that also received strong bi-partisan support. We call these the "Good Government" provisions. There were, however, a few amendments that the Committee adopted which will make final passage of the bill more difficult because they are inherently political in nature. We call these the "Problem" provisions.

GOOD GOVERNMENT PROVISIONS

Encouraging good government is a major theme of this year's authorization bill. We supported or requested the inclusion of several provisions that we believe will improve the efficiency and accountability of the Intelligence Community (IC), while at the same time, provide the Director of National Intelligence (DNI) with the flexibility he needs to lead the IC. Section 314 will enhance the IC's ability to obtain quality systems in a cost-efficient manner. It requires the DNI to conduct initial and subsequent vulnerability assessments for any major system, and its items of supply, that is included in the National Intelligence Program (NIP). Such assessments will ensure that any vulnerabilities or risks associated with a particular system are identified and resolved at the earliest possible stage. Section 316 requires the DNI to create a comprehensive business enterprise architecture that will define all IC business systems. This architecture will incorporate IC financial, personnel, procurement, acquisition, logistics, and planning systems into one interoperable and modernized system. As a complement to the architecture required by Section 316, the Committee included report language that requires the DNI to submit a plan for the IC to move to a single, shared-services financial system. In this way, the IC will be better positioned to achieve sustainable, clean financial audits.

Sections 317 and 318 will operate together to address the problem of cost overruns in major system acquisitions by the IC. These provisions were modeled on the Nunn-McCurdy provision in title 10 of the United States Code. They encourage greater DNI involvement in the acquisitions process and enable the Congressional in-

telligence committees to perform more effective and timely oversight of cost increases.

Section 315 continues the theme of encouraging good government. This section directs the DNI to conduct annual personnel level assessments of each element of the IC that capture the number and costs of personnel (and contractors) for that element. In order to provide the DNI with maximum flexibility as he addresses personnel management issues, Section 405 allows the DNI, with the concurrence of the head of the agency involved, to convert competitive service positions in the IC to excepted service positions. It also enables the DNI to grant authority (at the discretion of the agency head) to fix excess pay for certain critical positions.

Finally, Section 401 provides the DNI with the authority to conduct accountability reviews of elements and personnel of the IC in relation to their significant failures or deficiencies. We believe this section will encourage IC elements to address their own internal failures or deficiencies—something they apparently have been reluctant to do before now. In the event that they are reluctant or unable to do so, this provision gives the DNI the authority he needs to conduct his own reviews.

We believe that these measures will lead to a stronger, more efficient, and more effective IC. Major systems acquisition is an important issue for our warfighters and intelligence collectors, especially as technological capabilities evolve. It is also essential that the IC has sufficient and appropriate personnel to do the demanding jobs that are required to defeat our enemies.

PROBLEM PROVISIONS

A. President's daily briefs

Section 320 will likely be the most problematic provision in this bill. This section requires the President to provide the Congressional intelligence committees with all President's Daily Briefs (PDBs) during the period beginning on January 20, 1997 and ending on March 19, 2003, that refer to Iraq or otherwise address Iraq in any fashion. We anticipate that the Administration will strongly oppose inclusion of this provision in the final Intelligence Authorization bill. Also, we would not be surprised if the inclusion of this provision in the final bill results in a Presidential veto.

PDBs have never been provided to Congress by any Administration. The White House has consistently maintained that these documents are protected by executive privilege. The DNI recently wrote to the Committee that the PDB:

> is a unique intelligence product prepared specifically for the President. It serves as a critical element in Presidential communications and Executive Branch deliberations associated with the formulation and implementation of foreign policy. The contents of the PDB reflect an ongoing dialogue between the President and the [Intelligence Community] concerning the national security of the United States. Restricting access to the PDB is necessary to guarantee the candor of this dialogue and to provide the President with the freedom to explore alternatives in the process of shaping policies.

Even if some of my colleagues do not agree with the Administration's argument, Congress cannot magically legislate away executive privilege. Section 320 ignores the negotiation over access to information that has been ongoing between the Executive and Legislative branches since our Constitution was adopted. These negotiations have always been part of our democratic system of checks and balances. Within that system, Congress has many tools available to apply pressure to try to get the information it wants from the Executive branch. Attempting to create a statutory requirement to provide these privileged documents only creates additional friction in the ongoing negotiations between the two branches as they perform their constitutional roles.

Another problem with Section 320 is that it creates a false impression that Congress did not get all of the intelligence on Iraq that the President received before the war. Although Congress does not receive the PDBs, we do receive a very similar daily intelligence product and a variety of other important documents such as the October 2002 National Intelligence Estimate (NIE) on Iraq's Weapons of Mass Destruction (WMD) programs. The bipartisan Robb-Silberman WMD Commission examined the prewar PDBs regarding Iraq's WMD programs and found that they contained language that was not "markedly different" from the intelligence received by Congress, and were just as flawed. In fact, they noted that the language in the PDBs was actually "more alarmist" and "less nuanced" than the intelligence received by Congress, such as the WMD NIE.

Proponents of Section 320 must know that neither this Administration nor any other Administration will acquiesce to providing privileged documents, yet they persist in demanding them. We are starting to wonder whether these demands are more theater than substance. If they actually received the PDBs they would no longer be able to claim that the White House was withholding information and they would no longer be able to give the false impression that the PDBs contained different intelligence on Iraq than the assessments provided to Congress.

The facts are clear—Congress had the same prewar intelligence assessments on Iraq as the President. To keep attempting to create the impression that they did not, particularly when it prevents the intelligence authorization bill from being passed into law, is irresponsible.

It is because this provision was passed as an amendment that Senator Hatch, who joins Vice Chairman Bond in these additional views, voted against the bill.

B. Notifications to Congress

Despite recent difficulties the Congress and the Administration have had regarding the oversight of intelligence, there has been a history of cooperation and compromise between the two, particularly with respect to the sharing with Congress of sensitive information regarding intelligence sources and methods. While we believe that briefings to all Members and staff are the preferred method of notification of intelligence activities, the congressional intelligence committees have historically acquiesced to requests by the Executive branch to limit access on particularly sensitive mat-

ters to the Chairman and Vice Chairman. We support such limited notification when absolutely necessary.

In contrast to the National Security Act of 1947, Section 312 imposes new requirements when the Executive branch determines that disclosure to less than the full membership of the Committee is appropriate. It requires that, in those cases, the Executive branch must provide the "main features" of the program to the entire membership of the intelligence committees. Although we believe in comprehensive oversight, we also believe in working in comity with the Administration regarding the President's authority to control access to the nation's most sensitive national security programs when necessary.

While we appreciate the majority's efforts to make the provision less controversial and more tenable, we believe this requirement will still increase tension between the Legislative and Executive branches over information access. Rather than ensure that Members receive the information they are seeking, this provision could instead merely provoke a stalemate.

C. Declassification of the National Intelligence Program top line

Section 107 of the bill would require the declassification of the aggregate amount of appropriations requested, authorized, and appropriated for the NIP. A similar provision was included in the Committee-passed version of the fiscal year 2007 Intelligence Authorization bill, and it received criticism from the Administration. Senator Chambliss offered an amendment to strike this provision of the bill during the markup. Although I voted against his amendment and it was not accepted by the Committee, I am sympathetic to Senator Chambliss's argument that the declassification of the aggregate amounts requested, authorized, and appropriated could possibly provide our enemies with insight into the cancellation of or creation of major intelligence initiatives. Such declassification might become the source of political attacks and wasteful spending if future administrations feel compelled to keep raising intelligence budgets so as not to be accused of neglecting national security. As the bill moves forward, we are open to considering a number of options to improve this provision, including the retroactive declassification of the NIP top line to show the fluctuation of the IC budgets during the past several decades, and the possibility of declassifying only the aggregate amount appropriated by Congress.

D. Global climate change National Intelligence Estimate

We are also concerned about Section 321, which requires the DNI to submit an NIE to Congress on the anticipated geopolitical effects of global climate change and the implications of such effects on the national security of the United States. We recognize that many members on both sides of the aisle believe that global climate change is a serious issue which could have profound consequences. We also recognize that the DNI has said he believes it is appropriate for the National Intelligence Council (NIC) to prepare such an assessment and that he has, in fact, directed the preparation of such an assessment in the hope of precluding legislation on this issue. Nonetheless, we believe that the production of an NIE on global climate change is inappropriate for the IC.

Members who support Section 321 cite the national security implications of global climate change. We agree that global climate change could have national and global security implications and that elements of the U.S. government should be studying it, but the IC is not one of those elements. The job of the IC is not to provide analysis on every issue which has national security implications—it is not a think tank. The job of the IC is to steal secrets and provide analysis of those secrets. There are no secrets to analyze when it comes to estimating the geopolitical effects of an event 20 or more years in the future as this bill requires. We do not even know what countries or global groups will exist in 20 years.

This Committee is constantly reminded by various Commissions, and the IC itself, that intelligence analysts are overtasked, overworked, and do not have the time to devote to long-term assessments, even on the countries and issues they currently cover on a daily basis, such as terrorism, proliferation, Iran, Iraq, and China. Which analysts are going to be pulled from their current responsibilities to analyze the implications of climate change? Preparing an estimate covering all of the geopolitical implications of global climate change would seem to require analysis on dozens of countries and groups with global reach. Can we really afford to have these analysts take a leave of absence from their current responsibilities to prepare such an estimate, especially when our nation is at war? We are not confident that terrorist leaders will stop plotting against us while analysts take time off to ponder the potential implications of global climate change.

Finally, we take seriously the comments to our Committee from the Office of the DNI that mandating preparation of NIEs in legislation sets a harmful precedent. The DNI added that the production of products on topics of interest should not be reflected in law, particularly in a manner that impinges on the flexibility of IC professionals to approach a task in the most appropriate manner.

We agree with the DNI and believe that legislating the production of NIEs—particularly when the legislation requires them to be unclassified—sets a harmful precedent and further politicizes the intelligence process. NIEs are supposed to be confidential assessments, based on collected intelligence, to inform senior policymakers. They are not supposed to provide fodder for political debates. In the past few years we have already seen an explosion of legislation demanding NIEs on topics like Iraq and Iran. We also have seen the political rhetoric and charges of politicization when those NIEs do not offer the conclusions the requesters wanted. This is a disturbing trend which we fear will only continue to worsen.

E. Foreign Intelligence Surveillance Act reporting requirements

Section 319 requires the Department of Justice (DoJ) to provide copies of all decisions, orders, and opinions (and associated pleadings) issued by the Foreign Intelligence Surveillance Court (FISC) that involve significant construction or interpretation of the Foreign Intelligence Surveillance Act (FISA). We objected to this section on several grounds. First, this section should have been considered in relation to upcoming FISA modernization legislation as it directly changes a reporting provision in the FISA statute.

Second, FISA already requires DoJ to provide the congressional intelligence and judiciary committees with copies of all decisions (but not orders or pleadings) that include a significant construction or interpretation of FISA. It seems to me that if a particular decision raises issues that the Committee believes need to be further explored, then any supporting documents can be requested at that time. Expanding the FISA reporting requirement to a wholesale submission of court orders and pleadings is simply unnecessary.

In addition, we believe it is the decisions, not the orders or pleadings, that are essential to this Committee's oversight. Court orders and pleadings relate to particular targets and thus have limited value to this Committee's proper role in overseeing the implementation of FISA. This Committee can get better insight into significant search and surveillance issues confronting the FISC or the Intelligence Community by examining court decisions or opinions.

Finally, DoJ will be forced to use valuable resources to search five years of FISA applications and orders to identify any significant documents. Further resources will then have to be expended by IC agencies to review those documents and redact any sensitive material. At a time when IC resources are spread thin, we should not be requiring extensive document searches that we believe are unnecessary. In any event, DoJ's opinion about this amendment should have been sought by the Committee before it imposed this additional task.

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ADDITIONAL VIEWS OF SENATOR FEINGOLD

The Fiscal Year 2008 Intelligence Authorization bill, along with the accompanying classified annex, provides vital support to our Intelligence Community, as well as the legal framework and policy guidance that is so critical to our national security. Indeed, congressional oversight has never been more important, as our nation seeks a new way forward, with an Intelligence Community focusing its resources on defending America while operating within the rule of law and with the informed support of the Congress.

One of the most important, as well as long overdue, areas for congressional oversight is the CIA's detention and interrogation program. I have opposed the program on moral, legal and national security grounds. For that reason, while I commend the Committee's increased scrutiny of the program, I cannot support the Committee's report language stating that the Congress must continue to evaluate whether having a separate CIA program with different interrogation rules than those applicable to military and law enforcement officers is necessary, lawful and in the best interests of the United States. It is my position that detainees should never be interrogated except as authorized by the United States Army Field Manual on Human Intelligence Collector Operations. I voted in favor of the amendment offered by Senator Whitehouse, which would have restricted the circumstances in which separate interrogation techniques can be employed, as a step forward.

Another critical priority for congressional oversight is government wiretapping of Americans, conducted under the Foreign Intelligence Surveillance Act, and, illegally, under the President's warrantless wiretapping program. When the program was finally placed within the FISA process, an opportunity arose for the Administration and the Congress to move forward, under the law. Unfortunately, the Administration has yet to demonstrate a real interest in doing so. First, the Administration has sought broad new authorities unrelated to keeping FISA up-to-date with new technology, and has pursued these authorities while refusing to rule out further surveillance activities entirely outside of the law. Second, the Administration has sought to impose a set of impediments to congressional oversight and responsible legislating. I am pleased, therefore, that the Committee has stated clearly that, before it can legislate, these impediments, including the Administration's refusal to provide critical documents related to the president's warrantless wiretapping program as well as efforts to limit staff access to the program, must be removed. I am also pleased that the Committee approved my amendment to the bill requiring the Attorney General to provide to the congressional intelligence and judiciary committees, in a timely manner, all orders, decisions, and opinions of the FISA Court and FISA Court of Review that contain significant construction or interpretation of the law, as well

as associated pleadings. No responsible legislature can amend a statute without knowing how the courts have interpreted it. The Foreign Intelligence Surveillance Act is no exception.

For more than four years, the Administration failed to inform the full congressional intelligence committees of the warrantless wiretapping program. In doing so, the Administration violated the National Security Act, which allows restricted notification to the "Gang of Eight" only in certain limited cases involving covert action. In light of this abuse of the limited notification provision, I was pleased to co-sponsor an amendment offered by Senator Feinstein to ensure that all members of the Committee receive, at a minimum, summary information about programs that the Administration has sought to limit to the Chairman and Vice Chairman.

Another area about which the Congress needs more information is the large databases of information, including on American citizens, collected by the government, both inside and outside the Intelligence Community. The Committee has requested that the Secretary of the Treasury, in coordination with the Director of National Intelligence, report on databases of financial information and information on financial transactions maintained at the Office of Terrorism and Financial Intelligence at the Department of the Treasury, including on access to and use of such databases, dissemination of information and minimization requirements and issues related to privacy and United States person information. This is an important step in Congress's efforts to develop a comprehensive understanding of all such programs throughout the government.

I have expressed concern about broad new arrest authorities granted to protective personnel at the CIA and NSA that have been included in previous intelligence authorization bills reported by the Committee. The Administration has yet to present a case that these new authorities are necessary. While I am disappointed that these provisions were included in this year's bill, I am pleased that the Committee's report clearly indicates that these authorities are not to be used except to protect the specific individuals to whom those CIA and NSA personnel are assigned, and that Congress is to be kept fully informed of how these authorities are used.

Finally, I was pleased to cosponsor two amendments offered by the Vice Chairman to ensure greater accountability and cost-savings in the Intelligence Community. The first granted the Director of National Intelligence authorities to conduct accountability reviews of significant failures or deficiencies within the Intelligence Community. The second requires the DNI to justify to the Congress cost overruns in major system acquisitions exceeding 20 percent, and for the President to justify cost overruns over 40 percent. These provisions are important steps in the ongoing effort to reform our Intelligence Community and demonstrate the Committee's bipartisan commitment to ensuring that our nation is defended effectively and efficiently and with real accountability for financial mismanagement and other wrongdoing.

RUSSELL D. FEINGOLD.

ADDITIONAL VIEWS OF SENATOR WHITEHOUSE

I strongly support provisions contained in this legislation that I believe will enhance the accountability of managers in the Intelligence Community. In my short time on the Committee, I have become troubled by the apparent lack of accountability I have observed in the management of certain major Intelligence Community acquisition programs which have experienced enormous cost overruns and significant scheduling delays. The Intelligence Community is our nation's early warning system against large and increasingly complex threats such as terrorism and the proliferation of weapons of mass destruction. The nature and extent of the threats facing the United States today requires more than ever that we insure that we get the most value possible from our nation's investment in intelligence. Yet the secrecy these programs require to be effective insulates them from many ordinary channels of accountability.

This legislation contains provisions that provide the Director of National Intelligence with the authority to conduct accountability reviews of significant failures or deficiencies within the Intelligence Community as well as creates a mechanism that requires the Director of National Intelligence to submit annual reports for each major system acquisition by the Intelligence Community. In addition, the Classified Annex to this legislation includes a provision I sponsored related to the National Reconnaissance Office (NRO), which designs, builds and operates the nation's reconnaissance satellites. My proposal directs the NRO Inspector General to conduct a review of the accountability practices employed for certain NRO programs. It is my hope that this review will lead to the incorporation of accountability mechanisms into the NRO's program management processes.

During the Committee's mark-up of this legislation, I offered an amendment that prohibits the use of funds for interrogations conducted by the Central Intelligence Agency—or any other element of the U.S. Government—that differs from the techniques listed in the U.S. Army Field Manual on Human Intelligence Collector Operations. My amendment makes an exception if the President determines that "there is an immediate national exigency, and that there are compelling reasons to believe that the individual has information about a specific and imminent threat related to that national exigency."

I am deeply concerned that so-called enhanced interrogation techniques (EITs) may provide unreliable information and that their use would undermine our nation's moral standing in the world. On June 26, 2003, President Bush issued a statement for United Nations International Day in Support of Victims of Torture in which he said, "[t]he United States is committed to the worldwide elimination of torture and we are leading this fight by exam-

ple." I don't believe that the alleged use of these EITs has placed our nation in a leadership position in this area. In fact, I believe that the prisoner abuse scandal in Abu Ghraib, for example, has done a great deal to damage America's standing in the world. And publicized allegations of abuse related to the CIA interrogation program raise further concern.

The Army Field Manual on Human Intelligence Collector Operations provides interrogation procedures adhered to by all branches of the U.S. military. General David Petraeus, Commander of the Multi-National Force in Iraq wrote in a letter to U.S. military forces in Iraq on May 10, 2007:

> Some may argue that we would be more effective if we sanctioned torture or other expedient methods to obtain information from the enemy. They would be wrong. Beyond the basic fact that such actions are illegal, history shows that they also are frequently neither useful nor necessary. Certainly, extreme physical action can make someone "talk;" however, what the individual says may be of questionable value. In fact, our experience in applying the interrogation standards laid out in the Army Field Manual (2–22.3) on Human Intelligence Collector Operations that was published last year shows that the techniques in the manual work effectively and humanely in eliciting information from detainees.

The concern has also been raised that a determined detainee will be able to withhold critical, time-sensitive, actionable intelligence that could prevent an imminent, catastrophic attack on the United States. That is why my amendment allows an exception from the limitation on the use of appropriated funds, when the President determines that there is "an immediate national exigency, and that there are compelling reasons to believe that the individual has the information about a specific and imminent threat related to that national exigency."

The full text of my amendment, co-sponsored by Senator Dianne Feinstein, is as follows:

> Absent a determination by the President that there is an immediate national exigency, and that there are compelling reasons to believe that the individual has information about a specific and imminent threat related to that national exigency, none of the funds made available pursuant to this Act or pursuant to any authorization of appropriations in this Act may be used for the interrogation of an individual by the Central Intelligence Agency or any other department, agency, or entity of the United States in a manner that differs from treatment or techniques of interrogation explicitly authorized by, and listed in, the United States Army Field Manual on Human Intelligence Collector Operations.

SHELDON WHITEHOUSE.

ADDITIONAL VIEWS OF SENATOR WARNER

The annual intelligence authorization bill is vital legislation that authorizes the Intelligence Community's efforts against national security and provides legislative tools and strategic guidance to reform the Intelligence Community. In short, the authorization bill supports and enhances the Intelligence Community's capabilities to protect the United States, its interests, and its allies. There are numerous provisions in this year's bill which advance those efforts.

I offer these additional views to discuss one provision which I am particularly pleased to support. Section 321, an amendment which I cosponsored, requires the Director of National Intelligence (DNI) to submit to Congress a National Intelligence Estimate (NIE) on the anticipated geopolitical effects of global climate change and the implications of such effects on the national security of the United States.

The NIE will use the fourth assessment report of the United Nations Intergovernmental Panel on Climate Change (IPCC) to illustrate the impacts of global climate change. The IPCC report predicted that global warming will increase 0.72 degree Fahrenheit during the next two decades with current emission trends. This projected increase of 0.72 degree Fahrenheit in two decades is a cause for concern considering that the National Oceanic and Atmospheric Administration said the average annual global temperature increased approximately 1.0 degree Fahrenheit from the start of the 20th century.

The NIE required by Section 321 will focus on the effects global climate change would have on U.S. national security and strategic economic interests. Changes resulting from global climate change present potentially wide-ranging threats to the United States that may require military, diplomatic, financial, and other national responses. It is the Intelligence Community's responsibility to prepare Executive and Legislative Branch policymakers for such possibilities.

Section 321 considered the views of the Director of National Intelligence who told the Committee that "it is entirely appropriate for the NIC to prepare an assessment on the geopolitical and security implications of global climate change" and asked that the task of examining the implications be worked in coordination with experts from the National Academy of Sciences, the national laboratories, and the National Oceanographic and Atmospheric Administration. This provision calls for that coordination and does not ask the Intelligence Community to reach beyond its capabilities to explore the sources or causes of global climate changes or specific actions that can mitigate such changes.

In fact, the DNI has already tasked the NIC to produce an assessment on this issue. This legislation allows the DNI to determine whether the requirement to produce a NIE would be duplica-

tive of the current NIC effort if both products would have the same drafting and review procedures. Furthermore, such an estimate will not require the diversion of any collection assets from other intelligence priorities.

In my 28 years in the Senate, I have focused above all on issues of national security, and I see the problem of climate change as fitting in with that focus. As a number of retired flag officers, including Generals Zinni and Sullivan, reported last month, global climate change poses a destabilizing threat to US military operations, heightens global tensions, and strains long-standing international alliances. As the Senate proceeds to legislate on climate change, it is vitally important that we receive the Intelligence Community's comprehensive view on the problem.

My own view as a senior member of the Senate Committee on the Environment and Public Works, which has conducted a number of hearings this year on the issue, is that the national consensus is moving beyond the debate over whether global warming is real and occurring, and whether human activity is contributing to the change in our climate.

I accept the fact that increased greenhouse gas emissions, resulting from human activity, is changing our global environment. I concur that we must now begin to devise a domestic program and I have joined by cosponsoring the Biden-Lugar Resolution to urge us to participate in the international dialogue to reduce these emissions.

While I have not personally decided on any specific legislative approach on global climate change, the complexity of the problem requires careful thought to ensure fairness to consumers and to the manufacturing sector of our economy. The federal government must take a leadership role in addressing this national and international problem, particularly given the Supreme Court's ruling earlier this year that confirmed the federal government's obligation under the law to regulate greenhouse gas emissions.

Without federal leadership, an ineffective patchwork of regulations would develop in each of the 50 states, and this would serve the needs neither of the environment nor business. Any federal program, however, must allow for an economy-wide approach that incorporates market-based flexibility, provides for a measure of federal investment in new technologies, includes cost-containment mechanisms, and has environmental integrity. Most important, the federal government must ensure international participation by developed and developing nations.

In sum, we must be careful in the Congress to be sure that we get it right as we move to legislate on global climate change, and this NIE will be critical in providing the comprehensive views of the Intelligence Community on the issue.

JOHN WARNER.