Public Law 100-453
100th Congress

An Act

Sept. 29, 1988
[H.R. 4387]

To authorize appropriations for fiscal year 1989 for intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Intelligence Authorization Act, Fiscal Year 1989.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence Authorization Act, Fiscal Year 1989".

TITLE I—INTELLIGENCE ACTIVITIES

AUTHORIZATION OF APPROPRIATIONS

SEC. 101. (a) Funds are hereby authorized to be appropriated for fiscal year 1989 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

(1) The Central Intelligence Agency.
(2) The Department of Defense.
(3) The Defense Intelligence Agency.
(4) The National Security Agency.
(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
(6) The Department of State.
(7) The Department of the Treasury.
(8) The Department of Energy.
(9) The Federal Bureau of Investigation.
(10) The Drug Enforcement Administration.

Reports.

(b) None of the funds authorized to be appropriated by this Act may be used to procure more than three Guardrail RC-12K aircraft and sensor suites until the Department of the Army has submitted to the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives and to the Committee on Armed Services of the Senate a report detailing the long-range plans and budgetary commitments to meet the future requirements for tactical airborne reconnaissance in support of the United States Army. The report should include, but not be limited to, the contribution of remotely piloted vehicles and other reconnaissance assets.

(c) Of the funds authorized to be appropriated in this Act for the Defense Intelligence Agency, the Secretary of Defense may transfer not to exceed $15,100,000 to appropriations for the foreign counterintelligence activities of the Federal Bureau of Investigation.

Termination date.
5 USC 9101 note.

(d) The expiration date provided for in section 803(b) of the Intelligence Authorization Act for Fiscal Year 1986 (Public Law 99-169) shall be extended until December 31, 1989.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

CLASSIFIED SCHEDULE OF AUTHORIZATIONS

SEC. 102. (a) The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1989, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared by the committee of conference to accompany H.R. 4387 of the One Hundredth Congress.

(b) The Schedule of Authorizations described in subsection (a) shall be made available to the Committee on Appropriations of the Senate and of the House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

President of U.S.

PERSONNEL CEILING ADJUSTMENTS

SEC. 103. The Director of Central Intelligence may authorize employment of civilian personnel in excess of the numbers authorized for fiscal year 1989 under sections 102 and 202 of this Act when he determines that such action is necessary to the performance of important intelligence functions, except that such number may not, for any element of the Intelligence Community, exceed 2 per centum of the number of civilian personnel authorized under such sections for such element. The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever he exercises the authority granted by this section.

RESTRICTION ON SUPPORT FOR MILITARY OR PARAMILITARY OPERATIONS IN NICARAGUA

SEC. 104. Funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States may be obligated and expended during fiscal year 1989 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance to support miltiary or paramilitary operations in Nicaragua only as authorized in section 101 and as specified in the classified Schedule of Authorizations referred to in section 102, or pursuant to section 502 of the National Security Act of 1947, or pursuant to any provision of law specifically providing such funds, materiel, or assistance.

TITLE II—INTELLIGENCE COMMUNITY STAFF

AUTHORIZATION OF APPROPRIATIONS

SEC. 201. There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1989 the sum of $23,745,000.

AUTHORIZATION OF PERSONNEL END STRENGTH

SEC. 202. (a) The Intelligence Community Staff is authorized two hundred and forty-four full-time personnel as of September 30, 1989. Such personnel of the Intelligence Community Staff may be permanent employees of the Intelligence Community Staff or personnel detailed from other elements of the United States Government.

(b) During fiscal year 1989, personnel of the Intelligence Community Staff shall be selected so as to provide appropriate representation from elements of the United States Government engaged in intelligence and intelligence-related activities.

Government organization and employees. Armed Forces.

(c) During fiscal year 1989, any officer or employee of the United States or a member of the Armed Forces who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

INTELLIGENCE COMMUNITY STAFF ADMINISTERED IN SAME MANNER AS CENTRAL INTELLIGENCE AGENCY

SEC. 203. During fiscal year 1989, activities and personnel of the Intelligence Community Staff shall be subject to the provisions of the National Security Act of 1947 (50 U.S.C. 401 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) in the same manner as activities and personnel of the Central Intelligence Agency.

TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

AUTHORIZATION OF APPROPRIATIONS

SEC. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1989 the sum of $144,500,000.

COMPARABILITY OF CERTAIN SPOUSE PROVISIONS WITH CIVIL SERVICE RETIREMENT AND DISABILITY SYSTEM

SEC. 302. (a) Part C of title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) is amended by adding at the end thereof the following new section:

"SURVIVOR ANNUITIES FOR PREVIOUS SPOUSES AND SECOND CHANCE TO ELECT SURVIVOR ANNUITY FOR CERTAIN SPOUSES

Regulations.

"SEC. 226. (a) The Director shall prescribe regulations under which any previous spouse (including former spouses who are also previous spouses), divorced after the effective date of this section from a participant, former participant, or annuitant whose retirement or disability or FECA (chapter 81 of title 5, United States Code) annuity commences after the effective date of this section, shall be eligible for a survivor annuity to the same extent, and, to the greatest extent practicable, under the same conditions (including reductions to be made in the annuity of the participant) applicable to spouses of participants in the Civil Service Retirement and Disability System (CSRS) married for at least nine months with service creditable under section 8332 of title 5, United States Code.

"(b) The Director shall prescribe regulations under which participants, retired participants, and former participants who have separated from service with a deferred annuity may make an election within two years after the effective date of this section (or, if later,

at the time of retirement) to receive a reduced annuity, pay a deposit, and provide a survivor annuity for any spouse for whom survivor benefits were not elected at the time of retirement, or (if the marriage occurred after retirement) were not elected in a timely manner, and for any previous spouse (including former spouses who are also previous spouses) who is not eligible for a survivor annuity under subsection (a) of this section, under, to the greatest extent practicable, the same terms and conditions as those prescribed for participants in the Civil Service Retirement and Disability System (CSRS) by the Civil Service Retirement Spouse Equity Act of 1984.

"(c) As used in this section, the term 'previous spouse' means a former wife or husband who was married for at least nine months to a participant or former participant who had at least eighteen months of service which are creditable under sections 251, 252, and 253 of this Act.

"(d) This section shall take effect on the date of enactment of the Intelligence Authorization Act, Fiscal Year 1989.". Effective date.

(b)(1) Section 224 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) is amended—

(A) in subsection (a)(2), by inserting "an amount equal to any survivor annuity payments made to the former spouse under section 223 and also by" after "shall be reduced by"; and

(B) in subsection (b), by striking out paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(2) The amendments made by paragraph (1) shall take effect as of October 1, 1986. Effective date. 50 USC 403 note.

(c)(1) Section 225(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) is amended by inserting "and any former spouse divorced after November 15, 1982, from a participant or former participant who retired before November 15, 1982," after "1982".

(2) The amendment made by paragraph (1) shall take effect as of December 2, 1987. Effective date. 50 USC 403 note.

(d)(1) The third sentence of section 221(n) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) is amended by striking out "one year" and inserting in lieu thereof "nine months after the date of remarriage".

(2) Section 221 of title II of such Act is amended by adding at the end thereof the following new subsection:

"(p) The election of a survivor annuity and the reduction of an annuity under subsection (f)(2) or (n) of this section shall take effect on the first day of the first month beginning nine months after the date of marriage. For the purposes of this subsection, the nine-month period shall be deemed to be satisfied in any case in which—

"(1) the annuitant dies within such period;

"(2) the surviving spouse of the annuitant had been previously married to the annuitant and subsequently divorced; and

"(3) the aggregate time married is at least nine months.".

(3) The amendment made by this subsection shall apply to marriages which occur on or after May 7, 1985. Effective date. 50 USC 403 note.

(e) Any new spending authority (within the meaning of section 401(c) of the Congressional Budget Act of 1974) provided pursuant to the amendments made by this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts. 50 USC 403 note.

TITLE IV—GENERAL PROVISIONS

RESTRICTION OF CONDUCT OF INTELLIGENCE ACTIVITIES

SEC. 401. The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

INCREASES IN EMPLOYEE BENEFITS AUTHORIZED BY LAW

SEC. 402. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such benefits authorized by law.

EQUAL EMPLOYMENT OPPORTUNITY PLAN

Reports.
50 USC 403 note.

SEC. 403. Ninety days after enactment of this Act, the Director of Central Intelligence and the Secretary of Defense shall submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report setting forth an analysis of each equal employment opportunity group's representation in the Central Intelligence Agency and the National Security Agency respectively and proposing a plan for rectifying any underrepresentation of any such equal employment opportunity group by September 30, 1991.

(b) The Director of Central Intelligence and the Secretary of Defense shall each submit interim reports on February 1, 1989, 1990, and 1991 concerning the Central Intelligence Agency and the National Security Agency respectively detailing the efforts made, and the progress realized, by each such agency in achieving the objectives of each such plan, including, but not limited to, the number of applications from, and the hiring, promotion, and training of, members of each equal employment opportunity group.

(c) For purposes of this section, the term "equal employment opportunity group" means—

(A) white women,
(B) black men,
(C) black women,
(D) Hispanic men,
(E) Hispanic women,
(F) Asian American and Pacific Islander men,
(G) Asian American and Pacific Islander women,
(H) Native American and Alaskan Native men, or
(I) Native American and Alaskan Native women.

DISCLOSURE OF INFORMATION CONCERNING AMERICAN PERSONNEL LISTED AS PRISONER, MISSING, OR UNACCOUNTED FOR IN SOUTHEAST ASIA

50 USC 401 note.

SEC. 404. (a) This section is enacted to ensure that current disclosure policy is incorporated into law.

(b) Except as provided in subsection (c), the head of each department or agency—

(1) with respect to which funds are authorized under this Act, and

(2) which holds or receives live sighting reports of any United States citizen reported missing in action, prisoner of war, or unaccounted for from the Vietnam Conflict, Vietnam.

shall make available to the next-of-kin of that United States citizen all reports, or portions thereof, held by that department or agency which have been correlated or possibly correlated to that citizen. Records.

(c) Subsection (b) does not apply with respect to—

(1) information that would reveal or compromise sources and methods of intelligence collection; or

(2) specific information that previously has been made available to the next-of-kin.

(d) The head of each department or agency covered by subsection (a) shall make information available under this section in a timely manner.

TITLE V—CENTRAL INTELLIGENCE AGENCY ADMINISTRATIVE PROVISIONS

ONE-TIME PERSONNEL AUTHORITY

SEC. 501. (a) Whenever the Director of Central Intelligence finds during fiscal year 1989 that a former employee of the Central Intelligence Agency has unfairly had his career with the Agency adversely affected as a result of allegations concerning the loyalty to the United States of such former employee, the Director may grant such former employee such monetary or other relief (including reinstatement and promotion) as the Director considers appropriate in the interest of fairness.

(b) Any action of the Director under this section is not reviewable in any other forum or in any court.

(c) The authority of the Director to make payments under subsection (a) is effective only to the extent that appropriated funds are available for that purpose.

(d) The Director shall report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives any use of the authority granted by this section in advance of such use. Reports.

FERS-CIARDS SPECIAL ELECTION AUTHORITY

SEC. 502. (a) Subsection (d) of section 301 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, is redesignated as subsection (e). 50 USC 403 note.

(b) A new subsection (d) is added after subsection (c) as follows:

"(d) An employee who has been designated as a participant in the Central Intelligence Agency Retirement System after December 31, 1987, pursuant to section 203 of this Act, may elect to become subject to chapter 84 of title 5, United States Code. An election under this paragraph—

"(1) shall not be effective unless it is made during the six-month period after the enactment of this section, or during the six-month period beginning on the date on which the employee is so designated, whichever comes later;

"(2) shall take effect beginning with the first pay period beginning after the date of the election; and

"(3) shall be irrevocable.".

AUTHORITY TO COMPENSATE RETIRED MILITARY PERSONNEL SERVING ON DCI ADVISORY COMMITTEES

Uniformed services.

SEC. 503. Subsection (a) of section 303 of the National Security Act of 1947 (50 U.S.C. 405) is amended by adding at the beginning of the last sentence "Retired members of the uniformed services employed by the Director of Central Intelligence who hold no other office or position under the United States for which they receive compensation,"; and by changing the word immediately thereafter from "Other" to "other".

REPORTS CONCERNING INSPECTOR GENERAL ACTIVITIES

SEC. 504. The Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) is amended by adding after section 16 the following new section:

"REPORTS OF INSPECTOR GENERAL ACTIVITIES

50 USC 403q.

"SEC. 17. The Director of Central Intelligence shall furnish to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives the following reports relating to the activities of the Inspector General at the Central Intelligence Agency.

"(a) A report made at the time any Inspector General is selected by the Director of Central Intelligence, specifying the name of the person selected, and certifying that such selection was made without regard to political affiliation. Such report shall also include a certification that the person selected meets Central Intelligence Agency security requirements and has had prior senior experience in the foreign intelligence field. It should also describe the background of such person as it relates to his or her experience in accounting, law, financial analysis, management analysis, public administration, or other field directly relevant to the performance of functions assigned the Inspector General.

"(b) A report made at the time any Inspector General is removed by the Director of Central Intelligence, specifying the basis for such removal.

"(c) Semiannual reports, to be furnished not later than June 30 and December 31 of each year, summarizing the activities of the Office of Inspector General for the preceding six-month period. Such reports shall include: (i) a certification that such activities have been carried out in accordance with accepted Federal standards for inspections, investigations, and audits; (ii) a certification that the Inspector General has had full and direct access to all information relevent to his activities; (iii) a description of any violation of law or willful violation of regulations, or any evidence of serious fraud, waste and abuse, identified during the reporting period; and (iv) the status of corrective actions taken during the reporting period in response to Inspector General recommendations.

"(d) A report of any decision made by the Director of Central Intelligence to prohibit the Inspector General from initiating, carrying out, or completing any audit, inspection, or investigation within the Central Intelligence Agency, to be made within seven days of such decision.

"(e) A report of any other decision made by the Director of Central Intelligence which would substantially affect the ability of the Inspector General to carry out his duties and responsibilities. Such

report shall include the position of the Inspector General with respect to such decision, and be transmitted within seven days to the committees.".

TITLE VI—FBI ENHANCED COUNTERINTELLIGENCE AUTHORITIES

DEMONSTRATION PROJECT ON MOBILITY AND RETENTION FOR THE NEW YORK FIELD DIVISION

SEC. 601. (a) Notwithstanding any other provision of law, the Director of the Federal Bureau of Investigation and the Director of the Office of Personnel Management shall conduct a demonstration project to ascertain the effects on the recruitment and retention of personnel, and on field operations in the New York Field Division of the Federal Bureau of Investigation of providing—

Contracts.

(1) lump-sum payments to personnel upon directed assignment to the New York Field Division from another geographical location who enter into an agreement to complete a specified minimum period of service, not to exceed three years, in the New York Field Division, except that no lump-sum payment under this paragraph may exceed $20,000, and no employee shall be eligible to receive more than one lump-sum payment under this paragraph in connection with each such assignment; and

(2) periodic payments to New York Field Division employees who are subject by policy and practice to directed geographical transfer or reassignment, except that the amounts paid under this paragraph to an employee for any period may not be less than 20 per centum nor greater than 25 per centum of the basic pay paid or payable to such employee for service performed during such period.

Any lump-sum payment under paragraph (1) and any periodic payment under paragraph (2) shall be in addition to basic pay. Any authority to make payments under this section shall be effective only to the extent of available appropriations.

Effective date. Termination date.

(b) Such demonstration project shall commence not later than ninety days after the date of enactment of this Act and shall terminate five years after such date, unless extended by law.

Reports.

(c) The Director of the Federal Bureau of Investigation and the Director of the Office of Personnel Management shall jointly provide to the President and the Congress annual interim reports and, at the conclusion of the five year period, a final evaluation concerning the results of the demonstration project.

TITLE VII—DEPARTMENT OF DEFENSE

INTELLIGENCE PROVISIONS

SEC. 701. (a) Section 421 of title 10, United States Code, is amended to read as follows:

"§ 421. Funds for foreign cryptologic support

Communications and telecommunications.

"(a) The Secretary of Defense may use appropriated funds available to the Department of Defense for intelligence and communications purposes to pay for the expenses of arrangements with foreign countries for cryptologic support.

"(b) The Secretary of Defense may use funds other than appropriated funds to pay for the expenses of arrangements with foreign countries for cryptologic support without regard for the provisions of law relating to the expenditure of United States Government funds, except that—

"(1) no such funds may be expended, in whole or in part, by or for the benefit of the Department of Defense for a purpose for which Congress had previously denied funds; and

"(2) proceeds from the sale of cryptologic items may be used only to purchase replacement items similar to the items that are sold; and

"(3) the authority provided by this subsection may not be used to acquire items or services for the principal benefit of the United States.

Reports.

"(c) Any funds expended under the authority of subsection (a) shall be reported to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House pursuant to the provisions of title V of the National Security Act of 1947, as amended, and funds expended under the authority of subsection (b) shall be reported pursuant to procedures jointly agreed upon by such committees and the Secretary of Defense.".

(b) The reference to section 421 in the sections at the beginning of chapter 21 of such title is amended to read "Funds for Foreign Cryptologic Support.".

AUTHORITY TO ESTABLISH POSITION OF ASSISTANT SECRETARY OF DEFENSE FOR INTELLIGENCE

SEC. 702. Paragraph (3) of section 136(b) of title 10, United States Code, is amended to read as follows:

"(3)(A) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence. He shall have as his principal duty the overall supervision of command, control, communications, and intelligence affairs of the Deprtment of Defense.

"(B) Notwithstanding subparagraph (A), one of the Assistant Secretaries established by the Secretary of Defense may be an Assistant Secretary of Defense for Intelligence, who shall have as his principal duty the overall supervision of intelligence affairs of the Department of Defense.

"(C) If the Secretary of Defense establishes an Assistant Secretary of Defense for Intelligence, the Assistant Secretary provided for under subparagraph (A) shall be the Assistant Secretary of Defense for Command, Control, and Communications and shall have as his principal duty the overall supervision of command, control, and communications affairs of the Department of Defense.".

REQUIREMENTS TO DISCLOSE DEFENSE INTELLIGENCE AGENCY ORGANIZATIONAL AND PERSONNEL INFORMATION

SEC. 703. (a) Section 1607 of title 10, United States Code (as added by section 603 of Public Law 100-178), is transferred to the end of chapter 21, redesignated as section 424, and amended to read as follows:

"§ 424. Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency

"(a) Except as required by the President or as provided in subsection (b), the Secretary of Defense may not be required to disclose information with respect to—

"(1) the organization or any function of the Defense Intelligence Agency; or

"(2) the number of persons employed by or assigned or detailed to such Agency or the name, official title, occupational series, grade, or salary of any such person.

"(b) This section does not apply—

"(1) with respect to the provision of information to Congress; or

"(2) with respect to information required to be disclosed by section 552 or 552a of title 5.".

(b) The table of sections at the beginning of chapter 21 of such title is amended by adding at the end the following new item:

"424. Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency.".

DEFENSE ATTACHÉ DEATH GRATUITY

SEC. 704. (a) During fiscal year 1989, the Secretary of Defense may pay a death gratuity identical to that payable under section 1489(b) of title 10, United States Code, to the surviving dependents of a member of the Armed Forces who, while serving on active duty assigned to a Defense attaché office outside the United States, died as a result of hostile or terrorist activities.

Armed Forces. Terrorism.

(b) The death gratuity referred to in subsection (a) may be paid with respect to an individual who died on or after June 15, 1988.

(c) The Secretary of Defense shall submit to Congress no later than March 1, 1989, a report concerning the advisability of permanent law permitting the payment of death gratuities to the survivors of any member of the armed services who, while on active duty assigned to a Defense attaché office outside the United States, dies as a result of hostile or terrorist activities.

Reports.

Approved September 29, 1988.

LEGISLATIVE HISTORY—H.R. 4387 (S. 2366):

HOUSE REPORTS: No. 100-591 Pt. 1 (Permanent Select Comm. on Intelligence) and Pt. 2 (Comm. on Armed Services), and No. 100-879 (Comm. of Conference).

SENATE REPORTS: No. 100-334 (Select Comm. on Intelligence) and No. 100-404 (Comm. on Armed Services) accompanying S. 2366.

CONGRESSIONAL RECORD, Vol. 134 (1988):

May 26, considered and passed House.

Aug. 5, considered and passed Senate, amended, in lieu of S. 2366.

Sept. 14, House agreed to conference report.

Sept. 15, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 24 (1988):

Sept. 29, Presidential statement.