

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the Senate and the House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2082), to authorize appropriations for fiscal year 2008 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, submit the following joint statement to the Senate and House in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The classified nature of United States intelligence activities precludes disclosure of details of budgetary recommendations in this conference report. The managers have therefore prepared a classified supplement to this conference report that contains the classified annex to this conference report and the classified Schedule of Authorizations.

The managers agree that the congressionally directed actions described in the House bill, the Senate amendment, the respective committee reports, and classified annexes accompanying H.R. 2082 and S. 1538, should be undertaken to the extent that such congressionally directed actions are not amended, altered, substituted, or otherwise specifically addressed in either this Joint Explanatory Statement or in the classified annex to the conference report on the bill H.R. 2082.

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—BUDGET AND PERSONNEL AUTHORIZATIONS

Section 101. Authorization of appropriations

Section 101 of the conference report authorizes appropriations for fiscal year 2008 for the intelligence and intelligence-related activities of a list of United States Government departments, agencies, and other elements. Section 101 is identical to Section 101 of the House bill, and similar to Section 101 of the Senate amendment.

Section 102. Classified schedule of authorizations

Section 102 provides that the details of the amounts authorized to be appropriated under Section 101 for intelligence and intelligence-related activities for fiscal year 2008, and (subject

to Section 103) the personnel ceilings authorized for fiscal year 2008, are contained in the classified Schedule of Authorizations. The Schedule of Authorizations will be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President.

Section 102 is similar to Section 102 of the House bill. Section 102 of the Senate amendment had provided that personnel authorizations for the Intelligence Community would be in terms of personnel levels, expressed as full-time equivalent positions, rather than personnel ceilings, as in the House bill and prior intelligence authorizations. The conferees followed the House in this regard, but established in Section 103 an authority during fiscal year 2008 for the management of the personnel authorized under section 102 as full-time equivalents.

Section 103. Personnel ceiling adjustments

Section 103 provides procedures to enhance the flexibility of the Director of National Intelligence (“DNI”) to manage the personnel levels of the Intelligence Community.

Section 103(a) allows the DNI, with the approval of the Director of the Office of Management and Budget (“OMB”), to authorize employment of civilian personnel in excess of the number authorized under Section 102 by an amount not to exceed three percent of the total limit applicable to each Intelligence Community element. Before the DNI may authorize this increase, the DNI must determine that the action is necessary to the performance of important intelligence functions and notify the congressional intelligence committees. Section 103 of the Senate amendment had provided that this authority could extend to five percent. Section 103 of the House bill had set the additional amount at two percent. The conference agreement of three percent is part of a package of personnel flexibility mechanisms in Section 103.

Section 103(b) provides for a one-year transition in the description of the personnel authorization in the annual intelligence authorization, and the subsequent implementation of that authorization by the DNI, from “personnel ceilings” to “personnel levels expressed as full-time equivalent positions.” Although the DNI has not previously managed Intelligence Community personnel limits in terms of full-time equivalent positions, the conferees have determined that the DNI should use this practice in the future to plan and manage personnel levels within the Intelligence Community. The use of full-time equivalent positions will allow Intelligence Community elements to plan for and manage its workforce based on overall hours of work, rather than number of employees, as a truer measure of personnel levels. This approach is consistent with general governmental practice and will provide the DNI and Congress with a more accurate measurement of personnel levels. For example, it will enable Intelligence Community 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.

To provide the DNI with time to address any difficulties arising from counting by full-time equivalent positions rather than personnel levels, the conferees agreed that Sections 102 and

103 would allow, but do not require, the DNI to manage personnel levels by full time equivalent positions in fiscal year 2008. One aspect of this transition will be the consideration of the manner in which elements of the Intelligence Community account for (or presently fail to account for) a variety of part-time arrangements. These include, but are not limited to, the circumstances set forth in paragraph (2) of subsection 103(b): student or trainee programs; re-employment of annuitants in the National Intelligence Reserve Corps; joint duty rotational assignments; and other full-time or part-time positions.

During their consideration of the DNI's request for authority to manage personnel as full-time equivalents, the congressional intelligence committees have learned that practices within the Intelligence Community on the counting of personnel are inconsistent, and include not counting certain personnel at all against personnel ceilings. The discretionary authority that is granted to the DNI during fiscal year 2008 will permit the DNI to authorize Intelligence Community elements to continue (but not expand) for this one additional fiscal year their existing methods of counting, or not counting, part-time employees against personnel ceilings, while ensuring that by the beginning of fiscal year 2009 there is a uniform and accurate method of counting all Intelligence Community employees under a system of personnel levels expressed as full-time equivalents. To ensure that the transition is complete by the beginning of fiscal year 2009, paragraph (4) of Section 103(b) provides that the DNI shall express the personnel level for all civilian employees of the Intelligence Community as full-time equivalent positions in the congressional budget justifications for that fiscal year.

Section 103(c) establishes authority that will enable the DNI to reduce the number of Intelligence Community contractors by providing the flexibility to add a comparable number of government personnel to replace those contractor employees. Section 103(c) accomplishes this by permitting the DNI to authorize employment of additional personnel if the head of an element in the Intelligence Community determines that activities currently being performed by contractor employees should be performed by government employees, the DNI agrees with the determination, and the Director of OMB approves. The DNI may not authorize this for more than ten percent of the total number of personnel authorized for each element of the Intelligence Community under Section 102, except that within the Office of the DNI that limit shall be five percent. Section 103(c) is similar to Section 103(b) of the Senate amendment. The House bill did not have a similar provision. The percentage limits on the authority are part of the conferees' agreement.

Section 103(d) provides for notifications to the congressional intelligence committees of the exercise of authority under Sections 103(a) and 103(d).

Section 104. Intelligence Community Management Account

Section 104 authorizes the sum of \$734,126,000 in fiscal year 2008 for the Intelligence Community Management Account of the Director of National Intelligence. The Intelligence

Community Management Account is part of the Community Management Account. The section authorizes 952 full-time or full-time equivalent personnel for the Intelligence Community Management Account, who may be either permanent employees or individuals detailed from other elements of the United States Government. Section 104 also authorizes additional funds and personnel in the classified Schedule of Authorizations for the Community Management Account. Section 104 is similar to Section 104 of the Senate amendment and Section 104 of the House bill.

As in Section 104 of the Senate amendment, the DNI may use the authorities in Section 103 to adjust personnel levels in elements within the Intelligence Community Management Account, subject to the limitations in that section.

Section 104 also authorizes funds from the Intelligence Community Management Account for the National Drug Intelligence Center (“NDIC”). These funds may not be used for purposes of exercising police, subpoena, or law enforcement powers or internal security functions. This provision authorizing funds for NDIC was included in Section 104 of the House bill, but was not included in Section 104 of the Senate amendment.

Section 105. Specific authorization of funds within the National Intelligence Program for which fiscal year 2008 appropriations exceed amounts authorized

Section 105 authorizes, solely for the purposes of reprogramming under Section 504(a)(3) of the National Security Act of 1947 (50 U.S.C. 414(a)(3)), those funds appropriated within the National Intelligence Program in fiscal year 2008 in excess of the amount specified for such activity in the classified Schedule of Authorizations (as described in greater detail in the Classified Annex) to accompany this conference report. Under this authority, funds appropriated for a specific purpose but not authorized for that purpose will still be available for use by the Intelligence Community but can be applied only to other intelligence activities within the National Intelligence Program under established reprogramming procedures.

TITLE II – CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Section 201. Authorization of appropriations

Section 201 authorizes appropriations of \$262,500,000 for the Central Intelligence Agency Retirement and Disability Fund. Section 201 of the House bill and Section 201 of the Senate amendment are identical.

Section 202. Technical modification to mandatory retirement provision of Central Intelligence Agency Retirement Act

Section 202 updates the Central Intelligence Agency Retirement Act to reflect the use of pay levels within the Senior Intelligence Service program, rather than pay grades, by the Central

Intelligence Agency (“CIA”). Section 202 is identical to Section 202 of the Senate amendment, and substantially similar to Section 202 of the House bill.

TITLE III—GENERAL INTELLIGENCE COMMUNITY MATTERS

SUBTITLE A – PERSONNEL 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 301 is identical to Section 301 of the Senate amendment and the House bill.

Section 302. Enhanced flexibility in non-reimbursable details to elements of the Intelligence Community

Section 302 expands from one year to up to two years the length of time that United States Government personnel may be detailed to the Office of the Director of National Intelligence (“ODNI”) on a reimbursable or non-reimbursable basis under which the employee continues to be paid by the home 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 Intelligence Community for community-wide activities where both the home agency and the ODNI would benefit from the detail.

Section 308 of the Senate amendment would have expanded the time available for reimbursable or non-reimbursable details to three years. Section 104 of the House bill allowed non-reimbursable details of less than one year. The conferees agreed to a two-year maximum for reimbursable or non-reimbursable details.

Section 303. Multi-level security clearances

Section 303 adds a provision to section 102A of the National Security Act of 1947 (50 U.S.C. 403-1), which generally sets forth the responsibilities and authorities of the Director of National Intelligence. The new provision states that the DNI shall be responsible for ensuring that the elements of the Intelligence Community adopt a multi-level clearance approach that allows for clearances consistent with the protection of national security that can be tailored to particular circumstances in order to enable the more effective and efficient use of persons proficient in foreign languages or with cultural, linguistic, or other subject matter expertise that is critical to national security.

Section 303 is based on Section 406 of the House bill. The Senate amendment did not have a comparable provision. Under the House provision, the DNI would have been required to

establish a multi-level clearance system throughout the Intelligence Community. Pursuant to the conference amendment, the DNI shall, within six months of enactment, issue guidelines to the Intelligence Community to support and facilitate the implementation of a multi-level approach across the Intelligence Community.

Section 304. Pay authority for critical positions

Section 304 adds a new subsection to section 102A of the National Security Act of 1947 (50 U.S.C. 403-1) to provide enhanced pay authority for critical positions in portions of the Intelligence Community where that authority does not now exist. It allows the DNI to authorize the head of a department or agency with an Intelligence Community 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 higher than Executive Level I would require written approval of the President in response to a DNI request. Section 304 is identical to the corresponding portion of Section 405 of the Senate amendment. The House bill did not have a comparable provision.

The section of the Senate bill that contained this pay authority also would have provided additional authority to enable the DNI to harmonize personnel rules in the Intelligence Community. It would have enabled the DNI, with the concurrence of a department or agency head, to convert competitive service positions and incumbents within an Intelligence Community element to excepted positions. It also would have granted authority to the DNI to authorize Intelligence Community elements—with concurrence of the concerned department or agency heads 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 Intelligence Community element. The conferees recommend that these proposals be studied further during consideration of the fiscal year 2009 authorization.

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

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

Section 305 provides that the DNI may delegate the authority in section 116 of the National Security Act of 1947 to the head of any element. This expansion is consistent with the view of the conferees that the DNI should be able to delegate authority throughout the

Intelligence Community when such delegation serves the overall interests of the Intelligence Community.

Section 305 also provides that the head of an Intelligence Community element to which travel authority has been delegated is 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 Intelligence Community. To facilitate oversight, the DNI shall submit the guidelines to the congressional intelligence committees. Section 305 is identical to Section 304 of the Senate amendment and substantially the same as Section 306 of the House bill.

Section 306. Annual personnel level assessments for the Intelligence Community

Section 306 requires the Director of National Intelligence, in consultation with the head of the element of the Intelligence Community concerned, to prepare an annual assessment of the personnel and contractor levels for each element of the Intelligence Community for the following fiscal year. Section 306 is a new mechanism to allow both the Executive branch and Congress to better oversee personnel growth in the Intelligence Community. Section 306 combines elements from Section 315 of the Senate amendment, and Sections 411 and 414 of the House bill.

The assessment required by Section 306 seeks information about budgeted personnel and contractor costs and levels, a comparison of this information to current fiscal year and historical five year data, and a written justification for the requested personnel and contractor levels. The assessment also requires the DNI to state that, based on current and projected funding, the element will have sufficient internal infrastructure and training resources to support the requested personnel and contractor levels, and sufficient funding to support the administrative and operational activities of the requested personnel levels. All of this information was required in Section 315 of the Senate amendment. Section 306 also requires that the assessment contain information about intelligence collectors and analysts employed or contracted by each element of the Intelligence Community, and contractors who are the subjects of an Inspector General investigation, information that was requested in Sections 414 and 411, respectively, of the House bill. The assessment must be submitted to congressional intelligence committees with the submission of the President's budget request.

The conferees believe that the personnel level assessment required by Section 306 will provide information necessary for the Executive branch and Congress to understand the consequences of modifying the Intelligence Community's personnel levels. Section 306 therefore recognizes that, although the conferees supported personnel growth in the post September 11, 2001 period, personnel growth must be better planned in the future to accomplish the goals of strengthening intelligence collection, analysis, and dissemination. In addition, the Administration must adequately fund its personnel growth plan, and structure its resources, to ensure that personnel growth is not done at the expense of other programs.

With regard to historical contractor levels to be included in the annual assessments, the DNI has expressed concern that there was no completed effort, prior to the ODNI's contractor inventory initiated in June 2006, to comprehensively capture information on the number and costs of contractors throughout the Intelligence Community. Although the Intelligence Community has not adequately focused on this issue in past years, the conferees believe it is important to require the DNI to attempt to assess historical contractor levels. Because of the concerns outlined by the DNI, however, conferees understand that information about contractor levels prior to June 2006 may need to be reported as a best estimate.

The conferees are also concerned about the Intelligence Community's increasing reliance on contractors to meet mission requirements. The Intelligence Community employs a significant number of "core" contractors who provide direct support to Intelligence Community mission areas and are generally indistinguishable from the United States Government personnel whose mission they support. Because of the cost disparity between employing a United States civilian employee, estimated to cost an average of \$126,500 annually, and a core contractor, estimated to cost an average of \$250,000 annually, the conferees believe that the Intelligence Community should strive to reduce its dependence on contractors. The personnel assessment required in Section 306 should assist the DNI and the congressional intelligence committees in determining the appropriate balance of contractors and permanent government employees.

Section 307. Comprehensive report on Intelligence Community contractors

Section 307 requires the DNI to provide a one-time report by March 31, 2008, describing the personal services activities performed by contractors across the Intelligence Community, the impact of contractors on the Intelligence Community, and the accountability mechanisms that govern contractors.

Intelligence Community leaders continue to lack an adequate factual and policy basis for controlling the size and use of its large contractor workforce. Among other things, the Intelligence Community lacks a clear definition of the functions that may be appropriately performed by contractors and, as a result, whether contractors are performing functions that should be performed by government employees. Generally, the conferees are concerned that the Intelligence Community does not have procedures for overseeing contractors and ensuring the identification of criminal violations or the prevention and redress of financial waste, fraud, or other abuses by contractors. The report is intended to help both the Intelligence Community and the congressional intelligence committees identify the facts and chart solutions. The report should also address the DNI's plans for conversion of contractors into employees under the authority provided in Section 103 of this Act.

Section 307 is based on Section 411 of the House bill. Section 411 would have required an annual report on the oversight of Intelligence Community contractors, and three separate one-time reports on accountability mechanisms governing Intelligence Community contractors, the

impact of contractors on the Intelligence Community workforce, and the use of contractors for intelligence activities. The Senate amendment had addressed reporting on contractors in Section 315 of the Senate amendment. The conferees consolidated these reporting requirements into the single report required by Section 307 and the annual assessment on consideration of the levels of the contractor workforce in Section 306.

Section 308. Report on proposed pay for performance Intelligence Community personnel management system

Section 308 prohibits the implementation of pay-for-performance compensation reform within an element of the Intelligence Community until 45 days after the DNI submits to the Congress a detailed plan for the implementation of the compensation plan at the particular element of the Intelligence Community in question. The DNI voiced concern that Section 307 of the House bill would have prohibited the heads of the elements of the Intelligence Community from implementing tailored pay plans under other existing statutory authorities and would have hindered DNI efforts to establish a program within the Intelligence Community “to provide common pay, performance evaluation and benefits throughout the Community.” By agreeing that the requirements of Section 308 would be applicable on an element-by-element basis, the conferees sought to ensure that plans for elements that are ready to proceed are not delayed by the planning requirements for elements that are not ready to proceed. With regard to the objective of providing for common pay, performance evaluation, and benefits throughout the Intelligence Community, the conferees added as an item of each report how the implementation of pay-for-performance in the element is consistent with the DNI’s overall plans for a performance-based compensation system.

The Senate amendment had no comparable provision.

Section 309. Report on plan to increase diversity within the Intelligence Community

Section 309 requires the DNI, in coordination with the heads of the elements of the Intelligence Community, to submit to the congressional intelligence committees a report on the plans of each element of the Intelligence Community, including the Office of the DNI (“ODNI”), to increase diversity within that element. The report shall include the specific implementation plans to increase diversity.

Section 308 of the House bill had required the DNI to submit a strategic plan to increase diversity within the Intelligence Community and had prohibited the expenditure of more than 80 percent of the amount appropriated to the Intelligence Community Management Fund until the report was delivered to Congress. The conferees altered the requirements of Section 308 of the House bill to recognize the information submitted to the congressional intelligence committees by the DNI following passage of the House bill, and to tailor the provision to obtain other information sought by the congressional intelligence committees. To ensure that the report is

submitted in a timely fashion, Section 309 now requires the DNI to submit the report by no later than March 31, 2008.

The Senate amendment had no comparable provision.

SUBTITLE B – ACQUISITION MATTERS

Section 311. Vulnerability assessments of major systems

Section 311 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 an initial vulnerability assessment and subsequent assessments of every major system and its significant items of supply in the National Intelligence Program (“NIP”). 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.

Section 311 requires the DNI to conduct an initial vulnerability assessment on every major system proposed for the NIP prior to completion of Milestone B or an equivalent acquisition decision. 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 at a minimum, an analysis-based approach to identify 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 that reason, Section 311 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 reassessment. 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 311 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 applicable 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. Nor is it intended to require the DNI to test system hardware. However, the vulnerabilities of a satellite's significant 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 311 requires the DNI to give due consideration to the vulnerability assessments prepared for the major systems within the NIP. It also requires that the vulnerability assessments be provided to the congressional intelligence committees within ten days of their completion. The conferees encourage the DNI to also share the results of these vulnerabilities assessments, as appropriate, with other congressional committees of jurisdiction.

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

Section 311 is similar to Section 310 of the Senate amendment. The House bill had no similar provision.

Section 312. Business enterprise architecture and business system modernization for the Intelligence Community

Section 312 requires the DNI to create a business enterprise architecture that defines all Intelligence Community 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 Intelligence Community business system solutions. The conferees expect the DNI will include Department of Defense representatives in the established forum as appropriate. The conferees agreed that the business enterprise architecture and transition plan are to be submitted to the congressional intelligence committees by September 1, 2008. The acquisition strategy, however, is to be submitted by March 1, 2008.

Section 312 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 312 is similar to Section 312 of the Senate amendment. The House bill had no similar provision.

Section 313. Reports on acquisition of major systems

Section 313 amends Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.) to require annual reports from the DNI for each major system acquisition by an element of the Intelligence Community.

These reports must include, among other items, information about the current total acquisition cost for such system, the development schedule for the system including an estimate of annual development costs until development is completed, the planned 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 313 includes definitions for “acquisition cost,” “full life-cycle cost,” “major contract,” “major system,” and “significant test and evaluation.”

Section 313 is similar to Section 313 of the Senate amendment. The House bill had no similar provision.

Section 314. Excessive cost growth of major systems

Section 314 amends Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.) to require that, in addition to the report required under Section 313, the program manager of a major system acquisition project shall determine on a continuing basis if the acquisition cost of such major system has increased by at least 25 percent as compared to the baseline of such major system. The program manager must inform the DNI of any such determination and the DNI must submit a written notification to the congressional intelligence committees if the DNI makes the same such determination.

Section 314 is intended to mirror the Nunn-McCurdy provision in Title 10 of the United States Code that applies to major defense acquisition programs. The conferees envision that the determination will be done as needed by the program manager of the major system acquisition and should not wait until the time that the DNI’s annual report is filed. In other words, the conferees expect the congressional intelligence committees to be advised on a regular basis by the DNI about the progress and associated costs of major system acquisitions within the Intelligence Community.

If the cost growth is 25 percent or more, the DNI must prepare a notification and submit, among other items, an updated cost estimate to the congressional intelligence committees, and a certification 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 to completion, 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.

If the program manager makes a determination that the acquisition cost has increased by 50 percent or more as compared to the baseline, and the DNI makes the same such determination, then the DNI must submit a written certification to certify the same four items as described above, as well as an updated notification and accompanying information. If the required certification, at either the 25 percent or 50 percent level, is not submitted to the congressional intelligence committees within 60 days of the DNI's determination of cost growth, 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.

Section 314 is similar to Section 314 of the Senate amendment. The House bill had no similar provision.

SUBTITLE C—OTHER MATTERS

Section 321. Restriction on conduct of intelligence activities

Section 321 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 and the laws of the United States. Section 321 is identical to Sections 302 of the Senate amendment and the House bill.

Section 322. Clarification of definition of Intelligence Community under the National Security Act of 1947

Section 322 amends Section 3(4)(L) of the National Security Act of 1947 (50 U.S.C. 401a(4)(L)) to permit the designation as “element 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 322 is identical to Section 303 of the Senate amendment and the House bill.

Section 323. Modification of availability of funds for different intelligence activities

Section 323 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) (“Intelligence Reform Act”) (governing the transfer and reprogramming by the DNI of certain intelligence funding).

This amendment to the National Security Act 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 “supports an emergent need, improves program effectiveness, or increases efficiency.” This modification brings the standard for reprogrammings and transfers of intelligence funding into conformity with the standards applicable to reprogrammings and transfers under Section 102A of the National Security Act of 1947. The modification preserves congressional oversight of proposed reprogrammings and transfers while enhancing the Intelligence Community’s ability to carry out missions and functions vital to national security. Section 323 is identical to Sections 305 of the Senate amendment and the House bill.

Section 324. Protection of certain national security information

Section 324 amends the National Security Act of 1947 in two respects. Section 324(a) 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 ten years. Subsection (a)(1) 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 the identify of a covert agent and intentionally discloses any information identifying such covert agent” is five years. Subsection (a)(2) increases that maximum sentence to ten years. Section 324(a) is identical to Section 306 of the Senate amendment. The House bill had no comparable provision.

Section 324(b) amends Section 603(a) of the National Security Act of 1947 (50 U.S.C. 423(a)) to provide that the annual report from the President on the protection of identities of certain United States undercover intelligence officers, agents, informants, and sources, also include an assessment of the need for any modification for the purpose of improving legal protections for covert agents. Section 324(b) is identical to Section 309 of the House bill. The Senate amendment had no similar provision.

Section 325. Extension 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 Intelligence Community 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 Intelligence Community 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 Act extended a similar exemption to the DNI in addition to applying the existing exemption to the CIA Director.

Section 325 provides to the heads of each Intelligence Community element the same limited exemption from specified public reporting requirements that is currently authorized for the DNI and CIA Director. The national security concerns that prompt those exemptions apply equally to other Intelligence Community elements. Section 325 mandates that the information not provided to the Secretary of State be provided to the DNI to ensure continued independent oversight of the receipt by Intelligence Community personnel of foreign gifts or decorations. The conferees agreed to require the DNI to keep a record of such information. Section 325 is otherwise similar to Section 307 of the Senate amendment and Section 304 of the House bill.

Gifts received in the course of ordinary contact between senior officials of elements of the Intelligence Community and their foreign counterparts should not be excluded under the provisions of Section 325 unless there is a serious concern that such contacts and gifts would adversely affect United States intelligence sources or methods.

Section 326. Report on compliance with the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006

Section 326 requires the DNI to submit a classified comprehensive report to the congressional intelligence committees on all measures taken by the ODNI and by any Intelligence Community 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 45 days after enactment of this Act.

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 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 required by Section 326 is to include a description of the 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 326 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 Intelligence Community element. The appendix shall also include the legal justifications of any office of the Department of Justice about the meaning of the Acts with respect to detention or interrogation activities, if any, of any Intelligence Community element. The conferees struck the requirement from Section 309 of the Senate amendment that the appendix contain the legal justifications of “any official of the Department of Justice” to accommodate the concern that this provision might compel the production of internal deliberative legal materials. This provision therefore seeks only the legal justifications of any office of the Department of Justice that rendered an opinion on the matter.

To the extent that the report required by Section 326 addresses an element of the Intelligence Community within the Department of Defense, that portion of the report, and associated material that is necessary to make that portion understandable, shall also be submitted by the DNI to the congressional armed services committees.

Section 326 is similar to Section 309 of the Senate amendment. The House bill had no similar provision.

Section 327. Limitation on interrogation techniques

Section 327 prohibits the use of any interrogation treatment or technique not authorized by the United States Army Field Manual on Human Intelligence Collector Operations (“U.S. Army Field Manual”) against any individual in the custody or effective control of any element of the Intelligence Community. This limitation on interrogation conducted by Intelligence

Community personnel is similar to the limitation on interrogation conducted by Department of Defense personnel in Section 1002(a) of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd-0(a)).

Section 327 was adopted as an amendment at the conference after significant deliberation in the past year by both congressional intelligence committees of the legality and effectiveness of CIA's detention and interrogation program. The congressional intelligence committees have held numerous hearings on interrogation-related issues, have had many additional member and staff briefings, and have solicited input from a variety of outside experts on both interrogation and the effects of current U.S. interrogation policy. The inclusion of Section 327 reflects the conferees' considered judgment that the CIA's program is not the most effective method of obtaining the reliable intelligence we need to protect the United States from attack. Further, the conferees concluded that damage to international perception of the United States caused by the existence of classified interrogation procedures that apply only to CIA's program and are different from those used by the U.S. military outweighs the intelligence benefits that may result from the interrogation of individuals using the interrogation techniques authorized in the CIA's program.

Section 327 therefore seeks to create one consistent interrogation policy across both the U.S. military and the Intelligence Community. Any individual in the custody or under the effective control of an element of the Intelligence Community may therefore be subject only to those interrogation techniques authorized for use by the U.S. military, that is, the interrogation techniques authorized by the U.S. Army Field Manual.

As the primary U.S. government beneficiaries of the protections of the Geneva Conventions of 1949, the U.S. military should play an important role in ensuring that U.S. interrogation policy complies with those international protections. Other countries look to U.S. policy as a whole, not the policy of particular agencies, in assessing how Americans captured on the battlefield should be treated. Requiring the Intelligence Community to follow the U.S. Army Field Manual ensures that the United States adopts only those interrogation techniques that would not be seen as abuse if used against an American soldier.

As updated in September of 2006, the U.S. Army Field Manual (FM 2-22.3) provides a detailed and unclassified description of the interrogation process, along with a number of interrogation approaches that can be used to elicit information from detainees. The Army Field Manual leaves interrogators with significant flexibility to determine what approaches will work in particular situations or with particular detainees; it does not mandate that particular interrogation approach strategies be used in any given situation. The congressional intelligence committees have received testimony that the approaches in the U.S. Army Field Manual are effective at eliciting information from detainees and that they can be appropriately tailored to all detainees, including senior terrorist leaders. The procedures in the Army Field Manual have also been extensively reviewed to ensure compliance with both "American constitutional standards

related to concepts of dignity, civilization, humanity, decency, and fundamental fairness,” as well as U.S. obligations under international law, including the four Geneva Conventions of 1949. *See Army Field Manual at 5-21.*

In addition to describing interrogation approaches, the U.S. Army Field Manual includes a number of specific prohibitions. In particular, it prohibits “acts of violence or intimidation, including physical or mental torture, or exposure to inhumane treatment as a means of or aid to interrogation.” It also explicitly prohibits forcing a detainee to be naked, perform sexual acts, or pose in a sexual manner; placing hoods or sacks over the head of a detainee; using duct tape over the eyes of a detainee; applying beatings, electric shock, burns, or other forms of physical pain; waterboarding; using military working dogs; inducing hypothermia or heat injury; conducting mock executions; and depriving the detainee of necessary food, water, or medical care. Requiring the Intelligence Community to comply with the U.S. Army Field Manual thus prohibits the Intelligence Community’s use of these actions as interrogation techniques.

Section 328. Limitation on use of funds

Section 328 was added by an amendment at conference. It provides that not more than 30 percent of the funds authorized to be appropriated in a specific Expenditure Center referred to in a classified Executive Branch Congressional Budget Justification for fiscal year 2008 – fiscal year 2009 may be obligated or expended until the full membership of the congressional intelligence committees are fully and currently informed about an important intelligence matter. The matter is a facility in Syria that was the subject of reported Israeli military action on September 6, 2007. The information on which the full membership of the committees should be briefed includes intelligence if any relating to any agent or citizen of North Korea, Iran, or any other foreign country present at the facility. It should also include any intelligence (as available) provided to the United States by a foreign country regarding the facility.

“To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters,” Section 502 of the National Security Act of 1947 (50 U.S.C. 413a) requires that the Director of National Intelligence and the heads of all entities of the United States Government involved in intelligence activities shall “keep the congressional intelligence committees fully and currently informed of all intelligence activities.”

As explained in a Senate report at the time of the original enactment of this requirement in 1980, the limited caveat about sensitive sources and methods or matters applies to “extremely rare circumstances” when there is a decision not to communicate to the intelligence committees “certain sensitive aspects of operations or collection programs.” S. Rep. No. 96-730, at 6. The key phrase “certain sensitive aspects” indicates that the scope of any withholding of information should be limited to certain details rather than to bar information about entire activities.

Section 504 of the National Security Act of 1947 (50 U.S.C. 413(b)) provides for only limited circumstances for not providing information to the full membership of the intelligence committees but, instead, informing the Chairmen and Vice Chairman or Ranking Minority Member of those committees as well as the congressional leadership. That exception applies only when the President determines that “it is essential to limit access to [a covert action] finding to meet extraordinary circumstances affecting vital interests of the United States.”

In agreeing to Section 328, the conferees concluded that it is essential that the full membership of the House and Senate intelligence committees be fully informed, in a manner consistent with the National Security Act, about intelligence that would indicate, among other matters, any presence at a Syrian facility of agents or citizens of states – particularly, North Korea and Iran – which have had nuclear or other weapons of mass destruction programs.

Section 329. Incorporation of reporting requirements

Section 329 incorporates into the Act by reference each requirement contained in the classified annex to this Act to submit a report to the congressional intelligence committees. Sections 105 of the Senate amendment and the House bill both also made reference to reporting requirements included in the joint explanatory statement to accompany the conference report. As no reporting requirements were included in the joint explanatory statement, this reference was eliminated.

Because the classified information in the annex cannot be included in the text of the bill, incorporating the reporting provisions of the classified annex is the only available mechanism to give these reporting requirements the force of law. The conferees therefore chose to include Section 329 to reflect the importance they ascribe to the reporting requirements in the classified annex.

Section 330. Repeal of certain reporting requirements

Section 330 eliminates five reporting requirements that were considered particularly burdensome to the Intelligence Community in cases where the usefulness of the report has diminished either because of changing events or because the information contained in those reports is duplicative of information already obtained through other avenues. Section 330 is similar to Section 316 of the Senate amendment. Section 316 had proposed eliminating a total of seven reporting requirements. The conferees agreed to remove two of these reports from the list of reports to be eliminated after certain congressional committees expressed an interest in continuing to receive these two reports.

The House bill had no similar provision.

TITLE IV – MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE
COMMUNITY

SUBTITLE A—OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Sec. 401. Clarification of limitation on co-location of the Office of the Director of National Intelligence

Section 103(e) of the National Security Act of 1947(50 U.S.C. 403-3(e)), as added by the Intelligence Reform Act, provides that commencing on October 1, 2008, the Office of the DNI may not be co-located with any other element of the Intelligence Community. Section 401 clarifies that this ban applies only to the co-location of the headquarters of the ODNI with the headquarters of any other Intelligence Community element. Accordingly, the ODNI may be co-located with non-headquarters units of Intelligence Community elements. Section 401 is identical to Section 406 of the Senate amendment and Section 401 of the House bill.

Section 402. Membership of the Director of National Intelligence on the Transportation Security Oversight Board

Section 402 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. The Transportation Security Oversight Board is responsible for, among other things, coordinating intelligence, security, and law enforcement activities affecting transportation and facilitating the sharing of intelligence, security, and law enforcement information affecting transportation among Federal agencies. Section 402 is identical to Section 416 of the Senate amendment and Section 402 of the House bill.

Section 403. Additional Duties of the Director of Science and Technology

Section 403 clarifies the duties of the Director of Science and Technology (DST) and the Director of National Intelligence Science and Technology Committee (NISTC). The conferees expect the DST to systematically identify, assess and prioritize the most significant intelligence challenges that require technical solutions, set long-term science and technology goals, develop a strategy/roadmap to be shared with congressional intelligence committees that meets these goals, and prioritize and coordinate efforts across the Intelligence Community. As chair of the NISTC, the DST should leverage the expertise of members of the committee to accomplish these duties.

Research and development efforts, including basic, advanced, and applied research and development projects, benefit the Intelligence Community most when they are consistent with current or future national intelligence requirements. Once a project is prototyped and successfully demonstrated, the conferees expect the DST to lead the NISTC to ensure the successful transition of projects from research and development into operational systems.

To sustain and further Intelligence Community's research and development goals, it is imperative that the DNI recruit and retain the country's top science and technology leadership

talent. This is especially important during this period marked by the restructuring of Intelligence Community research and development management. The conferees also note that science and technology are major factors driving change in today's world and believe that the Intelligence Community must return to preeminence in this area in order to fully protect our nation's security.

The conferees urge the DST to develop multi-year projections and assessments of Intelligence Community human resource needs to better ensure that appropriate steps are taken to recruit and retain a robust scientific and engineering workforce. The conferees also urge the Intelligence Community to enhance its support to scholarship programs, research grants, and cooperative work-study programs to achieve these human resources goals.

Section 403 is similar to Section 407 of the Senate amendment and Section 403 of the House bill.

Section 404. Leadership and location of certain offices and officials

Section 404 confirms in statute that various officers are within the ODNI. These are (1) the Chief Information Officer of the Intelligence Community (as renamed by Section 412); (2) the Inspector General of the Intelligence Community (as named under Section 413); (3) the Director of the National Counterterrorism Center; and (4) the Director of the National Counter Proliferation Center (NCPC). Section 404 also expressly provides in statute that the DNI shall appoint the Director of the NCPC. Section 119A of the National Security Act of 1947 (50 U.S.C. 404o-1), as added by the Intelligence Reform Act, had provided that the President could establish the NCPC. In doing so, the President delegated to the DNI the authority to name the Director. Section 404 ratifies that delegation. Section 404 is identical to Section 411 of the Senate amendment and Section 404 of the House bill.

Section 405. Plan to implement recommendations of the data center energy efficiency reports

Section 405 requires the DNI to develop a plan to implement across the Intelligence Community the recommendations of the Environmental Protection Agency report on improving data center energy efficiency. This planning requirement is intended to encourage the Intelligence Community to fulfill its responsibility to assess the use of environmental resources with regard to the power, space, and cooling challenges of Intelligence Community data centers. Section 405 is similar to Section 408 of the House bill. The Senate amendment did not have a comparable provision.

Section 406. Comprehensive listing of special access programs

Section 406 provides that the DNI shall submit to the congressional intelligence committees a classified comprehensive listing of special access programs under the National Intelligence Program. The listing need not describe the programs, but must provide a reference

to them to enable the congressional intelligence committees to determine whether the Intelligence Community has fulfilled its obligation to keep the committees informed about intelligence activities. In response to a concern of the DNI that a single document would create security and counterintelligence concerns, the conferees agreed to include a provision that allows the DNI to submit the listing in a form or forms consistent with national security.

Section 406 is based on Section 409 of the House bill. The Senate amendment did not have a comparable provision.

Section 407. Reports on the nuclear programs of Iran and North Korea

Section 407 provides that not less than once during the remainder of this fiscal year and twice during fiscal year 2009, the DNI shall submit to the congressional intelligence committees a classified report on the nuclear intentions and capabilities of Iran and North Korea. A national intelligence estimate may count as one of those reports for each country. The conferees encourage the DNI to make these reports available to other congressional oversight committees of jurisdiction to the extent consistent with the protection of sources and methods.

Section 407 is based on Section 410 of the House bill. The Senate amendment did not contain a comparable provision. The House provision had required quarterly reports indefinitely. In response to concerns of the DNI, the conferees reduced the number of reports required, but otherwise concur that it is essential that the Intelligence Community place a high priority on reporting to Congress on nuclear developments in Iran and North Korea.

Section 408. Requirements for accountability reviews by the Director of National Intelligence

Section 408 provides that the DNI shall have authority to conduct accountability reviews of elements of the Intelligence Community and the personnel of those elements. The primary innovation of this provision is the authority to conduct accountability reviews concerning an entire element of the Intelligence Community in relation to significant failures or deficiencies.

This accountability process is separate and distinct from any accountability reviews conducted internally by elements of the Intelligence Community or their Inspectors General. Also, as stated explicitly in Section 408, the new authority does not limit the existing authority of the DNI with respect to supervision of the CIA. The DNI, in consultation with the Attorney General, shall establish guidelines and procedures for conducting accountability reviews.

The Senate bill, as reported by the Select Committee on Intelligence, arguably would have mandated the DNI to conduct an accountability review at the direction of a congressional intelligence committee. To avoid a construction that a committee of Congress on its own could require such a review over the objection of the DNI, a concern raised by the ODNI, a managers' amendment prior to Senate passage made clear that the DNI shall conduct a review if the DNI

determines it is necessary, and the DNI may conduct an accountability review (but is not statutorily required to do so) if requested by one of the congressional intelligence committees.

Section 408 is identical to Section 401 of the Senate amendment. The House bill did not have a comparable provision.

Section 409. Modification of limitation on delegation by the Director of National Intelligence of the protection of intelligence sources and methods

Section 409 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 PDDNI) of the authority to protect intelligence sources and methods from unauthorized disclosure. It permits the DNI also to delegate the authority to the Chief Information Officer of the Intelligence Community.

Section 409 is based on Section 403 of the Senate amendment. The House bill did not have a comparable provision. The Senate bill, as originally reported, would have additionally permitted the delegation of this authority to any Deputy DNI or to the head of any Intelligence Community element. In a managers' amendment before passage in the Senate, the authority to delegate outside of the Office of the DNI was struck in accordance with the sequential report of the Committee on the Armed Services, S. Rep. No. 110-92, at 3. The conferees further limited the delegation authority to the Chief Information Officer, who is a presidentially-appointed, Senate-confirmed official whose responsibilities expressly involve information matters throughout the Intelligence Community.

Section 410. Authorities for intelligence information sharing

Section 410 amends section 102A(g)(1) of the National Security Act of 1947 (50 U.S.C. 403-1(g)(1)) to provide the DNI with statutory authority to use NIP funds to quickly address deficiencies or needs that arise in intelligence information access or sharing capabilities. It authorizes the DNI to provide to an agency or component, and for that agency or component to accept and use, funds or systems (which could include services or equipment) related to the collection, processing, analysis, exploitation, and dissemination of intelligence information. It also grants the DNI authority to provide funds to non-NIP activities for the purpose of addressing critical gaps in intelligence information access or sharing capabilities. Without the 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.

Section 410 is based on Section 402 of the Senate amendment. The House did not have a comparable provision. To aid in oversight, the conferees have added a four-year reporting requirement from fiscal years 2009 through 2012. No later than February 1 of each of those years, the DNI shall submit to the congressional intelligence committees a report on the

distribution of funds under the new section during the preceding fiscal year to facilitate implementation of information sharing.

Section 411. Authorities of the Director of National Intelligence for interagency funding

Section 411 provides the DNI with the ability to rapidly focus the Intelligence Community on an intelligence issue through a coordinated effort that uses all available resources. The premise of this authority is that the DNI's ability to coordinate the Intelligence Community 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, this section grants the DNI the authority to approve interagency financing of national intelligence centers established under section 119B of the National Security Act of 1947 (50 U.S.C. 404o-2). It 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 funding for Intelligence Community mission managers. Under this section, the DNI could authorize the pooling of resources from various Intelligence Community agencies to finance national intelligence centers or other organizational groupings designed to address identified intelligence matters.

Section 411 is based on Section 404 of the Senate amendment. The House bill did not have a comparable provision. To aid in oversight of the implementation of the authority granted by this section, the conferees have added a four-year reporting requirement from fiscal years 2009 through 2012. No later than February 1 of each of those years the DNI shall submit to the congressional intelligence committees a report on the exercise of this authority to support interagency activities.

Section 412. Title of Chief Information Officer of the Intelligence Community

Section 412 expressly designates the position of Chief Information Officer as Chief Information Officer of the Intelligence Community. The modification to the CIO 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 412 is identical to Section 408 of the Senate amendment. The House bill did not have a comparable provision.

Section 413. Inspector General of the Intelligence Community

Section 1078 of the Intelligence Reform Act authorized the DNI to establish an Office of Inspector General if the DNI determined that an Inspector General would be beneficial to improving the operations and effectiveness of the ODNI. It further provided that the DNI could 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).

A strong Inspector General is vital to achieving the goal, set forth in the Intelligence Reform Act, of improving the operations and effectiveness of the Intelligence Community. It is also vital to achieving the broader goal of identifying problems and deficiencies wherever they may be found in the Intelligence Community with respect to matters within the responsibility and authority of the DNI, especially the manner in which elements of the Intelligence Community interact with each other in providing access to information and undertaking joint or cooperative activities. By way of a new section 103H of the National Security Act of 1947, this section 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 Inspector General with full statutory authorities and the requisite independence.

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

The DNI may prohibit the Inspector General 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 congressional intelligence committees within seven days. The Inspector General may provide a response to the committees.

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

The Inspector General will have subpoena authority. However, information within the possession of the United States government must be obtained through other procedures. Subject to the DNI's concurrence, the Inspector General may request information from any U.S. government department, agency, or element. They must provide the information to the Inspector General insofar as practicable and not in violation of law or regulation.

The Inspector General must submit semiannual reports to the DNI that include a description of significant problems relating to Intelligence Community programs and operations

and to the relationships between Intelligence Community elements. The reports must include a description of Inspector General recommendations and a statement whether corrective action has been completed. The Inspector General shall provide any portion of the report involving a component of a department of the U.S. government simultaneously to the head of that department with submission of the report to the DNI. Within 30 days of receiving it from the Inspector General, the DNI must submit each semiannual report to Congress.

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

Intelligence Community employees or employees of contractors who intend to report to Congress an “urgent concern”—such as a violation of law or Executive order, a false statement to Congress, or a willful withholding from Congress—may report such complaints and supporting information to the Inspector General. Following a review by the Inspector General to determine the credibility of the complaint or information, the Inspector General must transmit such complaint and information to the DNI. On receiving the complaints or information from the Inspector General (together with the Inspector General’s credibility determination), the DNI must transmit the complaint or information to the congressional intelligence committees. If the Inspector General does not find a complaint or information to be credible, the reporting individual may submit the matter directly to the congressional intelligence committees by following appropriate security practices outlined by the DNI. Reprisals or threats of reprisal against reporting individuals constitute reportable “urgent concerns.”

In providing this channel for whistleblower communications to Congress, Section 413 does not disturb, and the conferees intend to retain, the authoritative guidance for analogous provisions of the Intelligence Community Whistleblower Act of 1998, Pub. L. No. 105-272 (October 20, 1998) as set forth in the findings in paragraphs (1) through (6) of section 701(b) of that Act, the Senate committee report for the legislation, S. Rep. No. 105-185, at 25-27, and particularly the conference report, H.R. Rep. 105-780, at 33-34, which emphasized that a disclosure to the Inspector General “is not the exclusive process by which an Intelligence Community employee may make a report to Congress.”

For matters within the jurisdiction of both the Inspector General of the Intelligence Community and an Inspector General for another Intelligence Community element, the Inspectors General shall expeditiously resolve who will undertake an investigation, inspection, or audit. In resolving that question, under an extensive subsection entitled “Coordination Among Inspectors General of Intelligence Community,” the Inspectors General may request the

assistance of the Intelligence Community Inspectors General Forum (a presently existing informal body whose existence is ratified by this section). In the event that the Inspectors General are still unable to resolve the question, they shall submit it for resolution to the DNI and the head of the department (or to the Director of the CIA in matters involving the CIA Inspector General, in accordance with a clarifying amendment of the conferees) in which an Inspector General with jurisdiction concurrent to that of the Inspector General of the Intelligence Community is located. This basic limitation addresses the concern raised by the DNI about the preservation of the authority of heads of departments and agencies over their respective departments.

Within Congress, mutuality of oversight is assured by the requirement that Inspector General reports concerning Intelligence Committee elements within departments are shared with committees that have jurisdiction over those departments.

Except for the provision clarifying that unresolved questions involving the CIA Inspector General will also be submitted to the Director of the CIA, rather than the head of a department, Section 413 is identical to Section 410 of the Senate amendment. The House bill did not have a similar provision.

Section 414. Annual report on foreign language proficiency in the Intelligence Community

Section 414 provides for an annual report by the DNI on the proficiency of each element of the Intelligence Community in foreign languages and, if appropriate, in foreign dialects. The section also requires the DNI to report on foreign language training. The Intelligence Community has an increasing need for fluency in difficult-to-master languages and for expertise in foreign cultures. The information required by the report will allow the congressional intelligence committees to better assess the Intelligence Community's ability to manage language resources. Section 414 is based on Sections 412 and 413 of the House bill, which have been merged by the conferees. The Senate amendment did not have a comparable provision.

Section 415. Director of National Intelligence report on retirement benefits for former employees of Air America

Section 415 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. Section 415 is identical to Section 425 of the Senate amendment and Section 415 of the House bill.

The conferees note that H.R. 1271 was introduced in the House in the 110th Congress, and H.R. 1276 and S.651 were introduced in the House and Senate in the 109th Congress, to make service performed with Air America and certain other entities creditable for federal civil

service retirement purpose. By including Section 415 in this authorization bill, the conferees take no position on the merits of that legislation.

Although the section invites the DNI to submit any recommendations on the ultimate question of providing benefits, the main purpose of the report is to provide Congress with the facts upon which Congress can make that determination. Accordingly, Section 415 outlines the factual elements required by the report. To aid in the preparation of the report, the section authorizes the assistance of the Comptroller General. Among the elements of the report should be: the relationship of Air America to the CIA, the missions it performed, and the casualties its employees suffered, as well as the retirement benefits that had been contracted for or promised to Air America employees and the retirement benefits Air America employees received.

On September 25, 2007, the CIA provided a three page letter to the congressional intelligence and appropriations committees in response to the Senate Select Committee on Intelligence Report 109-259 to S.3237, requesting a report 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.” Although the letter describes the legal basis for denying federal retirement benefits to employees of Air America, it does not provide the factual background that would allow Congress to make an assessment of whether to provide employees of Air America with federal retirement benefits. The report requested in Section 415 therefore continues to be necessary for a comprehensive exploration of the underlying issues.

Section 416. Space Intelligence

Section 416 underscores the importance of the DNI’s consideration of space intelligence issues by adding this responsibility to the DNI’s statutory duties in Section 102A of the National Security Act of 1947 (50 U.S.C. 403-1). Section 416 requires the DNI to consider space intelligence issues and concerns in setting intelligence priorities, conducting analysis, and acquiring major systems. The Section also requires the DNI to ensure that agencies give due consideration to the vulnerability assessments prepared for a given major system at all stages of architecture and system planning, development, acquisition, operation, and support of a space intelligence system.

Section 412 of the Senate amendment would have created a new National Space Intelligence Office within the ODNI to coordinate and provide policy direction for the management of space-related intelligence assets and the development of personnel in space-related fields. The National Space Intelligence Office would also have been responsible for prioritizing space-related collection activities and evaluating analytic assessments of threats to classified United States space intelligence systems. The DNI, however, expressed concern about the creation of a dedicated office in the ODNI for space intelligence. Section 416 addresses that concern by highlighting the importance of space intelligence, while still giving the DNI

flexibility to organize the Intelligence Community to implement responsibilities for that intelligence.

The House bill had no similar provision.

Section 417. Operational files in the Office of the Director of National Intelligence

In the CIA Information Act, Pub. L. No. 98-477 (October 15, 1984) (50 U.S.C. 431), Congress authorized the Director of Central Intelligence 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 Geospatial-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 417 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 706 is to make clear that operational files of any Intelligence Community component, for which an operational files exemption is applicable, retain their exemption from FOIA search, review, disclosure, or publication when they are provided to an element of the ODNI. They also retain their exemption when they are incorporated in any substantially similar files of the ODNI.

Section 706 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 Intelligence Community elements, section 706 provides that the exemption 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 exemption would not apply to the subject matter of a congressional or Executive branch investigation into improprieties or violations of law.

Finally, Section 706 provides for a decennial review by the DNI to determine whether exemptions may be removed from any category of exempted files. 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 conferees underscore the importance of this requirement, which applies to the other operational exemptions in Title VII. The conferees also expect the DNI to submit the results of such review to the congressional intelligence committees in a timely manner.

Section 417 is based on Section 412 of the Senate amendment. The House bill did not contain a comparable provision. The conferees added the requirement of substantiality in the similarity between ODNI files and those of the originating element in order to tighten the connection between the files that are exempt in the originating element and the files in the ODNI that would also be exempt.

Section 418. 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 418 amends FACA to extend this exemption to advisory committees established or used by the ODNI. Section 418 is identical to Section 415 of the Senate amendment. The House bill did not contain a comparable provision.

Section 419. Applicability of the Privacy Act to the Director of National Intelligence and Office of the Director of National Intelligence

The Privacy Act (5 U.S.C. 552a) has long contained a provision under which the Director of Central Intelligence 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 exemption authority 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. Accordingly, Section 419 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. It is identical to Section 417 of the Senate amendment. The House bill did not contain a comparable provision.

Section 420. Repeal of certain authorities relating to the Office of the National Counterintelligence Executive

Section 420 amends the authorities and structure 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 420 is identical to Section 414 of the Senate amendment and Section 432 of the House bill.

Section 431. Review of covert action programs by Inspector General of the Central Intelligence Agency

Title V of the National Security Act of 1947, entitled “Accountability for Intelligence Activities,” sets forth the Act’s basic requirements on Executive branch obligations to keep the congressional intelligence committees fully informed about intelligence activities. Section 503 of the National Security Act of 1947 (50 U.S.C. 413b) is specifically devoted to presidential findings and congressional notification of covert actions. Section 431 augments the oversight of covert actions by adding a new subsection to Section 503 that requires that the CIA Inspector General conduct an audit of each covert action at least every three years and submit to the congressional intelligence committees a report containing the audit results within 60 days of completing the audit. To a considerable extent, this requirement confirms in statute existing practice and assures its regularity.

The Director of National Intelligence has expressed concern that this audit requirement, and several other provisions on Intelligence Community reports, raise concerns with respect to the President’s authority to control access to national security information. To allay any such concern regarding the covert action audit requirement, the conferees have amended Section 431 to state that the requirement is subject to the longstanding provisions of section 17(b)(3) and (4) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(b)(3) and (4)) that empower the CIA Director to prohibit the CIA Inspector General from initiating, carrying out, or completing an audit if the Director determines that the prohibition is necessary to protect vital national security interests of the United States, provided that the Director report the reasons to the congressional intelligence committees.

Section 431 is based on Section 423 of the House bill. The Senate amendment did not contain a comparable provision.

Section 432. Inapplicability to the Director of the Central Intelligence Agency of requirement for annual report on progress in auditable financial statements

Section 432 is identical to Section 422 of the Senate amendment and Section 424 of the House bill. Section 432 relieves the CIA Director from the requirement in section 114A of the National Security Act of 1947 (50 U.S.C. 404i-1) to submit to the congressional 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. Although concern remains that the CIA has had minimal success in achieving unqualified opinions on its financial statements, the report required by Section 114A is unnecessary as CIA is now submitting audited financial statements. The requirements of Section 114A continue to apply to the Directors of NSA, DIA, and NGA.

Section 433. Additional functions and authorities for protective personnel of the Central Intelligence Agency

Section 433 amends section 5(a)(4) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(a)(4)) which authorizes protective functions by designated security personnel who serve on CIA protective details.

The section authorizes protective detail personnel, when engaged in, and in furtherance of, 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.

Guidelines approved by the CIA Director and the Attorney General will provide safeguards and procedures to ensure the proper exercise of this authority. Section 433 specifically does not grant any authority to serve civil process or to investigate crimes.

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 Capitol Police (2 U.S.C. 1966(c)). 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 ability of Federal, State, or local law enforcement officers to respond immediately. 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.

Section 433 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 shall submit to the congressional intelligence committees as soon as possible, but not later than 10 days after an arrest, a report describing each exercise of authority under this section.

Section 433 is based on Section 423 of the Senate amendment. The House bill did not include a comparable provision. The conferees added the explicit requirement that arrests be in furtherance of the performance of protective functions and the requirement for a report to the congressional intelligence committees about each exercise of arrest authority.

Section 434. Technical amendments relating to titles of certain CIA positions

Section 434 replaces out-of-date titles for CIA positions with the current titles of the successors of those positions in a provision in section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q) on the obligation of the CIA Inspector General to notify the

congressional intelligence committees about investigations, inspections, or audits concerning high-ranking CIA officials. Section 434 is similar to Section 424 of the Senate amendment and Section 516 of the House bill, except for a conference agreement to add additional titles that needed to be changed.

Section 435. Clarifying amendments relating to section 105 of the Intelligence Authorization Act for Fiscal Year 2004

Section 435 changes the reference to the Director of Central Intelligence to the Director of National Intelligence to clarify 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. Section 435 is identical to Section 442 of the Senate amendment and Section 431 of the House bill.

SUBTITLE C—DEFENSE INTELLIGENCE COMPONENTS

Section 441. Enhancement of National Security Agency training program

Section 441 permits the Director of the National Security Agency 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 conferees recognize 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 conferees expect 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 441 is similar to Section 431(b) of the Senate amendment. The conferees did not include subsection (a) of Section 431 of the Senate amendment, which was a clarifying provision to allow the NSA to recoup the educational costs expended for the benefit of a student who fails to maintain satisfactory academic performance. The conferees believe that this matter and its

application to other Intelligence Community scholarship programs should be given further study by the congressional intelligence committees. The House bill had no similar provision.

Section 442. Codification of authorities of National Security Agency protective personnel

Section 442 amends the National Security Agency Act of 1959 (50 U.S.C. 402 note) by adding a new Section 21 to clarify and enhance the authority of protective details for NSA.

The new section 21(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.

The new section 21(b) would provide that NSA personnel, when engaged in performing protective detail functions, and in furtherance of the performance of those functions, may exercise the same arrest authority that Section 433 of this Act 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 explanation for Section 433. That analysis and explanation applies equally to the arrest authority provided to NSA protective detail personnel by Section 21(b).

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

Section 442 is similar to Section 432 of the Senate amendment. The House bill had no comparable provision.

Section 443. 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 Inspector Generals 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. These Inspectors

General also perform an important reporting function, “keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of . . . programs and operations and the necessity for and progress of corrective action.” *Id.* The investigative authorities exercised by Inspectors General, and their relative independence from the government operations they audit and investigate, provide an important mechanism to ensure that the operations of the government are conducted as efficiently and effectively as possible.

The Inspectors General of the CIA and Departments of Defense, Energy, Homeland Security, Justice, State, and Treasury are appointed by the President with the advice and consent of the Senate. These Inspectors General—authorized by either the Inspector 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 oversight 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 Financial Officers Act of 1990 (Pub. L. No. 101-576 (Nov. 15, 1990)). The lack of independence also prevents the Department of Defense Inspector General, and would prevent the Inspector General of the Intelligence Community, from relying on the results of NRO, DIA, NSA, or NGA Inspector General audits or investigations that must meet “generally accepted government auditing standards.”

To provide an additional level of independence and to ensure prompt access to the information necessary for these Inspectors General to perform their audits and investigations, Section 443 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 Intelligence Community elements will be required by statute administratively to 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 Inspectors General 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 443 permits the Secretary of Defense, in consultation with the Director of National Intelligence, 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 Department of Defense Inspector General. It will provide the President, through the Secretary of Defense, in consultation with the DNI, 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 Secretary of Defense.

The Senate amendment had provided the authority to prohibit the Inspectors General from initiating, carrying out, or completing any audit or investigation to either the DNI or the Secretary of Defense. To address Administration concerns that authorizing the DNI to cut off an investigation that had been ordered by the head of an executive department would be inconsistent with the preservation of the authority of the heads of departments and agencies over their respective departments, the conferees changed this provision to limit the authority to the Secretary of Defense, in consultation with the DNI.

Section 443 is similar to Section 433 of the Senate amendment. The House bill had no similar provision.

Section 444. Confirmation of appointment of heads of certain components of the Intelligence Community

Under present law and practice, the directors of the NSA 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 Director of NSA and the Secretary of Defense appoints the Director of the NRO. Neither of these 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 element of the Intelligence Community.

Section 434 of the Senate amendment provided that the heads of NSA, NGA, and NRO would be nominated by the President and that the nominations would be confirmed by the

Senate. 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.

To respond to the concerns of the DNI about the increase in the number of Senate-confirmed positions within the Intelligence Community, the conferees agreed that only the heads of the NSA and NRO, as the larger two of the three agencies, should be nominated by the President and confirmed by the Senate at this time. While all three agencies play a critical role in the national intelligence mission, the spending of NSA and NRO comprises a significant portion of the entire intelligence budget of the United States, and a substantial portion of the National Intelligence Program. The activities of NSA and NRO are also of particular concern to the congressional intelligence committees, because of the need for NSA's authorized collection to be consistent with the protection of the civil liberties and privacy interests of U.S. persons, and because of concerns about NRO's management of the significant budget resources and mission with which it is entrusted.

Section 444(b) provides that the amendments made by section 444 apply prospectively. Therefore, the Directors of NSA 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 444 does not alter the role of the Committee on Armed Services in reviewing and approving the promotion or assignment of military officers.

The House bill had no similar provision.

Section 445. Clarification of national security missions of National Geospatial-Intelligence Agency for analysis and dissemination of certain intelligence information

The National Imagery and Mapping Agency Act of 1996 (Pub. L. No. 104-201 (Sept. 23, 1996) (NIMA Act)) formally merged the imagery analysis and mapping efforts of the 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 Department of Defense, 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 product 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 conferees believe that FMV and ground-based photography should be included, with available positional data, in NGA data repositories for retrieval on Department of Defense and Intelligence Community networks. Current mission planners and military personnel are well-served with traditional imagery products and maps, but FMV of the route to and from a facility or photographs of what a facility would look like to a foot soldier—rather than from an aircraft—would be of immense value to 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 445 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 445 also makes clear that this new responsibility does not include the authority to manage tasking of handheld or clandestine photography taken by or on behalf of human intelligence collection organizations. Although Section 445 does not give the NGA authority to set technical requirements for collection of handheld or clandestine photography, the conferees encourage the NGA to engage other elements of the Intelligence Community on these technical requirements to ensure that their output can be incorporated into the national system for geospatial-intelligence within the security handling guidelines consistent with the photography’s classification as determined by the appropriate authority.

Section 445 is similar to Section 435 of the Senate amendment. The House bill had no similar provision.

Section 446. Security clearances in the National Geospatial-Intelligence Agency

Section 446 requires the Secretary of Defense to delegate to the Director of NGA through December 31, 2008, the personnel security authority with respect to NGA personnel that is identical to the personnel security authority of the Director of NSA with respect to NSA personnel. Section 446 is designed as an interim measure to address what has been a large backlog in security clearances at NGA. The conferees believe the DNI and the Secretary of Defense must continue to seek a permanent method of addressing clearance matters such as these. Section 446 is identical to Section 436 of the Senate amendment. The House bill had no similar provision.

SUBTITLE D—OTHER ELEMENTS

Section 451. Clarification of inclusion of Coast Guard and Drug Enforcement Administration as elements of the Intelligence Community

Section 451 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 451 clarifies that all of the Coast Guard’s intelligence elements are included within the definition of the “intelligence community.”

Section 451 also codifies the joint decision of the DNI and Attorney General that the Drug Enforcement Administration should be within the Intelligence Community.

Section 451 is similar to Section 441 of the Senate amendment and Section 433 of the House bill.

TITLE V – OTHER MATTERS

SUBTITLE A—GENERAL INTELLIGENCE MATTERS

Section 501. Extension of National Commission for Review of Research and Development Programs of the United States Intelligence Community

The National Commission for Review of Research and Development Programs of the United States Intelligence Community was authorized in Intelligence Authorization Act for Fiscal Year 2003, and lapsed on September 1, 2004. Section 501 renews authority for this Commission by extending the reporting deadline to December 31, 2008, and requiring that new members be appointed to the Commission. This section also authorizes funds for the commission from the Intelligence Community Management Account. Section 501 is similar to Section 502 of the House bill. The Senate amendment had no similar provision.

Section 502. Report on intelligence activities

Section 502 requires the DNI to submit a report to the congressional intelligence committees describing any authorization, if it exists, to engage in intelligence activities related to the overthrow of a democratically elected government during the 10-year period prior to enactment of this Act. Section 502 is similar to Section 503 of the House bill. The Senate had no comparable provision.

Section 503. Aerial Reconnaissance Platforms

The conferees agreed to include in Section 503 of the conference report the same amendment to Section 133(b) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (“NDAA”) that was included in H.R. 1585, the National Defense Authorization Act for Fiscal Year 2008 as passed by the House on May 17, 2007.

Section 501 of the House bill reflected the interest of the House that the Secretary of Defense not make the certification required in Section 133(b) of the NDAA until after a study has been completed to determine whether the Global Hawk RQ-4 unmanned aerial vehicle has reached mission capability and has attained collection capabilities on a par with the capabilities of the U-2 aircraft; the Secretary has made a determination whether the Global Hawk RQ-4 unmanned aerial vehicle has reached mission capability and has attained collection capabilities on a par with the collection capabilities of the U-2 Block 20 aircraft program as of the 2006 Quadrennial Defense Review; and the study has been submitted to the congressional committees of jurisdiction in accordance with the rules of each chamber.

The Senate had no comparable provision.

SUBTITLE B—TECHNICAL AMENDMENTS

Section 511. Technical amendments to Title 10, United States Code, arising from enactment of the Intelligence Reform and Terrorism Protection Act of 2004

Section 511 corrects a number of technical errors in the United States Code arising from the enactment of the Intelligence Reform Act in 2004. Section 511 is identical to Section 504 of the Senate amendment. The House bill has no similar provision.

Section 512. Technical amendments to the Central Intelligence Agency Act of 1949

Section 512 amends the Central Intelligence Agency Act of 1949 by updating references to the National Security Act of 1947 to reflect amendments made by the Intelligence Reform Act. Section 512 is identical to Section 505 of the Senate bill and similar to Section 422 of the House bill.

Section 513. Technical amendments to the multiyear National Intelligence Program

Section 513 updates the “multiyear national intelligence program” to incorporate organizational and nomenclature changes made by the Intelligence Reform Act. Section 506 is identical to Section 513 of the Senate amendment and Section 511 of the House bill.

Section 514. Technical clarifications of certain references to Joint Military Intelligence Program and Tactical Intelligence and Related Activities

Section 514 makes technical clarifications to the National Security Act of 1947 to reflect the consolidation of the Joint Military Intelligence Program and the Tactical Intelligence and Related Activities program into the Military Intelligence Program. This section preserves the requirement that the DNI participate in the development of the annual budget and be consulted prior to the transfer or reprogramming of funds for the Military Intelligence Program. Section 514 is identical to Section 502 of the Senate amendment and Section 512 of the House bill.

Section 515. Technical amendments to the National Security Act of 1947

Section 515 makes a number of technical corrections to the National Security Act of 1947 arising from enactment of the Intelligence Reform Act. Conferees removed one technical correction because it was unnecessary to clarify the scope of a completed reporting requirement. Section 515 is otherwise identical to Section 501 of the Senate bill and Section 513 of the House bill.

Section 516. Technical amendments to the Intelligence Reform and Terrorism Prevention Act of 2004

Section 516 makes a number of technical and conforming amendments to the Intelligence Reform Act. Section 516 is identical to Section 503 of the Senate amendment and Section 514 of the House bill.

Section 517. Technical amendments to the Executive Schedule

Section 517 makes technical amendments to the Executive Schedule to correct outdated and incorrect references to “Director of Central Intelligence,” “Deputy Directors of Central Intelligence,” and “General Counsel to the National Intelligence Director.” Section 517 is substantially similar to Section 507 of the Senate amendment and Section 515 of the House bill.

GENERAL MATTERS

Items Not Included

The managers agreed not to include in the conference report certain sections from the House bill and the Senate amendment because these sections were unnecessary; the requirements in the section had been or would be otherwise fulfilled; the sections related to activities for which funds would not be available; or for other reasons.

Because the DNI expressed concerns over the increase in the number of Senate-confirmed positions within the Intelligence Community, the conferees reviewed the total number of Senate-confirmed positions in the Senate amendment and the House bill. On that review, the conferees determined to limit the additional confirmed positions in this conference report to the three positions they identified to be the highest current priority. In doing so, the conferees eliminated a provision that would have required the head of NGA to be confirmed by the Senate, as discussed in Section 444 of this joint explanatory statement, and removed Section 421 of the Senate amendment and Section 421 of the House bill. Section 421 of the Senate amendment and House bill would have made the position of Deputy Director of the Central Intelligence Agency a statutory position that required appointment by the President, with the advice and consent of the Senate. The conferees expect that the congressional intelligence committees will continue to consider the appropriate method of appointment of the Deputy Director of the Central Intelligence Agency.

The conference report also eliminates Section 407 of the House bill, which would have required the DNI to submit a National Intelligence Estimate on the anticipated geopolitical effects of global climate change on the national security of the United States. The conferees remain fully committed to this assessment. The conferees note the DNI has stated that work on such a national intelligence assessment has already begun. The conferees expect that the national intelligence assessment will be transmitted to Congress in a timely manner.

The House receded on the following sections: Section 405, eligibility for incentive awards of personnel assigned to the Office of the Director of National Intelligence; Section 504, reiteration of the Foreign Intelligence Surveillance Act of 1978 (“FISA”) as the exclusive means for electronic surveillance; Section 517, technical amendments relating to redesignation of the National Imagery and Mapping Agency as the National Geospatial-Intelligence Agency; Section 601, identification of best practices for the communication of information concerning a terrorist threat; and Section 602, centers of best practices.

The Senate receded on the following sections: Section 106, development and acquisition program; Section 315, submittal to Congress of certain FISA court orders; Section 409, reserve for contingencies of the Office of the Director of National Intelligence; Section 508, technical amendments relating to redesignation of the National Imagery and Mapping Agency as the National Geospatial-Intelligence Agency; and Section 509, technical amendments relating to the responsibility of the Director of National Intelligence. The elimination of Section 106 of the Senate amendment is discussed in more detail in the classified annex.

With respect to the two provisions in the House bill and Senate amendment dealing with FISA, it was the judgment of the conferees that they would best be addressed in pending legislation to amend FISA.

Compliance with Rule XXI, CL. 9 (House) and with Rule XLIV (Senate)

The following list is submitted in compliance with clause 9 of rule XXI of the Rules of the House of Representatives and rule XLIV of the Standing Rules of the Senate, which require publication of a list of congressionally directed spending items (Senate), congressional earmarks (House), limited tax benefits, and limited tariff benefits included in the conference report, the joint explanatory statement, or the classified schedule of authorizations accompanying the conference report, including the name of each Senator, House Member, Delegate, or Resident Commissioner who submitted a request to the Committee of jurisdiction for each item so identified. Congressionally directed spending items (as defined in the Senate rule) and congressional earmarks (as defined in the House rule) in this division of the conference report, the joint explanatory statement, or the classified schedule of authorizations are listed below. The conference report, the joint explanatory statement, and the classified schedule of authorizations contain no limited tax benefits or limited tariff benefits as defined in the applicable House and Senate rules.

The following items are included in the NIP authorization:

- (1) A provision directing the expenditure of \$3,000,000 for research into advanced mirror development in the National Reconnaissance Program. The provision was requested by Congressman Tierney.
- (2) A provision adding \$3,200,000 to the National Security Agency for the RC-135 sensor upgrade. The provision was added at the request of Congressman Hall of Texas.
- (3) A provision adding \$2,750,000 to the National Security Agency for geo-location software development. The provision was added at the request of Congresswoman Eshoo.
- (4) A provision adding \$3,000,000 to the National Security Agency for a Counterproliferation system prototype. The provision was requested by Congressman Ruppertsberger.

- (5) A provision adding \$23,000,000 to fund the operations of the NDIC. The provision was added at the request of Congressman Murtha.
- (6) A provision adding \$1,600,000 to the Community Management Account for the Centers of Academic Excellence. The provision was requested by Congressman Hastings of Florida.
- (7) A provision adding \$1,500,000 for the Laboratory for High-Performance Computational Systems at the Missile and Space Intelligence Center. The provision was requested by Congressman Cramer.
- (8) A provision adding \$1,000,000 to improve rapid missile all-source analysis at the Missile and Space Intelligence Center. The provision was requested by Congressmen Cramer and Everett.
- (9) A provision adding \$4,000,000 for a Missile and Space Intelligence Center simulation project. The provision was requested by Congressman Cramer and Everett.
- (10) A provision adding \$1,000,000 for seismic research to the General Defense Intelligence Program. The provision was requested by Congressman Tierney.
- (11) A provision adding \$2,000,000 to the National Geospatial Intelligence Program for a global geospatial data project. The provision was requested by Congressman Everett.
- (12) A provision adding \$1,000,000 for joint intelligence training and education to the Joint Counterintelligence Training Activity. The provision was requested by Congressman Murtha.
- (13) A provision adding \$1,000,000 for mobile missile analysis and detection to the General Defense Intelligence Program. The provision was requested by Congressman Murtha.

- (14) A provision adding \$200,000 to the Office of the Director of National Intelligence for an Intelligence Training Program run by the Kennedy School of Government. This program was started in fiscal year 2007, but the President did not request funding for it for fiscal year 2008. The provision was added at the request of Senator Rockefeller.
- (15) A provision adding \$3,000,000 to the Naval Oceanographic Command. This provision was added at the request of Senator Lott.
- (16) A provision directing the expenditure of \$3,000,000 for a classified effort with the National Reconnaissance Office's GEOINT/SIGINT Integrated Ground Development Engineering and Management Expenditure Center. This provision was added at the request of Senator Rockefeller.

In addition, the following earmarks (as defined in the House rule) are included in the Military Intelligence Program and the Information Systems Security Program. The House Permanent Select Committee on Intelligence shares jurisdiction of these programs with the House Armed Services Committee.

- (1) A provision adding \$2,000,000 to the National Security Agency for a radio frequency signal collection program. The provision was requested by Congressman Ruppberger.
- (2) A provision adding \$1,000,000 to the National Security Agency for a next-generation signal intelligence sensor. The provision was requested by Congressman McCaul.
- (3) A provision adding \$1,000,000 to Special Operations Command for tactical signals intelligence and geo-location cognitive analysis. The provision was requested by Congressman Cramer.
- (4) A provision adding \$1,000,000 to the United States Army for Battle Lab collection management tool synchronization. The provision was requested by Congressman Cramer.
- (5) A provision adding \$1,500,000 to the United States Army for sensor visualization and data fusion. The provision was requested by Congressman Tierney.

- (6) A provision adding \$3,000,000 to the United States Air Force for the RC-135 modernization. The provision was requested by Congressman Hall of Texas.
- (7) A provision adding \$2,000,000 to the Office of the Secretary of Defense for the Western Hemisphere Security Analysis Center. The provision was requested by Congressman Hastings of Florida.
- (8) A provision adding \$10,000,000 to the National Security Agency for the national/tactical gateway. The provision was requested by Congressman Ruppertsberger.
- (9) A provision adding \$2,500,000 for computer chip hardening to the National Security Agency. The provision was requested by Congressman Ruppertsberger.
- (10) A provision adding \$2,500,000 for the cryptographic modernization program to the National Security Agency. The provision was requested by Congressman Honda.