

Proposed Intelligence Authorization

Fiscal Year 2010



22 May 2009

A Bill

To authorize appropriations for fiscal year 2010 for intelligence and intelligence-related activities of the United States Government and the Office of the Director of National Intelligence, the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the 'Intelligence Authorization Act for Fiscal Year 2010'.

(b) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I--BUDGET AND PERSONNEL AUTHORIZATIONS

Sec. 101. Authorization of appropriations.

Sec. 102. Classified Schedule of Authorizations.

Sec. 103. Elimination of certain personnel management constraints.

Sec. 104. Intelligence Community Management Account.

TITLE II--CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Sec. 201. Authorization of appropriations.

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

TITLE III--GENERAL INTELLIGENCE COMMUNITY MATTERS

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Sec. 301. Temporary appointment to fill vacancies in Presidentially-appointed and Senate-confirmed positions in the Office of the Director of National Intelligence.

Sec. 302. Repeal of restriction on the use of non-reimbursable detailees.

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Subtitle C--Other Matters

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Sec. 332. Modification of availability of funds for different intelligence activities.

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Sec. 334. Extension to the Intelligence Community of authority to delete information about receipt and disposition of foreign gifts and decorations.

Sec. 335. Counterintelligence initiatives for the Intelligence Community.

Sec. 336. Authority for the Director of National Intelligence Open Source Center to accept from individual volunteers certain needed translation services on an unpaid, gratuitous basis when in the interests of national security.

Sec. 337. Protection of terrorist identity information from unauthorized disclosure.

Sec. 338. National Intelligence Community medals or decorations.

Sec. 339. Misuse of the Office of the Director of National Intelligence name, initials, or seal.

Sec. 340. Misuse of the Intelligence Community name, initials, or seal.

TITLE IV--MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE COMMUNITY

Subtitle A--Office of the Director of National Intelligence

Sec. 401. Additional administrative authorities for the Office of the Director of National Intelligence.

Sec. 402. Clarification of restriction against co-location of Office of Director of National Intelligence headquarters and location of Office of Director of National Intelligence headquarters.

Sec. 403. Protection of certain files of the Office of the Director of National Intelligence.

Sec. 404. Membership of the Director of National Intelligence on the Transportation Security Oversight Board.

Sec. 405. Repeal of certain authorities relating to the Office of the National Counterintelligence Executive.

Sec. 406. Federal Advisory Committee Act exemption.

Sec. 407. Application of the Privacy Act to the Director of National Intelligence and the Office of the Director of National Intelligence.

Sec. 408. Award of rank to members of the Senior National Intelligence Service.

Sec. 409. Application of certain financial reporting standards to the Office of the Director of National Intelligence.

Subtitle B--Central Intelligence Agency

Sec. 421. Report on audited financial statements progress.

Sec. 422. Appeals from decisions of Central Intelligence Agency contracting officers.

Sec. 423. Deputy Director of the Central Intelligence Agency.

Sec. 424. General Counsel of the Central Intelligence Agency.

Sec. 425. Protection against reprisals.

Sec. 426. Inspector General subpoena power.

Sec. 427. Technical amendments relating to the titles of Central Intelligence Agency positions.

Sec. 428. Technical correction and addition of Deputy Director of the Central Intelligence Agency.

Subtitle C--Other Elements

Sec. 431. Homeland Security intelligence elements.

Sec. 432. Authorization of appropriations for Coast Guard National Tactical Integration Office.

TITLE V--TECHNICAL AMENDMENTS

Sec. 501. Technical corrections to the National Security Act and the Central Intelligence Agency Act.

Sec. 502. Multiyear National Intelligence Program.

Sec. 503. References to Military Intelligence Program and related activities.

Sec. 504. Technical corrections to the Intelligence Reform and Terrorism Prevention Act of 2004.

Sec. 505. Technical corrections to the Executive Schedule.

Sec. 506. Definition of Intelligence Community.

SEC. 2. DEFINITIONS.

In this Act:

(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.-- The term `congressional intelligence committees' means--

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(2) INTELLIGENCE COMMUNITY.-- The term `intelligence community' has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

TITLE I--BUDGET AND PERSONNEL AUTHORIZATIONS

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2010 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

- (1) The Office of the Director of National Intelligence.
- (2) The Central Intelligence Agency.
- (3) The Department of Defense.
- (4) The Defense Intelligence Agency.
- (5) The National Security Agency.
- (6) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
- (7) The Coast Guard.
- (8) The Department of State.
- (9) The Department of the Treasury.
- (10) The Department of Energy.
- (11) The Department of Justice.
- (12) The Federal Bureau of Investigation.

(13) The Drug Enforcement Administration.

(14) The National Reconnaissance Office.

(15) The National Geospatial-Intelligence Agency.

(16) The Department of Homeland Security.

SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL LEVELS.-- The amounts authorized to be appropriated under section 101 for the conduct of the intelligence activities of the elements listed in paragraphs (1) through (16) of section 101, are those specified in the classified Schedule of Authorizations prepared to accompany the conference report on the bill _____ of the One Hundred Eleventh Congress.

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

SEC. 103. ELIMINATION OF CERTAIN PERSONNEL MANAGEMENT CONSTRAINTS.

The National Security Act of 1947 (50 U.S.C. 403-1) is amended by adding new paragraphs to section 102A:

“(s) RELIEF FROM CIVILIAN END STRENGTH CEILINGS.--

“(1) The personnel of elements of the Intelligence Community, as defined by section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)), as amended, shall be managed each fiscal year solely on the basis of and consistent with -

“(A) the workload required to carry out authorized functions and activities; and

“(B) the funds made available to elements of the Intelligence Community for such fiscal year.

“(2) The management of such personnel in any fiscal year shall not be subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. The Director of National Intelligence, the Director of the Central Intelligence Agency, and the head of the department or agency containing elements of the Intelligence Community may not be required to make a reduction in the number of full-time equivalent positions in an element of the Intelligence Community unless such reduction is necessary due to a reduction in funds available to that element of the Intelligence Community, or is required under a law, that is enacted after the date of enactment of this Act, and that refers specifically to this subsection.

“(3) In order to ensure appropriate oversight, the Director of National Intelligence, in consultation with the head of each department or agency which contains an element of the Intelligence Community, shall submit, as part of the President’s annual budget, a projection of employment levels based on mission requirements, workload, and other considerations.”

SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.

(a) AUTHORIZATION OF APPROPRIATIONS.-- There is authorized to be appropriated for the Intelligence Community Management Account of the Director of National Intelligence for fiscal year 2010 the sum of \$____,____,000.

(b) CLASSIFIED AUTHORIZATION OF APPROPRIATIONS.-- In addition to amounts authorized to be appropriated for the Intelligence Community Management Account by subsection (a), there are authorized to be appropriated for the Community Management Account for fiscal year 2010 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts for advanced research and development shall remain available until September 30, 2011.

**TITLE II--CENTRAL INTELLIGENCE AGENCY RETIREMENT AND
DISABILITY SYSTEM**

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2010 the sum of \$290,900,000.

**SEC. 202. TECHNICAL MODIFICATION TO MANDATORY RETIREMENT
PROVISION OF CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT.**

Section 235(b)(1)(A) of the Central Intelligence Agency Retirement Act (50 U.S.C.

2055(b)(1)(A)) is amended to read as follows:

“(A) Upon reaching age 65, in the case of a participant in the system who
is at the Senior Intelligence Service rank of level 4 or above;”.

TITLE III--GENERAL INTELLIGENCE COMMUNITY MATTERS

Subtitle A--Personnel Matters

SEC. 301. TEMPORARY APPOINTMENT TO FILL VACANCIES IN PRESIDENTIALLY-APPOINTED AND SENATE-CONFIRMED POSITIONS IN THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Section 103 of the National Security Act is amended by redesignating subsection (e) as subsection (f) and adding a new subsection (e):

“(e) TEMPORARY APPOINTMENT TO FILL VACANCIES IN PRESIDENTIALLY-APPOINTED AND SENATE-CONFIRMED POSITIONS IN THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.-- If an officer of the Office of the Director of National Intelligence, other than the Director of National Intelligence, whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office—

“(1) the first assistant to the office of such officer shall perform the functions and duties of the office temporarily in an acting capacity subject to the time limitations of 5 U.S.C. § 3346 if during the 365-day period preceding the date of death, resignation, or beginning of inability to serve of the applicable officer, the person served in a position of first assistant to the office of such officer for not less than 90 days.

“(2) notwithstanding subparagraph (e)(1), the President may direct a person who serves in an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate, to perform the functions and

duties of the vacant office temporarily in an acting capacity subject to the time limitations of 5 U.S.C. § 3346.

“(3) notwithstanding subparagraph (e)(1), the Director of National Intelligence shall recommend to the President, and the President may direct, a person to perform the functions and duties of the vacant office temporarily in an acting capacity subject to the time limitations of 5 U.S.C. § 3346, if ---

“(A) during the 365-day period preceding the date of death, resignation, or beginning of inability to serve of the applicable officer, the person served in a position in an element of the Intelligence Community, as defined in section 3(4) of this Act, for not less than 90 days;

“(B) the rate of pay for the position described under subparagraph (A) is equal to or greater than the minimum rate of pay payable for a position at GS-15 of the General Schedule; and

“(C) in the case of a person who is employed in an element of the Intelligence Community other than the Central Intelligence Agency, the Director of National Intelligence shall consult with the head of the department containing the Intelligence Community element. If the head of the department containing the Intelligence Community element does not concur in the recommendation, the Director of National Intelligence may make the recommendation to the President over the objection of the relevant department head after informing the President of that department head’s objection.”

SEC. 302. REPEAL OF RESTRICTION ON THE USE OF NON-REIMBURSABLE DETAILEES.

REIMBURSEMENT.-- Except as provided in section 113 of the National Security Act of 1947 (50 U.S.C. 404h) and section 904(g)(2) of the Counterintelligence Enhancement Act of 2002 (title IX of Public Law 107-306)(50 U.S.C. 402c(g)(2)), and notwithstanding any other provision of law, during fiscal year 2010, or any fiscal year thereafter, any officer or employee of the United States or a member of the Armed Forces, who is detailed to the staff of an element of the Intelligence Community funded through the National Intelligence Program from another element of the Intelligence Community or from another element of the United States Government, may be detailed on a reimbursable or non-reimbursable basis, as agreed to by the heads of the sending and receiving departments or agencies, or their respective designees, with the approval of the Director of National Intelligence, for a period not to exceed three years.

SEC. 303. PERMANENT AUTHORIZATION FOR THE PAT ROBERTS INTELLIGENCE SCHOLARS PROGRAM.

Section 318 of the Intelligence Authorization Act for Fiscal Year 2004 (P.L. 108-177; 50 U.S.C. 441g note), as subsequently amended by the Intelligence Reform and Terrorism Prevention Act of 2004, is further amended—

- (1) by striking the word “pilot” throughout;
- (2) in subsection (a)(1), by inserting “acquisition, scientific and technical, or other” after “analytic” in both places;
- (3) in subsection (b)(1), by striking “analysts” and inserting “professionals”;
- (4) in subsection (b)(2), by inserting “, acquisition, scientific and technical, or other” after “analytic”; and
- (5) by striking paragraphs (c),(d),(e),(f)and (g); and
- (6) by inserting a new subsection (c):

“(c) Funds under this program may be used for the following purposes:

“(1) To provide a monthly stipend for each month that the individual is pursuing a course of study described in subsection (a).

“(2) To pay the individual’s full tuition to permit the individual to complete such a study.

“(3) To provide an allowance for books and materials that the individual requires to complete such course of study.

“(4) To pay the individual’s expenses for travel as requested by an element of the intelligence community related to the program.”

SEC. 304. MODIFICATIONS TO THE STOKES EDUCATIONAL SCHOLARSHIP PROGRAMS.

(a) EXPANSION OF THE STOKES EDUCATIONAL SCHOLARSHIP PROGRAM TO GRADUATE STUDENTS.-- Section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended as follows:

- (1) in subsection (a), by striking “undergraduate” and inserting “undergraduate and graduate”;
- (2) in subsection (a), by striking “baccalaureate” and inserting “baccalaureate or graduate”;
- (3) in subsection (b), by striking “undergraduate” and inserting “undergraduate and graduate”; and
- (4) in subsection (e), by striking “undergraduate” and inserting “undergraduate and graduate”.

(b) ENHANCEMENTS TO THE STOKES EDUCATIONAL SCHOLARSHIP PROGRAM.--

(1) REPLACEMENT OF THE TERM “EMPLOYEE.”--

(A) Subsection (b) of Section 16 of the National Security Agency Act of 1959 is amended by striking “civilian employees” and inserting “program participants”.

(B) Subsection (c) of Section 16 of the National Security Agency Act of 1959 is amended by striking “civilian employees” and inserting “program participants.”

(C) Subsection (d)(1)(A) through (D) of section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by striking “employee” wherever it appears and inserting “program participant”.

(D) Subsection (e)(1) of Section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by striking “employee” and inserting “program participant”

(2) TERMINATION OF PROGRAM PARTICIPANTS.-- Subsection(d)(1)(C) of section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by striking “terminated either by” and all that follows and inserting “terminated—

“(i) by the Agency due to misconduct by the program participant;
“(ii) by the program participant voluntarily; or
“(iii) by the Agency for the failure of the program participant to maintain such level of academic standing in the educational course of training as the Director of the National Security Agency shall have specified in the agreement of the program participant under this subsection; and”.

(3) AUTHORITY TO WITHHOLD DISCLOSURE OF AFFILIATION WITH NSA.--

Subsection (e) of Section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by striking “(1) When an employee” and all that follows through “(2) Agency efforts” and inserting “Agency efforts”.

(c) AUTHORITY TO OFFER PARTICIPATION IN THE STOKES PROGRAM TO THOSE NOT CURRENTLY EMPLOYED BY THE FEDERAL GOVERNMENT.-- Subsection (b) of Section 16 of the National Security Agency Act of 1959, is amended by striking “civilian employees” and inserting “civilians who may or may not be employees”

(d) AUTHORITY OF ALL IC ELEMENTS TO ESTABLISH A STOKES EDUCATIONAL SCHOLARSHIP PROGRAM.-- Insert a new subsection ____ in section 102A of the National Security Act of 1947 (50 U.S.C. 403-1):

“ The head of a department or agency containing an element of the intelligence community may establish an undergraduate or graduate training program with respect to civilian employees and prospective civilian employees of such element of the Intelligence Community similar in purpose, conditions, content, and administration to the program which the Secretary of Defense is authorized to establish under Section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) for civilian employees of the National Security Agency.

SEC. 305. INTELLIGENCE OFFICER TRAINING PROGRAM.

(a) PROGRAMS; PURPOSE.--

(1) IN GENERAL.--

(A) To encourage the preparation, recruitment, and retention of current or prospective civilian intelligence community personnel with the language, analytic, scientific, technical, or other skills necessary to meet current or emerging needs of the intelligence community as identified by the Director of National Intelligence, and to enhance recruitment and retention of an ethnically and culturally diverse mission workforce with capabilities critical to the national security interests of the United States.

(B) The Director of National Intelligence may carry out, or may authorize heads of intelligence community elements to carry out, programs in accordance with this section to provide financial support for education at institutions of higher education in disciplines identified by the Director in accordance with subsection (a)(1)(A).

(2) TYPES OF PROGRAMS.-- The programs authorized under this section are as follows:

(A) Financial aid for the pursuit of programs at institutions of higher education in language, analysis, science, technical fields, or other programs for skills necessary to meet current or emerging needs of the intelligence community as identified by the Director pursuant to subsection (a)(1)(A).

(B) Grants to institutions of higher education for development of programs of study in the skill areas identified in subsection (a)(2)(A).

(b) FINANCIAL AID.--

(1) AUTHORITY.-- The Director of National Intelligence, or the head of an intelligence community element to whom the Director delegates the authority, may, subject to this section, provide financial aid to a person -

(A) who is pursuing an associate, baccalaureate, or advanced degree, or a certification in a discipline referred to in subsection (a)(1)(A).at an institution of higher education; or

(B) who is pursuing an associate, baccalaureate, or advanced degree, or a certification identified by the Director as meeting a current or emerging mission need of one or more elements of the intelligence community.

(2) The financial aid provided to individuals under this chapter shall be administered through the Program on Recruitment and Training of Intelligence Analysts (Section 318 of the Intelligence Authorization Act for Fiscal Year 2004, P.L. 108-177; 50 U.S.C. 441g note) and the Undergraduate Training Program (Section 16 of the National Security Agency Act of 1959, P.L. 86-36; 50 U.S.C. 402 note).

(3) Financial aid made available to a person under this section may be provided to support internship activities of the person within the intelligence community in periods between, or during, the academic years leading to the degree for which financial aid is provided.

(4) In the selection of an individual recipient for the award of financial aid under this section, consideration shall be given to whether the institution at which the recipient pursues a degree is an institution to which a grant has been awarded under this chapter.

(5) The Director is authorized to screen and qualify each individual selected to receive financial aid under this section for the appropriate security clearance without regard to the date that the employment relationship between the individual and the element of the intelligence community is formed, or whether it is ever formed.

(6) GRANT PROGRAM.--

(A) AUTHORITY.-- The Director of National Intelligence may provide grants to institutions of higher education to support the establishment or continued development of programs of study for the improvement, or administration of programs of education in language, analysis, science, technical fields, or other skills necessary to meet the emerging needs of the intelligence community referred to in subsection (a)(1)(A).

(B) PURPOSES.-- Grant funds under this section may be used by an institution of higher education for the following purposes:

- (i) Curriculum or program development.
- (ii) Faculty development.
- (iii) Laboratory equipment or improvements.

(iv) Faculty research in language, analysis, science, technical, or other fields that meet current or emerging needs of the intelligence community as identified by the Director of National Intelligence.

(C) An institution of higher education seeking a grant under this section shall submit an application describing the proposed use of the grant at such time and in such manner as the Director may require.

(D) An institution of higher education that receives a grant under this section shall submit to the Director regular reports regarding the use of such grant, including--

(i) a description of the benefits to students who participate in the course of study funded by such grant;

(ii) a description of the results and accomplishments related to such course of study; and

(iii) any other information that the Director may require.

(c) REGULATIONS.-- The Director of National Intelligence shall prescribe regulations necessary to carry out this section.

(d) DEFINITIONS.-- In this section:

(1) The term “institution of higher education” has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(2) The terms “intelligence community,” “intelligence community element(s),” and “element(s) of the intelligence community” mean those elements of the intelligence community defined in the National Security Act of 1947, as amended (50 U.S.C. 401a(4)).

(3) The term “Director” means “the Director of National Intelligence”.

(e) REPEALED PROVISIONS.-- The following provisions are repealed:

(1) Pilot Project authorized by section 319 of Intelligence Authorization Act for Fiscal Year 2004, P.L. 108-177; 50 U.S.C. 403 note.

(2) Scholarship Program authorized by section 1043 of the Intelligence Reform and Terrorism Prevention Act of 2004; P.L. 108-458; 50 U.S.C. 441g-2.

(3) Pilot Program authorized by section 922 of Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005; P.L. 108-375; 50 U.S.C. 402 note.

Notwithstanding the foregoing repealed provisions, unless mutually agreed to by all parties, nothing in this section may be construed to amend, modify, or abrogate any agreement, contract, or employment relationship that was in effect related to those repealed provisions on the day prior to the date of enactment of the Intelligence Authorization Act for Fiscal Year 2010.

(f) EFFECT OF OTHER LAW.-- The Director shall administer the Intelligence Officer Training Program pursuant to the provisions of chapter 63 of title 31, United States Code and chapter 75 of such title, except that the Comptroller General of the United States shall have no authority, duty, or responsibility in matters related to this program.

Subtitle B--Reporting Requirements

SEC. 321. REPORTS ON FOREIGN INDUSTRIAL ESPIONAGE.

Section 809(b) of the Intelligence Authorization Act for Fiscal Year 1995, Public Law 103-359 {50 U.S.C. app. 2170b} is amended as follows:

(a) Strike subsection (b)(1) and (2) {50 U.S.C. app. 2170b(b)(1) and (2)} and insert:

“(b) BIENNIAL UPDATE.--

“(1) SUBMITTAL TO CONGRESSIONAL INTELLIGENCE COMMITTEES.-- The President shall submit to the congressional intelligence committees and congressional leadership a report updating the information referred to in subsection (a) (1) (d) not later than February 1, 2010 and every two years thereafter.”

(b) Strike subsection (b)(2) {50 U.S.C. app. 2170b(b)(2)}; and

(c) Renumber subsections (c), (d), and (e) as (b), (c), and (d).

SEC. 322. ELIMINATION OF REPORTING REQUIREMENT FOR THE DEPARTMENT OF THE TREASURY.

Section 342 of the Intelligence Authorization Act for Fiscal Year 2003 (Pub. L. 107-306;

50 U.S.C. 404m) is amended--

(1) by striking ``SEMIANNUAL REPORT ON'' from the title, and inserting

``EMERGENCY NOTIFICATION REGARDING'';

(2) by striking paragraphs (a) and (c); and

(3) renumbering paragraphs (b) and (d) as (a) and (b) respectively.

Subtitle C--Other Matters

SEC. 331. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.

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

SEC. 332. MODIFICATION OF AVAILABILITY OF FUNDS FOR DIFFERENT INTELLIGENCE ACTIVITIES.

Subparagraph (B) of Section 504(a)(3) of the National Security Act of 1947 (50 U.S.C.

414(a)(3)) is amended to read as follows:

“(B) the use of such funds for such activity supports an emergent need, improves program effectiveness, or increases efficiency; and”.

SEC. 333. STRENGTHENING ACCESS TO INFORMATION.

Section 102A(g)(1) of the National Security Act of 1947, as amended (50 U.S.C. 403-1(g)(1)), is further amended--

(1) in subparagraph (E), by striking “and” after the semicolon;

(2) in subparagraph (F), by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(G) in the implementation of this subsection and without regard to any other provision of law other than this Act and the National Security Intelligence Reform Act of 2004 (title I of the Intelligence Reform and Terrorism Prevention Act of 2004), expend funds for and direct the development and fielding of systems of common concern related to the collection, processing, analysis, exploitation, and dissemination of intelligence information, and any department or agency is authorized to receive and utilize such funds or systems; and

“(H) for the purpose of addressing critical gaps in intelligence information sharing capabilities, have the authority to transfer funds appropriated for a program within the National Intelligence Program to a program funded by appropriations not within the National Intelligence Program, subject to the same terms and conditions as apply to a transfer of funds appropriated for a program within the National Intelligence Program

to another such program under subsections (d)(3) through (d)(7) of this section, and under the National Security Intelligence Reform Act of 2004 (title I of the Intelligence Reform and Terrorism Prevention Act of 2004).”

**SEC. 334. EXTENSION TO THE INTELLIGENCE COMMUNITY OF
AUTHORITY TO DELETE INFORMATION ABOUT RECEIPT AND
DISPOSITION OF FOREIGN GIFTS AND DECORATIONS.**

Paragraph (4) of section 7342(f) of title 5, United States Code, is amended to read as follows:

“(4)(A) In transmitting such listings for an element of the intelligence community, the head of such element may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the head of such element certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources or methods.

“(B) In this paragraph, the term ‘element of the intelligence community’ means an element of the intelligence community listed in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).”.

SEC. 335. COUNTERINTELLIGENCE INITIATIVES FOR THE INTELLIGENCE COMMUNITY

Section 341(a) of the Intelligence Authorization Act for Fiscal Year 2004, 50 U.S.C § 442(a), is amended as follows:

(1) By striking “(2) The Director shall carry out the process through the Office of the National Counterintelligence Executive.”; and

(2) By striking “(2) The Director shall carry out paragraph (1) through the Office of the National Counterintelligence Executive.”

SEC. 336. AUTHORITY FOR THE DIRECTOR OF NATIONAL INTELLIGENCE OPEN SOURCE CENTER TO ACCEPT FROM INDIVIDUAL VOLUNTEERS CERTAIN NEEDED TRANSLATION SERVICES ON AN UNPAID, GRATUITOUS BASIS WHEN IN THE INTERESTS OF NATIONAL SECURITY.

During the current fiscal year and thereafter, and notwithstanding Section 1342 of Title 31 of the United States Code or any legal prohibition against the augmentation of appropriations, the Director of National Intelligence Open Source Center (hereinafter “Open Source Center”), is authorized to accept the translation services of individuals on an unpaid, gratuitous basis provided that:

- (a) The Director of the Central Intelligence Agency has determined, in accordance with Director of National Intelligence (DNI) guidance for the Intelligence Community, that the Open Source Center’s acceptance of translation services in the language(s) offered will serve the national security interests of the United States;
- (b) The translation work performed will be based upon information that has been collected from open sources or that otherwise is unclassified;
- (c) The individuals are qualified to perform the work involved;
- (d) The individuals will not require a security clearance to perform the work;
- (e) The Open Source Center executes and enforces a written agreement with each individual from whom such services will be accepted providing that the individual will make no claim against the United States for compensation for such services, that the individual providing translation services on a gratuitous basis under this provision is not considered to be an employee of the Federal Government for any purpose based on these services provided, and that the individual will otherwise protect the interests of the United States.

(f) The Open Source Center's use of gratuitous translation services in any given fiscal year may not result in translated material that exceeds 20 percent of OSC's translation production generated using appropriated funds, as measured by the number of translated words.

SEC. 337. PROTECTION OF TERRORIST IDENTITY INFORMATION FROM UNAUTHORIZED DISCLOSURE.

Section 119 of the National Security Act of 1947 (50 U.S.C. Section 404o), is amended by adding the following after subsection (d)(6):

“(A) PROTECTION OF TERRORIST IDENTITY INFORMATION FROM UNAUTHORIZED DISCLOSURE.--

“(i) The Center shall be responsible for ensuring that terrorist identifiers contained in its central and shared knowledge bank are transmitted, to the extent authorized by law, to the Terrorist Screening Center, which is responsible for the appropriate and lawful use of terrorist identity information in screening processes.

“(ii) Consistent with the protection of intelligence sources and methods, the Center will provide terrorist identifiers to the Terrorist Screening Center’s Terrorist Screening Database as Controlled Unclassified Information to facilitate terrorist screening.

“(iii) Notwithstanding any other provision of law, the Director of the National Counterterrorism Center, with respect to the Center’s central and shared knowledge bank, and the Director of the Terrorist Screening Center, with respect to the Terrorist Screening Database, shall ensure that terrorist identity information, including terrorist identifiers, is not disclosed for other than terrorist screening and authorized counterterrorism purposes unless they

determine, in the exercise of their discretion, that disclosure would not--

“(I) compromise the Government’s interest in an individual related to terrorism;

“(II) be likely to lead to the destruction of evidence; improper influencing of witnesses; evasion of government detection; endangerment of the safety of confidential sources, law enforcement personnel, or other persons; or disclosure of intelligence sources or methods;

“or

“(III) otherwise damage national security

“(iv) Terrorist identity information shall be exempt from disclosure under section 552 of title 5, United States Code.

“(B) USE IN TERRORIST DESIGNATION.-- For the purposes of this section, disclosure to, and appropriate use by, Federal agencies of terrorist identifiers of persons designated pursuant to the International Emergency Economic Powers Act, (50 USC 1701, *et seq*) and Executive Orders and regulations promulgated there under; Section 219 of the Immigration and Nationality Act (8 USC 1189); or other provision of law providing for the designation by a federal government agency of terrorists or their supporters shall be considered an authorized counterterrorism purpose.

“(C) SHARING OF TERRORIST IDENTIFIERS.-- Dissemination of terrorist identifiers to federal, state, local, tribal, and territorial partners, foreign

officials and entities, and private sector entities that have a substantial bearing on homeland security for terrorist screening purposes shall not be considered a disclosure for law enforcement purposes pursuant to 50 U.S.C. 1806(b); 50 U.S.C. 1825(c); or 50 U.S.C. 1845(b).

“(D) DEFINITIONS.— For purposes of this section--

“(i) The term “terrorist identity information” means:

“(I) Information, regardless of form, format, or classification, from databases maintained by the Center, the Terrorist Screening Center, or other United States Government departments or agencies that would reveal whether an individual has or has not been determined to be a known or suspected terrorist or has or has not been determined to be within the networks of contacts and support of a known or suspected terrorist.

“(II) Information related to determinations as to whether or not an individual is or should be included in the Terrorist Screening Database or other screening databases based on a determination that the individual is a known or suspected terrorist.

“(III) Information from the Terrorist Screening Database provided to any state, local, territorial, or tribal government, notwithstanding any state, local, territorial, or tribal law requiring disclosure of public records.

“(ii) The term “terrorist identifiers” includes the following data:

“(I) names and aliases;

“(II) dates or places of birth;

“(III) unique identifying numbers or information;

“(IV) physical identifiers or biometrics; or

“(V) any other identifying information provided for watchlisting purposes.

“But does not include derogatory information or information that would reveal or compromise intelligence or law enforcement sources or methods.”

SEC. 338. NATIONAL INTELLIGENCE COMMUNITY MEDALS OR DECORATIONS.

(a) IN GENERAL.— Whoever knowingly wears, purchases, attempts to purchase, solicits for purchase, mails, ships, imports, exports, produces blank certificates of receipt for, manufactures, sells, attempts to sell, advertises for sale, trades, barter, or exchanges for anything of value any decoration or medal authorized or awarded by the Director of National Intelligence under the National Intelligence Awards Program, or any colorable imitation thereof, except when authorized under regulations made pursuant to law, shall be fined under this title or imprisoned not more than six months, or both.

(b) FALSE CLAIMS ABOUT RECEIPT OF INTELLIGENCE COMMUNITY MEDALS OR DECORATIONS.— Whoever falsely represents himself or herself, knowing such representation to be false, verbally or in writing, to have been awarded any decoration or medal authorized or awarded by the Director of National Intelligence under the National Intelligence Awards Program, or any colorable imitation of such item shall be fined under this title, imprisoned not more than six months, or both.

(c) ENHANCED PENALTY FOR OFFENSES INVOLVING INTELLIGENCE CROSS.—

(1) IN GENERAL.— If a decoration or medal involved in an offense under subsection (a) or (b) is an Intelligence Cross, in lieu of the punishment provided in that subsection, the offender shall be fined under this title, imprisoned not more than 1 year, or both.

(2) INTELLIGENCE CROSS DEFINED.— In this subsection, the term “Intelligence Cross” means an intelligence cross awarded by the Director of National Intelligence under the National Intelligence Awards Program.

(d) ENHANCED PENALTY FOR OFFENSES INVOLVING CERTAIN OTHER MEDALS OR DECORATIONS.— If a decoration or medal involved in an offense described in subsection (a) or (b) is an Intelligence Medal for Valor awarded by the Director of National Intelligence under the National Intelligence Awards Program, in lieu of the punishment provided in the applicable subsection, the offender shall be fined under this title, imprisoned not more than 1 year, or both.

(e) REGULATIONS. – The Director of National Intelligence shall promulgate regulations pursuant to this section.

SEC. 339. MISUSE OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE NAME, INITIALS, OR SEAL.

(a) PROHIBITED ACTS.—No person may, except with the written permission of the Director of National Intelligence (DNI), or the DNI’s designee, knowingly use the words “Office of the Director of National Intelligence,” the initials “ODNI,” the seal of the Office of the Director of National Intelligence, or any colorable imitation of such words, initials, or seal in connection with any merchandise, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the Director of National Intelligence.

(b) INJUNCTION.—Whenever it appears to the Attorney General that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (a) of this section, the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court shall proceed as soon as practicable to the hearing and determination of such action and may, at any time before final determination, enter such restraining orders or prohibitions, or take such other action as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.

SEC. 340. MISUSE OF THE INTELLIGENCE COMMUNITY NAME, INITIALS, OR SEAL.

(a) PROHIBITED ACTS.-- No person may, except with the written permission of the Director of National Intelligence (DNI), or the DNI's designee, knowingly use the words "Intelligence Community, " the initials "IC," the seal of the Intelligence Community, or any colorable imitation of such words, initials, or seal in connection with any merchandise, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the Director of National Intelligence, except that employees of the Intelligence Community, as defined in § 401a(4) of this Act, may use the Intelligence Community name, initials, and seal in accordance with regulations promulgated by the Director of National Intelligence.

(B) INJUNCTION.-- Whenever it appears to the Attorney General that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (a) of this section, the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court shall proceed as soon as practicable to the hearing and determination of such action and may, at any time before final determination, enter such restraining orders or prohibitions, or take such other action as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.

**TITLE IV--MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE
COMMUNITY**

Subtitle A--Office of the Director of National Intelligence

**SEC. 401. ADDITIONAL ADMINISTRATIVE AUTHORITIES FOR THE
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.**

Section 102A of the National Security Act of 1947 (50 U.S.C. 403-1) is amended by adding at the end the following new subsections:

“(t) ADDITIONAL ADMINISTRATIVE AUTHORITIES.--

“(1) Notwithstanding section 1346 of title 31, United States Code, or any other provision of law prohibiting the interagency financing of activities described in subparagraphs (A) or (B), upon the request of the Director of National Intelligence and with the approval of the Office of Management and Budget, elements of the Intelligence Community are authorized to use National Intelligence Program appropriated funds to support or participate in the following interagency activities of the Intelligence Community--

“(A) national intelligence centers established by the Director under section 119B of this Act; and

“(B) boards, commissions, councils, committees, and similar groups established by the Director for a period not to exceed two years.

“(2) No provision of law enacted after the date of the enactment of this subsection shall be deemed to limit or supersede the authority in paragraph (1) unless such provision makes specific reference to the authority in that paragraph.

“(u) DISCRETION.-- The provisions of Chapter 7 of title 5, United States Code, Judicial Review, shall not apply to the Director of National Intelligence in the performance of the functions, powers, duties, and actions vested by sections 102, 102A, 103, 103A, 103B, 103C, 103D, 103E, 103F, 106, 119, 119A, 119B, 1002, 1003 of the National Security Act of 1947, and section 8K of the Inspector General Act of 1978 in the Director of National Intelligence or the Office of the Director of National Intelligence.”.

SEC. 402. CLARIFICATION OF THE RESTRICTION AGAINST CO-LOCATION OF OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE HEADQUARTERS AND LOCATION OF OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE HEADQUARTERS.

(a) Section 103(e) of the National Security Act of 1947, as amended (50 U.S.C. 403-3(e)), is further amended--

(1) by striking “Commencing” and inserting “(1) Commencing”;

(2) by striking “the Office” and inserting “the headquarters of the Office”;

(3) by striking “any other element” and inserting “the headquarters of any other element”;

(4) by inserting before the period at the end thereof “as defined in section 3(4) of the National Security Act of 1947, as amended”; and

(5) by adding the following new paragraph:

“(2) The President may waive the limitation in paragraph (1) of this subsection if the President determines--

“(A) that waiver would be in the interest of national security; or,

“(B) that the additional cost of separate headquarters outweighs the potential benefits of the limitation.”

(b) Section 103 of the National Security Act of 1947, as amended, is further amended by adding at the end a new subsection:

“(f) LOCATION OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.--The headquarters of the Office of the Director of National Intelligence may be located in the District of Columbia or elsewhere in the Washington Metropolitan Region, as that term is defined in section 8301 of title 40, United States Code.”

SEC. 403. PROTECTION OF CERTAIN FILES OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.

Title VII of the National Security Act of 1947 (50 U.S.C. 431 et seq.) is amended by adding at the end the following new section:

“ Sec. 706. PROTECTION OF CERTAIN FILES OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.

(a) RECORDS FROM EXEMPTED OPERATIONAL FILES.--

“(1) Records disseminated or otherwise provided to an element of the Office of the Director of National Intelligence from the exempted operational files of elements of the intelligence community designated in accordance with Title VII of this Act, and any operational files created by the Office of the Director of National Intelligence that incorporate such records in accordance with paragraph (A)(ii) below, shall be exempted from the provisions of section 552 of Title 5, United States Code that require search, review, publication or disclosure in connection therewith, in any instance where--

“(A)(i) such record is shared within the Office of the Director of National Intelligence and not disseminated by that Office beyond that Office; or

“(ii) such record is incorporated into new records created by personnel of the Office of the Director of National Intelligence and maintained in operational files of the Office of the Director of National Intelligence and the records are not disseminated by that Office beyond that Office; and

“(B) the operational files from which such records have been obtained continue to remain designated as operational files exempted from section 552 of Title 5, United States Code.

“(2) The operational files of the Office of the Director of National Intelligence referenced in paragraph (A)(ii) shall be similar in nature to the originating operational files from which the record was disseminated or provided, as such files are defined in Title VII of this Act.

“(3) Records disseminated or otherwise provided to the Office of the Director of National Intelligence from other elements of the intelligence community that are not protected by subsection (a)(1), and that are authorized to be disseminated beyond the Office of the Director of National Intelligence, will remain subject to search and review under section 552 of title 5, United States Code, but may continue to be exempted from the publication and disclosure provisions of that section by the originating agency to the extent that the Act permits.

“(4) Notwithstanding the provisions of sections 701-705 of the National Security Act, records in the exempted operational files of the Central Intelligence Agency, the National Geospatial-Intelligence Agency, the National Reconnaissance Office, the National Security Agency or the Defense Intelligence Agency shall not be subject to the search and review provisions of section 552 of title 5 solely because they have been disseminated to an element or elements of the Office of the Director of National Intelligence, or referenced in operational files of the Office of the Director of National Intelligence and that are not disseminated beyond the Office of the Director of National Intelligence.”

“(5)(A) Notwithstanding the provisions of sections 701-705 of the National Security Act, the incorporation of records from the operational files of the Central Intelligence Agency, the National Geospatial-Intelligence Agency, the National Reconnaissance Office, the National Security Agency or the Defense Intelligence Agency, into operational files of the Office of the Director of National Intelligence shall not subject that record or the operational files of the Central Intelligence Agency, the National Geospatial-Intelligence Agency, the National Reconnaissance Office, the National Security Agency or the Defense Intelligence Agency to the search and review provisions of section 552 of title 5.

“(b) (1) Files in the Office of the Director of National Intelligence that are not exempted under subsection (a) of this section which contain information derived or disseminated from exempted operational files shall be subject to search and review.

“(2) The inclusion of information from exempted operational files in files of the Office of the Director of National Intelligence that are not exempted under subsection (a) of this section shall not affect the exemption of the originating operational files from search, review, publication, or disclosure.

“(3) Records from exempted operational files of the Office of the Director of National Intelligence which have been disseminated to and referenced in files that are not exempted under subsection (a) of this section and which have been returned to exempted operational files of the Office of the Director of National Intelligence for sole retention shall be subject to search and review.

“(c) EFFECT OF OTHER LAWS.-- The provisions of this section may not be superseded except by a provision of law that is enacted after the date of the enactment of this section and that specifically cites and repeals or modifies such provisions.

“(d) APPLICABILITY.-- The Director of National Intelligence will publish a regulation listing the specific elements within the Office of the Director of National Intelligence whose records can be exempted under this provision.

“(e) ALLEGATION; IMPROPER WITHHOLDING OF RECORDS; JUDICIAL REVIEW.-- (1) Except as provided in paragraph (2), whenever any person who has requested agency records under section 552 of Title 5, United States Code, alleges that the Office of the Director of National Intelligence has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of Title 5, United States Code.

“(2) Judicial review shall not be available in the manner provided for under paragraph (1) as follows:

“(A) In any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by the Office of the Director of National Intelligence, such information shall be examined ex parte, in camera by the court.

“(B) The court shall determine, to the fullest extent practicable, the issues of fact based on sworn written submissions of the parties.

“(C) When a complainant alleges that requested records are improperly withheld because of improper placement solely in exempted operational

files, the complainant shall support such allegation with a sworn written submission based upon personal knowledge or otherwise admissible evidence.

“(D)(i) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, the Office of the Director of National Intelligence shall meet its burden under section 552(a)(4)(B) of Title 5, United States Code, by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsive records currently meet the criteria set forth in subsection (a) of this section.

“(ii) The court may not order the Office of the Director of National Intelligence to review the content of any exempted operational file or files in order to make the demonstration required under clause (i), unless the complainant disputes the Office’s showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

“(E) In proceedings under subparagraphs (C) and (D), the parties may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36.

“(F) If the court finds under this subsection that the Office of the Director of National Intelligence has improperly withheld requested records because of failure to comply with any provision of this section, the court

shall order the Office to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of Title 5, United States Code, and such order shall be the exclusive remedy for failure to comply with this section.

“(G) If at any time following the filing of a complaint pursuant to this paragraph the Office of the Director of National Intelligence agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.”

(f) CLERICAL AMENDMENT.-- The table of contents in the first section of the National Security Act of 1947 is amended by inserting the following new item:

“Sec. 706. Protection of Certain Files of the Office of the Director of National Intelligence.”.

SEC. 404. MEMBERSHIP OF THE DIRECTOR OF NATIONAL INTELLIGENCE ON THE TRANSPORTATION SECURITY OVERSIGHT BOARD.

Section 115(b)(1)(F) of title 49, United States Code, is amended by striking “The Director of the Central Intelligence Agency” and inserting “The Director of National Intelligence.”.

SEC. 405. REPEAL OF CERTAIN AUTHORITIES RELATING TO THE OFFICE OF THE NATIONAL COUNTERINTELLIGENCE EXECUTIVE.

(a) REPEAL OF CERTAIN AUTHORITIES.-- Section 904 of the Counterintelligence

Enhancement Act of 2002 (title IX of Public Law 107-306; 50 U.S.C. 402c) is amended--

(1) by striking subsections (d), (g)(3), (g)(4), (h), (i), and (j); and

(2) by redesignating subsections (e), (f), (g), (k), (l), and (m) as subsections (d), (e), (f),

(g), (h), and (i) respectively.

(b) CONFORMING AMENDMENTS.-- That section is further amended-

(1) in subsection (d), as redesignated by subsection (a)(2) of this section,

by striking “subsection (f)” each place it appears in paragraphs (1) and (2) and inserting “subsection (e)”;

(2) in subsection (e)(1), as so redesignated, by striking “subsection(e)(1)” and inserting “subsection (d)(1)”;

(3) in subsection (e)(2), as so redesignated, by striking “subsection (e)(2)” and inserting “subsection (d)(2)”.

SEC. 406. FEDERAL ADVISORY COMMITTEE ACT EXEMPTION.

Section 4(b) of the Federal Advisory Committee Act (5 U.S.C. App. 2) is amended--

(1) in paragraph (1), by striking “or”;

(2) in paragraph (2), by striking the period and inserting “; or”; and

(3) by inserting at the end the following new paragraph:

“(3) the Office of the Director of National Intelligence.”.

SEC. 407. APPLICATION OF THE PRIVACY ACT TO THE DIRECTOR OF NATIONAL INTELLIGENCE AND THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.

Section 552a(j) of Title 5 of the United States Code is amended by--

- (1) striking the word “or” at the end of subparagraph (j)(1);
- (2) redesignating subparagraph (j)(1) as (j)(1)(i); and
- (3) inserting after subparagraph (j)(1)(i) the following new subparagraphs:

“ (ii) maintained by the Office of the Director of National Intelligence.”

SEC. 408. AWARD OF RANK TO MEMBERS OF THE SENIOR NATIONAL INTELLIGENCE SERVICE

Section 102A of the National Security Act of 1947 (50 U.S.C. 403-1) is amended by adding a new subsection to the end:

“(y) AWARD OF RANK TO MEMBERS OF THE SENIOR NATIONAL INTELLIGENCE SERVICE.--

The President, based on the recommendations of the Director of National Intelligence, may award ranks to members of the Senior National Intelligence Service and other intelligence community senior civilian officers not already covered by such a rank award program in a manner consistent with the provisions of 5 USC 4507. The award of such rank shall be made per the direction of the Director of National Intelligence and in a manner consistent with the provisions of that section.”

SEC. 409. APPLICATION OF CERTAIN FINANCIAL REPORTING REQUIREMENTS TO DIRECTOR OF NATIONAL INTELLIGENCE.

The Director of National Intelligence shall not be required to submit audited financial statements under section 3515 of title 31, United States Code for the Office of the Director of National Intelligence with respect to fiscal years 2009 through 2011.

Subtitle B--Central Intelligence Agency

SEC. 421. REPORT ON AUDITED FINANCIAL STATEMENTS PROGRESS.

Section 114A of the National Security Act of 1947 (50 U.S.C. §404i-1) is further amended by striking “the Director of the Central Intelligence Agency,”.

SEC. 422. APPEALS FROM DECISIONS OF CENTRAL INTELLIGENCE AGENCY CONTRACTING OFFICERS.

(a) JURISDICTION.-- Section 8(d) of the Contract Disputes Act of 1978 (41 U.S.C. 607(d)) is amended by adding at the end the following new sentence: “Notwithstanding any other provision of this section and any other provision of law, an appeal from a decision of a contracting officer of the Central Intelligence Agency relative to a contract made by that agency may be filed with whichever of the Armed Services Board of Contract Appeals or the Civilian Board of Contract Appeals is specified by the contracting officer as the Board to which such an appeal may be made; and the Board so specified shall have jurisdiction to decide that appeal.”

(b) EFFECTIVE DATE.-- The provisions of this amendment shall be effective upon the enactment of this Act.

SEC. 423. DEPUTY DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.

ESTABLISHMENT AND DUTIES OF THE POSITION OF DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE AGENCY.-- Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by adding after section 104A the following:

“DEPUTY DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY”

“Sec. 104B. (a) DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE AGENCY.--There is a Deputy Director of the Central Intelligence Agency who shall be appointed by the President.

“(b) DUTIES OF DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE AGENCY.—

“(1) The Deputy Director of the Central Intelligence Agency shall assist the Director of the Central Intelligence Agency in carrying out the duties and responsibilities of the Director of the Central Intelligence Agency.

“(2) The Deputy Director of the Central Intelligence Agency shall act for, and exercise the powers of, the Director of the Central Intelligence Agency during the absence or disability of the Director of the Central Intelligence Agency, or during a vacancy in the position of Director of the Central Intelligence Agency.”.

(b) EXECUTIVE SCHEDULE III.--Section 5314 of Title 5, United States Code, is amended by striking:

“Deputy Directors of the Central Intelligence Agency (2).”.

(c) EFFECTIVE DATE AND APPLICABILITY.--The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply upon the earlier of--

(1) the date of the appointment by the President of an individual to serve as Deputy Director of the Central Intelligence Agency, except that the individual administratively performing the duties of the Deputy Director of the Central Intelligence Agency as of the date of the enactment of this Act may continue to perform such duties until the individual appointed to the position of Deputy Director of the Central Intelligence Agency assumes the duties of such position;
or

(2) the date of the cessation of the performance of the duties of Deputy Director of the Central Intelligence Agency by the individual administratively performing such duties as of the date of the enactment of this Act.

SEC. 424. GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY.

(a) Section 20(a) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403t(a)) is amended by striking “, by and with the advice and consent of the Senate” and replacing it with a “.”.

(b) Section 5315 of title 5, United States Code is amended by striking “General Counsel of the Central Intelligence Agency.”

SEC. 425. PROTECTION AGAINST REPRISALS.

Section (e)(3)(B) of the CIA Inspector General Act (50 U.S.C. § 403q(e)(3)(B)) is amended by inserting “or providing such information” after “making such complaint.”

SEC. 426. INSPECTOR GENERAL SUBPOENA POWER.

Section (e)(5)(A) of the CIA Inspector General Act (50 U.S.C. § 403q(e)(5)(A)) is amended by inserting “in any medium (including electronically stored information, as well as any tangible thing)” after “other data.”

SEC. 427. TECHNICAL AMENDMENTS RELATING TO TITLES OF CENTRAL INTELLIGENCE AGENCY POSITIONS.

(a) AMENDMENTS TO CENTRAL INTELLIGENCE AGENCY ACT OF 1949.— Section 17(d)(3)(B)(ii) of the Central Intelligence Agency Act of 1949 (50 U.S.C.

403q(d)(3)(B)(ii)) is amended--

(1) in subclause (I), by striking “Executive Director” and inserting “Associate Deputy Director”;

(2) in subclause (II), by striking “Deputy Director for Operations” and inserting “Director of the National Clandestine Service”;

(3) in subclause (III), by striking “Deputy Director for Intelligence” and inserting “Director for Intelligence”;

(4) in subclause (IV), by striking “Deputy Director for Administration” and inserting “Director for Support”;

(5) in subclause (V), by striking “Deputy Director for Science and Technology” and inserting “Director for Science and Technology”.

(b) TITLE 10, UNITED STATES CODE.— Subsection (c) of section 528 of title 10, United States Code, is amended by striking “Associate Director of CIA for military support” and “Associate Director of the Central Intelligence Agency for Military Support” and inserting “Associate Director for Military Affairs, CIA or any successor position” and “Associate Director for Military Affairs, Central Intelligence Agency or any successor position” respectively.

SEC. 428. TECHNICAL CORRECTION AND ADDITION OF DEPUTY DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.

Section (d)(3)(B)(i) of the CIA Inspector General Act (50 U.S.C. § 403q) is amended by striking the word “advise” and substituting the word “advice” and inserting “Deputy Director of the Central Intelligence Agency;” as the new subclause (I) of section (d)(3)(b)(ii), and renumbering subclause (I) as subclause (II); subclause (II) as subclause (III); subclause (III) as subclause (IV); subclause (IV) as subclause(V); and subclause (V) as subclause (VI).

Subtitle C--Other Elements

SEC. 431. HOMELAND SECURITY INTELLIGENCE ELEMENTS.

Section 3(4) of the National Security Act of 1947 (50 U.S.C. § 401a) is amended—

(1) In paragraph (H), by inserting “the Coast Guard,” after “the Marine Corps,”;

and

(2) In paragraph (K), by striking “elements of the Department of Homeland Security” and all that follows through “Office of Intelligence of the Coast Guard.” and inserting “Office of Intelligence and Analysis of the Department of Homeland Security.”.

**Sec. 432. AUTHORIZATION OF APPROPRIATIONS FOR COAST GUARD
NATIONAL TACTICAL INTEGRATION OFFICE.**

Title 14, United States Code, is amended—

(1) in section 93(a)(4), by striking “function” and inserting “function, including research, development, test, or evaluation related to intelligence systems and capabilities,” and

(2) in section 662(4), by striking “related to” and inserting “related to intelligence systems and capabilities or”.

TITLE V--TECHNICAL AMENDMENTS

SEC. 501. TECHNICAL CORRECTIONS TO THE NATIONAL SECURITY ACT AND THE CENTRAL INTELLIGENCE AGENCY ACT.

(a) Title I of the National Security Act of 1947, as amended by Title I of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458), is further amended--

(1) in section 102A (50 U.S.C. 403-1)--

(i) in subsection (d)(3), by striking “subparagraph

(A)” and inserting “paragraph (1)(A)”;

(ii) in subsection (d)(5)(A), by striking “or personnel”;

(iii) in subsection (l)(2)(B), by striking “section” and inserting “paragraph”

(iv) in subsection (n), by striking “Acquisition Authorities” and inserting “Acquisition and Other Authorities”; and

(2) in section 119(c)(2)(B) (50 U.S.C. 404o(c)(2)(B)), by striking “(h)” and inserting “(i)”.

(b) Section 7 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403h) is amended by striking the words “Commissioner of Immigration and Naturalization” and replacing them with “Secretary of Homeland Security”.

SEC. 502. MULTIYEAR NATIONAL INTELLIGENCE PROGRAM.

Section 1403 of the National Defense Authorization Act for Fiscal Year 1991, as amended, (50 U.S.C. 404b) is amended--

(1) in the headings for the section and for subsection (a), and in subsection (a), by striking ‘‘foreign’’;

(2) in subsections (a) and (c), by striking ‘‘Director of Central Intelligence’’ and inserting ‘‘Director of National Intelligence’’; and

(3) in subsection (b), by inserting ‘‘of National Intelligence’’ after ‘‘Director’’.

SEC. 503. REFERENCES TO MILITARY INTELLIGENCE PROGRAM AND RELATED ACTIVITIES.

Section 102A of the National Security Act of 1947 (50 U.S.C. 403-1), as amended by section 1011(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458), is further amended--

(1) in subsection (c)(3)(A)--

(A) by striking the word “budgets” and inserting “budget”; and

(B) by striking “Joint Military Intelligence Program and for Tactical Intelligence and Related Activities,” and inserting ‘Military Intelligence Program’ or for any successor program or programs’; and

(2) in subsection (d)(1)(B), by striking “Joint Military Intelligence Program,” and inserting “Military Intelligence Program, or any successor program or programs.”.

SEC. 504. TECHNICAL CORRECTIONS TO INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004.

The Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458) is amended-

(1) in section 1016(e)(10)(B), by striking “Attorney General” the second time it appears and inserting “Department of Justice”;

(2) in section 1061(d)(4)(A), by striking “National Intelligence Director” and inserting “Director of National Intelligence”;

(3) in section 1071(e), by striking “ (1)”;

(4) in the heading of section 1072(b), by inserting “Agency” after “Intelligence”;

(5) in section 2001-

(A) in subsection (c)(1), by inserting “of” between “Investigation” and “an institutional culture”

(B) in subsection (e)(2), by striking “National Intelligence Director in a manner consistent with section 112(e)” and inserting “Director of

National Intelligence in a manner consistent with applicable law”;

(C) in subsection (f), by striking the comma after “shall”; and

(6) in section 2006--

(A) in subsection (2), by striking “the”;

(B) in subsection (3), by striking “the specific” and inserting “specific”.

SEC. 505. TECHNICAL CORRECTIONS TO THE EXECUTIVE SCHEDULE.

(a) Section 5313 of title 5, United States Code, is amended by striking “Director of Central Intelligence” and inserting in lieu thereof “Director of the Central Intelligence Agency”.

(b) Section 5314 of title 5, United States Code, is amended by striking “Deputy Directors of Central Intelligence (2).”.

(c) Section 5315 of title 5, United States Code, is amended by striking “General Counsel of the Office of the National Intelligence Director” and inserting in lieu thereof “General Counsel of the Office of the Director of National Intelligence”.

SEC. 506. DEFINITION OF INTELLIGENCE COMMUNITY.

Section 3(4)(L) of the National Security Act of 1947 (50 U.S.C. 401a(4)(L)), as amended by section 1073 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458), is further amended by striking “other” the second time it appears.

SECTIONAL ANALYSIS

TITLE I--BUDGET AND PERSONNEL AUTHORIZATIONS

Sec. 101. Authorization of appropriations.

Section 101 lists the United States Government departments, agencies, and other elements for which the Act authorizes appropriations for intelligence and intelligence-related activities for fiscal year 2010.

Sec. 102. Classified Schedule of Authorizations.

Section 102 makes clear that the details of the amounts authorized to be appropriated for intelligence and intelligence-related activities covered under this title for fiscal year 2010 are contained in a classified Schedule of Authorizations. The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President.

Sec. 103. Elimination of certain personnel management constraints.

This section would add a new subsection to the National Security Act of 1947, as amended, to eliminate congressionally imposed civilian end-strength ceilings on the Intelligence Community (IC). This proposal would repeal personnel ceilings and make future IC employment totals determined strictly by the overall budget appropriation. Congressional oversight of the IC workforce is assured by a requirement for an annual projection of employment levels based on mission requirements from the Office of the Director of National Intelligence to the intelligence oversight committees in each year's budget submission. This proposal is similar to legislation enacted by Congress for the Department of Defense, and codified at 10 U.S.C. 129. This proposal will eliminate the requirement for the personnel ceilings adjustments authority that was included in section 103 of the previous Intelligence Authorization Acts.

Sec. 104. Intelligence Community Management Account.

Section 104 authorizes appropriations for the Community Management Account (CMA) of the Director of National Intelligence (DNI) for fiscal year 2010.

Section 104 does not include a provision contained in recent intelligence authorization legislation which limits the term of non-reimbursable details to the Office of the DNI (ODNI) to one year or less. Because the Intelligence Reform and Terrorism Prevention Act of 2004 provided the DNI with considerable flexibility to manage human resources, the old Community Management restriction regarding non-reimbursable details is too limiting. The one year restriction has unduly impeded the ODNI's ability to facilitate the rotation of Intelligence Community employees, especially those on joint duty assignments. Accordingly, Section 104 does not contain this restriction and Section 302 provides for a new term, not to exceed three years, of non-reimbursable details to the ODNI and other elements of the Intelligence Community funded through the National Intelligence Program.

Subsection (a) authorizes appropriations of \$____,____,000 for fiscal year 2010 for the activities of the CMA of the DNI. Subsection (a) also authorizes funds identified for advanced research and development to remain available for two years.

Subsection (b) authorizes additional appropriations for the CMA as specified in the classified Schedule of Authorizations and permits the additional funding amount to remain available through September 30, 2010, except for funds for research and development activities, which remain available through September 30, 2011.

**TITLE II--CENTRAL INTELLIGENCE AGENCY RETIREMENT AND
DISABILITY SYSTEM**

Sec. 201. Authorization of appropriations..

Section 201 authorizes appropriations in the amount of \$290,900,000 for fiscal year 2010 for the Central Intelligence Agency Retirement and Disability Fund.

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

Section 202 updates the Central Intelligence Agency Retirement Act provision on mandatory retirement to reflect the Agency's abolition of pay grades within the Senior Intelligence Service (SIS) and the Agency's adoption of SIS personal ranks. As part of the revised SIS program approved by the Director of Central Intelligence in February 2004, the Agency—effective 11 July 2004—adopted a single pay range for the SIS, thereby eliminating the six SIS pay grades. The CIA Executive Director subsequently approved an SIS personal rank structure comprising levels 1-6, effective 1 December 2005. The change made by Section 202 resolves the discrepancy between the prior version of Section 235(b)(1) of the CIA Retirement Act and the revised SIS structure.

TITLE III--GENERAL INTELLIGENCE COMMUNITY MATTERS

Subtitle A--Personnel Matters

Sec. 301. Temporary appointment to fill vacancies in Presidentially-appointed and Senate-confirmed positions in the Office of the Director of National Intelligence.

Section 301 adds a new subsection (e) to section 103 of the National Security Act of 1947. This new subsection would permit the President to temporarily fill vacancies in offices in the Office of the Director of National Intelligence (ODNI) that require Senate confirmation with an individual who serves in another element of the Intelligence Community.

In creating the ODNI, Congress envisioned an executive branch agency that would pull from the expertise of employees from the other sixteen elements of the Intelligence Community. Indeed, the Intelligence Reform and Terrorism Prevention Act of 2004 (section 102A of the National Security Act) tasks the DNI with developing personnel policies that “encourage and facilitate assignments and details of personnel to national intelligence centers [of the ODNI], and between elements of the intelligence community.” Moreover, the DNI is charged with developing regulations to “provide incentives for personnel of elements of the intelligence community to serve . . . on the staff of the Director of National Intelligence.”

As the Congress is aware, a significant number of ODNI personnel are detailed from other elements of the Intelligence Community. Moreover, there are certain positions in the ODNI that are highly specialized. To that end, the ODNI may not have in place individuals who meet the requisite requirements of the Vacancies Act to serve in an acting capacity. Accordingly, the ODNI may be left with vacant senior level positions until such time as the President nominates someone for that position and the Senate confirms that nominee. In fact, the ODNI recently faced this problem in attempting to fill, on an acting basis, the Chief Information Officer for the Intelligence Community. Because this position requires a specialized skill set and the Office of the Chief Information Officer is small, there was no individual who satisfied the requirements of the Vacancies Act to serve in an acting capacity. Rather than leave this critical position vacant, the President should have the ability to temporarily appoint an individual from other Intelligence Community elements who possesses the specialized skills and background necessary to fill this critical position.

Subsections (1) and (2) of this provision mirror 5 U.S.C. § 3345(a)(1) and (a)(2) of the Vacancies Act. These provisions provide that (1) the first assistant of the office shall begin serving as the acting officer immediately and automatically upon the occurrence of the vacancy and (2) another officer who has already received senate confirmation may serve as the acting officer. In addition, both subsections incorporate the time limitations to serve in an acting capacity, generally limiting such acting appointment to no longer than 210 days.

Subsection (3) of this provision incorporates many of the aspects of the Vacancies Act, but rather than limiting temporary appointment to certain senior agency employees designated by the President, it permits the President to appoint an individual from certain senior level positions from any element of the Intelligence Community.

Sec. 302. Repeal of restriction on the use of non-reimbursable detailees.

This section permanently authorizes details on a reimbursable or non-reimbursable basis from any element of the government to the staff of an element of the IC funded through the National Intelligence Program. Such details will be determined under terms jointly agreed to by the heads of the concerned departments or agencies, but the terms shall be no longer than three years. This authority will provide flexibility for IC elements to receive support from other IC elements on a non-reimbursable basis for community-wide activities where both elements would benefit from the detail.

Sec. 303. Permanent authorization for the Pat Roberts Intelligence Scholars Program.

This proposal provides permanent authorization for the Pat Roberts Intelligence Scholars Program (PRISP), which was originally authorized as a pilot program in section 318 of the Intelligence Authorization Act for fiscal year 2004, and has continued under year-to-year appropriations. In addition, it would authorize the broader use of PRISP funds beyond intelligence analysts to include acquisition, science and technology, and other intelligence professionals, thus allowing for maximum impact of limited resources for the development of the Intelligence Community workforce.

This proposal would also authorize a student participating in PRISP to receive tuition, books, travel expenses and a stipend.

Since its inception as a pilot program in 2004, PRISP has provided funds to over 800 individuals with an attrition of less than half a dozen program participants. IC elements are enthusiastic supporters of the PRISP, as it gives them a great deal of flexibility to compete effectively with the private sector by offering scholarships and recruitment incentives, in the form of reimbursement of prior educational expenses, to recruit individuals who possess critical skills sought by the IC. Making PRISP permanent removes any ambiguity with regards to Congress' support for this important and successful program. Broadening the use of PRISP funds beyond intelligence analysts recognizes the important role that other professionals play in the intelligence enterprise.

Sec. 304. Modifications to the Stokes Educational Scholars Program.

This chapter is designed to expand and to strengthen the Stokes Educational Scholars Program. The Stokes program has been effective in helping undergraduate students, particularly minority students, develop critical skills necessary to the Intelligence Community. Because of the success of this program, the DNI would like to expand the Stokes program to include graduate students. This expansion is the goal of section 305(a).

Section 304(b) is designed to make the Stokes program more effective by doing two things. First, it would clarify that, for purposes of the program, “termination of employment” includes situations where employees fail to maintain satisfactory academic standards. Such employees shall be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, shall be liable for repayment. Failure to maintain satisfactory academic performance has always been grounds for default resulting in the right of the Government to recoup educational costs expended for the benefit of the defaulting employee. Thus, the change to subparagraph 16(d)(1)(C) is not a substantive change, but rather a clarification.

Section 304(b) also amends Section 16 (e) of the National Security Agency Act of 1959, which currently requires NSA to publicly identify to educational institutions which students are NSA employees. Deletion of this disclosure requirement enhances NSA’s ability to protect personnel and prospective personnel, and it preserves training program participants’ abilities to undertake future covert or other sensitive assignments for the intelligence community. At the same time, however, this amendment leaves intact the long-standing prohibition against training program participants engaging in any intelligence functions at the institutions they attend under the program.

Section 304(c) would authorize the NSA to offer participation in the Stokes program to individuals who are not current federal employees. The DNI would like to be able to offer the Stokes program to students and to other individuals interested in pursuing a career in the Intelligence Community who have not yet formed an employment relationship with an IC element to further expand the reach of this program. In furtherance of that objective, the language replacing the term “employee” with “program participant” has been added by Section 305(b), above.

Section 304(d) would extend the authority of all elements of the Intelligence Community to establish a Stokes scholarship program. The ODNI is pursuing policies that will create a “level playing field” with regard to personnel flexibilities across the IC. This proposal is an important part of that effort. It is necessary to build a unified and cohesive IC workforce, as well as ensure that some IC elements do not have a statutory advantage in their personnel management to the detriment of other IC elements.

Sec. 305. Intelligence Officer Training Program.

The Intelligence Officer Training Program (IOTP) builds on two pilot programs that were authorized in previous years: the National Security Agency (NSA) “Pilot Program on Cryptologic Service Training” described in section 922 of the Defense Authorization Act for Fiscal Year (FY) 2005, Public Law 108-375, and the Director of Central Intelligence pilot program “Improvement of Equality of Employment Opportunities in the Intelligence Community.” The purpose of IOTP is to encourage the preparation, recruitment and retention of civilian personnel for careers in the Intelligence Community (IC). It is also to help ensure that the IC can better recruit and retain a workforce that is ethnically and culturally diverse so that it can accomplish its critical national security mission.

The program would consist of two parts. First, the program would provide financial assistance to individuals (through existing IC scholarship authorities) to pursue studies in critical language, analytic, scientific, technical, or other skills necessary to meet current or emerging needs of the IC. Second, building on the ODNI’s successful Centers for Academic Excellence Program, IOTP would solicit colleges and universities from across the country to competitively apply for grants to implement academic programs which will help students to develop the critical skills required for careers in the IC.

Students attending participating colleges and universities and taking the prescribed course of study could competitively apply for financial assistance including, but not limited to, a monthly stipend, tuition assistance, book allowances, and travel expenses. Students who receive a threshold amount of financial assistance would be obligated to serve in the IC. The ODNI would develop application requirements for students, which could include the successful completion of a security background investigation.

This proposal would make permanent the program to improve employment opportunities in the IC, originally authorized in 2004, which allowed the IC to give grants to academic institutions. With regards to the NSA pilot program, although it has been beneficial to NSA, its focus on cryptologic service at NSA no longer meets the variety of the IC’s critical skills requirements. The broader IOTP program envisions cohorts of students taking classes together specifically designed to help prepare them for careers in the IC while receiving a variety of financial assistance, in return for which they will be obligated to a period of service in the IC. The IOTP program will help the IC accomplish the following: establish and build partnerships with academic institutions, which can help the IC build a workforce prepared for the challenges of the future; improve analysis and foreign language capabilities, regional expertise, science and technical innovations; improve recruiting, hiring, and retention of first- and second-generation Americans with critical language and cultural knowledge; and establish a means to ensure a continuous pool of qualified entry-level applicants to IC elements, tailored to the changing priorities of an evolving global IC enterprise.

Finally, this proposal would repeal the following programs that are either incorporated into or replaced by this program: the Pilot Project authorized by section 319 of Intelligence Authorization Act for Fiscal Year 2004, P.L. 108-177 (50 U.S.C. 403 note); the Scholarship Program authorized by section 1043 of the Intelligence Reform and Terrorism Prevention Act of 2004; P.L. 108-458 (50 U.S.C. 441g-2); and the Pilot Program authorized by section 922 of Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005; P.L. 108-375 (50 U.S.C. 402 note).

Subtitle B--Reporting Requirements

Sec. 321. Report on foreign industrial espionage.

This section would modify 50 U.S.C. Section 2170b(b)(1) and (2) to require the submission of the Report to Congress on Foreign Economic Collection and Industrial Espionage every two years, instead of annually. Changing this requirement will do nothing to impede Congressional oversight of this very important topic because the information contained in the report varies only slightly from year to year. For example, the major actors, the techniques they employ, and the technologies they steal – the primary topics of the Annual Report – were exactly the same in the 2006 and 2007 Annual Reports. Moreover, the existing understandings between the Intelligence Community and the Congress will ensure that the congressional intelligence committees remains fully and currently informed of any developments in this area during the interim periods.

Even though the data has been unchanging over this time frame, producing the report is nevertheless a major, resource-intensive undertaking. More than 20 US Government agencies commit significant manpower to collecting the data, drafting the report, coordinating it across the Community and shepherding the paper through the production process. These resources would be better employed in tracking counterintelligence threats of a more dynamic nature.

Sec. 322. Elimination of a reporting requirement for the Department of the Treasury.

Section 322 proposes to eliminate the requirement in 50 USC subsection 404m(a) that the Department of the Treasury submit a semi-annual report to the congressional intelligence oversight committees on the U.S. Government's operations against terrorist financial networks. The Department of the Treasury asserts that this reporting requirement has served its purpose and become unnecessary for the reasons set forth below.

When section 342 of the Intelligence Authorization Act for Fiscal Year 2003 amended the National Security Act of 1947 with this reporting requirement, the Treasury Department was receiving little information about terrorist financing from other U.S. law enforcement and intelligence agencies. Congress attempted to remedy the situation by requiring other agencies to provide relevant terrorist financing information to the Treasury for inclusion in this report.

Since the creation of the Office of Intelligence and Analysis (OIA) in 2004, the Treasury Department has become far better integrated into the Intelligence Community, and the Department has developed significantly closer ties with its law enforcement partners, rendering this report no longer necessary. OIA now has comprehensive arrangements with various intelligence, law enforcement, and military organizations, which have resulted in far greater information sharing and coordination. For example, OIA now works jointly with the Federal Bureau of Investigation (FBI), both at FBI Headquarters and field office levels, on terrorist financing investigations. In addition, during the past year, OIA has developed closer ties with the Central Intelligence Agency.

In 2005, OIA hired a full time Requirements Officer, who has increased Treasury's profile in the Intelligence Community requirements process by aggressively delivering requirements and evaluations on behalf of all Treasury entities to the Intelligence Community. In these requirements submissions, Treasury includes comprehensive background information, as well as detailed statements of Treasury's intelligence gaps to help focus the Intelligence Community on Treasury's requirements. In response to Treasury's detailed requests, the Intelligence Community has increased its level of tailored support to Treasury, making this report unnecessary.

Treasury asserts that taken together, these developments have rendered the subsection 404m(a) report unnecessary. Therefore new section 331 proposes that the semiannual report required by 50 U.S.C. section 404m(a) be deleted. In addition, section 331 leaves intact the emergency notification provisions of section 404m(b), but with a different paragraph heading.

Subtitle C--Other Matters

Sec. 331. Restriction on conduct of intelligence activities.

Section 331 provides that the authorization of appropriations by the Act shall not be deemed to constitute authority for the conduct of any intelligence activity that is not otherwise authorized by the Constitution or laws of the United States.

Sec. 332. Modification of availability of funds for different intelligence activities.

Section 332 replaces the “unforeseen requirements” standard that governs reprogrammings and transfers of funds which is set forth in Section 504(a)(3)(B) of the National Security Act, with a more precise standard consistent with the National Security Act, as amended by the National Security Intelligence Reform Act of 2004 (Title I of the Intelligence Reform and Terrorism Prevention Act of 2004). The new standard would enhance the flexibility and capability of intelligence agencies to reprogram funds to meet higher-priority mission requirements.

Section 332 conforms the text of Section 504(a)(3)(B) of the National Security Act of 1947 (50 U.S.C. section 414(a)(3)(B) (governing the funding of intelligence activities)) with the more substantive text provided in Section 1011(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub.L. No. 108-458 (Dec. 17, 2004)) (governing the transfer and reprogramming by the Director of National Intelligence (DNI) of certain intelligence funding). This conforming amendment replaces the “unforeseen requirements” standard set forth in Section 504(a)(3)(B) of the National Security Act with a clearer standard to govern reprogrammings and transfers of funds authorized for a different intelligence or intelligence-related activity.

Under this new standard, a reprogramming or transfer would be authorized if, in addition to the other requirements of Section 504(a)(3), the new use of funds would “support an emergent need, improve program effectiveness, or increase efficiency.” This modification brings the standard for reprogrammings or transfers of intelligence funding into conformity with the standards applicable to reprogrammings and transfers under Section 102A of the National Security Act of 1947. The modification preserves congressional oversight of proposed reprogrammings and transfers while enhancing the Intelligence Community’s ability to carry out missions and functions vital to national security.

Sec. 333. Strengthening access to information.

Section 333 provides statutory authority for the Director of National intelligence (DNI) to use National Intelligence Program (NIP) funds to quickly address deficiencies or requirements that arise in intelligence information sharing capabilities related to intelligence mission responsibilities.

Section 333 adds a new section 102A(g)(1)(G) to the National Security Act of 1947 (50 U.S.C. 403-1) that gives clear authority to the DNI to provide -- and clear authority to a receiving agency or component to accept and use -- appropriately authorized and appropriated funds, services, or equipment that address intelligence information sharing requirements, even or especially if the requirements arise outside the normal budget or requirements cycle.

Moreover, section 333 specifically gives the DNI the authority, not found in Section 102A(d) of the National Security Act, to provide funds to non-NIP activities for the purpose of addressing critical gaps in intelligence information sharing capabilities. Without this authority, the development and implementation of necessary intelligence information sharing capabilities could be delayed due to an agency's lack of authority to accept or use such DNI-funded systems, lack of current-year funding, or augmentation of appropriations concerns.

Section 333 also is important to the development and deployment of systems of common concern that are designed to enhance the collection, processing, analysis, exploitation, and dissemination of national intelligence -- systems that will greatly benefit the Intelligence Community. Intelligence information sharing systems must be interconnected, interoperable, secure, and available: Section 333, by permitting the DNI to help find funding for such systems, will help ensure their development. In addition, establishing standards for the utilization and operation of such systems is consistent with DNI authorities set forth in the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458)(IRTPA), including section 1018.

Finally, the proposed section 333 authority is similar to the authority of the National Geospatial-Intelligence Agency to deploy, operate and maintain systems related to the processing and dissemination of imagery intelligence and geospatial information that may be transferred, accepted or used by, or used on behalf of any other department or agency of the United States. See, 10 U.S.C. 442(e).

Sec. 334. Extension to the Intelligence Community of authority to delete information about receipt and disposition of foreign gifts and decorations.

Section 334 provides to the heads of Intelligence Community (IC) elements the same exemption from certain reporting requirements under 5 U.S.C. 7342 as the Central Intelligence Agency (CIA) and the Office of the Director of National Intelligence (ODNI) have. This section only applies to certain reporting requirements because receipt of gifts still must comply with all applicable ethics laws and regulations.

Current law generally requires that detailed information about the receipt of foreign gifts be reported, including the source of the gift. In addition, some of this information subsequently is published in the Federal Register. Revealing the source of a gift given in the context of a foreign intelligence relationship would compromise the relationship and undermine national security.

To resolve this dilemma, the law provided an exemption to the former Director of Central Intelligence (DCI) from reporting information about foreign gifts, when the publication of the information could adversely affect United States intelligence sources. A similar exemption was extended to the Director of National Intelligence (DNI) and the Director of the Central Intelligence Agency (D/CIA) in section 1079 of the Intelligence Reform and Terrorism Prevent Act of 2004, Pub. L. No. 108-458 (Dec. 17, 2004).

Section 334 amends existing law to provide to the heads of the each IC element the same limited exemption from specified public reporting requirements that is currently authorized for the DNI and the D/CIA. The national security concerns that prompted the initial DCI exemption, and the more recent exemptions for the DNI and the D/CIA, apply with equal weight to other IC elements: The publication of certain information relating to foreign gifts or decorations provided to employees of IC agencies could adversely affect United States intelligence sources.

Section 334 modernizes IC business practices by facilitating the protection of sources and methods while permitting the appropriate reporting of gift information required under other authorities.

Sec. 335. Counterintelligence initiatives for the Intelligence Community.

Section 335 amends the Intelligence Authorization Act for Fiscal Year 2004 by striking the delegation of responsibility to the Office of the National Counterintelligence Executive (ONCIX). The required action falls under the statutory mission of the DNI in his role of protecting intelligence sources and methods; however, the responsibility delegated to ONCIX does not fall within its mission and would be better delegated to a component of the ODNI that has the resources and expertise necessary to answer the requests.

Sec. 336. Authority for Director of National Intelligence Open Source Center to accept from individual volunteers certain needed translation services on an unpaid, gratuitous basis when in the interests of national security.

Section 336 will allow the DNI Open Source Center (OSC) to accept the services of qualified non-IC personnel with language skills in order to better meet Intelligence Community requirements involving the translation into English of foreign-language open source and/or unclassified items. This authority will maximize the Center's ability to exploit open sources by making use of a cadre of outside persons with language skills needed to serve important national security interests. This proposal is consistent with the National Intelligence Strategy, which emphasizes innovative means to address national security challenges.

The DNI Open Source Center envisions employing gratuitous service agreements for two specific purposes: to develop a ready surge capacity to respond to temporary peaks in demand for translations in a given language, as well as to address a scarcity of qualified translators with mission critical language skills.

The IC has acknowledged a capability gap in mission critical languages and has employed new recruitment approaches and monetary incentives for proficiency in designated hard languages. Section 326 will strengthen the Open Source Center's foreign language capabilities, including those in critical languages such as Farsi, Arabic, and Chinese

The Open Source Center conducted a test pilot employing three individuals with gratuitous service agreements to support the OSC China Program with occasional translations and preparation of translation summaries. The individuals processed material that otherwise would not have been translated, and the items produced were of substantive value.

Legal concerns related to unlawful augmentation of appropriations have constrained OSC from continuing this pilot on a long term basis or expanding it, absent this proposed statutory authority.

Sec. 337. Protection of terrorist identity information from unauthorized disclosure.

Section 337 aims to further enhance information sharing for national security purposes by providing for protection against unauthorized dissemination of sensitive terrorist identity information used in screening processes. For the purposes of this section, “terrorist identity information” encompasses information of the National Counterterrorism Center (NCTC) or the Terrorist Screening Center (TSC) that would reveal if a person is or is not a known or suspected terrorist or within the network of contacts or support of a known or suspected terrorist; information relating to inclusion of a known or suspected terrorist in the Terrorist Identities Datamart Environment (TIDE) or the Terrorist Screening Database (TSDB) or other screening databases; and TSDB information that is shared with federal, state, local, tribal, and territorial partners, foreign officials and entities, and private sector entities, as appropriate. The term “terrorist identifiers,” as defined in this section, includes personal, physical, and travel information, but excludes derogatory information or information that could reveal intelligence sources and methods.

NCTC was established as a component of the Office of the Director of National Intelligence (ODNI) under the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) amendments to the National Security Act of 1947. Pursuant to section 119 of the National Security Act of 1947, as amended by IRTPA, one of NCTC’s six primary missions is “To serve as the central and shared knowledge bank on known and suspected terrorists and international terror groups, as well as their goals, strategies, capabilities, and networks of contacts and support.” TIDE functions as that knowledge bank and feeds the TSDB, which functions as the USG’s consolidated watchlist.

Section 337 defines the responsibilities of NCTC and TSC and their relationship for sharing terrorist identity information for terrorist screening purposes. This provision invokes the DNI’s statutory responsibility to protect intelligence sources and methods from unauthorized disclosure, but recognizes that screening information must be passed as “Controlled Unclassified Information” (CUI) to facilitate maximal sharing with federal, state, local, tribal, and territorial partners, foreign officials and entities, and private sector entities, as appropriate.

Section 337 provides that the Director of NCTC (D/NCTC) and the Director of TSC (D/TSC) shall not allow information contained in their respective databases to be publicly disclosed if disclosure would: (1) compromise USG interest in an individual related to terrorism; (2) likely lead to: destruction of evidence; improper influencing of a witness; evasion of government detection; endangerment of the safety of confidential sources, law enforcement personnel, or other persons; or disclosure of intelligence sources and methods; or (3) otherwise damage national security. Section (B) recognizes that use of terrorist identifiers in designation processes required of federal agencies pursuant to law is considered an “authorized counterterrorism purpose” and shall not be inhibited by this provision.

Section 337(A)(iv) establishes that terrorist identity information shall be exempt from disclosure for the purposes of the Freedom of Information Act. Additionally, section 337 seeks to simplify the sharing of “terrorist identifiers” by clarifying that sharing of terrorist identifiers to certain foreign or domestic partners for terrorist screening purposes would not be considered a disclosure for law enforcement purposes. Sections 106, 305, and 405 of the Foreign Intelligence Surveillance Act (FISA) (50 U.S.C. Sec. 1806(b), 50 U.S.C. Sec. 1825(c), and 50 U.S.C. Sec. 1845(b)) require that information acquired pursuant to FISA that is disclosed “for law enforcement purposes” must be “accompanied by a statement that the information, or any information derived there from, may only be used in a criminal proceeding with the advance authorization of the Attorney General” (referred to as the “FISA caveat”). Because certain screening databases are shared with law enforcement authorities, the FISA statute could be construed to require application of the FISA caveat when the information is made available to such authorities. The FISA caveat, however, would reveal that the source of the identities information was FISA collection, thus revealing a classified collection method and linking the collection with a particular target. Consequently, information with the FISA caveat must be classified and cannot be shared with as many law enforcement partners as can CUI information. Release of the terrorist identifiers, alone, however, without reference to the method of acquisition or any source-revealing derogatory information is otherwise authorized. This legislation would make it clear that sharing terrorist identifiers is not a disclosure for law enforcement purposes and would clarify that terrorist identifiers may be shared without the FISA caveat and the consequential encumbrance of terrorism information sharing.

Sec. 338. National Intelligence Community medals or decorations.

This section would add a new subsection to the National Security Act of 1947, as amended, to preserve and protect the integrity and value of medals and decorations awarded by the Director of National Intelligence under the National Intelligence Awards Program by providing for criminal penalties for misuse.

Sec. 339. Misuse of the Office of the Director of National Intelligence name, initials, or seal.

This section would add a new subsection to the National Security Act of 1947, as amended, to protect the official Office of the Director of National Intelligence name, initials, or seal from misuse. It would provide legal protection to the Office of the Director of National Intelligence name, initials, and seal from misuse for any unauthorized purpose. It also provides legal remedies for stopping such misuse when it is discovered.

Sec. 340. Misuse of the Intelligence Community name, initials, or seal.

This section would add a new subsection to the National Security Act of 1947, as amended, to protect the official Intelligence Community name, initials, or seal from misuse.

The official Intelligence Community seal was recently promulgated by the DNI. This statutory provision will provide legal protection to the Intelligence Community name, initials, and seal from misuse for any unauthorized purpose. It also provides legal remedies for stopping such misuse when it is discovered.

TITLE IV--MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE COMMUNITY

Subtitle A--Office of the Director of National Intelligence

Sec. 401. Additional administrative authorities for the Office of the Director of National Intelligence.

Section 401 recognizes that from an organizational standpoint, the Director of National Intelligence (DNI) must be able to focus the Intelligence Community (IC) rapidly on a particular intelligence issue through a coordinated effort that uses all available resources. The DNI should have the ability to respond with flexibility and coordinate the IC response to an emerging threat or issue. Often times, the appropriate response is a small, limited duration inter-agency board or commission to examine the threat or issue and report back to the DNI. Other times, it may be the rapid establishment of a national intelligence center. Given the federated nature of the Intelligence Community, which crosses many organization lines, the application of the general prohibition against funding inter-agency boards and commissions to the Intelligence Community should be modified to permit limited exceptions.

To provide the necessary operational and organizational flexibility, this section grants the DNI the authority - notwithstanding certain specified provisions of general appropriations law - to approve interagency financing of national intelligence centers (authorized under Section 119B) of the National Security Act of 1947 (50 U.S.C. 404o-2)) and of other boards, commissions, councils, committees, or similar groups established by the DNI (e.g., "mission managers," as recommended by the Commission on the Intelligence Capabilities of the United States regarding Weapons of Mass Destruction (WMD Commission)). Under this section, the DNI could authorize the pooling of resources from various IC agencies to finance national intelligence centers or other organizational groups designed to address identified intelligence matters. Upon the request of the DNI, the provision expressly permits Intelligence Community elements to fund or participate in the funding of, the authorized activities.

Section 401 also exempts the DNI and ODNI actions arising out of enumerated authorities and responsibilities from judicial review pursuant to Chapter 7 of title 5, United States Code; this limited exemption is similar to that recognized for the former Director of Central Intelligence, see, e.g., *Dubbs v. CIA*, N.D. Cal 1990, 769 F. Supp. 1113. The authorities and responsibilities enumerated in section 106 are those pertaining to the management and oversight of the National Intelligence Program, elements of the Intelligence Community, and personnel management of the Intelligence Community. This provision is not intended to preclude judicial review of DNI and the Office of the Director of National Intelligence actions under the Privacy Act or the Freedom or Information Act.

Sec. 402. Clarification of restriction against co-location of Office of Director of National Intelligence headquarters and location of Office of Director of National Intelligence headquarters.

First, section 402 clarifies that the ban on co-location of the Office of the Director of National Intelligence (ODNI) with any other Intelligence Community element, which was slated to take effect on 1 October 2008, applies to the co-location of the headquarters of each. Section 402 also provides that the President may waive the ban if the President determines a waiver is in the interests of national security, or if the President determines that the cost of providing for separate facilities is not warranted. Finally, this section provides a statutory exemption that the ODNI headquarters need not be located within the District of Columbia.

Section 402 affords flexibility to ensure that the ODNI or its various components may be located in the most appropriate facility or facilities. Because the ODNI handles some of the most sensitive intelligence information within the U.S. Government, it is important that the ODNI have the highest level of physical and technical security possible.

The ODNI has located its headquarters where it is separate and apart from the headquarters of the various Intelligence Community elements. However, considering the difficulty and cost of finding or building a facility that meets the appropriate physical and technical security standards, the President must have the discretion to locate any or all components of the ODNI in one or more existing Intelligence Community facilities if doing so would be in the interests of the national security.

This provision would also authorize the President to waive the ban on co-location where the cost of providing separate facilities is unwarranted. This could be the case where it may be prudent or convenient for communications or logistical purposes to locate an element of the ODNI near the headquarters of another element of the Intelligence Community. If co-location would be a more cost-effective solution and if the additional cost of separate headquarters did not support the potential benefits of the limitation (such as avoiding any real or apparent confusion of the identity or authorities of the two entities), the President should have the authority to waive the ban on co-location.

Second, ODNI's security requirements as an Intelligence Community agency and the limited remaining office space within the District of Columbia necessitate an exemption from any requirement that the ODNI be located within the District of Columbia.

Whether existing statutory language requires that federal government executive agency headquarters should be located in the District of Columbia, absent a statutory exemption to the contrary, is unclear. The relevant statutes require only that the District of Columbia shall be the "seat of government of the United States" (4 U.S.C. 71) and that all offices attached to the seat of government shall be exercised "in the District of

Columbia, and not elsewhere, except as otherwise expressly provided by law” (4 U.S.C. 72). (The location of Washington, D.C. as the “seat of government” dates back to July 16, 1790, when George Washington and the First Congress enacted a law designating the District of Columbia as the seat of government for the new nation.)

Both the Central Intelligence Agency (“CIA,” an independent establishment under 5 U.S.C. 104, similar to ODNI) and the Department of Defense (“DoD,” an executive department under 5 U.S.C. 101, containing Intelligence Community elements) occupy headquarters campuses in the nearby Washington, D.C. region. Congress granted both CIA (located in McLean, VA) and DoD (located in Arlington, VA) statutory exemptions to permit these agencies to occupy headquarters space outside the District of Columbia. By securing headquarters space immediately outside Washington, D.C., CIA and DoD are able to provide for physical security of their headquarters and to reserve enough space to meet future needs while remaining close to the seat of government.

Sec. 403. Protection of certain files of the Office of the Director of National Intelligence.

Section 403 adds a new section 706 to the National Security Act of 1947, to exempt specific categories of Office of the Director of National Intelligence (ODNI) files from the search, review, and disclosure provisions of the Freedom of Information Act (FOIA) (5 U.S.C. 552). This exemption parallels and reinforces the statutory operational files FOIA exemptions already granted to five of the main Intelligence Community elements: the Central Intelligence Agency (CIA), the National Geospatial-Intelligence Agency (NGA), the National Reconnaissance Office (NRO), the National Security Agency (NSA), and the Defense Intelligence Agency (DIA). The exemption provided by new section 204 preserves the statutory framework for existing operational files exemptions and removes any uncertainty about whether those exemptions are lost by sharing the sensitive information contained in such files with the ODNI.

In order to carry out the authorized duties and responsibilities of the DNI under section 102A of the National Security Act of 1947, as amended, the ODNI will receive intelligence and intelligence-related information from existing operational files, and create new records that include or use such information. The ODNI has received, and will expect to continue to receive, broad FOIA requests for intelligence community documents that would require a search of such operational files within the ODNI. ODNI-received ‘operational files’ information, and ODNI material that includes or is derived from existing ‘operational files’ information, warrants the same search, review and disclosure exemption under FOIA as the same sensitive information in CIA, NGA, NRO, NSA and DIA operational files. (*See* National Security Act of 1947, as amended, 50 U.S.C. 701-705, 50 U.S.C. 431,432,432a,432b and 432c.) Furthermore, the “operational files” in the originating agency should not lose their exemption as a result of providing records from those files to the ODNI.

In order to maintain the nexus between exempt operational files created in the ODNI with the originating exempt operational files, this provision contains a requirement that the operational files created in the ODNI shall be similar in nature to the originating operational files from which the record was disseminated or provided, as such files are defined in Title VII of this Act. The DNI will promulgate regulations to implement this authority within the ODNI.

This proposal does not provide for decennial review, as provided in the CIA operational files exemption. Since the ODNI operational files are derivative, no review is believed to be necessary.

Sec. 404. Membership of the Director of National Intelligence on the Transportation Security Oversight Board.

Section 404 substitutes the Director of National Intelligence (DNI) or the DNI's designee as a member of the Transportation Oversight Board under 49 U.S.C. 115(b)(1), in place of the Director of the Central Intelligence Agency (D/CIA) or the D/CIA's designee.

Sec. 405. Repeal of certain authorities relating to the Office of the National Counterintelligence Executive.

Section 405 makes technical corrections to eliminate certain independent administrative authorities that had been vested in the National Counterintelligence Executive (NCIX) when that official was appointed by and reported to the President. Those authorities are unnecessary, redundant, and anomalous, and could or would undercut the authorities of the Director of National Intelligence (DNI), now that the NCIX is to be appointed by and under the authority, direction, and control of the DNI.

Sec. 406. Federal Advisory Committee Act exemption.

Congress enacted the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) to regulate the use of advisory committees throughout the Federal Government. FACA sets forth the responsibilities of Congress and the Executive Branch with regard to such committees and outlines procedures and requirements for such committees.

For example, under FACA, Federal agencies sponsoring advisory committees ordinarily open advisory committee meetings to the public, and, subject to the Freedom of Information Act, make available for public inspection papers and records, including detailed minutes of each meeting. For advisory committees handling extremely sensitive material, such openness requirements may be inconsistent with national security or business confidentiality requirements.

Therefore, FACA, as originally enacted in 1972, expressly exempted advisory committees used by the Central Intelligence Agency and the Federal Reserve System, *see* 5 U.S.C. App. 2, section 4(b). Section 406 amends FACA to extend this exemption explicitly to those advisory committees established or used by the Office of Director of National Intelligence.

Sec. 407. Application of the Privacy Act to the Director of National Intelligence and the Office of the Director of National Intelligence.

Section 407 amends the Privacy Act, 5 U.S.C. 552a(j)(1), to extend to the Director of National Intelligence (DNI) the authority to promulgate rules by which certain records systems of the Office of the Director of National Intelligence (ODNI) may be exempted from certain Privacy Act requirements. This authority, which is identical to that currently available to the Director of the Central Intelligence Agency (CIA), is necessary to ensure that the DNI may provide adequate and appropriate safeguards for certain sensitive information in ODNI records systems, and fulfill the ODNI mission.

Historically, the Privacy Act has included a long-standing provision by which the Director of the CIA could promulgate rules to exempt any system of records within the CIA from certain requirements under the Act. This provision was designed to ensure that the CIA could provide adequate and appropriate safeguards for certain sensitive information in its records systems.

The DNI, as the head of the Intelligence Community, requires the ability to safeguard sensitive information in records systems within the ODNI. The DNI, as the President's principal intelligence advisor, has broad access to and responsibility for analyzing and disseminating national intelligence for national security purposes. Whereas the CIA has a collection mission that the DNI does not, the DNI has expanded authorities and responsibilities for accessing and analyzing all-source intelligence -- authorities and responsibilities that mirror and in many cases go far beyond those previously afforded the CIA.

The DNI is committed to the protection of privacy and civil liberties, and has mechanisms for protecting those concerns, including the Civil Liberties and Privacy Office and is subject to oversight by the Privacy and Civil Liberties Oversight Board. Like the CIA, ODNI will continue to remain subject to important provisions of the Privacy Act.

It is important to note that section 407 would not authorize agencies to exempt systems of records from the following provisions of the Privacy Act:

- Section (b) Conditions of Disclosure;
- Section (c)(1) and (2), Accounting of Certain Disclosures;
- Section (e)(4)(A) through (F), Notice of Systems of Records;
- Section (e)(6) assurance that records are accurate, complete, timely, and relevant, (7) protection of First Amendment rights, (9) establish rules of conduct for persons involved with systems of records, (10) establish safeguards to insure security and confidentiality and (11) publication of new or intended use of a system or records, and
- Section (i) Criminal Penalties.

Sec. 408. Award of rank to members of the Senior National Intelligence Service.

This proposal adds a new subsection to section 102A of the National Security Act to authorize Presidential Rank awards to members of the SNIS in the Office of the Director of National Intelligence (ODNI) and other IC senior civilian officers not already covered by such a rank award program.

The authority to issue Presidential Rank Awards was originally enacted as a program of the Senior Executive Service (SES) in 1978, to honor high-performing senior career government employees. The Central Intelligence Agency and other elements of the IC were exempted by statute from the SES, and employees of those agencies were therefore not eligible for Presidential Rank Awards. Legislation enacted since 1978 has opened the eligibility for Presidential Rank Awards to senior civilian officers of exempt agencies, including the Federal Bureau of Investigation, the Drug Enforcement Administration, and members of the Defense Intelligence Senior Executive Service. This legislation would authorize the President to also recognize members of the SNIS and other senior civilian officers not already covered by such a program who deserve such recognition with Presidential Rank, in a manner consistent with rank awards conferred on other senior executives of the Executive Branch.

Sec. 409. Application of certain financial reporting standards to the Office of the Director of National Intelligence.

Section 409 delays the applicability to the Director of National Intelligence (DNI) of the audited financial reporting requirements of 31 U.S.C. 3515. This grace period gives the DNI the necessary time to establish a financial management system for the Office of the DNI (ODNI) that can generate financial statements to meet the prescribed legal and audit standards.

Ordinarily, section 3515 requires certain Federal agencies, including the ODNI, to prepare and submit to the Congress and the Director of the Office of Management and Budget (D/OMB), not later than 1 March of each year, an audited financial statement for the preceding fiscal year. The Accountability of Tax Dollars Act of 2002, Public Law 107-289, amended 31 U.S.C. 3515, and gave the D/OMB the authority to waive the audited financial reporting requirements for up to two fiscal years for any newly covered Executive agency. Section 3515 subsequently was amended to permit the D/OMB to waive the reporting requirements for a covered agency if the budget authority for that agency did not exceed \$25 million in the given fiscal year and if the D/OMB determined that there was an absence of risk associated with the agency's operations. The D/OMB cannot use this limited waiver authority to grant a grace period to the ODNI. Therefore, section 409 would exempt the ODNI from the requirements of section 3515 for fiscal year 2011.

The former Community Management Staff (CMS) took significant strides to address financial management issues, and section 409 will permit the DNI adequate time to complete CMS' diligent efforts to establish an ODNI financial management system. This system is critical to the ODNI's generation of audited financial statements that satisfy generally accepted accounting principles, applicable laws, and financial regulations.

Subtitle B--Central Intelligence Agency

Sec. 421. Report on audited financial statements progress.

Section 421 repeals the requirement that the Director of the Central Intelligence Agency submit to the Congressional intelligence committees an annual report describing the activities being undertaken to ensure that financial statements of the CIA can be audited in accordance with applicable law and requirements of the Office of Management and Budget. The report is unnecessary and duplicative now that CIA has submitted and will continue to submit audited financial statements in accordance with section 3515 of title 31, United States Code.

Sec. 422. Appeals from decisions of Central Intelligence Agency contracting officers.

Section 422 amends current law by providing that an appeal from a decision of a Central Intelligence Agency contracting officer may be appealed to whichever of the Armed Services Board of Contract Appeals or the Civilian Board of Contract Appeals is specified by the contracting officer as the Board to which such an appeal may be made; and the Board so specified shall have jurisdiction to decide that appeal.

Sec. 423. Deputy Director of the Central Intelligence Agency.

Section 423 adds provisions to the National Security Act that: establish in statute the position of Deputy Director of the Central Intelligence Agency (DD/CIA); specify that the President shall appoint the DD/CIA; and specify the duties of the DD/CIA. Section 302 also places the position of DD/CIA at Level III of the Executive Schedule. Finally, Section 302 provides for when the amendments that it makes shall take effect.

Sec. 424. General Counsel of the Central Intelligence Agency.

Section 424 changes the appointment process for the General Counsel of the Central Intelligence Agency. This provision contributes to reducing the number of positions in the Intelligence Community that require Senate confirmation. The amendment made by Section 303 will expedite the process of filling vacancies in the very important and sensitive position of General Counsel of the CIA, while appropriately ensuring that appointments to the position are considered and made at the very highest level of the Executive Branch. Section 303 does not amend Section 5315 of Title 5, United States Code, and leaves the CIA General Counsel position as one to which Level IV of the Executive Schedule applies.

Sec. 425. Protection against reprisals.

Section (e)(3) (B) of the CIA Inspector General Act authorizes the Inspector General to receive and investigate complaints and information. Currently, section (e)(3)(B) addresses reprisal, or threat of reprisal for making a complaint; the amendment would clarify that the protections also apply as to information provided to the Inspector General by Agency employees.

Sec. 426. Inspector General subpoena power

Section 426 is intended to clarify IG subpoena authority by indicating that “other data” as referred to in Section (e) (5) (A) of the CIA Inspector General Act (50 U.S.C. 403q(e) (5) (A)) encompasses data in any medium (including electronically stored information), as well as any tangible thing. This provision parallels section 9, *Subpoena Power*, of the Inspector General Reform Act of 2008, Public Law 110-409, which amends section 6(a)(4) of the Inspector General Act of 1978 (5 U.S.C. App.).

Sec. 427. Technical amendments relating to the titles of Central Intelligence Agency positions.

Section 427 corrects now-outdated references to the Executive Director, Deputy Director for Operations, Deputy Director for Intelligence, Deputy Director for Administration, and Deputy Director for Science and Technology in Section 17(d)(3)(B)(ii) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)(3)(B)(ii)) and the Associate Director for Military Affairs in Section 528 of Title 10, United States Code. The technical amendments of this section reflect the recent changes of the position titles of the Executive Director to Assistant Deputy Director, the Deputy Director for Operations to Director of the National Clandestine Service, the Deputy Director for Intelligence to the Director for Intelligence, the Deputy Director for Administration to Director for Support, the Deputy Director for Science and Technology to the Director for Science and Technology, and the Associate Director for Military Support to the Associate Director for Military Affairs.

Sec. 428. Technical correction and addition of Deputy Director of the Central Intelligence Agency.

The amendment adds the Deputy Director of the Central Intelligence Agency as an official subject to the immediate reporting requirements set forth at Section (d)(3)(B)(ii) of the CIA Inspector General Act as the position is not subject to appointment by the President, by and with the advice and consent of the Senate. This amendment also makes a technical correction, by changing the word “advise” to “advice.”

Subtitle C--Other Elements

Sec. 431. Homeland Security intelligence elements.

This provision affirms that both the Coast Guard and Office of Intelligence and Analysis of the Department of Homeland Security are elements of the Intelligence Community.

Prior to the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458; 118 Stat. 3638 (2004)), the intelligence element of the Coast Guard was an independent member of the intelligence community and, like the other intelligence elements of the armed forces, responsible for the full range of intelligence activity. Section 1073 of the Intelligence Reform and Terrorism Prevention Act of 2004 (“IRTPA”) (Public Law 108-458; 118 Stat. 3693-94) amended section 3(4) of the National Security Act of 1947 (50 U.S.C. § 401a) in such a manner as to obscure the standing of the intelligence element of the Coast Guard. This amendment would eliminate this ambiguity by returning the language of section 3(4) of the 1947 Act to a pre-2004 state.

Section 1073 of the IRTPA also amended section 3(4) of the National Security Act of 1947 (50 U.S.C. § 401a) to account for the role of the Department of Homeland Security in the intelligence community. However, section 3(4) as amended is overly broad, ambiguous, and does not properly define the intelligence community membership at the Department of Homeland Security. This proposal clarifies that the Office of Intelligence and Analysis is the Department of Homeland Security’s intelligence community member in accordance with both practice and as defined in Executive Order 12333.

Sec. 432. Authorization of appropriations for Coast Guard National Tactical Integration Office.

On July 30, 2008, the President issued an executive order, further amending Executive Order 12333, United States Intelligence Activities, expressly directing the Intelligence and Counterintelligence Elements of the Coast Guard to “monitor the development, procurement, and management of tactical intelligence systems and equipment and conduct related research, development, and test and evaluation activities. . . .”

The Coast Guard National Tactical Integration Office (NTIO)—the Coast Guard counterpart to the Tactical Exploitation of National Capabilities programs in each of the military services—explores the use of national intelligence systems in support of operations of Coast Guard tactical maritime, air, and shore units. The Coast Guard NTIO has been identified as the most effective and efficient means by which to give full effect to the presidential directive. However, to achieve this end, the NTIO requires research and development appropriation authorization authority. This proposal is intended to address this limitation within the context of the Coast Guard’s existing R&D authority.

TITLE V--TECHNICAL AMENDMENTS

Sec. 501. Technical corrections to the National Security Act and the Central Intelligence Agency Act.

Section 501 corrects several inadvertent technical anomalies in the National Security Act of 1947 arising from the amendments made to that Act by the Intelligence Reform and Terrorism Prevention Act of 2004.

The first correction clarifies that the funds referred to in section 102A(d)(3) of the National Security Act are those noted in section 102A(d)(1)(A) of the Act (i.e., funds made available under the National Intelligence Program).

The second correction removes the extraneous reference to “personnel” in section 102A(d)(5)(A) of the National Security Act, as that Act was amended by the Intelligence Reform and Terrorism Prevention Act of 2004. Section 102A(d) of the National Security Act addresses the transfer and reprogramming of funds by the Director of National Intelligence (DNI), whereas section 102A(e) addresses the transfer of personnel by the DNI.

The third correction clarifies that the regulations that the DNI may issue under section 102A(l)(2)(B) of the National Security Act are regulations to carry out the promotion rate provisions in section 102A(l)(2)(A) of the Act.

The fourth correction deletes an erroneous cross-reference to the “dispute resolution” subsection of section 119 of the National Security Act and substitutes the intended cross-reference to the “Directorate of Intelligence” subsection of section 119.

The fifth correction changes the title of subsection 102A(n) from “Acquisition Authorities” to “Acquisition and Other Authorities” more adequately describe its function.

Section 501 also corrects a dated reference to the Commissioner of Immigration and Naturalization in the Central Intelligence Agency Act of 1949 and changes the reference to the Secretary of Homeland Security. The Homeland Security Act of 2002 abolished the position of the Commissioner of Immigration and Naturalization and transferred its responsibilities to the Secretary of Homeland Security.

Sec. 502. Multiyear National Intelligence Program.

Section 502 updates the “multiyear national intelligence program” provision to incorporate and reflect organizational and nomenclature changes made by the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458).

Sec. 503. References to Military Intelligence Program and related activities.

Until Fiscal Year 2007, the Defense Department's intelligence efforts were funded through the Joint Military Intelligence Program (JMIP) and the Tactical Intelligence and Related Activities (TIARA). The Defense Department since has abandoned these resource structures in favor of the new Military Intelligence Program (MIP), which is designed to ensure that the Defense Department, the Director of National Intelligence (DNI), and the Congress each has the transparency and insight required to assess the allocation of resources to meet Defense intelligence requirements.

The Intelligence Reform and Terrorism Prevention Act included participation of the DNI in the development of the annual JMIP and TIARA budgets, and the requirement for Secretary of Defense consultation with the DNI prior to transfer or reprogramming of JMIP funds. The new text that appears in section 503 changes the references from JMIP and TIARA to the new MIP.

Sec. 504. Technical corrections to the Intelligence Reform and Terrorism Prevention Act of 2004.

Section 504 corrects a number of inadvertent technical errors in the specified sections of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458).

Paragraph (1) amends section 1016(e)(10)(B) by striking “Attorney General” the second time it appears and replacing it with “Department of Justice. Thus, the information sharing provision of section 1016(e)(10) is made consistent by references to office heads in the first sentence and agencies in the second.

Paragraph (2) amends section 1061(d)(4)(A) to use the correct term for the head of the Intelligence Community, “Director of National Intelligence.”

Paragraph (3) strikes a superfluous “(1)” in section 1071(e).

Paragraph (4) corrects the title of the Central Intelligence Agency Act in the heading of section 1072(b).

Paragraph (5) corrects section 2001 by inserting an inadvertently omitted “of”; corrects the title of the Director of National Intelligence and replaces the reference to “section 112(e)” with a broader and clearer reference to “applicable law”; and strikes a superfluous comma in subsection 2001(f)

Paragraph (6) makes technical corrections to section 2006 by striking two unnecessary uses of the word “the.”

Sec. 505. Technical corrections to the Executive Schedule.

Section 505 makes several technical corrections to the Executive Schedule. This section clarifies that the position of the Director of the Central Intelligence Agency (D/CIA) is at Level II of the Executive Schedule. It is, of course, the case that section 1081 of the Intelligence Reform and Terrorism Prevention Act of 2004, when read in conjunction with section 1015 of that Act, has the legal effect of substituting the “Director of the Central Intelligence Agency” for the previous reference in 5 U.S.C. 5313 to “Director of Central Intelligence”. This amendment reinforces that the D/CIA is an Executive Schedule Level II position, and removes the need to track and trace through multiple other provisions to reach that conclusion. Section 217 also strikes the outdated references to the Deputy Directors of Central Intelligence in 5 U.S.C. 5314, and corrects the erroneous reference to the “General Counsel to the National Intelligence Director” in 5 U.S.C. 5315.

Section 505 supports Enterprise Objective 4 (EO4), “The U.S. Intelligence Community’s Strategic Human Capital Plan.” In particular, section 505 supports the underlying goals of EO4 by updating the law to clearly reflect changes in titles of leadership positions in the Central Intelligence Agency.

Sec. 506. Definition of Intelligence Community.

Section 506 further amends section 3(4)(L) of the National Security Act of 1947, as amended by section 1073 of the Intelligence Reform and Terrorism Prevention Act of 2004, to strike the redundant occurrence of the term “other” from the definition of “intelligence community”.