

## INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR

2010

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JULY 19, 2010 – Ordered to be printed

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Mrs. FEINSTEIN, from the Select Committee on Intelligence, submitted the following

**R E P O R T**

together with

ADDITIONAL VIEWS

[To accompany S. 3611]

The Select Committee on Intelligence, having considered an original bill (S. 3611) to authorize appropriations for fiscal year 2010 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, reports favorably thereon and recommends that the bill do pass.

**CLASSIFIED ANNEX TO THE COMMITTEE REPORT**

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

## **HISTORY OF THE BILL**

This is the second report by the Committee of an Intelligence Authorization Act for Fiscal Year 2010.

On July 22, 2009, the Committee unanimously reported S. 1494 with an accompanying report, S. Rep. 111-55 (2009). With amendments to address several concerns of other committees, the Senate passed S. 1494 by unanimous consent on September 16, 2009. 155 Cong. Rec. S9447-9480 (daily ed.). On September 17, 2009, S. 1494 was sent to the House and held there at the desk, where it remains today.

On June 26, 2009, the House Permanent Select Committee on Intelligence reported its proposed Fiscal Year 2010 Authorization, H.R. 2701, with an accompanying report, H.R. Rep. 111-186 (2009). On February 26, 2010, the House passed H.R. 2701 with amendments by a vote of 235 to 168. 156 Cong. Rec. H936-951 (daily ed.).

On March 15, 2010, the Director of the Office of Management and Budget (OMB) sent to the Intelligence Committees a letter setting forth the Administration's views on S. 1494 and H.R. 2701. The letter identified thirteen serious concerns with provisions in either or both bills. The letter stated that three of these were so serious that the President's senior advisors would recommend that he veto the bill if they were included in a bill presented for his signature. The veto-threat items were proposed amendments on notifications to Congress of sensitive intelligence matters and covert actions, amendments on the authority of the Government Accountability Office to conduct audits, investigations, and evaluations of elements of the Intelligence Community, and provisions on the amounts authorized for the National Intelligence Program. OMB provided in classified correspondence additional details about its concerns. On March 15, 2010, the Department of Justice also transmitted to the committees a letter stating its concerns about the constitutionality of various provisions in the House and Senate bills.

The committees began a three-month process of reconciling the House and Senate bills and addressing the Administration's concerns in order to produce a bill which, as a result of a conference or an exchange of messages between the House and Senate, would in the view of the committees' leadership make a substantial contribution to national security and be able to pass the two chambers and be signed by the President. The process involved extensive meetings and exchanges of drafts with and among representatives of the leaders of the two committees and the Administration.

On June 10, 2010, the OMB Director wrote to the leadership of the committees that the Administration had reviewed the proposed House-Senate agreement and, on the assumption there would be no material changes in either the unclassified bill or the classified annex, that the President's senior advisors had determined that they would recommend that he sign the bill if it is presented for his signature. Among the accommodations specifically noted in the OMB letter were those responding to the Administration's concerns on congressional notification and the authority of the Comptroller General.

Although fiscal year 2010 has entered its final quarter, the significance of the legislative provisions of the fiscal year 2010 bill is not time limited. Its provisions on authorities and oversight will have importance for years to come.

Notwithstanding the opportunity to produce the first intelligence authorization in five years, no conference has yet been requested on the bills that have passed the Senate and House. Accordingly, both S. 1494 and H.R. 2701 remain, as of now, in the House of Representatives.

In order to provide a public record of the agreement on the Intelligence Authorization Act for Fiscal Year 2010, and to urge Congress to complete action on this needed legislation, the Committee has determined to report the agreement as a new measure that the President's senior advisors will recommend that he sign into law as soon as he is provided the opportunity to do so. The only substantive change from the text reviewed by the Administration for the OMB letter of June 10, 2010, is described in the sectional analysis for Section 333(c).

#### **SECTION-BY-SECTION ANALYSIS AND EXPLANATION**

The following is a section-by-section analysis and explanation of the Intelligence Authorization Act for Fiscal Year 2010 that is being reported by the Committee.

The Chairman and Vice Chairman of the Committee recommended the provisions of this bill to the Committee as a reconciliation of a bill (S. 1494) that passed the Senate on September 16, 2009, and the text of a bill (H.R. 2701) passed by the House on February 26, 2010. As described above, the reconciliation of the Senate and House bills is the product of communications with the Executive Branch and the leadership of the Permanent Select Committee on Intelligence of the House of Representatives.

This section-by-section analysis describes the differences between S. 1494, H.R. 2701, and this Senate bill, except for clerical corrections, conforming changes, and minor drafting and clarifying changes.

#### **TITLE I—BUDGET AND PERSONNEL AUTHORIZATIONS**

##### *Section 101. Authorization of appropriations*

Section 101 authorizes appropriations for fiscal year 2010 for the intelligence and intelligence-related activities of a list of United States Government departments, agencies, and other elements. Section 101 is identical to Section 101 of S. 1494 and to Section 101 of the H.R. 2701.

*Section 102. Classified Schedule of Authorizations*

Section 102 provides that the details of the amounts authorized to be appropriated under Section 101 for intelligence and intelligence-related activities for fiscal year 2010, and (subject to Section 103) the personnel levels authorized for fiscal year 2010, are contained in the classified Schedule of Authorizations. The Schedule of Authorizations will be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President.

Section 102 is identical to Section 102 of S. 1494. Section 102 of H.R. 2701 had provided that personnel authorizations for the Intelligence Community would be in terms of personnel ceilings, as in prior intelligence authorizations, rather than as personnel levels expressed as full-time equivalent positions, as in S. 1494. This bill followed the Senate in this regard.

The use of full-time equivalent positions will allow Intelligence Community elements to plan for and manage its workforce based on overall hours of work, rather than number of employees, as a truer measure of personnel levels. This approach is consistent with general governmental practice and will provide the Director of National Intelligence (DNI) and Congress with a more accurate measurement of personnel levels. For example, it will enable Intelligence Community elements to count two half-time employees as holding the equivalent of one full-time position, rather than counting them as two employees against a ceiling.

*Section 103. Personnel ceiling adjustments*

Section 103 provides procedures to enhance the flexibility of the DNI to manage the personnel levels of the Intelligence Community.

Section 103(a) allows the DNI to authorize employment of civilian personnel in excess of the number of full-time equivalent positions authorized under Section 102 by an amount not to exceed three percent of the total limit applicable to each Intelligence Community element. Before the DNI may authorize this increase, the DNI must determine that the action is necessary to the performance of important intelligence functions and notify the congressional intelligence committees. Section 103 of S. 1494 had provided that this authority could extend to five percent. Section 103 of H.R. 2701 had set the additional amount at three percent. The agreement of three percent in part reflects the fact that employment above the number of full-time equivalent positions authorized under Section 102 is unlikely given the late date during the fiscal year of this bill.

Section 103(b) establishes authority that will enable the DNI to reduce the number of Intelligence Community contractors by providing the flexibility to add a comparable number of government personnel to replace those contractor employees. Section 103(b) accomplishes this by permitting the DNI to authorize employment of additional full-time equivalent personnel if the head of an element in the Intelligence Community determines that activities currently being performed by contractor employees should be performed by government employees, and the DNI agrees with the determination.

Section 103(c) requires the DNI to establish guidelines that govern, for each element of the intelligence community, the treatment under the personnel levels authorized under Section 102(a), of a variety of part-time arrangements. These include, but are not limited to, the circumstances set forth in subsection 103(c): student or trainee programs; re-employment of annuitants in the National Intelligence Reserve Corps; joint duty rotational assignments; and other full-time or part-time positions.

Subsection 103(d) provides for notifications to the congressional intelligence committees of the exercise of authority under subsections 103(a) and 103(b). Subsections 103(b) through (d) are identical to subsections 103(b) through (d) of S. 1494. H.R. 2701 did not have provisions similar to subsections (b) and (c).

#### *Section 104. Intelligence Community Management Account*

Section 104 authorizes the sum of \$710,612,000 in fiscal year 2010 for the Intelligence Community Management Account of the Director of National Intelligence. The Intelligence Community Management Account is part of the Community Management Account. The section authorizes 822 full-time equivalent personnel for the Intelligence Community Management Account, who may be either permanent employees or individuals detailed from other elements of the United States Government. Section 104 also authorizes additional funds and personnel in the classified Schedule of Authorizations for the Community Management Account. The DNI may use the authorities in Section 103 to adjust personnel levels within the Intelligence Community Management Account, subject to the limitations in that section.

Section 104 is similar to Section 104 of S. 1494 and Section 104 of H.R. 2701.

#### *Section 105. Restriction on conduct of intelligence activities*

Section 105 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 the laws of the United States. Section 105 is identical to Section 105 of S. 1494 and Section 106 of H.R. 2701.

#### *Section 106. Continuation of prior authorization of funds for certain intelligence activities*

Section 106 amends Section 8079 of the Department of Defense Appropriations Act, 2010 (Pub. L. No. 111-118; 123 Stat. 3446) in order that the authorization of funds appropriated by that Act continue notwithstanding the enactment of the Intelligence Authorization Act for Fiscal Year 2010. A similar provision is included in section 301 of H.R. 4899, the emergency supplemental appropriations act for fiscal year 2010, as passed by the Senate.

## TITLE II – CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

### *Section 201. Authorization of appropriations*

Section 201 authorizes appropriations of \$290,900,000 for the Central Intelligence Agency Retirement and Disability Fund. Section 201 is identical to Sections 201 of S. 1494 and H.R. 2701.

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

Section 202 updates the Central Intelligence Agency Retirement Act to reflect the use of pay levels within the Senior Intelligence Service program, rather than pay grades, by the Central Intelligence Agency (CIA). Section 202 is identical to Section 202 of S. 1494 and similar to Section 512 of H.R. 2701.

## TITLE III—GENERAL INTELLIGENCE COMMUNITY MATTERS

### SUBTITLE A – PERSONNEL MATTERS

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

Section 301 provides that funds authorized to be appropriated by this Act for salary, pay, retirement, and other benefits for federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in compensation or benefits authorized by law. Section 301 is identical to Section 301 of S. 1494 and Section 301 of H.R. 2701.

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

Section 302 expands from one year to up to two years the length of time that United States Government personnel may be detailed to elements of the Intelligence Community from other parts of the federal government on a reimbursable basis or on a non-reimbursable basis under which the employee continues to be paid by the home agency. To utilize this authority,

the joint agreement of the head of the Intelligence Community element and the head of the detailing element is required. As explained by the DNI, this authority will provide flexibility for the Office of the Director of National Intelligence (ODNI), for example, to receive support from other elements of the Intelligence Community or other elements of the United States Government for community-wide activities where both the home agency and the ODNI would benefit from the detail.

Section 302 of S. 1494 would have expanded the time available for reimbursable or non-reimbursable details to three years. Section 303 of H.R. 2701 allowed reimbursable or non-reimbursable details for periods not to exceed two years. While providing in this bill only for a two-year maximum for reimbursable or non-reimbursable details to the Intelligence Community, the Committee believes that the question of three year details merits further study.

*Section 303. Pay authority for critical positions*

Section 303 adds a new subsection (s) to section 102A of the National Security Act of 1947 (50 U.S.C. 403-1) to provide enhanced pay authority for critical positions in portions of the Intelligence Community where that authority does not now exist. Subsection 102A(s) allows the DNI, in coordination with the Director of the Office of Personnel Management (OPM) and the Director of the Office of Management and Budget (OMB), to authorize the head of a department or agency with an Intelligence Community element to fix a rate of compensation in excess of applicable limits for a position that requires an extremely high level of expertise and is critical to accomplishing an important mission, to the extent necessary to recruit or retain an individual extremely well qualified for such position. A rate of pay higher than Executive Level II would require written approval of the DNI. A rate of pay higher than Executive Level I would require written approval of the President in response to a DNI request.

Section 303 is identical to the corresponding portion of Section 303 of S. 1494, with an additional notification requirement when the authority is exercised by the employing department or agency. H.R. 2701 did not have a comparable provision. The section of S. 1494 that contained this pay authority also would have provided additional authority to enable the DNI to harmonize personnel rules in the Intelligence Community. It would have enabled the DNI, with the concurrence of a department or agency head, to convert competitive service positions and incumbents within an Intelligence Community element to excepted service positions. It also would have granted authority to the DNI to authorize Intelligence Community elements—with concurrence of the concerned department or agency heads and in coordination with the Director of the Office of Personnel Management—to adopt compensation, performance, management, and scholarship authority that have been authorized for any other Intelligence Community element. The Committee agreed to study these additional provisions further and not include them in this compromise.

*Section 304. Award of rank to members of the Senior National Intelligence Service*

Section 304 adds a new subsection (t) to Section 102A of the National Security Act of 1947 (50 U.S.C. 403-1). Subsection 102A(t) authorizes Presidential Rank awards to members of the Senior National Intelligence Service (SNIS) and other Intelligence Community senior civilian officers not already covered by such a rank award program.

According to the DNI, the authority to issue Presidential Rank Awards was originally enacted in 1978 as a program of the Senior Executive Service (SES) to honor high-performing senior career employees. The CIA and other elements of the Intelligence Community were exempted by statute from the SES, and thus 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 (FBI), the Drug Enforcement Administration, and members of the Defense Intelligence Senior Executive Service.

Section 304 would authorize the President to recognize members of the SNIS and other senior civilian officers not already covered by such a program who deserve such recognition with Presidential Rank. This authority must be used in a manner consistent with rank awards conferred on other senior executives of the Executive Branch, and subject to regulations that protect the identity of such individual as a member or officer of the intelligence community, if necessary.

Section 304 is based on Section 304 of S. 1494, which was modified to clarify the application of the provision to officers of the Intelligence Community who are undercover. H.R. 2701 had no comparable provision.

*Section 305. Annual personnel level assessments for the intelligence community*

Section 305 creates a new Section 506B in Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), an oversight mechanism that requires the DNI to conduct, in consultation with the head of the element of the Intelligence Community concerned, an annual personnel level assessment for each of the elements within the Intelligence Community and provide those assessments with the submission of the President's budget request each year. Section 305 is a new oversight mechanism that will allow both the Executive branch and Congress to better oversee personnel growth in the Intelligence Community.

The assessment consists of three parts. First, the assessment must provide basic personnel and core contract personnel information for the concerned element of the Intelligence Community (with civilian personnel expressed as full-time equivalent positions) for the upcoming fiscal year. It requires that the data be compared against current fiscal year and historical five-year personnel numbers and funding levels. The term "core contractor" is not defined in Section 305, but is intended to include those independent contractors or individuals employed by industrial contractors who augment civilian and military personnel by providing direct support to Intelligence Community elements—as opposed to commodity contractors (e.g.,

those working on the production or delivery of end-use items such as satellites) or commercial contractors (e.g., those providing services to Intelligence Community facilities, such as janitorial, landscaping, or food service personnel).

Second, the assessment must include a written justification for the requested funding levels. This requirement is necessary to ensure that any personnel cost cuts or increases are fully documented and justified. Third, the assessment must contain a statement by the DNI that, based upon current and projected funding, the element concerned will have the internal infrastructure to support the requested agency and core contract personnel levels, training resources to support agency personnel levels, and sufficient funding to support the administrative and operational activities of the requested agency and contract personnel levels.

To accommodate Executive branch concerns about the sensitivity of information concerning ongoing investigations, this bill does not include a requirement that the assessment contain a list of all contract personnel who have been the subject of an investigation by the inspector general of any element of the Intelligence Community during the previous fiscal year or who are or have been the subject of an investigation during the current fiscal year. The Committee expects the congressional intelligence committees to be notified under other provisions of law when such investigations involve a significant matter.

The Committee believes that the personnel level assessment tool is necessary for the Executive branch and Congress to fully understand the consequences of managing the Intelligence Community's personnel levels, particularly in light of a transition to managing personnel as full-time equivalents subject to available funds. In recent years, the congressional intelligence committees have been concerned that the sharp growth in personnel numbers since the terrorist attacks on September 11, 2001, is unsustainable. In particular, when overall budgets do not keep pace with inflation and decline in real terms, personnel costs as a percentage of the budget increase each year and divert funds from operations and modernization.

Another longstanding concern of the congressional intelligence committees has been the Intelligence Community's reliance upon contract personnel to meet mission requirements. The Committee believes that the annual personnel level assessment tool will assist the DNI and the elements of the Intelligence Community in arriving at an appropriate balance of contract personnel and permanent government employees.

Section 305 is similar to Section 305 of S. 1494 and Section 332 of H.R. 2701.

#### *Section 306. Temporary personnel authorizations for critical language training*

Section 306 addresses the continuing lack of critical language-capable personnel in the Intelligence Community and the difficulty of sending employees to get critical language training to remedy this shortage. Section 306 gives the DNI the authority to transfer full-time equivalent positions to elements of the Intelligence Community on a temporary basis, to enable these

elements to replace individuals who are participating in long-term language training, or to accept temporary transfers of language-capable employees from other elements of the Intelligence Community. This provision complements Section 103, which authorizes the DNI to issue guidance on the treatment of personnel under personnel ceilings, to include exemptions from personnel ceilings for personnel engaged in long-term full-time training. Section 306 authorizes an additional 100 full-time equivalent positions for the ODNI and notes that these positions are to be used specifically to implement the new authorities granted by this section.

Section 306 refers to “critical language training,” rather than “foreign language training.” The Committee understands that this phrasing will permit the DNI to use this new authority in situations where an employee of the Intelligence Community who speaks English as a second language needs further training in English in order to comprehend particular complex or technical subjects. The DNI is required to submit an annual report to the congressional intelligence committees on the use of this authority. Section 306 is based on Section 306 of S. 1494. H.R. 2701 did not include a comparable provision.

*Section 307. Conflict of interest regulations for intelligence community employees*

Section 307 adds a provision to section 102A of the National Security Act of 1947 (50 U.S.C. 403-1) directing the DNI, in consultation with the Director of the Office of Government Ethics, to issue regulations prohibiting an officer or employee of an element of the intelligence community from engaging in outside employment if such employment creates a potential conflict of interest. To the extent that the DNI considers regulations of the Office of Government Ethics on this issue to be adequate, the DNI may incorporate and supplement such regulations as appropriate. Section 307 also requires an annual report to the congressional intelligence committees describing all outside employment that was authorized by the head of an element of the intelligence community during the preceding calendar year.

Section 307 is based on Section 305 of H.R. 2701. S. 1494 did not have a comparable provision. The House provision would also have prohibited an officer or employee of an element of the intelligence community from personally owning or effectively controlling an entity that markets or sells for profit the use of knowledge or skills that such officer or employee acquires or makes use of while carrying out the employee’s official duties. The Committee expects the DNI to consider whether to include such a prohibition in the regulations issued pursuant to this section.

SUBTITLE B – EDUCATION MATTERS

*Section 311. Permanent authorization for the Pat Roberts Intelligence Scholars Program*

Section 311 provides a 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. The purpose of the PRISP is to provide funds for selected students or former students to continue academic training, or be reimbursed for academic training previously obtained, in areas of specialization where the Intelligence Community is deficient or likely to be deficient in the future. Section 311 would also authorize the use of funds to allow students participating in the program to receive funds for books, travel expenses and a stipend, and other expenses reasonably appropriate to carry out the program.

The PRISP has provided education funds to over 800 individuals since its inception in 2004, with an attrition rate of less than one percent of program participants. Intelligence agencies have been supportive of the program as it provides them the flexibility to compete effectively with the private sector to recruit individuals who possess critical skills sought by the Intelligence Community. Section 311 is similar to Section 311 of S. 1494 and H.R. 2701.

*Section 312. Modifications to the Louis Stokes Educational Scholarship Program*

Section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) authorizes the National Security Agency (NSA) to establish an undergraduate training program to facilitate recruitment of individuals with skills critical to its mission. The program is known as the Stokes Educational Scholarship Program, named for Representative Louis Stokes, a former chairman of the Permanent Select Committee on Intelligence of the U.S. House of Representatives.

Section 312 is intended to expand and strengthen the Stokes program. Section 312(a) expands the Stokes program to authorize the inclusion of graduate students. Section 312(d) amends Section 16 to permit the NSA Director to protect intelligence sources and methods by deleting a requirement that NSA publicly identify to educational institutions students who are NSA employees or training program participants. Deletion of this disclosure requirement will enhance the ability of NSA to protect personnel and prospective personnel and to preserve the ability of training program participants to undertake future clandestine or other sensitive assignments for the Intelligence Community.

The Committee recognizes that nondisclosure is appropriate when disclosure would threaten intelligence sources or methods, would endanger the life or safety of the student, or would limit the employee's or prospective employee's ability to perform intelligence activities in the future. Notwithstanding the deletion of the disclosure requirement, the Committee expects NSA to continue to prohibit participants in the training program from engaging in any intelligence functions at the institutions they attend under the program. *See* H.R. Rep. No. 99-690, Part I (1986) ("NSA employees attending an institution under the program will have no intelligence function whatever to perform at the institution.").

Section 312 is also intended to make the program more effective by clarifying that “termination of employment” includes situations where employees fail to maintain satisfactory academic standards. According to the DNI, 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. Section 312(b) would also expand the program by authorizing NSA to offer participation in the Stokes program to individuals who are not current federal employees.

Finally, Section 312(e) authorizes other intelligence agencies to establish undergraduate or graduate training programs for civilian employees or prospective civilian employees that are similar to programs under Section 16 of the National Security Agency Act. Section 312 is similar to Section 312 of S. 1494 and Section 313 of H.R. 2701.

### *Section 313. Intelligence officer training program*

Section 313 authorizes the Intelligence Officer Training Program (IOTP), which builds on two pilot programs that were authorized in previous years: the NSA “Pilot Program on Cryptologic Service Training,” described in Section 922 of the Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375 (2004) (50 U.S.C. 402 note), and the Director of Central Intelligence pilot program “Improvement of Equality of Employment Opportunities in the Intelligence Community,” under Section 319 of the Intelligence Authorization Act for Fiscal Year 2003, Pub. L. No. 108-177 (2003) (50 U.S.C. 403 note). The purpose of the IOTP is to encourage the preparation, recruitment, and retention of civilian personnel for careers in the Intelligence Community. It is also to help ensure that the Intelligence Community can better recruit and retain a workforce that is ethnically and culturally diverse so that it can accomplish its critical national security mission.

The IOTP is to consist of two parts. First, the program would provide financial assistance to individuals through existing Intelligence Community scholarship authorities to pursue studies in critical language, analytic, scientific, technical, or other skills necessary to meet current or emerging needs of the Intelligence Community. Second, building on the ODNI’s successful Centers for Academic Excellence program, the IOTP would solicit colleges and universities from across the country to apply for grants on a competitive basis to implement academic programs that will help students develop the critical skills needed for careers in the Intelligence Community. Although the Committee did not include the specific language of H.R. 2701 that would have authorized grant programs for historically Black colleges and universities, the Committee understands that such colleges and universities have been the recipients of such grants in the past. Further, the Committee encourages the ODNI to continue to reach out to historically Black colleges and universities, as well Hispanic-serving institutions, tribally controlled colleges and universities, Alaska Native-serving institutions, and Native Hawaiian-serving institutions, in its efforts to recruit and retain a diverse workforce.

Students attending participating colleges and universities and taking the prescribed course of study may 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 assistance are obligated to serve in the Intelligence Community. The ODNI is to develop application requirements for students, which could include the successful completion of a security background investigation.

Section 313 builds on a NSA pilot program that provided grants to academic institutions. The original NSA pilot program, with its focus on cryptologic service at NSA, although beneficial to NSA, no longer meets the variety of the Intelligence Community's critical skills requirements. The IOTP, with its broader scope, is intended to assist the Intelligence Community in establishing and building partnerships with academic institutions and ensure a continuous pool of qualified entry-level applicants to Intelligence Community elements, tailored to changing priorities of an evolving Intelligence Community enterprise.

Section 313 repeals the authorizations for the following programs that are either incorporated into or replaced by the IOTP: the pilot program authorized by Section 319 (but not the section findings) of the Intelligence Authorization Act for Fiscal Year 2004, Pub. L. No. 108-177 (2003) (50 U.S.C. 403 note); the scholarship program authorized by Section 1043 of the Intelligence Reform and Terrorism Prevention Act, Section 1003 of the National Security Act, Pub. L. No. 108-458 (2004) (50 U.S.C. 441g-2) (Intelligence Reform Act); and the pilot program authorized by Section 922 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375 (50 U.S.C. 402 note). Section 313 is similar to Section 313 of S. 1494 and Section 312 of H.R. 2701.

*Section 314. Pilot program for intensive language instruction in African languages*

Section 314 permits the DNI, in consultation with the National Security Education Board established under section 803(a) of the David L. Boren National Security Education Act of 1991, to establish a pilot program to provide scholarships for programs that provide intensive language instruction in any of the five highest priority African languages for which scholarships are not currently offered. The pilot program will terminate five years after the date on which it is established.

The intent of the program is to begin building capability in African languages spoken in areas where U.S. national security interests may be affected, but where insufficient instructional capability exists in the United States. For example, the program may use intensive immersion instruction both in the United States and abroad in languages like Somali, Hausa, Amharic, Tigrinya, and Kituba.

Section 314 is intended by the Committee as a component in the development of a comprehensive plan for meeting national intelligence linguistic requirements, as required by Section 1041 of the Intelligence Reform and Terrorism Prevention Act. The Committee believes

it is important for the Intelligence Community to be proactive in identifying languages from around the globe that are in need of attention and further resources. The Committee expects that the DNI will develop an overall language strategy that anticipates the Intelligence Community's future needs and allocates resources accordingly.

Section 314 is identical to Section 314 of H.R. 2701. S. 1494 had no comparable provision.

#### SUBTITLE C – ACQUISITION MATTERS

##### *Section 321. Vulnerability assessments of major systems*

Section 321 adds a new oversight mechanism to the National Security Act of 1947 (50 U.S.C. 442 et seq.) that requires the DNI to conduct an initial vulnerability assessment for each major system and its significant items of supply in the National Intelligence Program. The provision also requires the DNI to conduct subsequent vulnerability assessments throughout the procurement of a major system. The intent of the provision is to provide Congress and the DNI with an accurate assessment of the unique vulnerabilities and risks associated with each National Intelligence Program major system, which should enable a determination of whether funding for a particular major system should be modified or discontinued. The vulnerability assessment process will also require the various elements of the Intelligence Community responsible for implementing major systems to give due consideration to the risks and vulnerabilities associated with such implementation.

The timing of when an initial vulnerability assessment must be completed under Section 321 depends upon whether a major system has reached Milestone B or an equivalent acquisition decision. For new major system acquisitions, the DNI must complete a vulnerability assessment and submit it to the congressional intelligence committees prior to completion of Milestone B or an equivalent acquisition decision. For major systems that have already completed Milestone B or will complete Milestone B during the six-month period following such enactment, the DNI must complete a vulnerability assessment within one year of enactment of the Act. The DNI also has the authority to extend the deadline for a major system by an additional six months, provided the DNI notifies the congressional intelligence committees and includes a justification for the extension. Thus, the DNI will have up to 18 months to complete the vulnerability assessments for existing major systems.

The minimum requirements of the initial vulnerability assessment are fairly broad and are intended to provide the DNI with significant flexibility in crafting an assessment tailored to the proposed major system. The DNI is required to use, at a minimum, an analysis-based approach to identify vulnerabilities, define exploitation potential, examine the system's potential effectiveness, determine overall vulnerability, and make recommendations for risk reduction.

The Committee expects that these required elements will be weighted differently depending upon the nature of the major system at issue. For example, a major system that is based upon cutting-edge technology may require a more careful examination of the system's potential effectiveness than a system based upon time-tested technology. Also, certain major systems may share a common supply chain that can be assessed once, but incorporated into numerous vulnerability assessments. The DNI is obviously free to adopt a more rigorous methodology for the conduct of initial vulnerability assessments.

Section 321 contains an enforcement mechanism to ensure that major system vulnerability assessments are completed in a timely fashion so that Congress and the DNI can make informed funding decisions. If a major system vulnerability assessment is not completed and submitted to the congressional intelligence committees within the deadlines required by subsection (a)(1), no funds appropriated for the major system may be obligated for a major contract until Congress receives the assessment.

Vulnerability assessments should continue throughout the procurement of a major system. Numerous factors and considerations can affect the viability of a given major system. For that reason, Section 321 provides the DNI with the flexibility to set a schedule of subsequent vulnerability assessments for each major system when the DNI submits the initial vulnerability assessment to the congressional intelligence committees. The time period between assessments should depend upon the unique circumstances of a particular major system. For example, a new major system that is implementing an experimental technology might require annual assessments, while a more mature major system might not need such frequent reassessment. The DNI is also permitted to adjust a major system's assessment schedule when the DNI determines that a change in circumstances warrants the issuance of a subsequent vulnerability assessment. Section 321 also provides that a congressional intelligence committee may request that the DNI conduct a subsequent vulnerability assessment of a major system.

The minimum requirements for a subsequent vulnerability assessment are almost identical to those of an initial vulnerability assessment. There are only two additional requirements. First, if applicable to the given major system during its particular phase of development or production, the DNI shall also use a testing-based approach, if applicable, to assess the system's vulnerabilities. The testing approach is obviously not intended to require the "crash testing" of a satellite system. Nor is it intended to require the DNI to test system hardware. However, the vulnerabilities of a satellite's significant items of supply might be exposed by a rigorous testing regime. Second, the subsequent vulnerability assessment is required to monitor the exploitation potential of the major system. A subsequent vulnerability assessment should, therefore, monitor ongoing changes to vulnerabilities and understand the potential for exploitation. Since new vulnerabilities can become relevant and the characteristics of existing vulnerabilities can change, it is necessary to monitor both existing vulnerabilities and their characteristics and to check for new vulnerabilities on a regular basis.

Section 321 requires the DNI to give due consideration to the vulnerability assessments prepared for the major systems within the National Intelligence Program. It also requires that the vulnerability assessments be provided to the congressional intelligence committees within ten days of their completion. The Committee encourages the DNI to share the results of these vulnerabilities assessments, as appropriate, with other congressional committees of jurisdiction.

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

Section 321 is similar to Section 321 of S. 1494. H.R. 2701 had no similar provision.

*Section 322. Intelligence community business system transformation*

A business enterprise architecture incorporates an agency’s financial, personnel, procurement, acquisition, logistics, and planning systems into one interoperable system. Historically, Intelligence Community elements have pursued unique, stovepiped systems that do not leverage the investments of other elements of the Intelligence Community. More recently, there has been a more collaborative effort among the Intelligence Community elements on the development of business systems, but true transformation to an integrated Intelligence Community architecture has not been achieved. Section 322 will help ensure that the DNI effectively and efficiently coordinates Intelligence Community business systems.

Section 322 adds a new Section 506D to the National Security Act of 1947. It will prohibit the obligation of appropriated funds for any system costing more than three million dollars that has not been certified by the Director of the Office of Business Transformation of the ODNI as complying with the enterprise architecture, as necessary for national security, or as an essential capability. The certification process is to be supported by investment review procedures that meet the requirements of Section 11312 of title 40, United States Code, relating to maximizing the value, and assessing and managing the risks, of information technology acquisitions. The review process will be led by a board that will recommend business transformation policies and procedures to the DNI and review and approve major updates to the enterprise architecture and any plans for Intelligence Community business systems modernization.

Section 322 will also require the ODNI to identify all “legacy systems” that will be either terminated or transitioned into the new architecture, and to include within the annual budget submission details on each business system being funded. Further, this section will require the DNI to report to the congressional intelligence committees annually for five years on the progress being made in implementing the new architecture.

Section 322 requires the DNI to revise the enterprise architecture that was submitted to the congressional intelligence committees in December 2009 and to more clearly define all Intelligence Community business systems, as well as the functions and activities supported by

those business systems, in order to issue detailed guidance on implementation of interoperable Intelligence Community business system solutions. Section 322 requires the revised enterprise architecture to be submitted by September 30, 2010. In addition, the enterprise architecture is to be supported by an implementation plan that includes an acquisition strategy for new systems needed to complete the architecture. The acquisition strategy is to be submitted by March 31, 2011.

Section 322 is based on Section 322 of S. 1494. H.R. 2701 had no comparable provision.

### *Section 323. Reports on the acquisition of major systems*

Sections 323 and 324 amend Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.) by creating Sections 506E and 506F to regulate the oversight of major system acquisitions within the Intelligence Community. In the Department of Defense Authorization Act for Fiscal Year 1982, Congress created a statutory scheme (commonly referred to as “Nunn-McCurdy”) which was designed to curtail cost growth in weapons procurement programs. The acquisition reforms contained in this Act are intended to bridge the current gap in the Intelligence Community major system acquisition process in a manner similar to the major defense acquisition process. Specifically, Section 506E is modeled on 10 U.S.C. 2433, which governs the submission of unit cost reports for major defense acquisitions.

### *Definitions*

Sections 506E and 506F use terminology that is very similar to that used in the major defense acquisition process. However, some of these terms have been simplified to include terminology already familiar to the Intelligence Community. Some of the definitions in subsection (a) are not addressed here because they are either self-explanatory or merely cross-reference existing statutory definitions.

The term “cost estimate” appears only twice in Sections 506E and 506F and is used to alleviate concern by the Intelligence Community that they would have to conduct a full “independent cost estimate” under Section 506A of the National Security Act at certain points in the major system acquisition process. Section 506E requires the DNI to re-baseline any major system that is currently in breach of either the significant or the critical cost growth thresholds and permits the DNI to re-baseline any other existing major system. Given that the Act only allows a six-month period for the completion of such re-baselining, the Committee agreed that it would be unrealistic to expect a revised current Baseline Estimate to be based upon an independent cost estimate.

A similar timing consideration is present in Section 506F, which allows the DNI to restructure a major system that has met or exceeded its critical cost growth threshold. The DNI must submit a Major System Congressional Report and a certification to

Congress within 90 days after receiving notice of the critical cost growth breach. As part of that process, the DNI is required to establish a revised current Baseline Estimate. Again, the Committee recognized that 90 days was an insufficient time period to complete a formal independent cost estimate as part of this congressional reporting process. Thus, the definition allows the DNI to assess and quantify all of the costs and risks associated with each affected major system based upon reasonably available information at the time such cost estimate is conducted.

The definition of the term “critical cost growth threshold” is a simplified version of the same term in the major defense acquisition process. As is discussed below, Sections 506E and 506F do not differentiate between the terms “original Baseline Estimate” and “current Baseline Estimate.” Instead, these sections simply utilize “current Baseline Estimate,” which is subject to revision only in very limited circumstances. Also, these sections do not differentiate between “program acquisition unit costs” or “procurement unit costs.” The single term “total acquisition cost” is used to encompass both of these concepts, because it is currently used and understood by Intelligence Community acquisition and budgetary professionals. In addition, the definition of “critical cost growth threshold” is simplified to mean a percentage increase in the total acquisition cost for a major system of at least 25 percent over the total acquisition cost for the major system, as measured against the current Baseline Estimate for the major system. For example, if the current Baseline Estimate for a major system is 500 million dollars, the major system will reach its critical cost growth threshold when the total acquisition cost meets or exceeds 625 million dollars.

The term “current Baseline Estimate” merges the concepts of “original” and “current” baseline estimates used in the major defense acquisition process. There are only three circumstances in which a current Baseline Estimate may be established or modified. The first occurs when the DNI approves the projected total acquisition cost of a major system at Milestone B or an equivalent acquisition decision. This is the equivalent of an “original Baseline Estimate” and may be in the form of an independent cost estimate. The second occurs only if a major system has experienced a critical cost growth breach and the DNI has decided to restructure the major system and establish a revised current Baseline Estimate. The third may only occur during the six-month grandfather period following the enactment of the Act, when the DNI revises the current Baseline Estimates for existing major systems pursuant to subsection (h). Other than these three situations, the section contains no authority for the past practice of periodic re-baselining of major systems within the National Intelligence Program. Since this periodic re-baselining option has been taken off the table, the Committee expects that the incentive for accuracy of the independent cost estimates for major systems required by Section 506A will increase. If the independent cost estimate that drives the current Baseline Estimate is too low, the major system will likely breach its significant or critical

cost growth thresholds. If the independent cost estimate is too high, it might be difficult to obtain funding for the major system from Congress.

The term “major contract” is based upon but slightly different than the definition of the same term in 10 U.S.C. 2432(a)(3).

The term “Milestone B” was derived from the definition of the term “Milestone B approval” in 10 U.S.C. 2366(e)(7) substituting the DNI for the Secretary of Defense.

The term “program manager” has a meaning that is different from the usual understanding of the term. This definition does not include the individual who is responsible for the day-to-day administration of a particular major system. Rather, the term includes the head of the element of the Intelligence Community who is responsible for the budget, cost, schedule, and performance of a major system, or, if the major system is within the Office of the DNI, the deputy who is responsible for the budget, cost, schedule, and performance of a major system. The definition was constructed in this manner to ensure that Intelligence Community agency heads are fully cognizant and accountable for any major system cost overruns within their agency.

The term “significant cost growth threshold” was derived in a manner similar to that previously described in the discussion of the term “critical cost growth threshold” and is a simplified version of the identical term in the major defense acquisition process. A significant cost growth threshold is reached when there is a percentage increase in the total acquisition cost for a major system of at least 15 percent over the total acquisition cost for the major system as measured against the current Baseline Estimate for the major system. For example, if the current Baseline Estimate for a major system is 500 million dollars, the major system will reach its significant cost growth threshold when the total acquisition cost meets or exceeds 575 million dollars.

### *Major System Cost Reports*

Section 323 requires Intelligence Community program managers to submit a quarterly major system cost report to the DNI for each major system. These cost reports will keep the DNI updated on the progress of each major system as it progresses through the acquisition process. A major system cost report shall consist of four elements: (1) the total acquisition cost for the major system; (2) any cost or schedule variance in a major contract for the major system; (3) any changes from a major system schedule milestones or performances that are known, expected, or anticipated by the program manager; and (4) any significant changes in the total acquisition cost for development and procurement of any software component of the major system, schedule milestones for such software component, or expected performance of such software component that are known, expected, or anticipated by the program manager. These routine major

system cost reports are due to the DNI within 30 days after the end of the reporting quarter.

Program managers are also required to submit a major system cost report immediately to the DNI if they determine at any time during the quarter that there is reasonable cause to believe that the total acquisition cost has triggered a significant or critical cost growth breach.

#### *Major System Congressional Reports*

Unlike the Department of Defense acquisition process, Section 506E does not require the submission of detailed quarterly Selected Acquisition Reports to Congress for each major system. Instead, the DNI is only required to submit a Major System Congressional Report whenever the DNI determines the total acquisition cost of a major system has met or exceeded a significant or critical cost growth threshold. The elements of a Major System Congressional Report in subsection (f) track very closely with the elements contained in the congressional report required pursuant to 10 U.S.C. 2433(g)(1) under the defense acquisition process. The deviations are largely the result of terminology differences between the two processes or based on the fact that the Selected Acquisition Report is not included in the Intelligence Community major system acquisition process. Major System Congressional Reports for significant cost growth breaches must be submitted to Congress no later than 45 days after the date on which the DNI receives the major system cost report that identified such breach.

If the DNI determines that the total acquisition cost of a major system has met or exceeded the critical cost growth threshold, then the DNI is required to follow the procedures set forth in Section 506F, which includes a presumption of termination of the major system. If the DNI decides not to terminate a major system that has experienced a critical cost growth breach, the DNI will be required to submit a Major System Congressional Report and a certification pursuant to Section 506F(b)(2). Section 506F(b)(1) requires that such Major System Congressional Report and certification be submitted within 90 days after the date the DNI receives the major system cost report that identified the critical cost growth breach.

#### *Prohibition on Obligation of Funds*

To ensure that these reports and certifications are submitted to Congress in a timely fashion, Section 506E contains an enforcement mechanism that is very similar to that found in the major defense acquisition process at 10 U.S.C. 2433(e)(3). Subsection (g) prohibits the obligation of funds for a major system if the DNI fails to submit the required reports and certification within the 45-day deadline for a significant cost-growth breach or the 90-day deadline for a critical cost-growth breach. The prohibition on obligation of funds is *not* triggered by the DNI's determination that there has been a

significant or critical cost-growth breach under subsection (d). Rather, it is triggered by the failure of the DNI to submit the required congressional reporting within the statutory deadlines established in subsection (e)(1) and Section 506F(b)(1).

The prohibition on obligating funds for a major system will cease to apply 45 days after Congress receives the required Major System Congressional Report in the case of a significant cost-growth breach or the required Major System Congressional Report and certification in the case of a critical cost-growth breach. The only real difference between this provision and that used by the major defense acquisition process is the use of a straight-forward 45-day time period as compared to the “30 days of continuous session of Congress” formulation used in 10 U.S.C. 2433(e)(3).

#### *Grandfather Clause*

To ease the transition into this new Intelligence Community major system acquisition process, the Committee agreed to construct a grandfather clause that would require the DNI to establish a revised current Baseline Estimate for all major systems with a current total acquisition cost equal to or greater than its significant or critical cost-growth threshold and permit the DNI to establish a revised current Baseline Estimate for the remaining major systems. The DNI has six months after enactment of the Act to complete this process and submit a report to Congress describing the DNI’s determinations and each revised current Baseline Estimate. The grandfather clause also allows the DNI to include the estimated cost of conducting any vulnerability assessments in any such revised current Baseline Estimate.

#### *Reports on Acquisitions of Major Systems*

Section 323 also clarifies that any determination of a percentage increase under Section 506E is required to be stated in terms of constant base year dollars. In addition, any report required to be submitted under Section 506E is required to be submitted in a classified form. Finally, Section 323 also clarifies that nothing in the Intelligence Community major system acquisition process shall be construed to exempt an acquisition program of the Department of Defense from the requirements of chapter 144 of title 10, United States Code or Department of Defense Directive 5000, to the extent that such requirements are otherwise applicable.

Section 323 is based on Section 323 of S. 1494. H.R. 2701 had no comparable provision. The Committee agreed to modify Sections 323 and 324 in part to address concerns of the ODNI and to reflect changes made in Title 10 of the United States Code by the Weapons Systems Acquisition Reform Act of 2009, Pub. L. No. 111-23 (May 22, 2009).

#### *Section 324. Critical cost growth in major systems*

Section 324 amends Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.) by creating Section 506F to regulate the oversight of major system acquisitions within the Intelligence Community in the case of excessive cost growth. Specifically, Section 506F is modeled very closely on 10 U.S.C. 2433a, which governs the critical cost growth in major defense acquisition programs.

#### *Reassessment of Major System*

If the DNI determines under Section 506E(d) that the total acquisition cost of a major system has increased by a percentage equal to or greater than the critical cost growth threshold for such system, then the DNI is required to determine the root causes of the critical cost growth and carry out an assessment of the projected costs, any reasonable alternatives, and the need to reduce funding for other systems to compensate for the cost growth of the major system. This reassessment of the major system will be used by the DNI in deciding whether the major system should be terminated or restructured.

#### *Presumption of Termination*

After conducting a reassessment of the major system that has reached its critical cost growth threshold, the DNI is required to terminate the major system *unless* the DNI submits a Major System Congressional Report and a certification to Congress that justifies the continuation of the major system. The Major System Congressional Report and certification are due to Congress not later than 90 days after the date the DNI received the major system cost report that provided the basis for the DNI's determination under 506E(d).

The Major System Congressional Report for a critical cost growth breach contains all of the elements required by Section 506E(e) for the Major System Congressional Report required in the case of a significant cost growth breach, but also requires the following additional elements: (1) the root cause analysis and assessment required by subsection (a); (2) the basis for the determinations made in the DNI's certification that the major system should be continued; and (3) a description of all funding changes made as a result of the growth in the major system, including the need for any reductions made in funding for other systems to accommodate such cost growth. In essence, the Major System Congressional Report, in the case of critical cost growth, provides Congress with the detailed factual basis necessary to determine whether funding for the major system should be extended or terminated.

The certification is intended to make the DNI accountable for the decision to proceed with a major system that has experienced a critical cost growth breach. The required elements of the certification are straight-forward. First, the DNI must certify that the continuation of the major system is essential to national security.

The second element is closely related to the first. The DNI must certify that there are no less costly alternatives to the major system that will provide acceptable capability to meet the intelligence requirement.

Third, the DNI must determine that the new estimates of the total acquisition cost are reasonable. If the DNI's analysis and assessment reveal that the new estimate of the total acquisition cost of the affected major system is unreasonable, then this certification element cannot be satisfied and a revised current Baseline Estimate should not be prepared.

The fourth certification element requires the DNI to prioritize the affected major system relative to other systems whose funding must be reduced to accommodate its cost growth. The DNI must certify that the affected major system in question is a higher priority than any of the other major systems, otherwise this element cannot be satisfied.

The final certification element is an accountability requirement. The DNI must certify that the management structure for the major system is adequate to manage and control the total acquisition cost. Depending upon the particular circumstances, the DNI may need to take steps, in coordination with the major system program manager, to ensure that the management structure is capable of controlling the total acquisition cost of the affected major system.

If the DNI does not certify to all five of these elements, then the DNI is required to terminate the major system under subsection (b).

#### *Actions if a Major System is not Terminated*

There are some additional actions that the DNI must complete if the DNI elects not to terminate a major system that has breached the critical cost growth threshold. These actions are in addition to the submission of the Major System Congressional Report and certification requirements of subsection (b). First, the DNI must restructure the major system in a manner that addresses the root causes of the critical cost growth. The DNI must also ensure that the system has an appropriate management structure. Second, the DNI is required to rescind the most recent Milestone approval for the major system. Third, the DNI must require a new Milestone approval for the major system before taking any action to enter into a new contract, exercise an option under an existing contract, or otherwise extend the scope of an existing contract under the system. The requirement applies except to the extent determined necessary by the Milestone Decision Authority, on a non-delegable basis, to ensure that the system may be restructured as intended by the DNI without unnecessarily wasting resources. Fourth, the DNI is required to establish a revised current Baseline Estimate for the major system based upon an updated cost estimate. This revised current Baseline Estimate for the affected major system will be used to calculate future breaches of the significant or critical cost growth thresholds. Finally, the DNI is required to conduct regular reviews of major systems that have experienced a critical cost growth breach.

### *Actions if a Major System is Terminated*

If the DNI decides to terminate a major system, the DNI is required to submit a brief report to Congress that explains the reasons for the termination, the alternatives considered to address the problems with the major system, and the course the DNI plans to pursue to meet any intelligence requirements otherwise intended to be met by the terminated major system.

### *Waiver*

The Department of Defense major defense acquisition process provides for a waiver of the Selected Acquisition Report requirements of 10 U.S.C. 2432 and other Nunn-McCurdy requirements when 90 percent of the items to be delivered to the United States (90 percent of planned expenditures) have been made under a major defense acquisition program. The DNI requested that a similar 90 percent waiver provision be added to Section 506F.

The Committee agreed to a somewhat more limited waiver provision. Under subsection (f), the DNI may waive certain specified requirements in Sections 506E and 506F (e.g., the prohibition on obligation of funds, the presumption of termination) if the DNI determines that at least 90 percent of the amount of the current Baseline Estimate for the major system has been expended. If the DNI exercises this authority, the DNI is required to provide a written notification to the congressional intelligence committees that includes the basic information required for a Major System Congressional Report under Section 506E(f).

If the DNI grants the 90-percent waiver, the program manager is still required to submit quarterly major system cost reports on such major system to the DNI. If the major system cost report reveals a significant or critical cost growth breach, then the DNI must submit the additional written notice required by subsection (f)(2)(A) to the congressional intelligence committees. This notification process will facilitate Congress monitoring closely any waived major system that experiences a significant or critical cost growth breach during the last 10 percent of its estimated acquisition cost. It also creates an incentive for program managers to ensure that cost growth is minimized during the entire procurement of a major system.

Section 324 is based on Section 324 of S. 1494. H.R. 2701 had no comparable provision.

### *Section 325. Future budget projections*

Section 325 adds a new Section 506G to the National Security Act of 1947. It requires the DNI, with the concurrence of the Office of Management and Budget (OMB), to provide the congressional intelligence committees with two future budget projections that together span ten years. Section 325 thus ensures that the Intelligence Community will make long-term budgetary projections that span the same time frame as the funding needs of programs it initiates in the budget.

Section 325 requires first a Future Year Intelligence Plan for at least four years after the budget year, which includes the year-by-year funding plan for each expenditure center and for each major system in the National Intelligence Program. Section 325 also requires lifecycle cost and milestones for major systems and a Long-term Budget Projection five years beyond the Future Year Intelligence Plan, but at a much higher level of budget aggregation. Section 325 requires that the Long-term Budget Projection include a description of whether, and to what extent, the projection for each year for each element of the Intelligence Community exceeds the level that would result from applying the most recent OMB inflation estimate to that element. Both budget projections must be submitted to Congress with the President's budget request.

Section 325 ensures that the Executive branch and Congress will be fully aware of the long-term budgetary impact of a major system acquisition prior to its development or production. This is achieved through a requirement for a major system affordability report. This report will assess whether, and to what extent, a new acquisition, if developed, procured, and operated, would cause an increase in the most recent Future Year Intelligence Plan and Long-term Budget Projection. The affordability report is required before the time that the President submits to Congress the budget for the first fiscal year in which appropriated funds are anticipated to be obligated for the development or procurement of the system. This affordability report will be updated whenever an independent cost estimate must be updated. Section 325 is based on Section 325 of S. 1494. H.R. 2701 had no comparable provision.

*Section 326. National Intelligence Program funded acquisitions*

Section 326 adds a new subparagraph (4) to the acquisition authorities of the DNI collected in Section 102A(n) of the National Security Act of 1947. Existing subparagraph (1) authorizes the DNI to exercise the acquisition and appropriations authorities referred to in the Central Intelligence Agency Act of 1949 (CIA Act). Although subparagraph (1) is not explicit, those authorities are found in Sections 3 and 8 of the CIA Act, except, as provided in subparagraph (1), for the CIA's authority under section 8(b) to expend funds without regard to laws and regulations on Government expenditures for objects of a confidential, extraordinary, or emergency nature.

Subparagraph (4)(A) authorizes the DNI to make acquisition authority referred to in Sections 3 and 8(a) of the CIA Act also available to any Intelligence Community element for an acquisition that is funded in whole or in majority part by the National Intelligence Program. Among Intelligence Community elements, the National Reconnaissance Office (NRO) and the National Geospatial-Intelligence Agency (NGA) already exercise these or similar authorities either directly or through the CIA. The grant of this authority to the DNI is part of an effort to ensure that the DNI has the ability to manage the elements of the Intelligence Community as a community by enabling the DNI to make available throughout the Intelligence Community, when warranted, authority originally enacted for one of its elements.

Subparagraphs 4(B) – (G) establish procedures and controls on the grant of this authority. The head of an Intelligence Community element, without delegation, must request in writing that the DNI make the authority available. The request must explain the need for the acquisition authority, including an explanation why other authorities are insufficient and a certification that the mission of the element would be impaired if the requested authority is not exercised. In turn, for the authority to be provided, the DNI, the Principal Deputy DNI, or a designated Deputy DNI must issue a written authorization that includes a justification supporting the use of the authority.

Requests from the head of an Intelligence Community element that are within the Departments of Defense, Energy, Homeland Security, Justice, State, and Treasury shall be transmitted to the DNI in accordance with procedures established by the heads of those departments. Also, to ensure periodic review, authorities may not be granted for a class of acquisitions beyond a renewable 3 years, except for a renewable 6 years if the DNI personally approves the authority. The congressional intelligence committees shall be notified of all authorizations granted under subparagraph (4).

Section 326 is similar to Section 326 of S. 1494. H.R. 2701 had no comparable provision.

#### SUBTITLE D—CONGRESSIONAL OVERSIGHT, PLANS, AND REPORTS

##### *Section 331. Notification procedures*

Section 331 amends requirements concerning congressional oversight in Sections 501 – 503 of the National Security Act of 1947. It is based on Section 321 of H.R. 2701 and Sections 331 – 334 of S. 1494.

Section 501(c) of the National Security Act of 1947 provides that the President and the congressional intelligence committees shall each establish such procedures as are necessary to carry out the accountability provisions of Title V of that Act, which include the requirements for reporting on intelligence activities and covert actions. Section 331(a) amends Section 501(c) to clarify that the procedures required by subsection (c) be written procedures.

Section 331(b) amends Section 502(a)(2) of the National Security Act to specify that the requirement to provide the congressional intelligence committees with any information or material concerning activities other than covert actions includes the legal basis under which the significant intelligence activity is being or was conducted. A similar amendment is made by Section 331(c) to Section 503(b)(2) with respect to covert action. In addition, Section 331(c) specifies, in an amendment to Section 503(c), that any covert action finding shall be reported in

writing and that the President shall also provide in writing the reasons for any limited access to a finding or notice of significant change in a finding.

Section 331(c) also sets forth, as an amendment to Section 503(d), six factors that the President shall consider, among other relevant factors, in determining whether an activity constitutes a “significant undertaking” for which an additional congressional notification is required. These factors include: significant risk of loss of life; expansion of existing authorities; the expenditure of significant funds or other resources; notification under Section 504, pertaining to funding of intelligence activities; significant risk of disclosure of intelligence sources or methods; or a reasonably foreseeable risk of serious risk of damage to diplomatic relations if such activity were disclosed without authorization. Finally, Section 331(c) also adds a new subsection (g) to Section 503 to require the President to maintain a record of the Members of Congress to whom a limited access finding—or notice of significant change in a previously approved covert action or in any significant undertaking pursuant to a previously approved finding—was reported and the date on which each such Member receives such a finding or notice. The President must also maintain the written statement required to be made of the reasons for not notifying all Members of the intelligence committees of such a finding or notice.

Over the years that the intelligence committees have engaged in oversight of the Intelligence Community, many elements of the process for notifying Congress concerning intelligence activities, including covert actions, have emerged from practice that reflects a sense of comity between the two branches and a shared sense of responsibility for national security matters.

There have nonetheless been serious disputes over the implementation of these practices—and over the meaning of the provisions on which they are based—with respect to notification regarding certain intelligence activities. The modifications to the notification provisions adopted in this section are intended to clarify and improve certain specific and important elements of this practice, but should not be construed to be anything more than specific requirements that procedures, findings, and reasons be in writing, and information on legality be provided. The modifications contained in this section do not alter the fundamental compact between the Executive and Legislative branches with respect to national security oversight. Moreover, nothing in these provisions is intended to infringe on the President’s constitutional authority in this area or on the constitutional authority of Congress to conduct oversight of U.S. intelligence activities.

### *Section 332. Certification of compliance with oversight requirements*

Section 332 requires the head of each element of the Intelligence Community to submit a certification on an annual basis that the element is in full compliance with Title V of the National Security Act of 1947, which requires that the congressional intelligence committees be kept fully and currently informed of intelligence activities. The head of each element of the Intelligence

Community must also certify that any information required to be submitted to the congressional intelligence committees has been submitted. The first certification shall be submitted within 90 days of enactment of the Act.

If the head of an element is unable to submit the certification required by this section, the section requires an explanation as to why the certification cannot be made, a description of information required to be submitted, and an affirmation that the head of the element will submit such information as soon as possible.

Section 332 is based on Section 336 of H.R. 2701. S. 1494 did not have a comparable provision.

*Section 333. Report on detention and interrogation activities*

Section 333 requires the DNI, in coordination with the Attorney General and the Secretary of Defense, to provide the congressional intelligence committees a comprehensive report on five matters by December 1, 2010. The report may be submitted in classified form.

Pursuant to subsection (a)(1), the report shall contain the policies and procedures of the United States Government governing participation by an element of the Intelligence Community in the interrogation of individuals detained by the United States who are suspected of international terrorism with the objective, in whole or in part, of acquiring national intelligence. This reporting requirement applies to policies and procedures and is not intended to require a description of interrogations on a detainee-by-detainee basis. However, with respect to policies and procedures, the report is intended to be comprehensive. It includes not only interrogation directly by an element of the Intelligence Community (a term that includes the CIA, the Defense Intelligence Agency, and the intelligence elements of the FBI) but also interrogation undertaken with the support of an element of the Intelligence Community or by any interagency body established to carry out interrogation.

The report shall include, in accordance with subsection (a)(2), the policies and procedures of the United States Government for any detention by an individual suspected of international terrorism by the Central Intelligence Agency. Section 4(a) of Executive Order 13491 (74 Fed. Reg. 4893) directed the CIA to close any detention facility that it operated at the time of the issuance of the order, on January 22, 2009, and not to operate any such detention facility in the future. However, Section 2(g) of the Executive Order defined “detention facility” as not referring “to facilities used only to hold people on a short-term, transitory basis.” The report required by subsection (a)(1)(B) does not distinguish between long-term and short-term detention, but embraces all detention of individuals suspected of international terrorism by the CIA.

Pursuant to subsection (a)(3), the comprehensive report shall describe the legal basis of the interrogation and detention policies and procedures described in subsection (a)(1) and (a)(2). This should include the legal basis of such policies and procedures under applicable statutes, international agreements, and Executive orders.

In August 2009, the Special Task Force on Interrogation and Transfer Policies established by Executive Order 13491 (74 Fed. Reg. 4893) recommended that the United States form a specialized interagency interrogation group that would coordinate the deployment of experienced, interagency interrogation teams, develop a set of best interrogation practices for training purposes, and establish a program of scientific research on interrogation approaches and techniques. Under subsection (a)(4) of Section 333, the report should describe the actions taken to implement these recommendations of the Special Task Force concerning research relating to interrogation practices and training on interrogation in the Intelligence Community.

Finally, pursuant to subsection (a)(5), the report should describe any actions taken to implement the section of the Detainee Treatment Act that provides for the protection against civil or criminal liability, as well as counsel fees and other expenses, for U.S. Government personnel who had engaged in officially authorized interrogations that were determined to be lawful at the time.

Section 333(b) provides to the extent that the report required by Section 333 addresses an element of the Intelligence Community within the Department of Defense or the Department of Justice, that portion of the report must also be submitted to the congressional armed services committees or the congressional judiciary committees.

Section 333(c) requires the DNI to provide the appropriate committees of Congress with any significant modification or revision of the charter and procedures for the specialized interagency interrogation group, known as the “High-Value Detainee Interrogation Group” (HIG), within 30 days after their approval. Section 333 (c) also requires the DNI to submit to the appropriate committees of Congress a report setting forth an analysis and assessment of the lessons learned as a result of the operations and activities of the HIG within 60 days of enactment of this Act. The appropriate committees of Congress are the appropriations, armed services, judiciary, homeland security and intelligence committees. The requirement of reporting to the appropriations, armed services, judiciary, and homeland security committees as well as to the congressional intelligence committees is intended to conform to the provision of the Senate-passed supplemental appropriations measure requiring that updates of the HIG charter, HIG procedures, and the lessons learned report be provided to those committees. This reporting is subject to the requirement, also in subsection (b), that it be consistent with the protection of sensitive intelligence sources and methods. The reporting provisions of Section 333(c), which

have been reviewed with the ODNI, are the only provisions of the bill that have been modified, for other than technical corrections, following the OMB letter of June 10.

Section 333(d) clarifies that any submission required under Section 333 may be submitted in classified form.

Section 333 merges Section 336 of S. 1494 with Section 352 of H.R. 2701. Several of the specific report matters identified in Sections 352 and 358 of H.R. 2701 may be addressed in response to the requirement for a report on policies and procedures in Section 334. H.R. 2701 also included a number of additional provisions governing the operation and conduct of interrogation activities. Before taking action on legislation that would change the law on interrogations, the Committee decided it was important to receive information on the new system of detainee detention and interrogation that will be described in the report. The Committee therefore decided not to attempt to address the operation and conduct of interrogation activities in this bill. The following sections from H.R. 2701 are thus not included in this bill: Section 412, prohibition on the use of private contractors for interrogations involving persons in the custody of the Central Intelligence Agency; Section 416, requirement for video recording of interrogations of persons in the custody of the Central Intelligence Agency; and Section 504, prohibition on use of funds to provide Miranda warnings to certain persons outside of the United States.

*Section 334. Assessments on national security threat posed by Guantanamo Bay detainees*

Section 334 requires the DNI to submit to the congressional intelligence committees the written threat analyses prepared on each Guantanamo Bay detainee by the Guantanamo Task Force established pursuant to executive Order 13492. It also requires the DNI to provide the congressional intelligence committees with any new threat assessment prepared by any element of the intelligence community of a Guantanamo Bay detainee who remains in detention or is pending release or transfer. In both cases, the DNI is also required to provide the congressional intelligence committees with access to the intelligence information that formed the basis of such threat analyses and assessments. It is not the intent of the Committee that the DNI create new assessments specifically to meet the reporting requirements under this section.

Section 334 is based on Section 337 of S. 1494 and Section 367 of H.R. 2701.

*Section 335. Summary of intelligence relating to terrorist recidivism of detainees held at United States Naval Station, Guantanamo Bay, Cuba*

Section 335 requires the DNI, in consultation with the Director of the CIA and the Director of the Defense Intelligence Agency (DIA), to make publicly available an unclassified summary of intelligence relating to recidivism of detainees currently or formerly held by the Department of Defense at the United States Naval Station, Guantanamo Bay and an assessment

of the likelihood that such detainees will engage in terrorism or communicate with persons in terrorist organizations. The unclassified summary must be made available 60 days after the enactment of the Act.

Section 335 is based on Section 350 of S. 1494 and Section 351 of H.R. 2701. Section 335 extends to 60 days the amount of time provided to the DNI to make the unclassified summary publicly available, rather than the 30 days provided in Section 350 of H.R. 2701.

*Section 336. Report and strategic plan on biological weapons*

Section 336 provides for a report by the DNI on the intelligence collection efforts of the United States against biological weapons or the threat of biological weapons in the hands of terrorists, rogue states, or other actors, both foreign and domestic. The report also must describe intelligence collection efforts to protect the United States bio-defense knowledge and infrastructure.

The report required by Section 336 must include the following elements: (1) an accurate assessment of the intelligence collection efforts of the United States dedicated to detecting the development or use of biological weapons by state, non-state, or rogue actors, either foreign or domestic; (2) detailed information on fiscal, human, technical, open source, and other intelligence collection resources of the United States for use against biological weapons; and (3) an assessment of any problems that may reduce the overall effectiveness of United States intelligence collection and analysis to identify and protect biological weapons targets, including intelligence collection gaps or inefficiencies, inadequate information sharing practices, or inadequate cooperation among agencies or departments of the United States.

Additionally, Section 336 provides that this report include a strategic plan prepared by the DNI, in coordination with the Attorney General, Secretary of Defense, and Secretary of Homeland Security, that provides for a coordinated action plan for the Intelligence Community to address and close the gaps identified in the report. This strategic plan shall also include a description of appropriate goals, schedules, milestones, or metrics to measure the long-term effectiveness of the plan and any long-term resource and human capital issues related to the collection of intelligence against biological weapons or the threat of biological weapons. The report shall also include any recommendation to address shortfalls of experienced and qualified staff possessing relevant scientific, language, and technical skills.

Section 336 requires that the DNI submit this report to the congressional intelligence committees no later than 180 days after the enactment of this bill. The DNI is required to begin implementing the strategic plan within 30 days of submitting the report.

Section 336 is identical to Section 339 of S. 1494. H.R. 2701 had no comparable provision.

### *Section 337. Cybersecurity oversight*

Section 337 sets forth a preliminary framework for executive and congressional oversight to ensure that the government's national cybersecurity mission is consistent with legal authorities and preserves reasonable expectations of privacy. Section 337 also requires an Inspector General report on the sharing of cyber threat information and a plan for recruiting, retaining, and training an Intelligence Community workforce to secure the networks of the Intelligence Community. Finally, Section 337 requires annual reports from the DNI on guidelines and legislation to improve the cybersecurity of the United States.

Section 337(h) defines three terms: national cyber investigative joint task force, critical infrastructure, and cybersecurity program. The definition of the term "cybersecurity program" in Section 337(h) is intentionally a narrow one. The definition of cybersecurity programs in this section intentionally excludes firewalls, anti-virus programs, and other routine programs. Likewise, by requiring a class or collection of similar cybersecurity operations, the definition of cybersecurity programs intentionally excludes individual cyber operations or cyber information-sharing conducted in a non-programmatic fashion, such as the sharing of a piece of information for a particular cybersecurity, foreign intelligence, or national security investigation.

Section 337 instead focuses on multi-agency cybersecurity programs in which large amounts of information are characterized, screened, or inspected for the purpose of protecting government networks. These programs use more effective technologies to integrate cyber defenses among government entities that wish to, or are directed to, participate. These types of programs pose challenging new legal and privacy questions that make congressional and Executive branch oversight particularly important. Because the section seeks to provide a framework of oversight of only those programs that involve significant potential privacy implications, the term "cybersecurity program" is also limited by the requirement that the programs involve personally identifiable data.

Section 337(a) requires the President to notify Congress of cybersecurity programs and provide Congress with five types of information or documents: the program's legal basis; any certifications of the program's legality under 18 U.S.C. 2511(2)(a)(ii) or other statutory provision; any concept of operations; any privacy impact statement; and any plan for independent audit or review of the program to be carried out by the head of the relevant department or agency, in conjunction with the appropriate inspector general. The notification requirements of subsection (a) are designed to ensure that Congress is aware of significant legal, privacy and operational issues with respect to each new cybersecurity program.

The Department of Justice has expressed concern about providing to Congress any certifications of the legality of a cybersecurity program under Section 2511(2)(a)(ii) of Title 18 of the United States Code—certifications which serve to insulate from litigation providers of wire or electronic communication who provide information to the government—on the basis that

those types of certifications are not routinely provided to Congress. Because of the broad scope of possible operations under cybersecurity programs as defined by this section, however, the Committee believe that a certification under Section 2511(2)(a)(ii) prepared for a cybersecurity program would be different than a certification provided in other current investigations and law enforcement activities. Rather than assessing the legality of a single instance of providing information to the government, any certification for a “cybersecurity program” would have to address the legality of the program as a whole. A certification for a cybersecurity program therefore has the potential to authorize providers of wire or electronic communication to provide significant assistance to the government, without fear of litigation. Given the potential impact of any certification, the Committee believes that significant congressional oversight is warranted.

For existing cybersecurity programs, the notification and documents must be provided no later than 30 days after the date of the enactment of this Act. For new programs, the notification and documents must be provided not later than 30 days after the date of the commencement of operations of a new cybersecurity program.

Section 337(b) requires the heads of agencies or departments with responsibility for a cybersecurity program, in conjunction with the inspector general for that department or agency, to prepare a report describing the results of any audit or review under the audit plan and assessing whether the cybersecurity program is in compliance with, and adequately described by, the documents submitted to Congress. This subsection is designed to provide an independent check that the agencies are conducting cyber operations in a manner consistent with Executive branch guidance and to supply Congress more information about the operation of those programs. In addition, these reports should help identify the key difficulties and challenges in the cybersecurity programs.

Section 337(c) requires the inspectors general of the Department of Homeland Security and the Intelligence Community to prepare a report on the sharing of cyber threat information both within the U.S. government and with those responsible for critical infrastructure. This report should be submitted one year after the enactment of this Act. In their report, the inspectors general should identify any barriers to sharing cyber threat and vulnerability information and assess the effectiveness of current sharing arrangements.

Section 337(d) provides the head of an element of the Intelligence Community the authority to detail an officer or employee to the Department of Homeland Security or the National Cyber Investigative Joint Task Force to assist with cybersecurity for a period not to exceed three years. This section will allow Intelligence Community experts to be made available to the Department of Homeland Security, which serves as the civilian cyber defense manager but where funding for cyber security has not been given the same level of priority as the Intelligence Community. In recognition of the intelligence committees’ ample support for cyber over the last few years, the provision permits these details to be provided on a nonreimbursable basis. This

detail authority, however, is restricted to a period not to exceed three years to prevent details from being used as an alternative to building expertise at civilian cyber defense agencies.

Section 337(e) requires an additional plan from the DNI for recruiting, retaining, and training an adequate cybersecurity workforce, including an assessment of the capabilities of the current workforce, an assessment of the benefits of outreach and training with private industry and academic institutions, and an examination of best practices for making the Intelligence Community workforce aware of cybersecurity best practices and principles.

Section 337(f) requires the DNI, in coordination with the Attorney General, the Director of the NSA, the White House Cybersecurity Coordinator, and any other officials the DNI considers appropriate, to submit three annual reports containing guidelines or legislative proposals to improve the capabilities of the Intelligence Community and law enforcement agencies to protect the cybersecurity of the United States. The report shall include guidelines or recommendations on: improving the intelligence community's ability to detect hostile actions; the need for data retention requirements; improving the ability of the intelligence community to anticipate nontraditional targets; and the adequacy of existing criminal statutes to successfully deter cyber attacks.

Finally, Section 337(g) provides that the requirements of subsections (a) through (e) will terminate on December 31, 2013. During the next three years, the Executive branch will begin new and unprecedented cybersecurity programs with new technology and new legal and privacy challenges. Section 337 will allow Congress to follow these developments closely and gain a deeper and broader understanding of cybersecurity issues so that, upon the termination of this section, it may be replaced with a permanent framework for oversight.

Section 337 is based on Section 340 of S. 1494 and Section 356, Section 360D, Section 360F, and Section 507 of H.R. 2701.

*Section 338. Report on foreign language proficiency in the intelligence community*

Section 338 requires the DNI to report on the Intelligence Community's proficiency in foreign languages within one year after the date of enactment of the Act, and then biennially for four years. The report should include information on: the number of positions within the Intelligence Community that require foreign language proficiency; foreign language training; the number of personnel hired with such proficiency; and efforts to recruit, hire, train, and retain personnel who are proficient in a foreign language. The section requires detailed reporting for each foreign language. In addition, the report should include identification of critical gaps in foreign language proficiency and recommendations for eliminating such gaps.

Section 338 is identical to Section 334 of H.R. 2701. S. 1494 did not have a comparable provision.

*Section 339. Report on plans to increase diversity within the intelligence community*

Section 339 requires the DNI, in coordination with the heads of the elements of the Intelligence Community to submit a report on the plans of each element to increase diversity within the Intelligence Community.

This report must include specific plans: to achieve the goals articulated in the DNI's strategic plan on equal opportunity and diversity; plans and initiatives to increase recruiting and hiring of diverse candidates; specific plans and initiatives to improve retention of diverse federal employees; a description of specific diversity awareness training and education programs; and a description of performance metrics to measure the success in carrying out the plans, initiatives, and programs. The report is due not later than a year after the enactment of the Act.

To carry out its mission most effectively, the Intelligence Community needs personnel that look and speak like the citizens of the countries in which it operates. In the past, the Intelligence Community has not properly focused on hiring a diverse workforce, and the capabilities of the Intelligence Community have suffered. The Intelligence Community must be deliberate and work hard to hire a diverse workforce that improves its operational capabilities and effectiveness.

Section 339 is similar to Section 353 of H.R. 2701. S. 1494 had no comparable provision.

*Section 340. Report on intelligence community contractors*

Section 340 requires the DNI to provide a report on the use of personal services contracts in the Intelligence Community, including the impact of such contracts on the Intelligence Community workforce, plans for conversion of contractor employment into Federal Government employment, and accountability mechanisms that govern the performance of such contractors. This report is seeking information on core contractor personnel, those independent contractors or individuals employed by industrial contractors who augment civilian and military personnel by providing direct support to Intelligence Community elements. The report should not include information on commodity contractors, such as those who work on the production or delivery of end-use items, or commercial contractors, such as those who provide services to Intelligence Community facilities.

The report required by Section 340 must include the following: a description of any relevant regulation or guidance relating to the minimum standards for contract personnel and how those standards differ from those for Federal Government employees; an identification of contracts where the contractor is performing substantially similar functions to a Federal

Government employee, as well as an estimate of the number of such contracts; an assessment of the costs incurred or saved by the use of contracts; an assessment of the appropriateness of using contractors to perform the activities; a comparison between contractor and Federal employee compensation; an analysis of Federal Government attrition; a description of the positions that will be converted to Federal employment; an analysis of the oversight and accountability mechanisms and procedures applicable to personal service contracts; and an identification of best practices for oversight and accountability. The report must be submitted by February 1, 2011.

Section 340 is identical to Section 338 of H.R. 2701. S. 1494 had no comparable provision. The comprehensive report is intended to provide the congressional intelligence committees information about the Intelligence Community's large contractor work force, to aid in conducting oversight of these contracts and to assist in devising any appropriate policy solutions.

*Section 341. Study on electronic waste destruction practices of the intelligence community*

Section 341 requires the Inspector General of the Intelligence Community to conduct a study on the electronic waste destruction practices of the Intelligence Community and report the results of the study to the congressional intelligence committees not later than one year after the enactment of this Act. The study should assess the both the security of the Intelligence Community's electronic waste disposal practices and the environmental impact of those practices. It should also propose methods to improve both the security and environmental impact of those disposal practices.

Section 341 is identical to Section 344 of H.R. 2701. S. 1494 had no comparable provision.

*Section 342. Review of records relating to potential health risks among Desert Storm veterans*

Section 342 requires the Director of the CIA to conduct a classification review of CIA records relevant to known or potential health effects suffered by veterans of Operation Desert Storm. Those health effects were described in a November 2008 report by the Department of Veterans Affairs Research Advisory Committee on Gulf War Veterans Illnesses. Section 342 also requires the Director of the CIA to report to Congress the results of the classification review, including the total number of CIA records determined to be relevant, within a year after enactment of the Act. To the extent that a classification review for a relevant set of records has already been conducted according to current classifications standards, the Director should report this to Congress with information concerning the review and the location of such records.

Section 342 is identical to Section 348 of H.R. 2701. S. 1494 had no comparable provision

*Section 343. Review of Federal Bureau of Investigation exercise of enforcement jurisdiction in foreign nations*

Section 343 requires the Director of the FBI, in consultation with the Secretary of State, to conduct a review of constraints under international law and the laws of foreign nations to the assertion of enforcement jurisdiction with respect to criminal investigations of terrorism offenses under U.S. law. Such review should look specifically at investigations conducted by FBI agents using funds made available by the National Intelligence Program.

Section 343 is based on Section 354 of H.R. 2701. S. 1494 had no similar provision. Section 354 of H.R. 2701 required the Director of the FBI to submit the report within sixty days after enactment of the Act. Section 343 extends this time frame to require submission of the report to the appropriate congressional committees within 120 days of enactment of the Act.

*Section 344. Public release of information on procedures used in narcotics airbridge denial program in Peru*

Section 344 requires the Director of the CIA to make publicly available within 30 days an unclassified version of the CIA Inspector General report entitled “Procedures Used in Narcotics Airbridge Denial Program in Peru, 1995-2001,” dated August 25, 2008. In releasing such report, the Director may declassify and release any additional information he deems appropriate related to the narcotics airbridge denial program and its subsequent investigation. Section 344 is identical to Section 355 of H.R. 2701. S. 1494 had no comparable provision.

*Section 345. Report on threat from dirty bombs*

Section 345 requires the DNI, in consultation with the Nuclear Regulatory Commission, to submit a report summarizing intelligence relating to the threat to the United States from weapons using radiological materials. The report must be submitted within 180 days after the enactment of the Act.

Section 345 is identical to Section 360B of H.R. 2701. S. 1494 had no similar provision.

*Section 346. Report on creation of space intelligence office*

Section 346 requires the DNI to submit to Congress a report on the feasibility and advisability of creating a national space intelligence office to manage space-related intelligence assets and access to such assets. This report must be submitted within 60 days after the enactment of the Act.

Section 346 is based on Section 360E of H.R. 2701. Section 410 of S. 1494 had proposed establishing a National Space Intelligence Office and had described the mission of the Office. Although the Committee followed the House on this provision, there is significant interest in establishing a National Space Intelligence Office in the future. The Committee therefore expects that, if the DNI determines the creation of a national space intelligence office to be feasible and advisable, the report required by Section 346 will describe how such an Office would be established, including a description of the proposed organizational structure of the Office and the manner in which it would be staffed.

*Section 347. Report on attempt to detonate explosive device on Northwest Airlines flight 253*

Section 347 requires the DNI to submit to Congress a report on the attempt to detonate an explosive device aboard Northwest Airlines flight number 253 on December 25, 2009. This report should describe any failures to share or analyze intelligence or information and the measures the Intelligence Community has taken to prevent such failures in the future. In the report, the DNI should describe the roles and responsibilities of various elements of the Intelligence Community to synchronize and analyze terrorism information; assess the technological capabilities of the Federal Government to assess terrorist threats; describe watchlisting training and procedures; describe the steps the Intelligence Community has taken to improve its tradecraft and processes; and assess how to meet the challenge of exploiting the ever-increasing volume of information available to the Intelligence Community. In addition, the DNI should provide any legislative recommendations deemed appropriate to improve the sharing of intelligence relating to terrorists. The report must be submitted no later than 180 days after enactment of this Act.

Section 347 is based on Section 360L of H.R. 2701. S. 1494 had no comparable provision. The Committee has conducted an inquiry into the attempted December 25, 2009, terrorist attack and has issued a report, S. Rep. No. 111-199 (2010). Section 347 therefore asks the DNI to provide a description of steps taken to respond to any findings and recommendations provided to the DNI from any review by the congressional intelligence committees in addition to providing the information requested by Section 360L of H.R. 2701.

*Section 348. Repeal or modification of reporting requirements*

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

The Committee recognizes, however, that congressional reporting requirements, particularly recurring reporting requirements, can place a significant burden on the resources of

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

In response to a request from the DNI, the congressional intelligence committees examined some of these recurring reporting requirements. Section 348 eliminates certain reports that were particularly burdensome to the Intelligence Community in cases where the information in the reports could be obtained through other means. It also eliminates reports whose usefulness has diminished either because of changing events or because the information contained in those reports is duplicative of information already obtained through other avenues.

Because the majority of recurring reports provide critical information relevant to the many challenges facing the Intelligence Community today, the Committee has proceeded carefully in eliminating only six statutory reporting requirements. In addition, the Committee changed the requirement of one report to make its submission biennial, rather than annual, and making another report annual, rather than a semiannual report. The Committee believes that reduction in the number of reporting requirements will help the Intelligence Community to allocate its resources properly towards areas of greatest congressional concern.

The Committee recognizes the concern expressed by the Intelligence Community about the impact of reporting requirements. The Committee suggests that the ODNI submit, even in advance of the Administration's formal requests for legislation, facts (including the cost of preparing particular reports and the use of contract personnel, if any, to prepare reports) and proposals (including the possible consolidation of reports and lengthening the intervals between them) that will enable a fuller evaluation of alternatives for providing information to Congress. Also, for reports that by law are unclassified, the Committee requests that the ODNI advise the congressional intelligence committees about any system that is in place, or should be put in place, for their public dissemination.

Section 348 is based on Section 341 of S. 1494 and Section 360M of H.R. 2701.

#### *Section 349. Incorporation of reporting requirements*

Section 349 incorporates into the Act by reference each requirement contained in the classified annex to this Act to submit a report to the congressional intelligence committees. Section 349 is based on Section 360N of H.R. 2701. Because the classified information in the annex cannot be included in the text of the bill, incorporating the reporting provisions of the classified annex is the only available mechanism to give these reporting requirements the force of law. The Committee therefore chose to include Section 349 to reflect the importance they ascribe to the reporting requirements in the classified annex.

*Section 350. Conforming amendments for report submission dates*

Section 350 contains conforming amendments to the National Security Act made necessary by this Act.

SUBTITLE E—OTHER MATTERS

*Section 361. Extension of authority to delete information about receipt and disposition of foreign gifts and decorations*

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

With respect to Intelligence Community activities, public disclosure of gifts or decorations in the Federal Register has the potential to compromise intelligence sources (*e.g.*, confirmation of an intelligence relationship with a foreign government) and could undermine national security. Recognizing this concern, the Director of Central Intelligence (DCI) was granted a limited exemption from reporting certain information about such foreign gifts or decorations where the publication of the information could adversely affect United States intelligence sources. Section 1079 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. No. 108-458) extended a similar exemption to the DNI in addition to applying the existing exemption to the CIA Director.

Section 361 provides to the heads of each Intelligence Community element the same limited exemption from specified public reporting requirements that is currently authorized for the DNI and CIA Director. The national security concerns that prompt those exemptions apply equally to other Intelligence Community elements. Section 361 mandates that the information not provided to the Secretary of State be provided to the DNI, who is required to keep a record of such information, to ensure continued independent oversight of the receipt by Intelligence Community personnel of foreign gifts or decorations.

Gifts received in the course of ordinary contact between senior officials of elements of the Intelligence Community and their foreign counterparts should not be excluded under the provisions of Section 361 unless there is a serious concern that the public disclosure of such contacts or gifts would adversely affect United States intelligence sources or methods.

Section 361 is identical to Section 351 of S. 1494 and Section 363 of H.R. 2701.

*Section 362. Modification of availability of funds for different intelligence activities*

Section 362 conforms the text of Section 504(a)(3)(B) of the National Security Act of 1947 (50 U.S.C. 414(a)(3)(B) (governing the funding of intelligence activities)) with the text of Section 102A(d)(5)(A)(ii) of that Act (50 U.S.C. 403-1(d)(5)(A)(ii)), as amended by Section 1011(a) of the Intelligence Reform Act (governing the transfer and reprogramming by the DNI of certain intelligence funding).

The amendment replaces the “unforeseen requirements” standard in Section 504(a)(3)(B) with a more flexible standard to govern reprogrammings and transfers of funds authorized for a different intelligence or intelligence-related activity. Under the new standard, a reprogramming or transfer is authorized if, in addition to the other requirements of Section 504(a)(3), the new use of funds would “support an emergent need, improve program effectiveness, or increase efficiency.” This modification brings the standard for reprogrammings or transfers of intelligence funding into conformity with the standards applicable to reprogrammings and transfers under Section 102A of the National Security Act of 1947. The modification preserves congressional oversight of proposed reprogrammings and transfers while enhancing the Intelligence Community’s ability to carry out missions and functions vital to national security. Section 362 is identical to Section 352 of S. 1494 and Section 361 of H.R. 2701.

*Section 363. Protection of certain national security information*

Section 363 amends Section 601 of the National Security Act of 1947 (50 U.S.C. 421) to increase the criminal penalties involving the disclosure of the identities of undercover intelligence officers and agents.

Section 363(a) amends Section 601(a) to increase criminal penalties for an individual with authorized access to classified information who intentionally discloses any information identifying a covert agent, if the individual knows that the United States is taking affirmative measures to conceal the covert agent’s intelligence relationship to the United States. Currently, the maximum sentence for disclosure by someone who has had “authorized access to classified information that identifies a covert agent” is 10 years. Subsection (a)(1) of Section 364 of this Act increases that maximum sentence to 15 years.

Currently, under Section 601(b) of the National Security Act of 1947, the maximum sentence for disclosure by someone who “as a result of having authorized access to classified information, learns of the identity of a covert agent” is 5 years. Subsection (a)(2) of Section 364 of this Act increases that maximum sentence to 10 years.

Subsection (b) of Section 363 amends Section 603(a) of the National Security Act of 1947 (50 U.S.C. 423(a)) to provide that the annual report from the President on the protection of

identities of certain United States undercover intelligence officers, agents, informants, and sources, also include an assessment of the need, if any, for modification to improve legal protections for covert agents. Section 363 is based on Section 354 of S. 1494 and Section 362 of H.R. 2701.

*Section 364. National Intelligence Program budget*

Section 601(a) of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 (2007) (50 U.S.C. 415c), requires the DNI to disclose the aggregate amount of funds appropriated by Congress for the National Intelligence Program for each fiscal year beginning with fiscal year 2007. Section 601(b) provides that the President may waive or postpone such disclosure if certain conditions are met, beginning with fiscal year 2009.

Section 364 amends Section 601 of the Implementing Recommendations of the 9/11 Commission Act of 2007 to require additionally that, on the date that the President submits to Congress the annual budget request, the President shall disclose to the public the aggregate amount of appropriations requested for that fiscal year for the National Intelligence Program. Also, in addition to the President's authority under present law to waive or postpone disclosure at the end of the fiscal year, the Committee agreed to provide for presidential waiver authority related to the public disclosure by the President of the aggregate amount of funds requested by the President.

Section 364 is based on Section 355 of S. 1494, except for the waiver provision that the Committee has added and the omission from Section 364 of the congressional findings in Section 355 of S. 1494. H.R. 2701 had no comparable provision.

*Section 365. Improving the review authority of the Public Interest Declassification Board*

Section 365 clarifies that the Public Interest Declassification Board may conduct reviews in response to requests from the committee of jurisdiction or an individual member of such committee. It also clarifies that the Board may consider the proper classification level of records, rather than simply consider whether or not they should be classified. This authority is important to address questions of excessive compartmentation or other over-classification that may impede needed information sharing, adequate reviews within the Executive branch, or oversight by the Congress.

Section 365 is identical to Section 356 of S. 1494. H.R. 2701 had no comparable provision.

*Section 366. Authority to designate undercover operations to collect foreign intelligence or counterintelligence*

Various provisions in the United States Code preclude the government from conducting the following activities: (1) the deposit of funds in a financial institution; (2) the lease or

purchase of real property; (3) the establishment and operation of a proprietary business on a commercial basis; and (4) the utilization of proceeds of the operation to offset necessary and reasonable operational expenses. In recognition, however, of the important role such activities may play in the conduct of undercover operations, Pub. L. No. 102-395 (1992) (28 U.S.C. 533 note) provides a mechanism for the FBI to obtain an exemption from these otherwise applicable laws.

Under Pub. L. No. 102-395, an exemption may be obtained if the proposed activity is certified by the Director of the FBI and the Attorney General as being necessary to the conduct of the undercover operation. For national security investigations, the Director of the FBI may delegate certifying authority to an Assistant Director in the Counterterrorism, Counterintelligence, or Cyber Divisions at the FBI, and the Attorney General may delegate such authority to the Assistant Attorney General for National Security at the Department of Justice.

Section 366 amends the current delegation level for both the FBI and the Department of Justice. It allows the FBI Director to delegate certifying authority to a level not lower than a Deputy Assistant Director in the National Security Branch. It also allows the Attorney General to delegate the certifying authority to a level not lower than a Deputy Assistant Attorney General in the National Security Division. It should be noted that this delegation level for the Department of Justice remains at a higher level than that which is currently required in criminal undercover operations.

The Committee is concerned that, because of both statutory and administrative limitations, the current delegation levels are insufficient to allow for timely processing of undercover exemptions. The success and safety of undercover operations can depend in part on the ability to do such simple tasks as open a bank account or rent an apartment for cover purposes in a timely manner. While the creation of the National Security Division at the Department of Justice has led to more efficient processing of some exemption requests, there remains room for improvement. The Committee believes that the new delegation levels established in Section 367 will encourage and facilitate further internal and administrative improvements in processing undercover exemptions both at the FBI and the Department of Justice, without sacrificing needed oversight within the FBI and Department of Justice.

Section 366 is identical to Section 357 of S. 1494. H.R. 2701 did contain a comparable provision.

#### *Section 367. Security clearances: reports; reciprocity*

Section 367 requires a series of reports and audits on the security clearance process and measurement of improvements in the timeliness of security clearance process. The reports and audits required under this section are intended to provide Congress with metrics to evaluate the efficacy of the security clearance process.

Subsection (a) of Section 367 amends Title V of the National Security Act of 1947 to add a new section 506H, requiring an audit and an annual report. Under new Section 506H(a), the President must conduct an audit every four years of how the Executive branch determines whether a security clearance is required for a particular position in the Federal Government. This audit must be submitted to Congress within 30 days of its completion.

New Section 506H(b) requires an annual report on the number of employees and contractors within the Federal Government who held or were approved for security clearances; the amount of time taken for each element of the Intelligence Community to process security clearance determinations; the number of security clearance investigations that have remained open for extended period of time; and the results of security clearance investigation and determinations. The Committee intend for this requirement to cover all contractor employees, including those employed by commodity contractors and commercial contractors.

Section 367(a)(2) requires a report on security clearance investigations and adjudication, to be submitted no later than 180 days after the enactment of this Act. That report requires information on security clearance adjudication guidance and metrics, a plan to improve the professional development of security clearance adjudicator, metrics to evaluate the investigation quality and the effectiveness of interagency clearance reciprocity, and an assessment of the feasibility, counterintelligence risk, and cost effectiveness of reducing the number of agencies that conduct the investigation and adjudication of security clearances. The President may also consider the advisability of reducing the number of agencies involved in the investigation and adjudication of security clearances.

Under Section 367(c), the Inspector General of the Intelligence Community must conduct an audit of the reciprocity of security clearances in the Intelligence Community. This audit will include an assessment of the time required to obtain reciprocal security clearance for an Intelligence Community employee or contractors detailed to, or seeking permanent employment with, another Intelligence Community element. This audit must be submitted to the congressional intelligence committees no later than 180 days after enactment of the Act.

While the reports required by Section 367 focus on the security clearance process, the Committee recognizes that safeguarding national security information depends upon ensuring not only that new individuals successfully complete the security clearance process, but also that current holders of clearances receive appropriate and ongoing scrutiny for their continued fitness for access to classified information. The Committee encourages the DNI, in consultation with the Office of Personnel Management if necessary, to develop more effective methods for identifying, on a continual basis, current holders of security clearances within the Intelligence Community who may pose a security risk.

Section 367 is based on Section 366 of H.R. 2701. S. 1494 had no comparable provision. Section 366 of H.R. 2701 had also included a provision requiring the DNI to appoint an ombudsman for intelligence community security clearances, who would annually report to the congressional intelligence committees on the concerns, complaints and questions received from persons applying for security clearances.

*Section 368. Correcting long-standing material weaknesses*

Section 368 requires the heads of the five intelligence agencies that have been specifically required to produce auditable financial statements (CIA, DIA, NGA, NRO, and NSA) to designate each senior management official who is responsible for correcting long-standing, correctable material weaknesses, and to notify the DNI and the congressional intelligence committees of these designations.

Under Section 368, the term “material weakness” has the meaning given that term under OMB Circular A-123, *Management’s Responsibility for Internal Control*, revised December 21, 2004. In particular, “[a] material weakness in internal controls is a reportable condition, or combination of reportable conditions, that results in more than a remote likelihood that a material misstatement of the financial statements, or other significant financial reports, will not be prevented or detected.”

The Committee has been dissatisfied with the lack of progress in correcting material weaknesses. Section 368 is intended to ensure there is clear accountability about who is responsible for correcting these deficiencies.

Section 368 pertains only to “long-standing” material weaknesses, defined as those that were identified in annual financial reports prior to fiscal year 2007. Also, Section 368 pertains only to material weaknesses that are correctable in the near term--i.e., those where correction is not substantially dependent on a business information system that will not be fielded prior to the end of fiscal year 2010. The head of an element of the Intelligence Community may be designated as the responsible official.

Section 368 also requires a senior intelligence management official to notify the head of the element of the Intelligence Community when a long-standing material weakness is corrected. The determination that the specified long-standing correctable material weakness has been corrected must be based on the findings of an independent review conducted by an independent auditor, who may be an auditor in the office of the agency’s inspector general. The element head shall notify the congressional intelligence committees that the material weakness has been corrected.

The Committee believes that this legislative step is necessary to establish clear accountability for correcting these long-standing correctable material weaknesses. Section 368 is based on Section 358 of S. 1494. H.R. 2701 had no comparable provision.

*Section 369. Intelligence community financial improvement and audit readiness*

Section 369 requires the DNI to conduct a review of the status of auditability compliance of each element of the Intelligence Community and to develop a plan and timeline to achieve a full, unqualified audit of each element of the Intelligence Community by September 30, 2013. This review and development of a plan must be completed within 180 days after enactment of this Act.

Section 369 is based on Section 368 of H.R. 2701. S. 1494 had no comparable provision. The Committee has removed the sense of the Congress contained in Section 368 of H.R. 2701. Although Section 348 of this bill repeals an annual report on progress in auditable financial statements, the Committee expects to be informed of the status of the review required by Section 369, as well as the plan and timeline established to achieve full, unqualified audits.

## TITLE IV – MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE COMMUNITY

### SUBTITLE A—OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

*Section 401. Accountability reviews by the Director of National Intelligence*

Section 401 provides that the DNI shall have new authority to conduct accountability reviews of elements within the Intelligence Community and the personnel of those elements. The primary innovation of this provision is the authority to conduct accountability reviews concerning an entire element of the Intelligence Community in relation to failures or deficiencies.

This accountability process is intended to be separate and distinct from any accountability reviews being conducted internally by the elements of the Intelligence Community or their Inspectors General, and is not intended to limit the authorities of the DNI with respect to his supervision of the CIA.

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

Any findings and recommendations for corrective or punitive action made by the DNI shall be provided to the head of the applicable element of the Intelligence Community. If the head of such element does not implement the recommendations, then the congressional intelligence committees must be notified and provided the reasons for the determination by the head of the element.

In addition, to avoid a construction that a committee of Congress on its own could require such a review over the objection of the DNI, a concern raised by the ODNI, the section makes clear that the DNI shall conduct a review if the DNI determines it is necessary, and the DNI may conduct an accountability review (but is not statutorily required to do so) if requested by one of the congressional intelligence committees.

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

Section 401 is based on Section 401 of S. 1494. H.R. 2701 had no comparable provision.

#### *Section 402. Authorities for intelligence information sharing*

Section 402 amends Section 102A(d)(2) of the National Security Act of 1947 (50 U.S.C. 403-1(d)(2)) to provide the DNI statutory authority to use National Intelligence Program funds to quickly address deficiencies or needs that arise in intelligence information access or sharing capabilities, even if those needs arise outside the Intelligence Community.

The new Section 102A(d)(2)(B) authorizes the DNI to provide to a receiving agency or component, and for that agency or component to accept and use, funds or systems (which would include services or equipment) related to the collection, processing, analysis, exploitation, and dissemination of intelligence information. The new Section 102A(d)(2)(C) grants the DNI authority to provide funds to non-National Intelligence Program activities for the purpose of addressing critical gaps in intelligence information access or sharing capabilities.

Section 402(b) makes clear that the head of any department or agency is authorized to receive and utilize funds or systems made available to the department or agency by the DNI. Without these new authorities, development and implementation of necessary capabilities could be delayed by an agency's lack of authority to accept or utilize systems funded from the National Intelligence Program, inability to use or identify current-year funding, or concerns regarding the augmentation of appropriations.

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

Section 402 is based on Section 402 of S. 1494. H.R. 2701 had no comparable provision. The Committee placed the authorities in Section 102A(d) of the National Security Act of 1947, rather than Section 102A(g) of the National Security Act of 1947, as was in S. 1494, to ensure that any transfers pursuant to this authority would be subject to the terms and conditions governing transfers and reprogramming. Because the terms and conditions governing transfers and reprogramming include prior notice to the congressional intelligence committees, which would allow the congressional intelligence committees to assess the use of this authority, the Committee also eliminated the reporting requirements included in Section 402 of S. 1494.

### *Section 403. Location of the Office of the Director of National Intelligence*

Section 403 addresses the issue of the location of the Office of the DNI. Section 403 repeals the ban on the co-location of the Office of the DNI with any other Intelligence Community element, which took effect on October 1, 2008, by replacing that provision of the National Security Act of 1947 (50 U.S.C. 403-3) with a new subsection 103(e) that allows the ODNI to be located outside the District of Columbia within the Washington Metropolitan Region.

In his 2008 legislative request for the fiscal year 2009 authorization, the DNI asked, for the first time, that Congress provide that “[t]he headquarters of the Office of the Director of National Intelligence may be located in the District of Columbia or elsewhere in the Metropolitan Region, as that term is defined in Section 8301 of title 40, United States Code.” The purpose of this section is to provide statutory authorization for the location of the ODNI outside of the District of Columbia.

Section 72 of Title 4, United States Code—a codification enacted in 1947 which derived from a statute signed into law by President George Washington in 1790—requires that “[a]ll 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.” In 1955, just eight years after the 1947 codification, Congress granted statutory authority for the Director of Central Intelligence to provide for a headquarters of the Central Intelligence Agency either in the District of Columbia “or elsewhere.” 69 Stat. 324, 349.

Pursuant to the Committee’s direction during consideration of the fiscal year 2009 authorization act, the ODNI requested guidance from the Department of Justice’s Office of Legal Counsel (OLC) about the need for a statute authorizing the location of the ODNI outside the District of Columbia. The ODNI has informed the Committee that OLC informally advised the ODNI that there is no basis to exclude the ODNI from the requirement of 4 U.S.C. 72 and that a specific exception is needed to authorize the location of the ODNI headquarters outside the

District of Columbia. The Committee urges the ODNI to continue to study, and report to the congressional intelligence committees, about the impact if any of the ODNI's current location outside of the District of Columbia on the daily implementation of the ODNI's responsibilities with respect to the President, the Congress, and the elements of the Intelligence Community.

Section 403 is based on Section 404 of S. 1494 and Section 401 of H.R. 2701.

*Section 404. Title and appointment of the Chief Information Officer of the Intelligence Community*

Section 404 expressly designates the position of Chief Information Officer in the Office of the Director of National Intelligence as Chief Information Officer of the Intelligence Community (IC CIO). The modification to this title is consistent with the position's overall responsibilities as outlined in Section 103G of the National Security Act of 1947 (50 U.S.C. 403-3g). Section 404 also eliminates the requirement that the IC CIO be confirmed by the Senate while retaining the requirement that the IC CIO be appointed by the President. The continued requirement of presidential appointment emphasizes that the IC CIO has important responsibilities for the Intelligence Community enterprise architecture with respect to the whole of the Intelligence Community.

Section 404 is identical to Section 406 of S. 1494 and similar to Section 405 of H.R. 2701. Section 405 of H.R. 2701 did not eliminate the requirement that the IC CIO be confirmed by the Senate. To accommodate the possibility that ODNI might not have individuals who meet the requisite requirements of the Vacancies Act to serve in an acting capacity in Presidentially appointed and Senate confirmed positions, a concern the ODNI had raised with respect to the IC CIO position, Section 302 of H.R. 2701 provided authority for temporary appointment to fill vacancies in Senate confirmed positions in the Office of the Director of National Intelligence. Because Section 404 eliminates the requirement that the IC CIO be confirmed by the Senate, the Committee did not include Section 302 of H.R. 2701 in this bill.

*Section 405. Inspector General of the Intelligence Community*

Section 1078 of the Intelligence Reform Act authorizes the DNI to establish an Office of Inspector General if the DNI determines that an Inspector General (IG) would be beneficial to improving the operations and effectiveness of the ODNI. It further provides that the DNI may grant to the IG any of the duties, responsibilities, and authorities set forth in the Inspector General Act of 1978. The DNI has appointed an IG and has granted certain authorities pursuant to DNI Instruction No. 2005-10 (September 7, 2005).

As the congressional intelligence committees have urged in reports on proposed authorization acts for fiscal years 2006 through 2009, a strong IG is vital to achieving the goal, set forth in the Intelligence Reform Act, of improving the operations and effectiveness of the Intelligence Community. It is also vital to achieving the broader goal of identifying problems

and deficiencies, wherever they may be found in the Intelligence Community, with respect to matters within the responsibility and authority of the DNI, including the manner in which elements of the Intelligence Community interact with each other in providing access to information and undertaking joint or cooperative activities. By way of a new Section 103H of the National Security Act of 1947, Section 405 of this Act establishes an Inspector General of the Intelligence Community in order to provide to the DNI, and, through reports, to the Congress, the benefits of an IG with full statutory authorities and the requisite independence.

The Office of the IG is to be established within the ODNI. The Office of the IG created by this bill is to replace and not duplicate the current Office of the IG for the ODNI. The IG will keep both the DNI and the congressional intelligence committees fully and currently informed about problems and deficiencies in Intelligence Community programs and operations and the need for corrective actions. The IG will be appointed by the President, with the advice and consent of the Senate, and will report directly to the DNI. To bolster the IG's independence within the Intelligence Community, the IG may be removed only by the President, who must communicate the reasons for the removal to the congressional intelligence committees. To ensure that this language is not construed to prohibit an immediate personnel action otherwise authorized by law, the Committee added the same clarifying language found in the Inspector General Reform Act of 2008 (Pub. L. No. 110-409).

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

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

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

The IG must submit semiannual reports to the DNI that include a description of significant problems relating to Intelligence Community programs and activities within the responsibility and authority of the DNI. Portions of the reports involving a component of a department of the United States Government are to be provided to the head of the department at the same time the report is provided to the DNI. The reports must include a description of IG

recommendations and a statement whether corrective action has been completed. Within 30 days of receiving each semiannual report from the IG, the DNI must submit it to Congress.

The IG must immediately report to the DNI particularly serious or flagrant problems, abuses, or deficiencies. Within seven days, the DNI must transmit those reports to the intelligence committees together with any comments. In the event the IG is unable to resolve any differences with the DNI affecting the duties or responsibilities of the IG or the IG conducts an investigation, inspection, audit, or review that focuses on certain high-ranking officials, the IG is authorized to report directly to the congressional intelligence committees. The Central Intelligence Agency Act of 1949 contains similar language with regard to reports by the CIA Inspector General on high-ranking CIA officials. (50 U.S.C. 403q(d)(3)).

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

For matters within the jurisdiction of both the IG of the Intelligence Community and an IG for another Intelligence Community element (or for a parent department or agency), the Inspectors General shall expeditiously resolve who will undertake the investigation, inspection, audit, or review. In attempting to resolve that question, the Inspectors General may request the assistance of the Intelligence Community Inspectors General Forum (a presently functioning body whose existence is ratified by Section 405). In the event that the Inspectors General are still unable to resolve the question, they shall submit it to the DNI and the head of the agency or department for resolution.

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

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

Section 405 also provides for the transition from the Office of the IG of the ODNI to the Office of the IG of the Intelligence Community. The Committee provided that Section 8K of the Inspector General Act of 1978 (5 U.S.C. App. Note), which pertains to the former office, is repealed on the date that the Senate-confirmed Inspector General assumes the duties of the Office of the IG of the Intelligence Community.

Following the reporting of the conference on the Intelligence Authorization Act for Fiscal Year 2008, Congress enacted the Inspector General Reform Act of 2008, Pub. L. No. 110-409. In light of this recent determination by the Congress to protect and augment the authority of Inspectors General throughout the Government, Section 405 contains conforming changes in the IG provision in this conference report. Among these provisions is authority for the IG to appoint a counsel. Section 405 makes clear that it is not to be construed to alter the duties and responsibilities of the General Counsel of the Office of the Director of National Intelligence.

Section 405 is similar to Section 407 of S. 1494 and Section 406 of H.R. 2701.

*Section 406. Chief Financial Officer of the Intelligence Community*

Section 406 amends Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) to establish in statute a Chief Financial Officer of the Intelligence Community (IC CFO) to assist the DNI in carrying out budgetary, acquisition, and financial management responsibilities.

By way of a new Section 103I of the National Security Act of 1947, under Section 406, the IC CFO will, to the extent applicable, have the duties, responsibilities, and authorities specified in the Chief Financial Officers Act of 1990. The IC CFO will serve as the principal advisor to the DNI and the Principal Deputy DNI on the management and allocation of Intelligence Community budgetary resources and shall participate in overseeing a comprehensive and integrated strategic process for resource management within the Intelligence Community. Section 406 charges the IC CFO with ensuring that the strategic plan and architectures of the DNI are based on budgetary constraints as specified in the future budget projections required in Section 325.

Section 406 also charges the IC CFO with receiving verification from appropriate authorities that major system acquisitions satisfy validated national requirements for meeting the DNI's strategic plans and that such requirements are prioritized based on budgetary constraints as specified in the future budget projections required in Section 325. To guarantee this is achieved in practice, under Section 406, prior to obligation or expenditure of funds for major system acquisitions to proceed to Milestone A (development) or Milestone B (production),

requirements must be validated and prioritized based on budgetary constraints as specified in Section 325.

Section 406 requires that the IC CFO preside, or assist in presiding, over any mission requirement, architectural, or acquisition board formed by the ODNI, and to coordinate and approve representations to Congress by the Intelligence Community regarding National Intelligence Program budgetary resources. An individual serving as the IC CFO may not at the same time also serve as a CFO of any other department or agency.

Section 406 is based on Section 408 of S. 1494. H.R. 2701 had no comparable provision.

*Section 407. Leadership and location of certain offices and officials*

Section 407 confirms in statute that various offices are housed within the ODNI: (1) the Chief Information Officer of the Intelligence Community; (2) the Inspector General of the Intelligence Community; (3) the Director of the National Counterterrorism Center (NCTC); (4) the Director of the National Counter Proliferation Center (NCPC); and (5) the Chief Financial Officer of the Intelligence Community. It also expressly provides in statute that the DNI shall appoint the Director of the NCPC, which is what has been done by administrative delegation from the President.

Section 407 is identical to Section 409 of S. 1494. H.R. 2701 had no comparable provision.

*Section 408. Protection of certain files of the Office of the Director of National Intelligence*

In the CIA Information Act, Pub. L. No. 98-477 (October 15, 1984) (50 U.S.C. 431), Congress authorized the Director of Central Intelligence to exempt operational files of the CIA from several requirements of the Freedom of Information Act (FOIA), particularly those requiring search and review in response to FOIA requests. In a series of amendments to Title VII of the National Security Act of 1947, Congress extended the exemption to the operational files of the NGA, NSA, NRO, and DIA. It also provided that files of the Office of the National Counterintelligence Executive (NCIX) should be treated as operational files of the CIA (to the extent they meet the criteria for CIA operational files).

Components of the ODNI, including NCTC, require access to information contained in CIA and other operational files. To that end, section 408 adds a new section 706 to the National Security Act of 1947 to make clear that operational files of any Intelligence Community component, for which an operational files exemption is applicable, will not lose their exemption from FOIA search, review, disclosure, or publication solely because they have been provided to the ODNI.

The new Section 706 provides several limitations on what records can be considered operational files. The exemption does not apply to records that contain information derived or

disseminated from an operational file, unless that record is created for the sole purpose of organizing the operational file for use by the ODNI. It also does not apply to records disseminated beyond the ODNI.

As Congress has provided in the operational files exemptions for the CIA and other Intelligence Community elements, subsection (d) provides that the exemption from search and review does not apply to requests by United States citizens or permanent residents for information about themselves (although other FOIA exemptions, such as appropriate classification, may continue to protect such files from public disclosure). The exemption from search and review would also not apply to the subject matter of a congressional or Executive branch investigation into improprieties or violations of law.

Subsection (e) provides for a decennial review by the DNI to determine whether exemptions may be removed from any category of exempted files. This review shall include consideration of the historical value or other public interest in the subject matter of those categories and the potential for declassifying a significant part of the information contained in them. The Committee underscores the importance of this requirement, which applies to the other operational exemptions in Title VII. The Committee also expects the DNI to submit the results of such review to the congressional intelligence committees in a timely manner.

Subsection (f) describes the manner of judicial review of the question of whether the ODNI has withheld records improperly under the operational file exemption. In particular, subsection (f)(2) permits the ODNI to meet its burden to prove the validity of the exemption by submitting a sworn written submission that exempted files likely to contain responsive records are records provided to the ODNI by an element of the Intelligence Community, from the exempted operational files of such element.

Section 408 is identical to Section 411 of S. 1494. H.R. 2701 did not contain a comparable provision.

*Section 409. Counterintelligence initiatives for the intelligence community*

Section 409 amends Section 1102(a) of the National Security Act of 1947 (50 U.S.C. 442a) to eliminate the requirement that the NCIX perform certain security functions more appropriately carried out by other components of the Intelligence Community.

Section 409 is identical to Section 412 of S. 1494. H.R. 2701 had no comparable provision.

*Section 410. Inapplicability of Federal Advisory Committee Act to advisory committees of the Office of the Director of National Intelligence*

Congress enacted the Federal Advisory Committee Act (FACA) (5 U.S.C. App.) to regulate the use of advisory committees throughout the Federal Government. FACA sets forth

the responsibilities of the Executive branch with regard to such committees and outlines procedures and requirements for them. As originally enacted in 1972, FACA expressly exempted advisory committees utilized by the CIA and the Federal Reserve System. Section 411 amends FACA to extend this exemption to advisory committees established or used by the ODNI if the DNI determines that for reasons of national security such advisory committee cannot comply with the requirements of the Act. The section also requires the DNI and the Director of CIA each to submit annual reports, which may be classified, on their use of these exemptions.

Section 410 is based on Section 414 of S. 1494. H.R. 2701 did not contain a comparable provision.

*Section 411. Membership of the Director of National Intelligence on the Transportation Security Oversight Board*

Section 411 substitutes the DNI, or the DNI's designee, as a member of the Transportation Security Oversight Board established under section 115(b)(1) of Title 49, United States Code, in place of the CIA Director or CIA Director's designee. The Transportation Security Oversight Board is responsible for, among other things, coordinating intelligence, security, and law enforcement activities affecting transportation and facilitating the sharing of intelligence, security, and law enforcement information affecting transportation among Federal agencies.

Section 411 is identical to Section 415 of S. 1494 and Section 402 of H.R. 2701.

*Section 412. Repeal of certain authorities relating to the Office of the National Counterintelligence Executive*

Section 412 amends the authorities and structure of the NCIX to eliminate certain independent administrative authorities that had been vested in the NCIX when that official was appointed by and reported to the President. Those authorities are unnecessary now that the NCIX is to be appointed by and is under the authority of the DNI. Section 412 is identical to Section 416 of S. 1494 and Section 423 of H.R. 2701.

*Section 413. Misuse of the Office of the Director of National Intelligence name, initials or seal*

Section 413 prohibits the unauthorized use of the official name, initials or seal of the ODNI. Section 413 also permits the Attorney General to pursue injunctive relief for such unauthorized use. The provision is modeled on Section 13 of the CIA Act of 1949 (50 U.S.C. 403(m)) which provides similar protection against misuse of the name, initials, or seal of the CIA.

Section 413 is identical to Section 417 of S. 1494 and similar to Section 365 of H.R. 2701.

*Section 414. Plan to implement recommendations of the data center energy efficiency reports*

Section 414 requires the DNI to develop a plan to implement across the Intelligence Community the recommendations of the Environmental Protection Agency report on improving data center energy efficiency (submitted pursuant to Pub. L. No. 109-431, 120 Stat. 2920). This planning requirement is intended to encourage the Intelligence Community to fulfill its responsibility to assess the use of environmental resources with regard to the power, space, and cooling challenges of Intelligence Community data centers and to promote the use of energy-efficient technologies to reduce consumption of resources by the Intelligence Community's data centers.

Section 414 is similar to Section 404 of H.R. 2701. S. 1494 did not have a comparable provision.

*Section 415. Director of National Intelligence support for reviews of International Traffic in Arms Regulations and Export Administration Regulations*

Section 415 provides that the DNI may support any review conducted by a department or agency of the federal government of the International Traffic in Arms Regulations or Export Administration Regulations, including a review of technologies and goods on the U.S. Munitions List and Commerce Control List that may warrant controls that are different or additional to the controls such technologies and goods are subject to at the time of the review.

Section 415 is identical to Section 407 of H.R. 2701. S. 1494 had no comparable provision.

SUBTITLE B—CENTRAL INTELLIGENCE AGENCY

*Section 421. Additional functions and authorities for protective personnel of the Central Intelligence Agency*

Section 421 amends Section 5(a)(4) of the CIA Act of 1949 (50 U.S.C. 403f(a)(4)), which authorizes protective functions by designated security personnel who serve on CIA protective details. Section 421 authorizes the CIA Director on the request of the DNI to make CIA protective detail personnel available to the DNI and to other personnel within the ODNI.

Section 421 is identical to Section 421 of S. 1494. H.R. 2701 did not include a comparable provision.

*Section 422. Appeals from decisions involving contracts of the Central Intelligence Agency*

Section 422 amends Section 8(d) of the Contract Disputes Act of 1978 (41 U.S.C. 607(d)) to provide that an appeal from a dispute arising out of a CIA contract shall 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 and that such board shall have jurisdiction to decide the appeal.

Section 422 is based on Section 422 of S. 1494 and Section 413 of H.R. 2701.

*Section 423. Deputy Director of the Central Intelligence Agency*

Section 423 provides for a Deputy Director of the CIA in a new Section 104B of the National Security Act of 1947 (50 U.S.C. 402 et seq.). Under the new Section 104B, the Deputy Director of the CIA shall be appointed by the President, shall assist the Director of the CIA in carrying out the Director's duties and responsibilities, and shall assume those duties and responsibilities in the event of the Director's absence, disability, or when the position is vacant.

Prior to the Intelligence Reform and Terrorism Prevention Act of 2004, Congress had provided by law for the appointment by the President, with Senate confirmation, of a Deputy Director of Central Intelligence. The Intelligence Reform Act abolished that position and was silent on any deputy to the Director of the CIA. Since enactment of the Intelligence Reform Act, the position of Deputy Director at the CIA has been solely a product of administrative action.

Given the sensitive nature of the CIA's operations, the position of Deputy Director merits consideration through the process of presidential appointment. The Committee agreed that the position would not be subject to the requirement of Senate confirmation, as was called for in Section 423 of S. 1494.

Section 423(c) provides that the amendments made by Section 423 apply prospectively. Therefore, the individual performing the duties of Deputy Director of the CIA on the date of enactment will not be affected by the amendments. Section 423 is identical to Section 414 of H.R. 2701 and similar to Section 423 of S. 1494.

*Section 424. Authority to authorize travel on a common carrier*

Section 424 amends Section 116(b) of the National Security Act of 1947 (50 U.S.C. 404k(b)). Section 116(b) of the National Security Act of 1947 allows the DNI to authorize travel on common carriers for certain intelligence collection personnel, and it further allows the DNI to delegate this authority to the Principal Deputy Director of National Intelligence or to the Director of the Central Intelligence Agency. Section 424 permits the Director of the CIA to re-delegate this authority within the CIA.

Section 424 is identical to Section 424 of S. 1494. H.R. 2701 had no comparable provision.

*Section 425. Inspector General of the Central Intelligence Agency*

Section 425 amends Section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(b)), which established a statutory CIA Inspector General. The amendment updates and clarifies the statute in light of revisions made by Congress in the Inspector General Reform Act of 2008 (Pub. L. No. 110-409) and the recommendations in a recent semiannual report of the CIA IG. Among other provisions, Section 425 expands the protections against reprisals that now apply to CIA employees who bring complaints to the CIA IG to any CIA employee who provides information to the CIA IG. Section 425 provides that the CIA IG has final approval of the selection of internal and external candidates for employment with the Office of the IG and may appoint a counsel who reports to the IG. Section 425 provides that this is not to be construed to alter the duties and responsibilities of the General Counsel of the CIA.

Section 425 is based on Section 425 of S. 1494. Section 415 of H.R. 2701 expanded the protections against reprisals to any CIA employee who provides information to the CIA IG.

*Section 426. Budget of the Inspector General of the Central Intelligence Agency*

Section 426 further amends Section 17 of the CIA Act to require the DNI to provide to the President the budget amount requested by the CIA IG and to provide that information to the congressional appropriations and intelligence committees, together with any comments of the CIA IG. These changes are similar to revisions made by Congress in the Inspector General Reform Act of 2008 (Pub. L. No. 110-409) with respect to the budgets of other inspectors general within the federal government.

Section 426 is identical to Section 426 of S. 1494. H.R. 2701 had no comparable provision.

*Section 427. Public availability of unclassified versions of certain intelligence products*

Section 427 requires the Director of the Central Intelligence Agency to make publicly available unclassified versions of four documents which assess information gained from the interrogation of high value detainees. These documents are dated April 3, 2003, July 15, 2004, March 2, 2005, and June 1, 2005.

Section 427 is identical to Section 427 of S. 1494. The House bill had no comparable provision.

SUBTITLE C—DEFENSE INTELLIGENCE COMPONENTS

*Section 431. Inspector general matters*

The Inspector General Act of 1978 (5 U.S.C. App.) establishes a government-wide system of inspectors general, some appointed by the President with the advice and consent of the

Senate and others “administratively appointed” by the heads of their respective Federal entities. These IGs are authorized to “conduct and supervise audits and investigations relating to the programs and operations” of the government and “to promote economy, efficiency, and effectiveness in the administration of, and . . . to prevent and detect fraud and abuse in, such programs and operations.” 5 U.S.C. App. 2. They also perform an important reporting function: “keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of . . . programs and operations and the necessity for and progress of corrective action.” *Id.* The investigative authorities exercised by inspectors general, and their relative independence from the government operations they audit and investigate, provide an important mechanism to ensure that the operations of the government are conducted as efficiently and effectively as possible.

The IGs of the CIA and Departments of Defense, Energy, Homeland Security, Justice, State, and Treasury are appointed by the President with the advice and consent of the Senate. These IGs—authorized by either the Inspector General Act of 1978 or Section 17 of the CIA Act—are independent within their organizations, subject to certain specified authorities of the head of their respective departments or agencies. They also have explicit statutory authority to access information from their departments or agencies or other United States Government departments and agencies and may use subpoenas to access information (*e.g.*, from an agency contractor) necessary to carry out their authorized functions.

The NRO, DIA, NSA and NGA have established their own “administrative” Inspectors General. However, because they are not identified in Section 8G of the Inspector General Act of 1978, they lack explicit statutory authorization to access information relevant to their audits or investigations, or to compel the production of information via subpoena. This lack of authority could impede access to information in particular, information from contractors that is necessary for them to perform their important function. These inspectors general also lack the indicia of independence necessary for the Government Accountability Office (GAO) to recognize their annual financial statement audits as being in compliance with the Chief Financial Officers Act of 1990 (Pub. L. No. 101-576). The lack of independence also prevents the DoD IG, and would prevent the Inspector General of the Intelligence Community, from relying on the results of NRO, DIA, NSA, or NGA inspector general audits or investigations when such audits must meet “generally accepted government auditing standards.”

To provide an additional level of independence and to ensure prompt access to the information necessary for these IGs to perform their audits and investigations, Section 431 amends Section 8G(a)(2) of the Inspector General Act of 1978 to include the NRO, DIA, NSA, and NGA as “designated federal entities.” As so designated, the heads of these Intelligence Community elements will be required by statute to administratively appoint inspectors general for these agencies.

Also, as designated inspectors general under the Inspector General Act of 1978, these inspectors general will be responsible to the heads of the NRO, DIA, NSA, and NGA. The removal or transfer of any of these inspectors general by the head of their office or agency must be promptly reported to the congressional intelligence committees. These inspectors general will also be able to exercise other investigative authorities, including those governing access to information and the issuance of subpoenas, utilized by other inspectors general under the Inspector General Act of 1978.

To protect vital national security interests, Section 431 permits the Secretary of Defense, in consultation with the DNI, to prohibit the inspectors general of the NRO, DIA, NSA, and NGA from initiating, carrying out, or completing any audit or investigation they are otherwise authorized to conduct. This authority is similar to the authority of the CIA Director under Section 17 of the CIA Act with respect to the Inspector General of the CIA and the authority of the Secretary of Defense under Section 8 of the Inspector General Act of 1978 with respect to the DoD Inspector General. It will provide the Secretary of Defense, in consultation with the DNI, a mechanism to protect extremely sensitive intelligence sources and methods or other vital national security interests. The Committee expects that this authority will be exercised rarely by the DNI or the Secretary of Defense.

Section 431 is identical to Section 431 of S. 1494. H.R. 2701 had no comparable provision.

*Section 432. Clarification of national security missions of National Geospatial-Intelligence Agency for analysis and dissemination of certain intelligence information*

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

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

Though the NGA has made significant progress toward unifying the traditional imagery analysis and mapping missions of the CIA and Department of Defense, it has been slow to embrace other facets of “geospatial intelligence,” including the processing, storage, and dissemination of full motion video (“FMV”) and ground-based photography. Rather, the NGA’s geospatial product repositories—containing predominantly overhead imagery and mapping products—continue to reflect its heritage. While the NGA is belatedly beginning to incorporate more airborne and commercial imagery, its data holdings and products are nearly devoid of FMV and ground-based photography.

The Committee believes that FMV and ground-based photography should be included, with available positional data, in NGA data repositories for retrieval on Department of Defense and Intelligence Community networks. Current mission planners and military personnel are well-served with traditional imagery products and maps, but FMV of the route to and from a facility or photographs of what a facility would look like to a foot soldier—rather than from an aircraft—would be of immense value to military personnel and intelligence officers. Ground-based photography is amply available from open sources, as well as other government sources such as military units, United States embassy personnel, defense attachés, special operations forces, foreign allies, and clandestine officers. These products should be better incorporated into NGA data holdings.

To address these concerns, Section 432 adds an additional national security mission to the responsibilities of the NGA. To fulfill this new mission, NGA would be required, as directed by the DNI, to develop a system to facilitate the analysis, dissemination, and incorporation of likenesses, videos, or presentations produced by ground-based platforms, including handheld or clandestine photography taken by or on behalf of human intelligence collection organizations or available as open-source information, into the national system for geospatial intelligence.

Section 432 also makes clear that this new responsibility does not include the authority to manage tasking of handheld or clandestine photography taken by or on behalf of human intelligence collection organizations. Although Section 432 does not give the NGA authority to set technical requirements for collection of handheld or clandestine photography, the Committee encourages the NGA to engage other elements of the Intelligence Community on these technical requirements to ensure that their output can be incorporated into the national system for geospatial-intelligence within the security handling guidelines consistent with the photography’s classification as determined by the appropriate authority.

Section 432 is identical to Section 435 of S. 1494. H.R. 2701 had no similar provision.

*Section 433. Director of Compliance of the National Security Agency*

Section 433 amends the National Security Agency Act of 1959 (50 U.S.C. 402 note) to establish a statutory Director of Compliance, appointed by the Director of the NSA. The Director of Compliance is responsible for the NSA’s compliance programs over mission

activities and is therefore responsible for ensuring that the components within NSA are adhering to rules and restrictions governing surveillance activities.

The Committee understands the challenges involved in ensuring that the NSA's mission activities, which involve complicated and ever-changing technology, are conducted in a manner consistent with laws, rules, and restrictions governing surveillance. Having a Director of Compliance, who has expertise in both the legal and technical arenas of surveillance, will help minimize the risk of non-compliance.

Section 433 is based on Section 425 of H.R. 2701. S. 1494 did not have a comparable provision. Section 425 of H.R. 2701 would have created the position of Associate Director of the National Security Agency for Compliance and Training and would have given the Associate Director responsibility for ensuring that all NSA programs and activities were conducted in a manner consistent with all applicable laws, regulations and policies and that the training of relevant personnel was sufficient. The National Security Agency appointed its first Director of Compliance in July 2009. This official reports to the Director of the National Security Agency and is responsible for developing and maintaining a program of compliance for all of NSA's mission activities. Section 433 reflects the office and responsibilities of the Director of Compliance as they have been established administratively within the NSA. Codifying the new position in statute underscores its importance and conveys the Committee's belief that one individual should be responsible for the mission compliance program of NSA.

#### SUBTITLE D—OTHER ELEMENTS

##### *Section 441. Codification of additional elements of the intelligence community*

Section 441 restores, with respect to the United States Coast Guard, the prior definition of "intelligence community" in the National Security Act of 1947 applicable to that service. *See* 50 U.S.C. 401a. Section 1073 of the Intelligence Reform and Terrorism Prevention Act of 2004 modified the definition of "intelligence community," inadvertently limiting the Coast Guard's inclusion in the Intelligence Community to the Office of Intelligence or those portions of the Coast Guard concerned with the analysis of intelligence. Section 441 clarifies that all of the Coast Guard's intelligence elements are included within the definition of the "intelligence community."

Section 441 also codifies the joint decision of the DNI and Attorney General to designate an office within the Drug Enforcement Administration as an element of the Intelligence Community. Section 441 is identical to Section 441 of S. 1494 and similar to Sections 421 and 422 of H.R. 2701.

*Section 442. Authorization of appropriations for Coast Guard National Tactical Integration Office*

Section 442 provides authorization of appropriations for research and development (R&D) to the Coast Guard National Technical Integration Office (NTIO), which is the Coast Guard counterpart to the Tactical Exploitation of National Capabilities programs in each of the military services. The NTIO explores the use of national intelligence systems in support of Coast Guard operations. Section 442 is intended to enable the National Technical Integration Office to monitor the development, procurement, and management of tactical intelligence systems and equipment and to conduct related research, development, and test and evaluation activities within the context of the Coast Guard's existing R&D authority.

Section 442 is identical to Section 442 of S. 1494. H.R. 2701 had no comparable provision.

*Section 443. Retention and relocation bonuses for the Federal Bureau of Investigation*

Section 443 makes permanent the authority of the Director of the FBI to pay bonuses to retain certain employees, such as those who have unusually high or unique qualifications or who are likely to leave the Federal service, and to pay relocation bonuses to employees who are transferred to areas in which there is a shortage of critical skills.

Section 443 is identical to Section 443 of S. 1494. H.R. 2701 had no comparable provision.

*Section 444. Extension of the authority of the Federal Bureau of Investigation to waive mandatory retirement provisions*

Existing law permits agencies to exempt law enforcement officers from mandatory retirement (generally applicable at age 57 with 20 years of service) until age 60. Under 5 U.S.C. 8335(b)(2), pertaining to the Civil Service Retirement System, and 5 U.S.C. 8425(b)(2), pertaining to the Federal Employee Retirement System, the Director of the FBI may exempt FBI officers from mandatory retirement until age 65, if such an extension is in the public interest. Section 444 extends the waiver authority, which expired at the end of 2009, until the end of 2011.

Section 444 is identical to Section 444 of S. 1494. H.R. 2701 had no comparable provision.

*Section 445. Report and assessments on transformation of the intelligence capabilities of the Federal Bureau of Investigation*

Section 445 requires the Director of the FBI, in consultation with the DNI, to submit to the congressional intelligence committees, not later than 180 days after enactment of this Act, a

report describing the long-term vision for the intelligence capabilities of the FBI's National Security Branch, a strategic plan for the National Security Branch, and the progress in advancing the capabilities of the branch. Among other things, the report is to include a description of the intelligence and national security capabilities that will be fully functional within the 5-year period beginning on the date the report is submitted and a description of the metrics, timetables, and reforms. The report must also describe the activities being carried out to ensure the NSB is improving its performance and should address the issues pertaining to mandatory reassignment of FBI supervisors after serving in a position for seven years. In addition, Section 445 requires the DNI, in consultation with the Director of the FBI, to conduct for five years an annual assessment of the NSB's progress based on those performance metrics and timetables.

As described in the unclassified letter of the Director of Management and Budget setting forth the Administration's views on the Intelligence Authorization Act for Fiscal Year 2010, as passed by the Senate and House of Representatives, this FBI report was tied to a fence on funding in the classified annex. The fence was removed at the request of the Executive branch, in light of the timing of the enactment of this authorization bill late in the fiscal year, but the Committee requires the report to be completed within 180 days of enactment and will revisit the issue of a fence if the report is not completed on a timely basis. Section 445 is based on Section 445 of S. 1494 and Sections 339 and 349 of H.R. 2701.

## TITLE V – REORGANIZATION OF THE DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE

### *Section 501. Reorganization of the Diplomatic Telecommunications Service Program Office*

Section 501 provides for the reorganization of the Diplomatic Telecommunications Service (DTS) which is comprised of the Diplomatic Telecommunications Service Program Office (DTS-PO) and the DTS Network. The purpose of the DTS-PO is to establish and maintain a DTS Network that is capable of meeting the worldwide communications service needs of United States Government departments and agencies operating from diplomatic and consular facilities including their national security needs for secure, reliable, and robust communications. Section 501 replaces a reorganization plan enacted in the Intelligence Authorization Act for Fiscal Year 2001 and formally amends that Act that will appear in Title 22 of the U.S. Code.

Section 501 establishes a Governance Board that shall direct and oversee the activities of the DTS-PO. The Director of OMB shall designate from the departments and agencies that use the DTS Network those departments and agencies whose heads will appoint members of the Governance Board from among their personnel. The OMB Director shall designate the Chair of the Board from among its five voting members and also designate from among the users of the network the department or agency that shall be the DTS-PO Executive Agent.

The Governance Board shall determine the written arrangements, which may be classified, for managing the DTS-PO. The Board shall have the power to approve and monitor the DTS-PO's plans, services, policies, and pricing methodology, and to provide to the DTS-PO Executive Agent the Board's recommendation with respect to the approval, disapproval, or modification of the DTS-PO's annual budget requests. The Board will also approve or disapprove of the Executive Agent's nomination of a Director of the DTS Program Office.

Section 501 authorizes two-year appropriations for the DTS-PO. It requires that the DTS-PO shall charge users only for bandwidth costs attributable to that department or agency and for specific customer projects.

In requesting enactment of Section 501, the DNI advised the Committee as follows about its purpose: "The appropriations authorized by this measure will promote modernization of the [DTS] network and the expansion of its architecture. With the authority to recover bandwidth costs, the DTS-PO can vastly improve the overall business management and effectiveness of DTS-PO operations. The measure will facilitate the establishment of a financial management system that employs a single system of records, that increases transparency and traceability in customer billing, that promotes responsiveness to customer requirements, that insures timely acquisition of bandwidth and receipt of vendor payments, and that promotes cost-conscious behavior among DTS-PO customers."

Section 501 is substantially similar to Section 501 of S. 1494. H.R. 2701 did not include a comparable provision.

## TITLE VI – FOREIGN INTELLIGENCE AND INFORMATION COMMISSION ACT

Title VI establishes a Foreign Intelligence and Information Commission (Commission) to provide, in a year from the appointment of its members, recommendations to improve foreign intelligence and information collection, analysis, and reporting through the strategic integration of the Intelligence Community and other elements of the United States Government with regard to the collection, reporting, and analysis of foreign intelligence and information. Title VI is similar to Title VI of S. 1494. H.R. 2701 had no comparable provision. In addition to revisions of particular matters concerning the Commission, the Committee agreed not to include the findings in Section 602 of S. 1494.

### *Section 601. Short Title*

Section 601 provides that this title may be cited as the "Foreign Intelligence and Information Commission Act."

### *Section 602. Definitions*

Section 602 provides definitions, including subsection 602(3) which defines “information” to include information of relevance to the foreign policy of the United States collected and conveyed through diplomatic reporting and other reporting by personnel of the Government of the United States who are not employed by an element of the Intelligence Community, to include public and open-source information.

*Section 603. Establishment and functions of the Commission*

Section 603 establishes and sets forth the functions of the Commission. The Commission shall evaluate any current processes or systems for the strategic integration of the Intelligence Community, including the DNI’s Open Source Center, and other elements of the United States Government, including the Department of State, with regard to the collection, reporting, and analysis of foreign intelligence information.

The Commission shall provide recommendations on a number of matters. It shall recommend how to improve or develop such processes or systems including by development of an interagency strategy. It shall also provide recommendations on how to incorporate into the inter-agency strategy the means to anticipate future threats, challenges, and crises, including by identifying collection, reporting and analytical capabilities that are global in scope and are directed at emerging, long-term, and strategic threats.

The Commission shall also provide recommendations related to the establishment of any new Executive branch entity, or the expansion of the authorities of any existing Executive branch entity, as needed to improve the strategic integration of foreign intelligence and information collection.

In addition, the Commission shall provide recommendations on strategies for sustaining human and budgetary resources to effect the global collection and reporting missions identified in the inter-agency strategy.

*Section 604. Members and staff of the Commission*

Section 604 establishes that the Commission shall be composed of 10 members, eight of whom shall be voting members. The voting members shall be two members appointed by the Majority Leader of the Senate, two members appointed by the Minority Leader of the Senate, two members appointed by the Speaker of the House of Representatives, and two members appointed by the Minority Leader of the House of Representatives. Of the two nonvoting members, one shall be appointed by the Director of National Intelligence and the other shall be appointed by the Secretary of State.

Members of the Commission shall be private citizens with knowledge and experience in foreign information and intelligence collection, reporting, and analysis; knowledge and experience in issues related to the national security and foreign policy of the United States

gained by serving in the Department of State, other appropriate agency or department or independent organization with expertise in the field of international affairs; or knowledge and experience with foreign policy decision making. The congressional leaders, the DNI, and the Secretary of State shall consult among themselves prior to the appointment of members in order to achieve a fair and equitable representation of points of view on the Commission.

The members of the Commission shall designate one of the voting members to serve as chair. Five voting members of the Commission shall constitute a quorum for the purpose of transacting the business of the Commission.

Subsection 604(b) provides for the selection of an Executive Director by an appointment of the chair with the approval of a majority of the voting members of the Commission. The chair is also authorized, in consultation with the Executive Director, to appoint other Commission personnel. The Committee agreed to set the salary limits for Commission staff to those applicable to the maximum annual rate for employees of a standing committee of the U.S. Senate.

#### *Section 605. Powers and duties of the Commission*

Section 605 provides the powers and duties of the Commission, including holding hearings, taking testimony and receiving evidence. The Commission may secure directly from a department or agency of the United States information that the Commission considers necessary to carry out the title. Upon request of the Commission chair, the head of each department or agency shall furnish such information to the Commission, subject to applicable law. S. 1494 had provided subpoena authority to the Commission, but the Committee agreed that the Commission would not have the power to issue subpoenas.

#### *Section 606. Report of the Commission*

Section 606 provides that no later than 300 days (approximately 10 months) after the appointment of members, the Commission shall submit an interim report to the congressional intelligence committees. No later than 60 days thereafter, the Commission shall submit a final report to the President, the Director of National Intelligence, the Secretary of State, the congressional intelligence committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives.

#### *Section 607. Termination*

Section 607 provides that the Commission shall terminate 60 days after the submission of the Commission's final report.

#### *Section 608. Nonapplicability of Federal Advisory Committee Act*

Section 608 provides that the Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Commission.

*Section 609. Authorization of appropriations*

Section 609 authorizes the appropriation of such sums as may be necessary to carry out this title. The sums shall be available until expended.

## TITLE VII -- OTHER MATTERS

*Section 701. Extension of National Commission for the Review of the Research and Development Programs of the United States Intelligence Community*

The National Commission for Review of Research and Development Programs of the United States Intelligence Community was authorized by Title X of the Intelligence Authorization Act for Fiscal Year 2003, Pub. L. No. 107-306 (2002) and lapsed on September 1, 2004, when the time for the final report of the Commission was reached without completion of the appointment process for the Commission.

The Congress established the Commission after determining that there was a need for a review of the full range of current research and development programs within the responsibility of the Intelligence Community with the goal of ensuring a unified research and development program across the entire Community. As this remains an important objective, Section 701 renews authority for this Commission by extending the reporting deadline to one year after the date that members are appointed and requiring that new members be appointed to the Commission. This section also authorizes the appropriation of funds for the Commission, which shall remain available until expended.

Section 701 is based on Section 501 of H.R. 2701. S. 1494 had no similar provision.

*Section 702. Classification review of executive branch materials in the possession of the congressional intelligence committees*

Section 702 authorizes the DNI to conduct classification reviews of materials in the possession of the congressional intelligence committees that are at least 25 years old and were created, or provided to that committee, by the Executive branch. The DNI may only exercise this authority at the request of one of the congressional intelligence committees, in accordance with procedures established by that committee.

Section 702 is based on Section 503 of H.R. 2701. S. 1494 had no comparable provision. Section 503 of H.R. 2701 had stated that the DNI “shall” conduct classification reviews in

accordance with committee rules. In Section 702, the Committee clarified that classification reviews would only be conducted at the request of the congressional intelligence committees.

## TITLE VIII – TECHNICAL AMENDMENTS

### *Section 801. Technical amendments to the Foreign Intelligence Surveillance Act of 1978*

Section 801 makes technical amendments to the Foreign Intelligence Surveillance Act of 1978 to correct typographical and grammatical errors. Section 801 is identical to Section 701 of S. 1494 and Section 514 of H.R. 2701.

### *Section 802. Technical amendments to the Central Intelligence Agency Act of 1949*

Section 802 amends the Central Intelligence Agency Act of 1949 by updating references to the National Security Act of 1947 to reflect amendments made by the Intelligence Reform and Terrorism Prevention Act of 2004. Section 802 is identical to Section 702 of S. 1494 and Section 511 of H.R. 2701.

### *Section 803. Technical amendments to title 10, United States Code*

Section 803 corrects a number of technical errors in the United States Code arising from the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004. Section 803 is identical to Section 703 of S. 1494 and Section 519 of H.R. 2701.

### *Section 804. Technical amendments to the National Security Act of 1947*

Section 804 makes a number of technical corrections to the National Security Act of 1947 arising from enactment of the Intelligence Reform and Terrorism Prevention Act of 2004. Section 804 is identical to Section 704 of S. 1494 and Section 518 of H.R. 2701.

### *Section 805. Technical amendments to the multiyear National Intelligence Program*

Section 805 updates the “multiyear national intelligence program” to incorporate organizational and nomenclature changes made by the Intelligence Reform and Terrorism Prevention Act of 2004. Section 805 is identical to Section 705 of S. 1494 and Section 517 of H.R. 2701.

### *Section 806. Technical amendments to the Intelligence Reform and Terrorism Prevention Act of 2004*

Section 806 makes a number of technical and conforming amendments to the Intelligence Reform and Terrorism Prevention Act of 2004. Section 806 is substantially similar to Section 706 of S. 1494 and Section 516 of H.R. 2701.

### *Section 807. Technical amendments to the Executive Schedule*

Section 807 makes technical amendments to the Executive Schedule to correct outdated and incorrect references to “Director of Central Intelligence,” “Deputy Directors of Central Intelligence,” and “General Counsel to the National Intelligence Director.” Section 807 is identical to Section 707 of S. 1494 and Section 513 of H.R. 2701.

*Section 808. Technical amendments to section 105 of the Intelligence Authorization Act for Fiscal Year 2004*

Section 808 changes the reference to “the Director of Central Intelligence” to “the DNI” in Section 105 of the Intelligence Authorization Act for Fiscal Year 2004 (Pub. L. No. 108-77 (December 13, 2003)) to clarify that the establishment of the Office of Intelligence and Analysis within the Department of the Treasury, and its reorganization within the Office of Terrorism and Financial Intelligence (Section 222 of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Division H, Pub. L. No. 108-447 (December 8, 2004))), do not affect the authorities and responsibilities of the DNI with respect to the Office of Intelligence and Analysis as an element of the Intelligence Community. Section 808 is identical to Section 708 of S. 1494 and Section 515 of H.R. 2701.

*Section 809. Technical amendments to section 602 of the Intelligence Authorization Act for Fiscal Year 1995*

Section 809 changes references to “the Director of Central Intelligence” in Section 602 of the Intelligence Authorization Act for Fiscal Year 1995 to “the Director of National Intelligence” or to “the Director of the Central Intelligence Agency” as appropriate. Section 809 is identical to Section 709 of S. 1494. H.R. 2701 did not have a comparable provision.

*Section 810. Technical amendments to section 403 of the Intelligence Authorization Act for fiscal year 1992*

Section 810 makes technical amendments to Section 403 of the Intelligence Authorization Act, Fiscal Year 1992, to reflect the creation of the position of the Director of National Intelligence and the appropriate definition of the Intelligence Community. Section 810 is identical to Section 710 of S. 1494. H.R. 2701 did not have a comparable provision.

## GENERAL MATTERS

### *Items Not Included*

In addition to items not included in the bill as described above, certain other sections from S. 1494 and H.R. 2701 were not included because: these sections were unnecessary; the requirements in the section had been or would be otherwise fulfilled; the sections related to activities for which funds would not be available; or for other reasons.

Section 335 of both S. 1494 and H.R. 2701 provided for audits or investigations of the Intelligence Community by the GAO. On March 15, 2010, in a letter providing the views of the Administration on the House and Senate bills, the Director of the Office of Management and Budget (OMB) noted that the Administration continued to “strongly object” to the GAO provisions, indicated that “current law expressly exempts intelligence and counterintelligence activities from GAO review,” and stated that the President’s senior advisors would recommend that he veto a bill that included the GAO provisions. On March 18, 2010, the Acting Comptroller General sent a letter to the intelligence committees indicating his disagreement with the description of GAO’s authorities contained in the OMB Director’s letter, and noting that existing statutes “provide GAO with the required authority to perform audits and evaluations of [Intelligence Community] activities.”

In light of this, the Committee believes it is important to explore further the scope of current GAO arrangements with the Intelligence Community, the history of GAO’s work on classified matters outside of the Intelligence Community, existing GAO procedures for working with classified information, and the extent to which future GAO investigations and audits of the Intelligence Community can be conducted by mutual agreement. In this regard, the leadership of the Committee has in this Congress and the last Congress asked the DNI and Comptroller General whether they can identify selected oversight subjects regarding which GAO has expertise and for which assistance could be provided by agreement between the Intelligence Community and GAO in a manner consistent with national security.

The Committee continues to believe that GAO can make a significant contribution to the oversight of the Intelligence Community and that the intelligence committees should continue to work with the DNI and the Comptroller General to find ways to bring GAO’s significant skills to bear.

The bill also eliminates a series of reporting requirements from S. 1494 and H.R. 2701 with the expectation that the information required by these reports would be obtained by the congressional intelligence committees during the course of normal oversight activities. The ODNI has offered to provide the information requested in these reports in briefings or hearings. In particular, the bill does not include from H.R. 2701: Section 331, report on financial intelligence on terrorist assets; Section 333, semiannual reports on nuclear weapons programs of Iran, Syria, and North Korea; Section 340, report on intelligence resources dedicated to Iraq and Afghanistan; Section 341, report on international traffic in arms regulations; Section 342, report on nuclear trafficking; Section 343, study on revoking pensions of persons who commit unauthorized disclosures of classified information; Section 346, study on college tuition programs for employees of the Intelligence Community; Section 359, report on dissemination of counterterrorism information to local law enforcement agencies; Section 360, report on intelligence capabilities of state and local law enforcement agencies; Section 360A, Inspector General report on over-classification; Section 360C, report on activities of the Intelligence Community in Argentina; Section 360G, report on missile arsenal of Iran; Section 360H, study

on best practices of foreign governments in combating violent domestic extremism; Section 360I, report on information sharing practices of Joint Terrorism Task Force; Section 360J, report on technology to enable information sharing; Section 360K, report on threats to energy security of the United States; and Section 506, review of intelligence to determine if foreign connection to anthrax attacks exists. The elimination of the report on global supply chain vulnerabilities required by Section 347 of H.R. 2701 is discussed in more detail in the classified annex.

Section 314 of S. 1494 required the DNI to review certain educational grant and scholarship programs and report on whether those programs could be combined or otherwise integrated. The Committee encourages the DNI to consider this issue in future budget and legislative submissions. For future intelligence authorizations, the congressional intelligence committees will be interested in determining whether the ODNI's promise of methods of providing information other than through reports has worked to satisfy the oversight interest underlying the inclusion of these sections in the House and Senate bills.

The bill also does not include sections of H.R. 2701 and S. 1494 that have already been enacted into law. These sections include: Section 345 of H.R. 2701 and Section 338 of S. 1494, each of which required a report on retirement benefits for former employees of Air America; Section 357 of H.R. 2701 which reiterated an existing requirement to submit report on terrorism financing; and Section 428 of H.R. 2701, which required the submission of a charter for the National Reconnaissance Office. The Committee expects compliance with those existing reporting requirements. Similarly, because the National Defense Authorization Act has temporarily suspended pay authority under the Defense Civilian Intelligence Personnel System pending the submission of findings and recommendations by an independent organization, the bill does not include Section 304 of H.R. 2701, which contained provisions relating to the Defense Civilian Intelligence Personnel System.

Both Section 403 of H.R. 2701 and Section 405 of S. 1494 provided additional statutory duties for the DNI's Director of Science and Technology. Internal reorganization within the ODNI has obviated the need for this provision.

In addition, the following sections from H.R. 2701 are not included: Section 369, sense of the Congress on monitoring of northern border of the United States; Section 411, review of covert action programs by the Inspector General of the Central Intelligence Agency; Section 502, expansion and clarification of the duties of the program manager for the information sharing environment; and Section 505, sense of the Congress honoring the contributions of the Central Intelligence Agency. The Committee honors the contribution of the CIA and all other elements and personnel of the Intelligence Community but believes it is preferable that the intelligence authorization act not be the vehicle for expressing the sense of the Congress on various matters.

The following additional sections from S. 1494 are not included: Section 353, limitation on reprogrammings and transfers of funds; Section 403, authorities for interagency funding;

Section 413, applicability of the Privacy Act to the Director of National Intelligence and the Office of the Director of National Intelligence; Section 432, confirmation of appointment of heads of certain components of the Intelligence Community; and Section 434, DIA counterintelligence and expenditures. Also not included was Section 364 of H.R. 2701, exemption of dissemination of terrorist identity information from the Freedom of Information Act. These are matters that may be the subject of further study by the congressional intelligence committees.

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

Clause 9 of rule XXI of the Rules of the House of Representatives and rule XLIV of the Standing Rules of the Senate require publication of a list of the “congressionally directed spending items” (the term used in the Senate rule) or “congressional earmarks” (the term used in the House rules) that are included in the conference report, the joint explanatory statement, or the classified schedule of authorizations accompanying the conference report. The list must include the name of each Senator, House Member, Delegate, or Resident Commissioner who submitted a request to the committee of jurisdiction for each item so identified.

The House and Senate rules also require the listing of limited tax or tariff benefits. The conference report, the joint explanatory statement, and the classified schedule of authorizations contain no limited tax benefits or limited tariff benefits as defined in the applicable House and Senate rules.

There were no congressionally directed spending items (as defined in the Senate rule) or congressional earmarks (as defined in the House rule) in either S. 1494 or H.R. 2701 on the Intelligence Authorization Act for Fiscal Year 2010. Consistent with the determination of the Committee not to create any direct spending items or earmarks, none have been newly created in this bill, the report to accompany it, or the classified schedule of authorizations.

Congressionally directed spending items or earmarks for intelligence or intelligence-related activities in Fiscal Year 2010 were contained in the previously enacted Department of Defense Appropriations Act, 2010 (Pub. L. No. 111-118) or in the Military Construction and Veterans Administration Appropriations Act, 2010 (Pub. L. No. 111-117). In accordance with the request of the Administration that the authorization of these congressionally directed spending items or earmarks should remain in effect after passage of this Act, this bill does not remove the authorization for those congressionally directed items or earmarks contained in the Defense Appropriations Act, 2010. A definitive statement under the Senate and House rules of the congressionally directed spending items or earmarks contained in the Department of Defense Appropriations Act, 2010 and the Military Construction and Veterans Administration Appropriations Act may be found respectively in the Committee Print of the Committee on

Appropriations, U.S. House of Representatives, on H.R. 3326/Public Law 111-118, beginning on page 434, and in the conference report to accompany H.R. 3288, Consolidated Appropriations Act, 2010, H.Rept. 111-366, beginning on page 1362.

### **COMMITTEE ACTION**

#### *Vote to report the committee bill*

On July 15, 2010, a quorum for reporting being present, the Committee voted to report the bill, by a vote of 15 ayes and no noes. The votes in person or by proxy were as follows: Chairman Feinstein—aye; Senator Rockefeller—aye; Senator Wyden—aye; Senator Bayh—aye; Senator Mikulski—aye; Senator Feingold—aye; Senator Nelson—aye; Senator Whitehouse—aye; Vice Chairman Bond—aye; Senator Hatch—aye; Senator Snowe—aye; Senator Chambliss—aye; Senator Burr—aye; Senator Coburn—aye; Senator Risch—aye.

### **ESTIMATE OF COSTS**

Pursuant to paragraph 11(a)(3) of rule XXVI of the Standing Rules of the Senate, the Committee deems it impractical to include an estimate of the costs incurred in carrying out the provisions of this report due to the classified nature of the operations conducted pursuant to this legislation. The Congressional Budget Office (CBO) prepared cost estimates for H.R. 2701 and S. 1494. The June 25, 2009 cost estimate for H.R. 2701 and the August 6, 2009 cost estimate for S. 1494 are posted on the CBO website. On July 15, 2010, the Committee transmitted this bill to the CBO for any further review that is warranted, beyond those posted estimates, regarding the costs incurred in carrying out the bill's provisions.

### **EVALUATION OF REGULATORY IMPACT**

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

### **CHANGES IN EXISTING LAWS**

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

## ADDITIONAL VIEWS OF SENATOR ROCKEFELLER

The Congressional notification provisions in the bill that we are reporting out today constitute an important improvement over the status quo. They require that the congressional intelligence committees and the President establish written procedures regarding the details of notification processes and expectations; that the President provide written notice about intelligence activities and covert actions, including changes in covert action findings and the legal authority under which an intelligence activity or a covert action is or will be conducted; that the President provide written reasons for limiting access to notifications to less than the full committee; and that the President maintain records of all notifications, including names of Members briefed and dates of the briefings.

I support these provisions because I expect that they will go a long way toward correcting past deficiencies. However, I believe that additional clarity is needed regarding whether or not the full committee will be aware of three critical facts in circumstances of less-than-full-committee notifications: (1) the fact that such a limited access notification has occurred, (2) the general subject of the limited notification, and (3) the reasons for limiting access.

There are situations in which a limited notification is appropriate and even necessary, but those situations are rare. Congressional notification procedures – and practices – should reflect that rarity. Most importantly, they should prevent limited notification from impeding the committees’ oversight responsibilities, because effective congressional oversight of intelligence activities is critical to the national security interests of the United States.

As Senator Snowe and I noted in our additional views to the Committee’s July 22, 2009 report of an earlier version of this bill, the Committee has supported clarity on these matters in four consecutive intelligence authorization bills. I will continue to work with my colleagues in establishing written notification procedures that resolve any ambiguities in favor of full committee awareness.

The Congressional notification provisions in the bill that we are reporting out today are a good first step – but only a first step.

JOHN D. ROCKEFELLER IV.

## ADDITIONAL VIEWS OF SENATOR FEINGOLD

The version of the Fiscal Year 2010 Intelligence Authorization bill reported out by the Senate Select Committee on Intelligence on July 15, 2010, retains a critically important provision – the establishment of an independent commission to address structural impediments to global coverage and our ability to anticipate terrorist and other threats and crises before they appear. I am also pleased that the bill includes a number of provisions that would improve accountability and save taxpayer dollars. Unfortunately, the bill removes many other important provisions that were in the Senate-passed bill that were aimed at improving oversight and transparency, as well as accountability.

The so-called “Gang of Eight” provision of the National Security Act should be eliminated entirely so that all members of the congressional intelligence committees can be notified of all intelligence activities. The earlier version of the bill required merely that all members receive basic information about matters only briefed to the Chairman and Vice Chairman, yet this compromise has been removed. The current version also removes a provision ensuring access to the Intelligence Community by the Government Accountability Office, as well as provisions requiring that the heads of the NSA, NGA and NRO be confirmed by the U.S. Senate. Furthermore, the bill waters down an amendment I offered with Vice Chairman Bond and Senator Wyden requiring the president to submit an unclassified top-line budget request for the National Intelligence Program by adding a presidential waiver. This amendment was intended to make possible a recommendation of the 9/11 Commission to improve congressional oversight by passing a separate intelligence appropriations bill, a structural reform that would be seriously complicated by the year-to-year uncertainty of a presidential waiver.

Because of these and other modifications, the bill falls short of what should be reported out by the Committee this year, or in future years. However, while I will continue to fight for the reforms included in the original version, I do not wish to stand in the way of finally passing an intelligence authorization bill that includes the establishment of the independent commission as well as other important provisions.

RUSSELL D. FEINGOLD