

Proposed Intelligence Authorization

Fiscal Year 2012



A Bill

To authorize appropriations for fiscal year 2012 for intelligence and intelligence-related activities of the United States Government and the Office of the Director of National Intelligence, the Central Intelligence Agency Retirement and Disability System, and for other purposes.

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

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE -- This Act may be cited as the 'Intelligence Authorization Act for Fiscal Year 2012'.

(b) TABLE OF CONTENTS -- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I--BUDGET AND PERSONNEL AUTHORIZATIONS

Sec. 101. Authorization of appropriations; advance appropriations.

Sec. 102. Classified schedule of authorizations.

Sec. 103. Personnel ceiling adjustments.

Sec. 104. Intelligence Community Management Account.

TITLE II--CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Sec. 201. Authorization of appropriations.

TITLE III--GENERAL INTELLIGENCE COMMUNITY MATTERS

Subtitle A--Personnel Matters

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

Sec. 302. Non-reimbursable detail of other personnel.

Subtitle B—Technical Correction

Sec. 303. Technical correction to the Executive Schedule.

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

Subtitle A--Office of the Director of National Intelligence

- Sec. 401. Aligning the publication of the National Counterintelligence Strategy with the policy and strategy of the Director of National Intelligence and modifying the frequency of updates and revisions to the National Counterintelligence Strategy.
- Sec. 402. Application of certain financial reporting requirements to the Office of the Director of National Intelligence.
- Sec. 403. Repeal of Certain Reporting Requirements.

Subtitle B--Central Intelligence Agency

- Sec. 404. Maintenance and Disposition of Office of the Director of National Intelligence records by the Central Intelligence Agency.
- Sec. 405. Foreign language proficiency requirements for Central Intelligence Agency officers.
- Sec. 406. Section 5(a)(1) of the Central Intelligence Agency Act of 1949.

Subtitle C--Other Elements

- Sec. 407. Federal Bureau of Investigation participation in the Department of Justice leave bank.
- Sec. 408. Expenditure of funds for confidential, extraordinary, or emergency intelligence or counterintelligence purposes.
- Sec. 409. Intelligence Community membership of the Office of Intelligence and Analysis of the Department of Homeland Security.
- Sec. 410. Appropriation for Defense Intelligence Elements.
- Sec. 411. Additional Authorities for National Security Agency Security Personnel.

SEC. 2. DEFINITIONS.

In this Act:

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

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

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

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

TITLE I--BUDGET AND PERSONNEL AUTHORIZATIONS

SEC. 101. AUTHORIZATION OF APPROPRIATIONS; ADVANCE APPROPRIATIONS.

(a) Funds are hereby authorized to be appropriated for fiscal year 2012 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

(1) The Office of the Director of National Intelligence.

(2) The Central Intelligence Agency.

(3) The Department of Defense.

(4) The Defense Intelligence Agency.

(5) The National Security Agency.

(6) The Department of the Army, the Department of the Navy, and the Department of the Air Force.

(7) The Coast Guard.

(8) The Department of State.

(9) The Department of the Treasury.

- (10) The Department of Energy.
- (11) The Department of Justice.
- (12) The Federal Bureau of Investigation.
- (13) The Drug Enforcement Administration.
- (14) The National Reconnaissance Office.
- (15) The National Geospatial-Intelligence Agency.
- (16) The Department of Homeland Security.

(b) ADVANCE APPROPRIATIONS.--In addition to the funds authorized to be appropriated for fiscal year 2012 under section 101(a), funds, in the form of advance appropriations, are hereby authorized to be appropriated in FY2013 through FY2017 for the conduct of intelligence and intelligence related activities as specified in the classified Schedule of Authorizations prepared to accompany the conference report on the bill XXXX of the One Hundred Twelfth Congress.

SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL LEVELS.-- The amounts authorized to be appropriated under section 101 and the authorized personnel levels (expressed as full-time equivalent positions) for the conduct of the intelligence and intelligence-related activities of the elements listed in paragraphs (1) through (16) of section 101(a), are those specified in the classified Schedule of Authorizations prepared to accompany the conference report on the bill XXXX of the One Hundred Twelfth Congress.

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.-- The classified Schedule of Authorizations referred to in subsection (a) shall be made available to the Committee on Appropriations of the Senate, the Committee on Appropriations of the House of

Representatives, and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

SEC. 103. PERSONNEL CEILING ADJUSTMENTS.

(a) **AUTHORITY FOR INCREASES**--The Director of National Intelligence may authorize the employment of civilian personnel in excess of the number of full-time equivalent positions for fiscal year 2012 authorized by the classified Schedule of Authorizations prepared to accompany the conference report on the bill if the Director of National Intelligence determines that such action is necessary to the performance of important intelligence or intelligence-related activities, except that the number of personnel employed in excess of the number authorized under such section may not, for any element of the intelligence community, exceed 5 percent of the number of civilian personnel authorized under such section for such element.

(b) **AUTHORITY FOR CONVERSION OF ACTIVITIES PERFORMED BY CONTRACT PERSONNEL**--

IN GENERAL--In addition to the authority in subsection (a), if the head of an element of the intelligence community determines that activities currently being performed by contract personnel should be performed by employees of such element, the Director of National Intelligence, in order to reduce a comparable number of contract personnel, may authorize for that purpose employment of additional full-time equivalent personnel in such element equal to the number of full-time equivalent contract personnel performing such activities.

(c) **TREATMENT OF CERTAIN PERSONNEL**--The Director of National Intelligence shall establish guidelines that govern, for each element of the intelligence community, the treatment under the personnel levels authorized under section 102(a), including any exemption from such personnel levels, of employment or assignment in--

(1) a student program, trainee program, or similar program;

(2) a reserve corps or as a reemployed annuitant; and

(3) details, joint duty, or long term, full-time training.

(d) NOTICE TO CONGRESSIONAL INTELLIGENCE COMMITTEES.--The Director of National Intelligence shall notify the congressional intelligence committees in writing at least 15 days prior to the initial exercise of an authority described in subsection (a) or (b).

SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.

(a) AUTHORIZATION OF APPROPRIATIONS.-- There is authorized to be appropriated for the Intelligence Community Management Account of the Director of National Intelligence for fiscal year 2012 the sum of \$592,213,000.

(b) CLASSIFIED AUTHORIZATION OF APPROPRIATIONS.-- In addition to amounts authorized to be appropriated for the Intelligence Community Management Account by subsection (a), there are authorized to be appropriated for the Intelligence Community Management Account for fiscal year 2012 such additional amounts as are specified in the classified Schedule of Authorizations prepared to accompany the conference report on the bill. Such additional amounts for advanced research and development shall remain available until September 30, 2013.

TITLE II--CENTRAL INTELLIGENCE AGENCY

RETIREMENT AND DISABILITY SYSTEM

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2012 the sum of \$513,700,000.

TITLE III--GENERAL INTELLIGENCE COMMUNITY MATTERS

Subtitle A--Personnel Matters

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

(a) Section 103 of the National Security Act is amended by redesignating subsection (e) as subsection (f) and inserting after subsection (d) the following new subsection (e)--

“(e) TEMPORARY APPOINTMENT TO FILL VACANCIES IN PRESIDENTIALLY-
APPOINTED AND SENATE-CONFIRMED POSITIONS IN THE OFFICE OF THE
DIRECTOR OF NATIONAL INTELLIGENCE--

(1) Notwithstanding any other provision of law, if an officer of the Office of the Director of National Intelligence whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office--

(A) the first assistant to the office of such officer shall perform the functions and duties of the office temporarily in an acting capacity subject to the time limitations of section 3346;

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

Senate, to perform the functions and duties of the vacant office temporarily in an acting capacity subject to the time limitations of section 3346; or

(C) notwithstanding subparagraph (e)(1)(A), the Director of National Intelligence may recommend to the President, and the President (and only the President) may direct an officer or employee of an element of the Intelligence Community, as that term is defined in section 3(4) of this act, to perform the functions and duties of the vacant office temporarily in an acting capacity, subject to the time limitations of section 3346, if--

(i) during the 365-day period preceding the date of death, resignation, or beginning of inability to serve of the applicable officer, the person served in a position in an element of the Intelligence Community for not less than 90 days;

(ii) the rate of pay for the position described under clause (i) is equal to or greater than the minimum rate of pay payable for a position at GS-15 of the General Schedule; and

(iii) in the case of a person who is employed by an element of the Intelligence Community other than the Office of the Director of National Intelligence, the Director of National Intelligence consults with the head of the department containing the element of the Intelligence Community or, in the case of an employee of the Central Intelligence Agency, with the Director of the Central Intelligence Agency. If the head of the department containing an element of the Intelligence Community or, in the case of the Central Intelligence Agency, the Director of the Central Intelligence

Agency, objects to the recommendation, the Director of National Intelligence may make the recommendation to the President after informing the President of the objection.

(2)

(A) Notwithstanding subparagraph (e)(1)(A), a person may not serve as an acting officer for an office under this section, if--

(i) during the 365-day period preceding the date of the death, resignation, or beginning of inability to serve, such person--

(I) did not serve in the position of first assistant to the office of such officer; or

(II) served in the position of first assistant to the office of such officer for less than 90 days; and

(ii) the President submits a nomination of such person to the Senate for appointment to such office.

(B) Subparagraph (e)(2)(A) shall not apply to any person if--

(i) such person is serving as the first assistant to the office of an officer described under paragraph(e)(1);

(ii) the office of such first assistant is an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate; and

(iii) the Senate has approved the appointment of such person to such office.”.

(b) Section 119(b) of this Act is amended by deleting the period at the end of subsection

(b) and inserting the following: “, except that the Director of the National Counterterrorism Center may simultaneously perform the functions and duties of an officer of the Office of the Director of National Intelligence temporarily in an acting capacity pursuant to a temporary appointment under section 103(e) of this Act.”

SEC. 302. NON-REIMBURSABLE DETAIL OF OTHER PERSONNEL.

(a) IN GENERAL.--Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by revising Section 113A to read as follows:

“NON-REIMBURSABLE DETAIL OF OTHER PERSONNEL

SEC. 113A. An officer or employee of the United States or member of the Armed Forces may be detailed to the staff of an element of the intelligence community funded through the National Intelligence Program from another element of the intelligence community or from another element of the United States Government on a non-reimbursable basis, as jointly agreed to by the heads of the receiving and detailing elements, for a period not to exceed two years. This section does not limit any other source of authority for reimbursable or non-reimbursable details.”.

(b) TABLE OF CONTENTS AMENDMENT.--The table of contents in the first section of such Act is amended by revising the item relating to section 113A to read as follows:

“Sec. 113A. Non-reimbursable detail of Other Personnel.”.

Subtitle B—Technical Correction

SEC. 303. TECHNICAL CORRECTION TO THE EXECUTIVE SCHEDULE.

EXECUTIVE LEVEL IV. Section 5315 of title 5, United States Code, is amended by adding at the end the following:

“Chief Information Officer of the Intelligence Community.”

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

Subtitle A--Office of the Director of National Intelligence

SEC. 401. ALIGNING THE PUBLICATION OF THE NATIONAL COUNTERINTELLIGENCE STRATEGY WITH THE POLICY AND STRATEGY OF THE DIRECTOR OF NATIONAL INTELLIGENCE AND MODIFYING THE FREQUENCY OF UPDATES AND REVISIONS TO THE NATIONAL COUNTERINTELLIGENCE STRATEGY.

Section 904(e)(2) of the Counterintelligence Enhancement Act of 2002 [50 U.S.C. 402c] is amended by--

- (1) by striking “Assessment” and inserting “Assessments”;
- (2) by striking “on an annual basis”; and
- (3) by inserting after “National Counterintelligence Strategy.” the following: “The National Counterintelligence Strategy shall be revised or updated at least every three years and shall be aligned with the strategy and policies of the Director of National Intelligence.”.

SEC. 402. APPLICATION OF CERTAIN FINANCIAL REPORTING REQUIREMENTS TO THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.

The Office of the Director of National Intelligence shall not be required to submit audited financial statements under section 3515 of title 31, United States Code for the Office of the Director of National Intelligence with respect to fiscal years 2010 through 2012.

SEC. 403. REPEAL OF CERTAIN REPORTING REQUIREMENTS.

(a) TERMINATION.—Subject to subsection (b), any provision of law enacted before, on, or after the date of enactment of this section that requires the Director of National Intelligence, the head of a department or agency containing an element of the Intelligence Community or the head

of an element of the Intelligence Community to submit to Congress (or any committee of Congress) a periodic report relating to programs or activities of the Intelligence Community shall cease to be effective, with respect to that requirement, three years after the date of the enactment of that provision of law.

(b) EXCEPTIONS.—

(1) Paragraph (a) shall not apply to the following reporting requirements:

(i) reporting obligations of the Inspectors General of the agencies listed, including those contained in the Central Intelligence Agency Act of 1949, the National Security Act of 1947, and the Inspector General Act of 1978;

(ii) reporting obligations contained in the Foreign Intelligence Surveillance Act of 1978;

(iii) reporting obligations contained in Title V of the National Security Act of 1947;

(iv) any reporting obligations imposed on all departments and agencies of the federal government;

(v) reports required in conjunction with provisions of law requiring certifications, determinations or comparable findings, or authorizing waivers with respect to conditions, limitations, or comparable restrictions;

(vi) reports required pursuant to Senate resolutions providing advice and consent to treaties; and

(vii) reports required under section 25 of the Arms Export Control Act, sections 116(d) and 634 of the Foreign Assistance Act, and section 102 of the International Religious Freedom Act, respectively.

(2) Subsection (a) does not apply to a provision of law containing a requirement for the submittal of a periodic report if that provision of law—

- (i) expressly states that the requirement is indefinite in nature; or
- (ii) specifies a number of years (in excess of three) for which the report is required or states a specific termination date for the report requirement.

(c) PERIODIC REPORT DEFINED.—In this section, the term ‘periodic report’ means a report required to be submitted on an annual, semiannual, or other regular periodic basis.

Subtitle B—Central Intelligence Agency

SEC. 404. MAINTENANCE AND DISPOSITION OF OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE RECORDS BY THE CENTRAL INTELLIGENCE AGENCY.

The Central Intelligence Agency Act of 1949 (50 U.S.C. 403) is amended by adding--

“SEC. XXX. Maintenance and Disposition of Office of the Director of National Intelligence Records by the Central Intelligence Agency.

(a) Notwithstanding any other provision of law, the Central Intelligence Agency may maintain and dispose of, on behalf of, and at the direction of, the Office of the Director of National Intelligence, any record related to an administrative or business activity of the Office of the Director of National Intelligence.

(b) Whenever such records concern individual United States persons, they may be disclosed by the Central Intelligence Agency to the Office of the Director of National Intelligence, or by the Office of the Director of National Intelligence to the Central

Intelligence Agency, without the person's consent and without the maintenance of any accounting of such disclosures.

(c) The Office of the Director of National Intelligence shall reimburse the Central Intelligence Agency for all actual (direct and indirect) costs incurred by the Agency in carrying out any of the actions authorized under this section.

(d) Except as provided in subsection (b), nothing in this section limits the protection afforded any records or information by other provisions of law, including Freedom of Information Act exemptions, the Privacy Act of 1974, the National Security Act of 1947, and the Central Intelligence Agency Act of 1949.”

SEC. 405. FOREIGN LANGUAGE PROFICIENCY REQUIREMENTS FOR CENTRAL INTELLIGENCE AGENCY OFFICERS.

(a) IN GENERAL.--Section 104A(g) of the National Security Act of 1947 (50 U.S.C. 403-4a(g)) is amended--

(1) in paragraph 1, by striking the text after “an individual” and inserting “in the Directorate of Intelligence career service or the National Clandestine Service career service may not be promoted into the Senior Intelligence Service of the Central Intelligence Agency unless the Director of the Central Intelligence Agency determines that the individual has foreign language test scores on record with the Central Intelligence Agency and meets a minimum foreign language proficiency that the Director of the Central Intelligence Agency considers appropriate for a Senior Intelligence Service officer”; and

(2) in paragraph 2, by striking “position or category of positions” each time it appears and inserting “position, category of positions, or occupation”.

(b) EFFECTIVE DATE.--Section 611(b) of the Intelligence Authorization Act for Fiscal Year 2005 (Public Law 108-487; 50 U.S.C. 403-4a note) is amended--

- (1) by striking “appointments” and inserting “promotions”; and
- (2) by striking “that is one year after the date”.

(c) REPORT ON WAIVERS.--Section 611(c) of the Intelligence Authorization Act for Fiscal Year 2005 (Public Law 108-487) is amended--

- (1) in the first sentence--
 - (i) by inserting “, categories of positions, or occupations” after “positions”; and
 - (ii) by striking “Directorate of Operations” and inserting “National Clandestine Service”; and
- (2) in the second sentence, by striking “position or category of positions” and inserting “position, category of positions, or occupation.”

SEC. 406. SECTION 5(a)(1) OF THE CENTRAL INTELLIGENCE AGENCY ACT OF 1949.

Section 5(a)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(a)(1)) is amended by striking “authorized under section 104A of the National Security Act of 1947 (50 U.S.C. 403-4a).”, and inserting “any Agency functions or activities authorized under law.”.

Subtitle C--Other Elements

SEC. 407. FEDERAL BUREAU OF INVESTIGATION PARTICIPATION IN THE DEPARTMENT OF JUSTICE LEAVE BANK.

In Title 5, Section 6372, strike subsection (b) and insert the following:

“(b)(1) except as provided in subsection (b)(2) and notwithstanding any other provision of this subchapter, neither an excepted agency nor any individual employed in or under an excepted agency may be included in a leave bank program established under any of the preceding provisions of this subchapter.

(b)(2) notwithstanding any other provision of law, the Director of the Federal Bureau of Investigation may authorize any individual or group of individuals employed in the Bureau to participate in a leave bank program administered by the Department of Justice under this subchapter if in his judgment such participation will not adversely affect the protection of intelligence sources and methods.”.

SEC. 408. EXPENDITURE OF FUNDS FOR CONFIDENTIAL, EXTRAORDINARY, OR EMERGENCY INTELLIGENCE OR COUNTERINTELLIGENCE PURPOSES.

Section 105 of the National Security Act of 1947 (50 U.S.C. 403-5) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

“(c) EXPENDITURE OF FUNDS FOR INTELLIGENCE OR COUNTERINTELLIGENCE PURPOSES.--Within the limitations of appropriations made for this purpose and consistent with sections 102 and 102A of this Act, amounts made available to the Department of Defense for intelligence or counterintelligence activities may be expended for objects of a confidential, extraordinary, or emergency nature related to such activities without regard to the provisions of law and regulations relating to the expenditure of Government funds. Amounts so expended may be accounted for solely by a certificate by the Secretary of Defense, and any such certificate shall be deemed a sufficient voucher for the amount certified.”.

SEC. 409. INTELLIGENCE COMMUNITY MEMBERSHIP OF THE OFFICE OF INTELLIGENCE AND ANALYSIS OF THE DEPARTMENT OF HOMELAND SECURITY.

Section 3(4) of the National Security Act of 1947 (50 U.S.C. § 401a) is amended in subparagraph (K), by:

- 1) striking “elements”;
- 2) striking “concerned with the analysis of intelligence information”; and,
- 3) inserting before “of the Department” the following: “Office of Intelligence and Analysis”.

SEC. 410. ACCOUNTS AND TRANSFER AUTHORITY FOR APPROPRIATIONS AND OTHER AMOUNTS FOR INTELLIGENCE ELEMENTS OF THE DEPARTMENT OF DEFENSE

(a) IN GENERAL. Chapter 21 of title 10, United States Code is amended by inserting after section 428 the following new section:

“§ 429. Appropriations for Defense intelligence elements: accounts for transfers; transfer authority

“(a) ACCOUNTS FOR APPROPRIATIONS FOR DEFENSE INTELLIGENCE ELEMENTS.-In addition to any other transfer authority available to the Department of Defense and notwithstanding relevant provisions of Section 1501 of title 31, United States Code, the Secretary of Defense may transfer appropriations of the Department of Defense which are available to the Department of Defense for intelligence, intelligence-related activities, and communications, to an account or accounts established by the Secretary of the Treasury for receipt of such transfers. Such an account may also receive transfers from the Director of National Intelligence, and transfers and reimbursements arising from transactions, as authorized by law, between a Defense intelligence

element and another entity. Appropriation balances in such an account may be transferred back to the account or accounts from which they originated as appropriation refunds.

“(b) AVAILABILITY OF APPROPRIATIONS.-Appropriations transferred pursuant to subsection (a) shall remain available for the same time period, and shall be available for the same purposes, as the appropriations from which transferred.

“(c) DEFENSE INTELLIGENCE ELEMENT DEFINED.- In this section, the term “Defense intelligence element” means any of the Department of Defense agencies, offices, and elements included within the definition of “intelligence community” under paragraph (4) of section 3 of the National Security Act of 1947 (50 U.S.C. 401a(4)).”.

(b) CLERICAL AMENDMENT.- The table of sections at the beginning of subchapter I of such chapter is amended by adding at the end the following new item:

“429. Appropriations for Defense intelligence elements: accounts for transfers; transfer authority.”.

**SEC. 411. ADDITIONAL AUTHORITIES FOR NATIONAL SECURITY AGENCY
SECURITY PERSONNEL.**

(a) AUTHORITY TO TRANSPORT APPREHENDED PERSONS.--Subsection (a) of section 11 of the National Security Agency Act of 1959 (50 USC 402 note) is amended:

(1) by striking paragraph (5);

(2) by renumbering paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively;

(3) by inserting after paragraph (1) a new paragraph (2):

“(2) Agency personnel designated by the Director under paragraph (1) may transport an individual apprehended under the authority of this section from the premises at which the

individual was apprehended, as described in subparagraph (A) or (B) of paragraph (1), for the purpose of transferring such individual to the custody of law enforcement officials. Such transportation may be provided only to make a transfer of custody at a location within 30 miles of the premises described in subparagraphs (A) and (B) of paragraph (1).”;

(b) CONFORMING AMENDMENT RELATING TO TORT LIABILITY.--Paragraph

(d)(1) of such section is amended—

(1) by replacing “; or” at the end of subparagraph (B) with “;”;

(2) by replacing “.” at the end of subparagraph (C) with “; or” and

(3) by adding at the end a new subparagraph (D):

“(D) transport an individual pursuant to subsection (a)(2).”

SECTIONAL ANALYSES

TITLE I--BUDGET AND PERSONNEL AUTHORIZATIONS

Section 101. Authorization of appropriations.

Section 101 lists the United States Government departments, agencies, and other elements for which the Act authorizes appropriations for intelligence and intelligence-related activities for fiscal year 2012.

Section 101(b) authorizes advance appropriations to be appropriated in FY2013 through FY2017 for the conduct of intelligence and intelligence-related activities as specified in the classified Schedule of Authorizations prepared to accompany the conference report on the bill XXX of the One Hundred Twelfth Congress.

Section 102. Classified schedule of authorizations.

Section 102 makes clear that the details of the amounts authorized to be appropriated for intelligence and intelligence-related activities covered under this title for fiscal year 2012 are contained in a classified Schedule of Authorizations. The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President.

Section 103. Personnel ceiling adjustments.

Section 103 authorizes the Director of National Intelligence (DNI) to exceed any existing personnel caps imposed by the Congress for Fiscal Year 2012 by as much as 5%. In the event the caps are exceeded, the DNI must notify the congressional intelligence committees after appropriate coordination within the Executive Branch. The provision also allows for contractor conversion and provides that those in student or trainee programs, reserve corps members or reemployed annuitants, detailees, joint duty participants, and those involved in long-term training will not count against any such caps.

In past years, the DNI supported a provision that would entirely remove end-strength ceilings for the Intelligence Community (IC). However, in recognition of congressional concerns related to this proposal, particularly those related to the size of the Office of the Director of National Intelligence (ODNI), Section 103 retains the personnel ceiling. Following an evaluation of the size of the ODNI and review of other issues related to the composition of the IC, it may be appropriate to seek relief from the personnel cap. It remains the long-term goal of the DNI to be able to manage the personnel budget of the IC without regard for any limitations such as caps on full-time equivalents (FTEs) or man-years, or any prescribed maximum number of employees. End-strength ceilings are inflexible, lead to increased use of contractors to perform necessary IC functions, and severely hinder the IC's joint duty and other programs.

Managing to budget promotes the most efficient allocation of resources and allows the DNI the maximum flexibility to carry out the missions of the IC as required.

Section 104. Intelligence Community Management Account.

Section 104 authorizes appropriations for the Intelligence Community Management Account (ICMA) of the DNI for fiscal year 2012.

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

Subsection (a) authorizes appropriations of \$592,213,000 for fiscal year 2012 for the activities of the ICMA of the DNI. Subsection (a) also authorizes funds identified for advanced research and development to remain available for two years.

Subsection (b) authorizes additional appropriations for the ICMA as specified in the classified Schedule of Authorizations and permits the additional funding amount to remain available through September 30, 2012, except for funds for research and development activities, which remain available through September 30, 2013.

TITLE II--CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Section 201. Authorization of appropriations.

Section 201 authorizes appropriations in the amount of \$513,700,000 for fiscal year 2012 for the Central Intelligence Agency Retirement and Disability Fund.

TITLE III--GENERAL INTELLIGENCE COMMUNITY MATTERS

Subtitle A--Personnel Matters

Section 301. Temporary appointment to fill vacancies in Presidentially-Appointed and Senate-Confirmed positions in the Office of the Director of National Intelligence.

Section 301 adds a new subsection (e) to section 103 of the National Security Act of 1947. This new subsection would permit the President to temporarily fill vacancies in offices in the ODNI that require Senate confirmation with an individual who serves in another element of the Intelligence Community. This provision is consistent with the recommendations of the National Commission on Terrorist Attacks Upon the United States (“the 9/11 Commission”), which noted that senior intelligence positions should be filled quickly and not left vacant for long periods of time.

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

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

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

Paragraph (1)(C) of this provision incorporates many of the aspects of the Vacancies Act, but rather than limiting temporary appointment to certain senior agency employees designated by the President, it permits the President to appoint an individual from certain senior level positions from any element of the IC, as opposed to just the ODNI.

Paragraph (2) limits the individuals that may serve on a temporary basis under Paragraph (1)(A) consistent with the limitations on vacancies set forth in the Vacancies Act.

Section 302. Non-reimbursable detail of other personnel.

This section amends Section 113A of the National Security Act of 1947 as amended by section 302 of the Intelligence Authorization Act for Fiscal Year 2010 (P.L. 111-186). As currently enacted, this section provides permanent authority for details on a non-reimbursable basis for periods not to exceed two years from any element of the government to the staff of an element of the Intelligence Community (IC) funded through the National Intelligence Program. Such details will be determined under terms jointly agreed to by the heads of the concerned departments or agencies, but the terms shall be no longer than two years. As originally enacted, section 113A was intended to provide flexibility for IC elements to receive support from other IC elements and other federal agencies on a non-reimbursable basis for Community-wide activities where both elements would benefit from the detail.

However, as enacted, Section 113A could be read in a way that constrains other statutory provisions authorizing reimbursable or non-reimbursable details longer than two years. See, e.g., Section 22 of the Central Intelligence Agency Act and Section 444 of Title 10 of the United States Code. These limitations were not contemplated by either the Executive Branch or the Congress when this provision was enacted.

This section revises Section 113A to clarify (1) that it only applies to non-reimbursable details and (2) that it does not limit any other source or authority for reimbursable or non-reimbursable details to include authority that permits details longer than two years.

Subtitle B—Technical Correction

Section 303. Technical correction to Executive Schedule.

Section 303 makes a technical correction to Level IV of the Executive Schedule to provide for inclusion of the Chief Information Officer of the Intelligence Community in the list of positions in Level IV, which includes chief information officers with comparable duties and responsibilities in other departments and agencies in the executive branch. The Chief Information Officer of the Intelligence Community is a position established in Section 103G of the National Security Act, added by section 303 of Public Law 108-487, the Intelligence Authorization Act for Fiscal Year 2005, and amended by section 404 of Public Law 111-259, the Intelligence Authorization Act for Fiscal Year 2010.

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

Subtitle A--Office of the Director of National Intelligence

Sec. 401. Aligning the publication of the National Counterintelligence Strategy with the policy and strategy of the Director of National Intelligence and modifying the frequency of updates and revisions to the National Counterintelligence Strategy.

This section amends the Counterintelligence Enhancement Act of 2002 to require that the National Counterintelligence Strategy be revised or updated at least every three years and to

align it with the policy and strategy of the DNI. It will bring the production of the National Counterintelligence Strategy into conformity with the standard set forth for executive agencies in Section 3 of the Government Performance Results Act of 1993 (5 U.S.C. Section 306(b)).

The current requirement to produce this multi-year Strategy on an annual basis is not an efficient or effective use of limited resources and does not enable consistent synchronicity with the strategic planning efforts of the DNI. This proposed amendment will ensure that the content of the Strategy aligns with the longer-term substantive policies and strategy of the DNI.

Sec 402. Application of certain financial reporting requirements to the Office of the Director of National Intelligence.

Section 402 delays the applicability to the DNI of the audited financial reporting requirements of 31 U.S.C. 3515. This grace period gives the DNI the necessary time to complete the design and implementation of policies and procedures, and training of personnel. The grace period also affords the service provider an opportunity to implement both system improvements as well as process changes to the financial management system currently supporting the ODNI. These combined efforts will yield financial statements that meet the prescribed legal and audit standards.

The FY2010 Intelligence Authorization Act directs the DNI to “develop a plan and schedule to achieve a full, unqualified audit of each element of the intelligence community not later than September 30, 2013.”). (Public Law 111-259, Section 369). This proposal aligns the statutory requirement for auditability with the plan for achieving auditability set forth in the Fiscal Year 2010 Intelligence Authorization Act.

Ordinarily, section 3515 requires certain Federal agencies, including the ODNI, to prepare and submit to the Congress and the Director of the Office of Management and Budget (OMB), not later than 1 March of each year, an audited financial statement for the preceding fiscal year. The Accountability of Tax Dollars Act of 2002, Public Law 107-289, amended 31 U.S.C. 3515, and gave the Director of OMB the authority to waive the audited financial reporting requirements for up to two fiscal years for any newly covered Executive agency. Section 3515 subsequently was amended to permit the Director of OMB to waive the reporting requirements for a covered agency if the budget authority for that agency did not exceed \$25 million in the given fiscal year and if the Director of OMB determined that there was an absence of risk associated with the agency’s operations. The Director of OMB cannot use this limited waiver authority to grant a grace period to the ODNI. Therefore, Section 402 would exempt the ODNI from the requirements of section 3515 for fiscal years 2010 through 2012.

The ODNI Comptroller staff to date has taken significant strides to address financial management issues. As an example, the ODNI issues its first ever Agency Financial Report for 2010, including the Financial Statements compiled for 2010. Section 402 will afford the ODNI and the service provider the time to take the steps necessary steps to enable the ODNI to generate audited financial statements that satisfy generally accepted accounting principles, applicable laws, and financial regulations.

Sec. 403. Repeal of certain reporting requirements.

This proposal represents the ODNI's efforts to reduce the burden these reporting requirements place on the intelligence community (IC) while ensuring that the Congress continues to receive the information it requires. Section 403 cancels outdated and duplicative statutory reporting requirements. It costs the IC more than a million dollars annually to prepare these recurring reporting requirements. The reduction of reporting requirements will assist in keeping staff and resources focused on more mission-oriented work and allow the IC to better address those items of current interest to Congress. Specific information regarding each reporting requirement is located in a separate document.

Subtitle B--Central Intelligence Agency

Sec. 404. Maintenance and disposition of Office of the Director of National Intelligence records by the Central Intelligence Agency.

This section adds a new section to the Central Intelligence Agency Act of 1949 (CIA Act) which authorizes the Central Intelligence Agency (CIA) to maintain and disposition records related to the administrative and business activities of the ODNI.

When the ODNI was first established, it requested that certain ODNI records related to ODNI administrative and business activities be maintained and dispositioned by the CIA on behalf of the ODNI, since the ODNI did not have the financial, administrative, and technical capabilities to do so at that time. This arrangement resulted in the co-location of information related to the ODNI's activities with information related to the CIA's activities and missions within the CIA's existing information systems.

This new section of the Central Intelligence Agency Act would provide the CIA with specific authority to maintain and disposition, on behalf of and at the direction of the ODNI, the information related to the administrative and business activities of the ODNI, notwithstanding any other provision of law (e.g., 5 U.S.C. 552a, 44 U.S.C. 3301 et seq.). This legislation would ensure that CIA and ODNI processes and procedures are legally compliant, notwithstanding any law to the contrary regarding the management of information in federal agencies.

Sec. 405. Foreign language proficiency requirements for Central Intelligence Agency officers.

Amending section 104A(g) of the National Security Act of 1947 (50 U.S.C. 403-4a(g)) will help to tie the need for foreign language skills to officers in specific occupations where language is most important, rather than to specific positions. This will eliminate the need for the Director of the Central Intelligence Agency (CIA) to approve waivers for promotions of officers in certain positions (e.g., Attorney; Human Resource Officer) who are assigned to positions in the Directorate of Intelligence or the National Clandestine Service – officers to whom this requirement was not intended to apply.

Amending section 611(b) of the Intelligence Authorization Act for Fiscal Year 2005 (Public Law 108-487; 50 U.S.C. 403-4a note) would modify the effective date of the provision of

law addressing foreign language proficiency for certain senior level positions in the CIA; it would take effect immediately upon promotion, rather than one year after the effective date of the amendment.

Amending Section 611(c) of the Intelligence Authorization Act for Fiscal Year 2005 (Public Law 108-487) will make technical changes needed to delete reference made to the “Directorate of Operations,” as this Directorate no longer exists within the CIA. It would replace this term with the currently-existing “National Clandestine Service.” This change would further clarify that the report submitted to Congress with respect to foreign language proficiency for certain senior level positions in the CIA would identify positions, categories of positions, or occupations, rather than just positions.

These changes brought about by this section would capture the CIA’s true needs as they relate to foreign language proficiency by placing an emphasis on skills proficiency specific to the needs of the Directorate of Intelligence or the National Clandestine Service. Additionally, these changes will give the Director of the CIA the flexibility to determine the level of proficiency and the combination of skills needed for an SIS level officer specific to mission needs and that officer’s particular occupation.

Sec. 406. Section 5(a)(1) of the Central Intelligence Agency Act of 1949.

Section 405 amends section 5(a)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(a)(1)) by striking a statutory reference to the authorities of the Director of the Central Intelligence Agency and Agency functions specified in section 104A of the National Security Act with a general reference to functions and activities of the Central Intelligence Agency as “authorized by law.” This amendment will avoid any ambiguity as to whether the CIA’s funds transfer authority in section 5(a)(1) of the CIA Act may be used to support the performance of other Agency functions otherwise authorized under law.

Subtitle C—Other Elements

Sec.407. Federal Bureau of Investigation participation in the Department of Justice leave bank.

This provision would allow employees of the Federal Bureau of Investigation (FBI) to participate in the Department of Justice’s Voluntary Leave Bank Program, which allows federal employees to donate to and to receive donations from a leave “bank” to cover absences necessitated by extraordinary medical conditions. While the law permits all other Department of Justice (DoJ) components to participate in DoJ’s leave bank, it does not currently allow participation by FBI employees, even though the FBI is a part of the Department of Justice.

While 5 U.S.C. Section 6372(c) allows excepted agencies such as the FBI to establish their own voluntary leave bank programs, it would not be cost effective to do so in this case. Allowing FBI employees to become part of the established DoJ leave bank program would promote efficiency and would have a positive effect on the morale of FBI employees.

Sec. 408. Expenditure of funds for confidential extraordinary, or emergency Intelligence or counterintelligence purposes.

This proposal would provide Department of Defense intelligence and counterintelligence elements funded through the National Intelligence Program with specific funds expenditure authority under Title 50 similar to that provided to the Secretary of Defense under Title 10, section 127 and to the Central Intelligence Agency under section 8(b) of the CIA Act of 1949. It would allow the Department to use funds available for intelligence and counterintelligence activities without regard to the provisions of law and regulations relating to the expenditure of Government funds in instances where it is imperative not to disclose the methods for intelligence collection or the sources of intelligence information. Such expenditures would be accounted for solely by a certificate by the Secretary of Defense. While this proposal would be available to all appropriate intelligence and counterintelligence activities within the Department, the recent experience of the Defense Intelligence Agency highlights the need for this authority.

The Defense Intelligence Agency (DIA) is currently allocated spending authority under 10 U.S.C. 127 (Extraordinary and Emergency Expenses/EEE) to expend funds for confidential military purposes, including critical intelligence gathering functions. Two inter-related factors have degraded DIA's progress in using EEE authority more effectively. DIA's mission requirements in human intelligence collection, counterintelligence, and in management of the Defense Attaché System have increased significantly since 2001. Additionally, the increased use of the Secretary's limited EEE authority by disparate DoD components isolates the funds from use for emergent intelligence requirements, including those in DIA's substantial support to contingency operations.

As a result of these factors, the DIA allocation of EEE authority has consequently lagged behind the operational tempo required in the satisfaction of its strategic collection and combat support responsibilities. These activities and the Defense Attaché program are core DIA missions, prescribed both in the National Security Act of 1947 and Executive Order 12333, and should not compete against overall Department of Defense EEE expenditures.

Sec. 409. Intelligence Community membership of the Office of Intelligence and Analysis of the Department of Homeland Security.

This legislative proposal appropriately recognizes the distinct roles and authorities of DHS's Office of Intelligence and Analysis (I&A). The proposal adds a specific reference to I&A to the definition of "intelligence community" in the National Security Act of 1947, as amended. It also aligns the statutory definition of the IC with the relevant definition in Executive Order 12333, as amended, which separately delineates, "The Office of Intelligence and Analysis of the Department of Homeland Security". The proposal fits with the recently enacted change to the statute that included the U.S. Coast Guard's Office of Intelligence within section 3(4)(H) of the statute, along with the intelligence elements of the other armed services and eliminated the reference to that office in section 3(4)(K).

Sec. 410. Appropriations for Defense Intelligence elements.

This section authorizes the Secretary of Defense to transfer Defense appropriations into an account or accounts established by the Department of the Treasury for receipt of such funds. Funds from this account or accounts may receive transfers and reimbursement from transactions between the Defense intelligence elements and other entities, and the Director of National Intelligence may also transfer funds into the account.

The Defense Financial Accounting Service (DFAS) maintains defense appropriations for the Defense intelligence elements. The DFAS however, cannot provide daily balances, making it difficult to administer funding. Authorization for the Secretary of Defense to transfer Defense appropriations to Treasury accounts, from DFAS, will enable more efficient administration of defense funding.

Moreover, moving such funds to Treasury from DFAS is required by the FY10 Defense Appropriations Bill.

Placement of the new language in chapter 21 of title 10 is consistent with similar fiscal authority granted to the Secretary of Defense related to the management of Defense intelligence elements. Section 429 would be an addition to Subchapter I and compares to existing sections 421, 422, and 423 regarding authority to expend funds associated with Defense intelligence activities. Paragraph (a) is a clerical amendment to add the title of the new section to the table of sections at the beginning of chapter 21.

Paragraph (b) of the new legislation expressly preserves limitations on time and purpose for the appropriations placed into these accounts. Transfer of funds to the Treasury accounts will not change how these funds may be used to pay authorized obligations of the respective element from an obligation that occurs within the allotted period of availability.

Paragraph (c) of the draft section 429 identifies the Defense intelligence elements that are covered by this new section.

Sec. 411. Additional Authorities for National Security Agency Security Personnel.

Section 410 amends section 11 of the National Security Agency Act of 1959 to authorize National Security Agency (NSA) security personnel to transport apprehended individuals from NSA premises to law enforcement officials.

Under current law, when NSA security personnel apprehend an individual, they must wait with the individual until law enforcement arrives to complete the transfer of custody. This arrangement can tie up valuable security resources for several hours while NSA security personnel wait, frequently with the apprehended individual in a security vehicle, for law enforcement to arrive and complete the transfer. For example, from 2004 to 2009, on 448 occasions, the apprehension of an individual engaged NSA security and transportation resources for over two hours. NSA has no detention facility, and the current scenario increases the risk to NSA security personnel and the likelihood that a medical event might occur.

So that the transfer of custody to local law enforcement can be performed in a timely fashion, Section 410 permits NSA security personnel to transport apprehended individuals to local law enforcement within 30 miles of NSA premises, thereby relieving NSA security personnel of having to wait for the arrival of law enforcement.

Legislation is necessary not only because section 11 currently does not authorize such a transportation activity, but also because the authority cannot be delegated from other law enforcement entities. For example, in a 3 November 2006 memorandum, the State of Maryland Office of the Attorney General determined that with respect to the Maryland State Police (MSP), “MSP has no authority under Maryland law to delegate any law enforcement power to any entity” – including NSA’s security personnel.

NSA intends to use Section 410 authority sparingly--that is, in those instances where local law enforcement cannot respond within a reasonable time. Ordinarily, a timely law enforcement response to an NSA transfer request requires between 45 and 60 minutes, and a round trip by NSA security personnel to a local law enforcement facility ordinarily would require between 30 and 60 minutes. However, if law enforcement would be unable to respond for more than two or three hours, then Section 410 would enable NSA to consider implementing a more timely custody transfer. Because NSA enjoys a good working relationship with local law enforcement, there is no reason to believe that the law enforcement would “drag its feet” and cause NSA to use the Section 410 more often than is necessary. Instead, having the option to transport apprehended individuals to local enforcement enables NSA to minimize the risk to the Government and address safety concerns, while permitting NSA to apply its security resources to other ongoing security responsibilities.

NSA has considered the use of other law enforcement resources; however, Section 410 is the more responsive and economic solution. First, NSA considered contracting with other law enforcement organizations to provide transportation. To be effective, such an arrangement would require 24/7 service, making it a prohibitively costly alternative. Second, although Maryland State Police (MSP) patrol 500 feet beyond the NSA perimeter, that service is limited to antiterrorism and force protection (ATFP) functions. The transportation of individuals ordinarily apprehended by NSA security personnel falls outside the scope of MSP’s ATFP responsibilities to NSA, thereby foreclosing MSP as a transportation option. In the final analysis, Section 410 is the more responsive and economical solution.

NSA security personnel already operate under a well-established regime of administrative controls and management oversight, and NSA expects to use the new Section 410 authority under similar restrictions. NSA security personnel already are trained at the Federal Law Enforcement Training Center, and they also have emergency medical service (EMS) training.

NSA anticipates relying upon the same authorities to maintain custody of an apprehended individual during transport that NSA uses to detain an individual while awaiting a response from local law enforcement. In each situation, NSA security personnel are permitted to use only the minimal force necessary to perform their duties in accordance with governing laws and applicable agency regulations.

Similarly, if a medical event were to occur, NSA security personnel would provide medical assistance, using standard EMS procedures, to any individual within their custody. Were the individual to be hospitalized, NSA security personnel would accompany the individual and coordinate custody transfer to the local jurisdiction at the health care facility.

Moreover, Section 410 includes an amendment to the NSA security personnel section 11(d) tort liability shield so that section 11(d) explicitly includes the transportation activity described herein.

Under no circumstances would NSA security personnel transport an individual without prior consent from the accepting jurisdiction. In the past, local jurisdictions occasionally have refused to accept custody of an individual apprehended on an active warrant, primarily because the nature of the offense did not pose a significant threat to the general public. In those instances, NSA released the individual from custody, notified the individual of the warrant status, and advised the individual to contact the issuing organization for resolution.

NSA security personnel may cross jurisdictional lines to transfer custody of an apprehended individual in a timely and efficient manner, but only in jurisdictions – primarily the State of Maryland – where local law enforcement officers are not so prohibited. In those jurisdictions where law enforcement officers are not authorized to transport offenders over local jurisdictional lines, e.g., the State of Texas, NSA would transfer custody to the law enforcement authorities within those jurisdictions.