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AUTHORIZING APPROPRIATIONS FOR FISCAL YEAR 2000 FOR THE INTELLIGENCE ACTIVITIES OF THE UNITED STATES GOVERNMENT AND THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM AND FOR OTHER PURPOSES

MAY 11, 1999.—Ordered to be printed

Mr. SHELBY, from the Select Committee on Intelligence,
submitted the following

REPORT

[To accompany S. 1009]

The Select Committee on Intelligence, having considered the original bill (S. 1009), which authorizes appropriations for fiscal year 2000 for intelligence-related activities and programs, the Community Management Account, the Central Intelligence Agency Retirement and Disability System, and accomplishes other purposes, reports favorably thereon and recommends that the bill do pass.

PURPOSE OF THE BILL

This bill will:

- (1) Authorize appropriations for fiscal year 2000 for (a) U.S. intelligence activities and programs; (b) the Central Intelligence Agency Retirement and Disability System; and (c) the Community Management Account of the Director of Central Intelligence;
- (2) Authorize the personnel ceilings as of September 30, 2000, for intelligence activities of the U.S. Government and for the Community Management Account of the Director of Central Intelligence;
- (3) Authorize the Director of Central Intelligence, with Office of Management and Budget approval, to exceed the personnel ceilings by up to two percent;
- (4) Extend for one additional year the President's authority to delay the imposition of proliferation-related sanctions when

necessary to protect an intelligence source or method or an ongoing criminal investigation;

(5) Provide for appropriate U.S. Government access to computers and computer data of Executive branch employees with access to classified information;

(6) Allow the naturalization of certain applicants for citizenship who have made important contributions to United States intelligence;

(7) Expand the CIA's Central Services Program and clarify the authorities for the Central Services Working Capital Fund;

(8) Extend the Director of Central Intelligence's authority under the Central Intelligence Agency Voluntary Separation Act of 1993 to offer separation pay to employees;

(9) Impose a moratorium on, and require a net assessment of, the Department of Energy's Foreign Visitor Program;

(10) Expand the definition of "agent of a foreign power" for foreign counterintelligence investigations to include a person who assumes a false or fraudulent identity for or on behalf of a foreign power; and

(11) Require the FBI to consult with Executive departments and agencies concerning espionage cases at an early stage of the investigation.

CLASSIFIED SUPPLEMENT TO THE COMMITTEE REPORT

The classified nature of U.S. intelligence activities prevents the Committee from disclosing the details of its budgetary recommendations in this Report.

The Committee has prepared a classified supplement to this Report, which contains (a) the classified annex to this Report and (b) the classified schedule of authorizations, which is incorporated by reference in the Act and has the same legal status as public law. The classified annex to this Report explains the full scope and intent of the Committee's action as set forth in the classified schedule of authorizations. The classified annex has the same status as any Senate Report.

The classified supplement to the Committee Report is available for review by any Member of the Senate, subject to the provisions of Senate Resolution 400 of the 94th Congress.

The classified supplement is made available to the Committees on Appropriations of the Senate and the House of Representatives and to the President. The President shall provide for appropriate distribution within the Executive branch.

SCOPE OF COMMITTEE REVIEW

The Committee conducted a detailed review of the fiscal year 2000 budget requests for the National Foreign Intelligence Program (NFIP) of the Director of Central Intelligence; the Joint Military Intelligence Program (JMIP) of the Deputy Secretary of Defense; and the Tactical Intelligence and Related Activities (TIARA) of the military services. The Committee's review entailed briefings by and hearings with senior intelligence officials, staff briefings, review of budget justification materials, and responses provided by the Intelligence Community to specific questions posed by the Committee. The Committee monitors compliance with statutory report-

ing requirements. The Committee scrutinizes each such report and takes appropriate action.

In accordance with a Memorandum of Agreement with the Senate Armed Services Committee (SASC), the Committee is including its recommendations on both JMIP and TIARA in its public report and classified annex. The Committee has agreed that JMIP and TIARA issues will continue to be authorized in the defense authorization bill. The SASC has also agreed to involve the Committee staff in defense authorization conference meetings and to provide the Chairman and Vice Chairman the opportunity to consult with the SASC Chairman and Ranking Member before JMIP or TIARA issue is finally closed out in conference in a manner with which they disagree. The Committee looks forward to continuing its productive relationship with the SASC on all issues of mutual concern.

In addition to its annual review of the Administrations's budget request, the Committee performs continuing oversight of various intelligence activities and programs. The Committee has a dedicated Audit Staff that conducts in depth audits and reviews of specific programs and activities identified by the Committee as needing a thorough and concentrated scrutiny. The Audit Staff also provides significant support to the Committee's review of a number of administrative and operational issues relating to the agencies of the Intelligence Community. Most recently, the Audit Staff reviewed CIA's contracting procedures and participated in the Committee's China investigation by conducting a review of the Intelligence Community's collection and analysis capabilities against the People's Republic of China. The staff is currently conducting a review of the authorities and administrative operations of the National Imagery and Mapping Agency. These inquiries frequently lead to Committee action with respect to the authorities, applicable laws, and budget of the activity or program concerned.

The Committee also established a Technical Advisory Group (TAG) in 1997. The TAG is an independent panel of twenty-five experts drawn from the private sector. Each member of the TAG was selected by the Committee for their extensive expertise in a particular discipline. The purpose of the TAG is to provide the Committee an objective and comprehensive evaluation of various intelligence programs and activities. Many of the TAG members have never worked within the Intelligence Community and therefore bring a fresh and independent perspective to intelligence programs and activities. The results of these examinations and the TAG will be discussed later in its report.

COMMITTEE RECOMMENDATIONS

The vast majority of the Committee's specific recommendations relating to the Administration's budget request for intelligence and intelligence-related activities are classified and are contained in the classified schedule of authorizations and the classified annex. The Committee is committed, however, to making its concerns and priorities for intelligence programs and activities public to the greatest extent possible consistent with the nation's security. Therefore, the Committee has included in this report information that is unclassified.

NATIONAL FOREIGN INTELLIGENCE PROGRAM

Customer satisfaction with intelligence collection and analysis and production

The Committee is encouraged by the progress of the Deputy Director of Central Intelligence for Community Management (DDCI/CM) and the Assistant Directors of Central Intelligence (ADCIs) for Collection and Analysis and Production in defining the Community's Strategic Direction and looks forward to further refinements in those strategies. Nevertheless, the Committee is recommending that several additional actions be taken to further enhance these ongoing efforts.

The Committee recommends that the DCI direct the ADCIs for Collection and Analysis and Production, working with the Intelligence Community's collection and analysis and production managers, to conduct a comprehensive annual review or customer satisfaction. Each review should: (a) evaluate the performance of the Community's collection and analysis and production programs in responding to consumer requirements; (b) address the Community's ability to fill key gaps in collection and analysis; (c) describe significant successes and failures of the collection and production communities in responding to consumer requirements; (d) review the allocation of resources across the collection and production communities to evaluate whether consumer requirements are being met; and, (e) make recommendations for improvement. The DCI should provide the ADCIs with the means necessary to conduct these assessments, and provide written reports of these reviews to the Congressional intelligence committees. Further, the DCI should direct all participating agencies to provide information as required by the ADCIs for this purpose.

The DCI should provide the first of these written reports to the Congress no later than September 30, 2000.

Future imagery architecture

The Intelligence Community is proceeding with the Future Imagery Architecture (FIA) to modernize imagery collection to meet the challenges of the next century. The National Imagery and Mapping Agency (NIMA) has developed a comprehensive set of requirements and challenges the National Reconnaissance Office's system will have to meet. The FIA focuses on collection and pays relatively less attention to the tasking, processing, exploitation, and dissemination functions necessary to a coherent and comprehensive end-to-end architecture. The Intelligence Community has not developed the FIA's latter features or analyzed the cost.

The classified annex of the Intelligence Authorization Act for Fiscal Year 1999 imposed a cap on FIA. Congress believed that the measure would ensure that other aspects of the imagery collection cycle as well as other activities within the National Foreign Intelligence Program could be funded at fiscally responsible levels and that the Director of Central Intelligence had program flexibility to meet future intelligence challenges. The FIA contract is currently being negotiated. It is imperative that the cap remain in place until the contractors can define what requirements can be met within the cap and whether the Intelligence Community may need addi-

tional resources. Accordingly, the Committee, sustains the cap on the Future Imagery Architecture as it is in the Classified Annex.

Furthermore, the Committee strongly urges the National Imagery and Mapping Agency to identify those imagery requirements that can be met by commercial providers so that funds can be targeted for the purchase of commercial imagery.

JOINT MILITARY INTELLIGENCE PROGRAM

National Imagery and Mapping Agency

The Committee believes the National Imagery and Mapping Agency (NIMA) has made much progress since 1996 when NIMA was authorized in the National Defense Authorization Act For Fiscal Year 1997. The Director of NIMA and his staff deserve credit for their dedicated efforts. While great strides have been made toward the goal of seamless provision of imagery, imagery intelligence and geospatial information to policy makers and war fighters, much remains to be accomplished.

One of NIMA's objectives has been greater use of the commercial sector for production of geospatial information. The Committee supports NIMA's efforts but believes the transition to greater reliance on the private sector can be accelerated. To help achieve this goal, the Committee recommends a reduction in Geospatial Production of \$75 million and an increase in acquisition of commercially-provided geospatial data of \$25 million.

In 1998, NIMA moved into new facilities in St. Louis, Missouri. The rationale for this move was cost savings. The previous facility was much older and more expensive. Budget projections, however, do not account for the savings the Committee believes can be attained. Therefore, the Committee recommends a reduction in Mission Support of \$25 million.

Joint SIGINT avionics family

Last year, in an effort to expedite delivery of this capability, the Committee reviewed an accelerated production effort. Based on briefings from the Air Force and the contractors, the Committee found that the delivery schedule could be accelerated up to three years in the case of the U-2, and two years for other platforms, simply by requiring that platforms be equipped with JSAF components at their next periodic depot maintenance (PDM) cycle following a JSAF production decision. No additional program risks are involved in this acceleration.

Under the plan submitted to Congress last year, both low and high band subsystems were scheduled to begin delivery to the Armed Services in fiscal year 2001 and conclude delivery in fiscal year 2007. During that period, some aircraft would complete a PDM cycle and not have the new components installed even though the components would have been readily available. Maintaining the older systems when they could be replaced would increase support costs. In an effort to deliver capability sooner and save \$44 million in program costs, the Committee recommended an accelerated delivery schedule consistent with platform PDM schedules.

Unfortunately, since the Committee made those recommendations last year, there have been cost overruns and schedule slip-

pages based on poor performance by the contractors and by some unforeseen technical difficulties. Under the current development schedule, barring any further problems with the contractors' performance, the earliest that a procurement decision can be made in May 2001.

Recent contractor performance, however, leads the Committee to believe that this schedule is now optimistic. Barring further delays in system development, a May 2001 decision to go forward with production potentially pushes delivery of the first production units into fiscal year 2003 and perhaps beyond.

As a result of the JSAF program cost growth, the Administration's budget request is underfunded by a minimum of \$12 million in fiscal year 2000. The Committee recommends an authorization for appropriations of an additional \$12 million in Air Force RDT&E for JSAF Advanced Sensors.

Global Hawk unmanned aerial vehicle

The Global Hawk is an unmanned aerial vehicle (UAV) and is the air vehicle component of the High Altitude Endurance Unmanned Aerial Vehicle (HAE UAV) System. The HAE UAV System is comprised of two components, the Global Hawk air vehicle and the ground control station, or Common Ground Segment (CGS).

The program began as an Advanced Concept Technology Demonstration (ACTD), and, in 1998, the program was transferred to the Air Force from the Defense Advanced Research Projects Agency (DARPA). The Military Utility Assessment (MUA) of Global Hawk was to begin in April 1999. Unfortunately, the MU test vehicle, known as Air Vehicle Number Two, crashed in early April 1999. Resultant program delays, combined with unforeseen manufacturing difficulties experienced by the contractor, have caused substantial cost growth in the program. The following charts compare the program as contained in the Administration's budget submission with current program projections.

[In millions of dollars]

	Fiscal year—					
	2000	2001	2002	2003	2004	2005
President's Budget	48	65	58	96	98	100
Estimated Shortfall	31	58	67	54	110	156
Estimated Requirement	79	123	125	150	208	256
Air Vehicles	0	1	1	1	2	2
Common Ground Segment			1		1	

The Committee strongly supports giving unmanned aerial vehicles a greater role in performing many intelligence, surveillance and reconnaissance missions, as well as, early warning missions, airborne communications relay missions and, potentially, boost phase intercept missions in support of Ballistic Missile Defense. The Committee believes that the original Global Hawk design for the Advanced Concept Technology Demonstration (ACTD) was too limited.

The goal of the ACTD was delivery of an air vehicle with sensor payload for \$10 million, while at the same time delivering an air vehicle capable of 40-hour flight duration. This was a worthy goal for fiscal reasons, but was potentially shortsighted for reasons of

military utility. The program cost constraints limited the size of the air vehicle, which in turn limited the size of the payload.

For example, weight and payload capabilities of the current Global Hawk design rule out the potential for configuration of one air vehicle for collection of both Signals Intelligence (SIGINT) and Synthetic Aperture Radar (SAR) data during the same mission, as well as ruling out growth to other missions such as those currently performed by the Joint Surveillance Target Acquisition Radar System (Joint STARS), the Airborne Warning and Control System (AWACS), or the RC-135 Rivet Joint, Combat Sent and Cobra Ball missions.

In an effort to prevent further delays and additional cost overruns, the Committee recommend an authorization for appropriations of an additional \$31 million for the Global Hawk program.

U-2 polarimetric kit

The Senior Year Electro-optical Reconnaissance System (SYERS) began service with the U-2 in 1988. Since that time, the Air Force and Congress have supported several upgrades to SYERS. In an effort to counter the growing threat of camouflage and denial and deception practices, the Committee recommends an authorization for appropriations of \$9 million to acquire, field, and test a polarimetric upgrade kit on a SYERS system.

Outrider tactical unmanned aerial vehicle

In 1999, the Army restructured its tactical UAV acquisition program. As a result, the \$45.8 million requested in procurement funds for fiscal year 2000 cannot be obligated. The funds, however, are required in RDT&E for continuation of source selection efforts. The Committee recommends that \$45.8 million requested for procurement be authorized for appropriations in RDT&E.

Dark Star unmanned aerial vehicle termination

The Department of Defense has terminated the Dark Star UAV program. The \$6 million requested for fiscal year 2000 is no longer needed. The Committee recommends a reduction in the authorization for appropriations for Dark Star of \$6 million.

RC-135 Rivet Joint quick reaction capabilities

As a result of delays in the JSAF program and changes in the threat, Quick Reaction Capabilities modifications to the RC-135 Rivet Joint fleet are underfunded by \$12 million in fiscal year 2000. The Committee recommends an authorization for appropriations of an additional \$12 million to address Quick Reaction Capability shortfalls in Fiscal Year 2000.

Rivet Joint theater airborne warning system

The Committee has supported development and fielding of a theatre airborne warning system (TAWS) for the RC-135 Rivet Joint fleet to detect and track the launch of tactical ballistic missiles. The Committee recommends an authorization for appropriations of \$17 million to continue this effort.

Gulf States initiative

The Committee is concerned by the growing threat posed to the United States both domestically and internationally by transnational threats. Transnational threats include, but are not limited to, the following: terrorism, narcotics trafficking, organized crime and the proliferation of chemical, biological and nuclear weapons or agents. The Committee believes that a concerted effort on the part of federal, state and local entities is required to address transnational threats.

The model U.S. response to transnational threats can be found in the Gulf States Initiative (GSI), which is a part of the Defense Intelligence Special Technologies Program (DISTP) within the Joint Military Intelligence Program (JMIP). The GSI was established by congressional direction in fiscal year 1992. Formerly known as the Gulf States Counterdrug Initiative, GSI formalized Defense Department support to Alabama, Mississippi, and Louisiana in the effort to combat narcotics trafficking. Georgia was added to GSI in fiscal year 1997.

One of the critical features of GSI has been the establishment of state-run command, control, communications, and computer (C4) capabilities that have facilitated the flow of information from federal entities to state and local law enforcement agencies (LEA). Based upon the success of GSI, Congress directed that the activities of GSI be broadened to include counter-terrorism. The Committee believes that GSI can be expanded beyond its traditional focus on combating narcotics trafficking and its more recent involvement in counter-terrorism to form the "backbone" of a national capability to combat the spectrum of transnational threats. Therefore, the Committee recommends an authorization for appropriations of an additional \$15 million in fiscal year 2000 to expand the Gulf States Initiative.

DEPARTMENT OF ENERGY INTELLIGENCE PROGRAMS

Over the past nine years, the Committee repeatedly has highlighted its deep concern about the adequacy of the Department of Energy's (DOE) Counterintelligence Program and the national security impact of the DOE's wide-ranging programs, including its Foreign Visitors Program. During that time, the Committee has directed that a number of assessments of the DOE's counterintelligence practices be conducted. Each has reinforced the Committee's view that the DOE's counterintelligence program is riddled with systemic weaknesses.

Beginning in 1990, the Committee has matched its concerns with recommended increases in the size and effectiveness of DOE's counterintelligence program. Specifically, the Committee increased resources in this area in 1991, 1992, 1995, 1997, 1998, and 1999. This year, the Committee, in its markup of the Administration's Fiscal Year 2000 budget request, has recommended that spending for cyber counterintelligence be increased by \$30.0 million. These additional resources would allow the DOE to install computer intrusion detection devices and monitor e-mail at virtually all of its facilities. The absence of this capability today is a counterintelligence weakness.

The Committee is encouraged by the steps now being taken by the DOE to address its counterintelligence programs. Nevertheless, the Committee's longstanding fears have been confirmed in recent months.

While the Foreign Visitors Program incurs risks, it produces real benefits. To the Committee's knowledge, however, there has been no assessment that would provide policymakers with the facts necessary to judge the overall efficacy of the Visitor's Program.

Section 504 of the Bill therefore requires a net assessment of the Foreign Visitors Program. The Committee intends that the Director of Central Intelligence and the Director of the Federal Bureau of Investigation appoint an independent panel of experts, similar to that which was appointed to assess the Intelligence Community's performance on the 1998 Indian Nuclear Tests, to perform a net assessment analysis of the DOE's Foreign Visitors Program. In carrying out its assessment, the panel should work in cooperation with the President's Foreign Intelligence Advisory Board (PFIAB). To the extent feasible, such report shall be unclassified and made available to the public. Such report shall be supplemented as necessary by a classified report or annex, which shall be provided separately to the President and the congressional intelligence committees.

In the interim, the Committee believes that we must ensure the integrity of the U.S. National Laboratories and believes that a moratorium on the Foreign Visitors Program must be imposed at certain facilities until the Department fully implements a comprehensive, fully effective, and sustained counterintelligence program. Accordingly, Title V of the Authorization Act for Fiscal Year 2000 also establishes a moratorium on the Department of Energy's Foreign Visitors Program and requires background checks on all foreign visitors to national laboratories. The moratorium applies only to individuals from countries on the DOE's sensitive country list. The term "background checks" is intended to mean the consultation of all available, appropriate, and relevant intelligence community and law enforcement indices and data bases.

COUNTERINTELLIGENCE

The Committee understands that polygraphing is employed as a tool by the CIA, FBI, and DOE for counterintelligence purposes. Polygraphing has been described as a "useful, if unreliable" investigative tool. Given the potential unreliability of the polygraph system, the Committee believes that alternatives to the polygraph should be explored. The Committee understands that alternatives to polygraphing exist and have been explored by several agencies, including the CIA and the FBI.

Therefore, the Director of Central Intelligence and the Director of the Federal Bureau of Investigation jointly shall conduct an assessment of alternative technologies to the polygraph for use in counterintelligence programs. The DCI and Director of the FBI shall report their findings to the Committee not later than 90 days after the enactment of this Bill. The report should include the three most viable alternative technologies, along with detailed cost projections for 25, 50, and 100 examinations per year. The report also should include a brief description of the contribution each

technology might make over and above continued employment of polygraph procedures.

TECHNICAL ADVISORY GROUP (TAG)

In 1997, the Committee empaneled a Technical Advisory Group (TAG) composed of scientists, former senior military officers, and industry leaders to review various complex systems engineering efforts within the Intelligence Community (IC); the task organization of components of the IC to accomplish their missions, and myriad other highly technical issues designated by the Committee for review. During the first session of the 106th Congress, the TAG was asked to review U.S. capabilities with regard to measurements and signatures intelligence (MASINT) and the future of U.S. imagery intelligence (IMINT).

The collection of MASINT depends upon a wide range of technologies and phenomena. It includes detection of nuclear, chemical, and biological effluvia, images within the electromagnetic radiation spectrum, not visible to the human eye, and processing and exploitation of radar phase history data collected by synthetic aperture radar (SAR). The MASINT TAG was asked to study both the IC organizational structure for MASINT issues as well as the technologies themselves. The IMINT TAG reviewed the Future Imagery Architecture, the requirements underpinning the architecture, and our tasking, processing, exploitation, and dissemination (TPED) capabilities.

Both groups reported their findings and recommendations to the Committee on April 21, 1999. Most of their findings and recommendations are classified and are addressed in the Classified Annex accompanying this Report.

ENCRYPTION

The Committee believes that export restrictions on encryption are necessary to protect our national security. Export restrictions on encryption and other telecommunications products are essential to the IC's signals intelligence mission. Signals intelligence assists the national and military policymaking customer by providing information on foreign governments, militaries, and nonstate actors. SIGINT also is instrumental in protecting our citizens and military from military actions, terrorist attacks, the proliferation of weapons of mass destruction, narcotics trafficking, and other threats to our national security.

Over the past four years, the Administration has significantly loosened restrictions on the export of encryption. Nevertheless, legislation has been introduced in Congress that would further relax restrictions on encryption exports. The Committee believes further precipitous and inappropriate loosening of encryption export restrictions may severely damage the Intelligence Community's ability to perform its SIGINT mission. Therefore, the Committee intends to look very closely at any legislation regarding encryption export policy.

ADMINISTRATIVE INSPECTORS GENERAL

The Committee has been concerned for a number of years about the capabilities and independence of the administrative Inspectors General within the Intelligence Community (IC). The administrative Inspectors General within the IC include those at the National Reconnaissance Office (NRO), the National Security Agency (NSA), the National Imagery and Mapping Agency (NIMA), and the Defense Intelligence Agency (DIA). The classified annex accompanying the Conference Report on the Intelligence Authorization Act for Fiscal Year 1998 requested that the quality control review being conducted by the statutory Inspectors General from the CIA and the Department of Defense (DoD) include recommendations for improving the authority and effectiveness of the NRO Office of Inspector General (IG).

The results of the CIA/DoD quality control review of the NRO IG were delivered to the Committee in January 1999. The report makes several recommendations relating to the NRO IG that this Committee believes should apply to all administrative IGs within the Intelligence Community. These recommendations include: a separate budget line item and personnel authorization for the IG; sole authority, within applicable laws and regulations, for the IG to manage its authorized staff and appropriate funds; and, the ability to obtain legal services from the appropriate agency General Counsel, the DoD or CIA Offices of Inspectors General, or to employ his or her own counsel.

The Committee understands that the NRO is attempting to implement the above recommendations. However, the NRO's lack of its own personnel system results in a situation where a 1995 Memorandum of Understanding (MOU) between the CIA and NRO stipulates that NRO IG employees must be hired on staff reserve appointments that equate to temporary five year contracts. Also, the MOU does not clearly state the extent of the IG's authority to promote his or her staff. These limitations have inhibited the NRO IG's ability to recruit and retain qualified personnel and threaten the Office's independence and effectiveness. Therefore, the Committee recommends that the DCI ensure that the NRO Director and CIA Executive Director work together to revise the 1995 MOU to allow the NRO IG to establish, manage, and administer his or her own career service.

The Committee also recommends that the Directors of NSA, NIMA, and DIA take the appropriate steps to create a separate budget line item and personnel authorization for their respective administrative IG offices, and ensure that their IGs have all the authorities required to independently manage these resources. These authorities should include the ability to hire and retain appropriately skilled personnel, and the option to retain independent legal counsel. The Committee requests that the Directors of the NRO, NSA, NIMA, and DIA provide a written response on the status of these initiatives by no later than July 31, 1999.

The Committee is also concerned about its insight into the administrative and operational activities of the administrative IGs. In order to improve its oversight of these offices, the Committee directs that the Inspectors General from the NRO, NIMA, NSA, and

DIA shall provide the intelligence committees of both Houses with an annual report, in conjunction with, but separate from the Congressional Budget Justification, that details the fiscal and personnel resources requested, and the plan for their use. This report also should include the programs and activities scheduled for review during the fiscal year, comments on the office's ability to hire and retain qualified personnel, and any other concerns relating to the independence and effectiveness of the IG's office.

SECTION-BY-SECTION ANALYSIS AND EXPLANATION

TITLE I—INTELLIGENCE ACTIVITIES

Sec. 101. Authorization of appropriations

Section 101 lists departments, agencies, and other elements of the U.S. Government for whose intelligence and intelligence-related activities the Act authorized appropriations for fiscal year 2000.

Sec. 102. Classified schedule of authorizations

Section 102 makes clear that the details of the amounts authorized to be appropriated for intelligence and intelligence-related activities and personnel ceilings for the entities listed in section 101 for fiscal year 2000 are contained in a classified Schedule of Authorizations. The classified Schedule of Authorizations is incorporated into the Act by this section.

Sec. 103. Personnel ceiling adjustments

Section 103 authorizes the Director of Central Intelligence, with the approval of the Director of the Office of Management and Budget, in fiscal year 2000 to exceed the personnel ceilings applicable to the components of the Intelligence Community under section 102 by an amount not to exceed 2 percent of the total of the ceilings applicable under section 102. The Director may exercise this authority only when necessary to the performance of important intelligence functions or to the maintenance of a stable personnel force, and any exercise of this authority must be reported to the two congressional intelligence committees.

Sec. 104. Community Management Account

Section 104 provides details concerning the amount and composition of the Community Management Account (CMA) of the Director of Central Intelligence.

Subsection (a) authorizes appropriations in the amount of \$171,672,000 for fiscal year 2000 for the staffing and administration of various components under the CMA.

Subsection (b) authorizes a total of 348 full-time personnel for elements within the CMA for fiscal year 2000 and provides that such personnel may be permanent employees of the CMA element or detailed from other elements of the U.S. Government.

Subsection (c) explicitly authorizes the classified portion of the CMA.

Subsection (d) requires that personnel be detailed to the Community Management staff on a reimbursable basis, with certain exceptions.

Subsection (e) authorizes \$27,000,000 of the amount authorized for the CMA under subsection (a) to be made available for the National Drug Intelligence Center (NDIC) in Johnstown, Pennsylvania. Subsection (e) requires the Director of Central Intelligence to transfer the \$27,000,000 to the Department of Justice to be used for NDIC activities under the authority of the Attorney General and subject to section 103(d)(1) of the National Security Act.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND
DISABILITY SYSTEM

Sec. 201. Authorization of appropriations

Section 201 authorizes appropriations in the amount of \$209,100,000 for fiscal year 2000 for the Central Intelligence Agency Retirement and Disability Fund.

TITLE III—GENERAL PROVISIONS

Sec. 301. Increase in employee compensation and benefits authorized by law

Section 301 provides that appropriations authorized by the conference reports for salary, pay, retirement, and other benefits for federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

Sec. 302. Restriction on conduct of intelligence activities

Section 302 provides that the authorization of appropriations by the conference report shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

Sec. 303. Extension of application of sanctions laws to intelligence activities

Section 303 extends until January 6, 2001, the authority first granted by section 303 of the Intelligence Authorization Act for Fiscal Year 1996 for the President to delay the imposition of an economic, cultural, diplomatic, or other sanction upon his determination that proceeding with the sanction could compromise an ongoing criminal investigation or an intelligence source or method. This authority was extended until January 6, 1998, by section 304 of the Intelligence Authorization Act for Fiscal Year 1997, until January 6, 1999, by section 304 of the Intelligence Authorization Act for Fiscal Year 1998; and again until January 6, 2000 by section 303 of the Intelligence Authorization Act for Fiscal Year 1999. There is continuing need for this authority in the event that an automatic or immediate imposition of sanctions would seriously jeopardize a criminal investigation or sources and methods of intelligence collection.

Sec. 304. Access to computers and computer data of executive branch employees with access to classified information

Section 304 authorizes investigative components like the FBI (and internal Intelligence Community investigative or security units) access to computers of individuals handling classified data.

The provision requires the government to obtain consent, which, in turn, would place the computer information within the already existing “consent” exceptions to the Fourth Amendment and the Electronic Communications Privacy Act. The definition of “computer” is drawn from the Computer Fraud and Abuse Act (18 U.S.C. 1030), with some minor modifications.

Sec. 305. Naturalization of certain persons affiliated with a Communist or similar party

Section 305 applies to certain applicants for naturalization (1) who are within the class described in section 313(a)(2) of the Immigration and Nationality Act (INA) because of past membership in or affiliation with the Communist Party or any other totalitarian organization, and (2) who meet all other statutory requirements for naturalization except for the requirement that they be free for at least ten years from such membership or affiliation. This provision authorizes the naturalization of these individuals otherwise eligible for naturalization, if the Director of Central Intelligence, the Attorney General, and the Commissioner of Immigration and Naturalization determine the applicants have made a contribution to the national security or the intelligence mission of the United States. These determinations will be made prior to the filing of the applicant’s naturalization petition. When making a determination in these cases, the Director of Central Intelligence will be acting in his capacity as head of the U.S. Intelligence Community but will, in advance, reach consensus on the merits of each case with the heads of all other Departments and agencies of the U.S. Intelligence Community.

Unlike section 316(f) of the INA, this new section 313(e) does not provide for expedited naturalization. Although individuals covered by this new provision must have made a contribution to the national intelligence mission, generally few will have made a contribution of such an extraordinary nature as to merit U.S. citizenship after only one year of lawful permanent residence and without regard to any prior Communist Party membership, as is already provided under section 316(f) of the INA. Nevertheless, after having taken great risks in furtherance of the U.S. intelligence mission, these individuals should not be penalized from obtaining U.S. citizenship at the otherwise allowable time because of their former Communist Party membership or affiliation.

Sec. 306. Infrastructure and quality of life improvements at Bad Aibling and Menwith Hill Stations

Section 306 extends through the end of FY 2001 the authority granted the Army in the Intelligence Authorization Act for Fiscal Year 1998 for infrastructure and quality of life improvements at Bad Aibling and Menwith Hill Stations. With respect to Bad Aibling Station, this authority is requested as an interim measure for contingency maintenance pending any final decision on the status of the Station.

The Army became the Executive Agent for Bad Aibling Station in FY 1995 and Menwith Hill Station in FY 1996. Without congressional action, the Army is prohibited by 31 U.S.C. § 1301 from using appropriated funds to support these field sites, notwith-

standing that the Army is the Executive Agent for them. The Intelligence Authorization Act for FY 1998 provided the necessary flexibility to allow the Army to transfer or reprogram up to \$2 million in FY 1998 O&M and \$2 million in FY 1999 O&M funds for necessary maintenance at these stations. However, sufficient funding has not been available to allow the Army to meet all of the stations' needs, given financial constraints and increasing operational tempo. Consequently, in order to continue addressing infrastructure and quality of life needs at Menwith Hill Station and to be able to meet contingencies on an interim basis at Bad Aibling Station, the Army's flexible transfer and reprogramming authority is extended through the end of FY 2001.

Sec. 307. Technical amendment

Section 307 makes a technical correction to Section 305(b)(2) of the Intelligence Authorization Act for Fiscal Year 1997. Section 305 of that Act authorizes the expedited naturalization of spouses and children of a deceased alien whose death resulted from an intentional and unauthorized disclosure of classified information. Section 305(b)(2) references "subparagraph (A), (B), (C), or (D) of section 243(h)(2)" of the Immigration and Nationality Act, which describes the categories of aliens who are ineligible for expedited naturalization or asylum (i.e., those who have participated in the persecution of any person; have been convicted of a particularly serious crime, thus constituting a danger to the U.S. community; have committed a serious nonpolitical crime outside the United States; or are regarded as a danger to the security of the United States).

The Immigration and Nationality Act was amended extensively (by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which was Division C of Omnibus Consolidated Appropriations Act, 1997, Public Law 104-208, September 30, 1996) at about the same time that section 305 of the Intelligence Authorization Act for Fiscal Year 1997 was enacted. Section 305 makes the necessary technical correction to Section 305(b)(2) of the Intelligence Authorization Act for Fiscal Year 1997 by deleting the no longer current or accurate Immigration and Nationality Act reference.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

Sec. 401. Modification to Central Intelligence Agency's central services program

Section 401 of the Act makes a number of changes to the Central Intelligence Agency's Central Services Program.

First, section 401 expands section 21(a) of the CIA Act to authorize the Director of Central Intelligence to provide items and services under the Program to nonappropriated fund entities, such as the Northwest Federal Credit Union and the Employee Activities Association, which are affiliated with the Agency.

Second, section 401 clarifies that the Central Services Program Working Capital Fund may retain and use proceeds from the sale or exchange of equipment or property of a central service provider, as well as amounts collected in payment for loss or damage to such equipment or property. Third, the amendments made by section

401 also clarify that the fee central service providers are authorized to impose and collect under section 21(f) of the Central Intelligence Agency Act may be levied and used by existing central service providers already in the Program to acquire or improve their equipment and systems, that is, to recapitalize and modernize, in order to remain competitive and/or expand their business operations (within the limits of subsection (a) and other parts of section 21). It is the committee's intent and direction that the costs of such recapitalization and/or modernization by central service providers not be considered or included as "other expenses" within the meaning of section 21(c) of the CIA Act. These two clarifications address and are intended to resolve concerns raised by the Agency's Inspector General in its most recent annual audit report on the Central Services Program and its Working Capital Fund.

Finally, section 401 extends to March 31, 2005 the scheduled sunset or expiration date for the Program, which otherwise would occur as of March 31, 2000. While the Agency's Program has shown considerable promise and potential to improve the efficiency and cost-effectiveness of the Agency's administrative and/or support activities, it would not be appropriate to consider making the DCI's authority to run such a Program permanent until a somewhat longer track record and experience base can be evaluated.

Sec. 402. Extension of the CIA Voluntary Separation Pay Act

Section 402 amends section 2(f) of the CIA Voluntary Separation Pay Act, Public Law 103-36, 50 U.S.C. 403-4 note, to extend the Agency's authority to offer separation incentives until September 30, 2000. Without this amendment, the Agency's authority to offer such incentives would expire on September 30, 1999.

CIA's separation incentive has been an effective workforce reduction tool. However, due to rapid and worldwide technological change and increasingly divergent intelligence collection requirements, the Agency must continue to address skills mix issues, to include reducing or eliminating outdated professions. Therefore, it is critical that the CIA separation incentive authority be extended to provide the Agency greater flexibility in addressing its skills mix requirements.

CIA has worked hard over the past decade to streamline and refocus its workforce to address critical, cutting-edge national security issues. The Agency has reduced significantly the size of its employee population and begun reengineering business processes in order to hire personnel with new skills, expand the diversity of the Agency workforce, and acquire new technologies.

The net impact of the six CIA early out exercises thus far, along with normal attrition and reduced hiring, has been a significant drop in the Agency's on-duty strength since the separation incentive program began in FY 1993. However, rapid worldwide technological change and increasing concern about such diverse issues as international terrorism, drug trafficking, and political instability require the Agency to do more to address the skills mix of the Agency population.

The Agency must continue to reduce or eliminate outdated professions, accelerate the transfer of resources from support to mission-critical work, and hire people with state-of-the-art skills. Vol-

untary Separation Incentive Pay authority—used for specific, targeted populations—will help the CIA achieve those goals without resorting to involuntary separations in certain occupational categories. The incentive pay would be targeted principally at individuals in outdated occupations and skill categories who would not be separating via regular attrition or switching to another work area after retraining. Incentive pay also helps to provide a “soft” landing for Agency employees in outdated or surpluses occupations, and thus mitigates the counterintelligence risk associated with a reduction in force.

Without an incentive authority, there would be a decline in separation rates. This would, in turn, limit the Agency’s ability to keep pace with the rapidly expanding technologies and dynamic geopolitical realities central to the Agency’s changing mission. Incentive authority through fiscal year 2002 will help enable the Agency to ensure its workforce has the right skills in the right areas at the right times.

The Committee notes that the Departments of Defense and Energy have agency-specific voluntary separation pay incentive authority through 30 September 2001 and until 1 January 2001, respectively.

TITLE V—DEPARTMENT OF ENERGY INTELLIGENCE ACTIVITIES

Section 502 establishes a moratorium on foreign visitors to classified facilities at Department of Energy (DOE) National Laboratories. The moratorium applies to citizens of nations on the DOE “sensitive countries list.” Section 502 also provides for a waiver of this moratorium on a case-by-case basis if the Secretary of Energy justifies the waiver and certifies that the visit is necessary for the national security of the United States.

Section 503 requires that the Secretary of Energy perform background checks on all foreign visitors to the National Laboratories. The term “background checks” means the consultation of all available, appropriate, and relevant intelligence community and law enforcement indices and data bases.

Section 504 requires a report to Congress on the counterintelligence activities at the National Laboratories and a net assessment of the Foreign Visitors Program at the National Laboratories to be produced by a panel of experts. The required report shall include a recommendation as to whether the moratorium (Section 502) should be repealed.

Section 505 defines “National Laboratory” to include the Lawrence Livermore, Los Alamos, and Sandia National Laboratories and defines the “sensitive countries list” to include countries on a list by that name maintained by the Secretary of Energy.

TITLE VI—FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS

Section 601 amends the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. § 1802, et seq. (FISA) to expand the definition of an “agent of a foreign power” to include a person who, for or on behalf of a foreign power, knowingly enters the United States under a false or fraudulent identity or, while in the United States and for or on behalf of a foreign power, knowingly assumes a false

or fraudulent identity. The definition is intended to include the classic illegal spy, who comes to the United States with a false identity and can remain hidden for many years before being tasked by his or her foreign master. The definition would also include the person who, for or on behalf of a foreign power, is in the United States under a fraudulent identity, which could be accomplished by changing letters or characters in a name or adding or deleting parts of a name. The fact that a person, for or on behalf of a foreign power, enters or is in the United States under these circumstances is, in the Committee's view, dangerous enough to the national security of the United States to allow application of the FISA.

Section 602 amends Section 811 (a)(c)(2) of the Intelligence Authorization Act of 1995 by deleting the words "after a report has been provided pursuant to paragraph (1)(a)". The deletion makes it clear that the FBI's obligation to consult with departments and agencies concerned begins before a report has been provided, if, for example, the FBI has knowledge of the activities from other sources or as a result of its own investigation.

COMMITTEE ACTION

On May 5, 1999, the Select Committee on Intelligence approved the Bill and ordered that it be favorably reported.

ESTIMATE OF COSTS

Pursuant to paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the estimated costs incurred in carrying out the provisions of this Bill, for fiscal year 2000, are set forth in the classified annex to this Bill. Estimates of the costs incurred in carrying out this Bill in the five fiscal years thereafter are not available from the Executive branch, and therefore the Committee deems it impractical, pursuant to paragraph 11(a)(3) of rule XXVI of the Standing Rules of the Senate, to include such estimates in this report.

EVALUATION OF REGULATORY IMPACT

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

CHANGES IN EXISTING LAW

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