

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR
1996

DECEMBER 20, 1995.—Ordered to be printed

Mr. COMBEST, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 1655]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1655), to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) *SHORT TITLE.*—This Act may be cited as the “Intelligence Authorization Act for Fiscal Year 1996”.

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

Sec. 1. Short title; table of contents.

TITLE I—INTELLIGENCE ACTIVITIES

Sec. 101. Authorization of appropriations.

Sec. 102. Classified schedule of authorizations.

Sec. 103. Personnel ceiling adjustments.

Sec. 104. Community Management Account.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND
DISABILITY SYSTEM

Sec. 201. Authorization of appropriations.

TITLE III—GENERAL PROVISIONS

- Sec. 301. Increase in employee compensation and benefits authorized by law.
 Sec. 302. Restriction on conduct of intelligence activities.
 Sec. 303. Application of sanctions laws to intelligence activities.
 Sec. 304. Thrift savings plan forfeiture.
 Sec. 305. Authority to restore spousal pension benefits to spouses who cooperate in criminal investigations and prosecutions for national security offenses.
 Sec. 306. Secrecy agreements used in intelligence activities.
 Sec. 307. Limitation on availability of funds for automatic declassification of records over 25 years old.
 Sec. 308. Amendment to the Hatch Act Reform Amendments of 1993.
 Sec. 309. Report on personnel policies.
 Sec. 310. Assistance to foreign countries.
 Sec. 311. Financial management of the National Reconnaissance Office.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

- Sec. 401. Extension of the CIA Voluntary Separation Pay Act.
 Sec. 402. Volunteer service program.
 Sec. 403. Authorities of the Inspector General of the Central Intelligence Agency.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

- Sec. 501. Defense intelligence senior level positions.
 Sec. 502. Comparable benefits and allowances for civilian and military personnel assigned to defense intelligence functions overseas.
 Sec. 503. Extension of authority to conduct intelligence commercial activities.
 Sec. 504. Availability of funds for Tier II UAV.
 Sec. 505. Military Department Civilian Intelligence Personnel Management System.
 Sec. 506. Enhancement of capabilities of certain army facilities.

TITLE VI—FEDERAL BUREAU OF INVESTIGATION

- Sec. 601. Disclosure of information and consumer reports to FBI for counterintelligence purposes.

TITLE VII—TECHNICAL AMENDMENTS

- Sec. 701. Clarification with respect to pay for Director or Deputy Director of Central Intelligence appointed from commissioned officers of the Armed Forces.
 Sec. 702. Change of designation of CIA Office of Security.

TITLE I—INTELLIGENCE ACTIVITIES

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 1996 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

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

(12) *The Central Imagery Office.*

SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.

(a) *SPECIFICATIONS OF AMOUNTS AND PERSONNEL CEILINGS.*—The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1996, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared to accompany the conference report on the bill H.R. 1655 of the One Hundred Fourth Congress.

(b) *AVAILABILITY OF 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. 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 ADJUSTMENTS.*—With the approval of the Director of the Office of Management and Budget, the Director of Central Intelligence may authorize employment of civilian personnel in excess of the number authorized for fiscal year 1996 under section 102 when the Director of Central Intelligence determines that such action is necessary to the performance of important intelligence functions, 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 two percent of the number of civilian personnel authorized under such section for such element.

(b) *NOTICE TO INTELLIGENCE COMMITTEES.*—The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever he exercises the authority granted by this section.

SEC. 104. COMMUNITY MANAGEMENT ACCOUNT.

(a) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated for the Community Management Account of the Director of Central Intelligence for fiscal year 1996 the sum of \$90,713,000. Within such amounts authorized, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for the Advanced Research and Development Committee and the Environmental Task Force shall remain available until September 30, 1997.

(b) *AUTHORIZED PERSONNEL LEVELS.*—The Community Management Staff of the Director of Central Intelligence is authorized 247 full-time personnel as of September 30, 1996. Such personnel of the Community Management Staff may be permanent employees of the Community Management Staff or personnel detailed from other elements of the United States Government.

(c) *REIMBURSEMENT.*—During fiscal year 1996, any officer or employee of the United States or a member of the Armed Forces who is detailed to the Community Management Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee or member may be detailed on a nonreimbursable basis for a period of less

than one year for the performance of temporary functions as required by the Director of Central Intelligence.

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 1996 the sum of \$213,900,000.

TITLE III—GENERAL PROVISIONS

SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.

Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.

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

SEC. 303. APPLICATION OF SANCTIONS LAWS TO INTELLIGENCE ACTIVITIES.

(a) *GENERAL PROVISIONS.*—The National Security Act of 1947 (50 U.S.C. 401 et seq.), is amended by adding at the end thereof the following new title:

“TITLE IX—APPLICATION OF SANCTIONS LAWS TO INTELLIGENCE ACTIVITIES

“STAY OF SANCTIONS

“SEC. 901. Notwithstanding any provision of law identified in section 904, the President may stay the imposition of an economic, cultural, diplomatic, or other sanction or related action by the United States Government concerning a foreign country, organization, or person when the President determines and reports to Congress in accordance with section 903 that to proceed without delay would seriously risk the compromise of an ongoing criminal investigation directly related to the activities giving rise to the sanction or an intelligence source or method directly related to the activities giving rise to the sanction. Any such stay shall be effective for a period of time specified by the President, which period may not exceed 120 days, unless such period is extended in accordance with section 902.

“EXTENSION OF STAY

“SEC. 902. Whenever the President determines and reports to Congress in accordance with section 903 that a stay of sanctions or

related actions pursuant to section 901 has not afforded sufficient time to obviate the risk to an ongoing criminal investigation or to an intelligence source or method that gave rise to the stay, he may extend such stay for a period of time specified by the President, which period may not exceed 120 days. The authority of this section may be used to extend the period of a stay pursuant to section 901 for successive periods of not more than 120 days each.

“REPORTS

“SEC. 903. Reports to Congress pursuant to sections 901 and 902 shall be submitted promptly upon determinations under this title. Such reports shall be submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate. With respect to determinations relating to intelligence sources and methods, reports shall also be submitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate. With respect to determinations relating to ongoing criminal investigations, reports shall also be submitted to the Committees on the Judiciary of the House of Representatives and the Senate.

“LAWS SUBJECT TO STAY

“SEC. 904. The President may use the authority of sections 901 and 902 to stay the imposition of an economic, cultural, diplomatic, or other sanction or related action by the United States Government related to the proliferation of weapons of mass destruction, their delivery systems, or advanced conventional weapons otherwise required to be imposed by the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (title III of Public Law 102-182); the Nuclear Proliferation Prevention Act of 1994 (title VIII of Public Law 103-236); title XVII of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510) (relating to the nonproliferation of missile technology); the Iran-Iraq Arms Nonproliferation Act of 1992 (title XVI of Public Law 102-484); section 573 of the Foreign Operations, Export Financing Related Programs Appropriations Act, 1994 (Public Law 103-87); section 563 of the Foreign Operations, Export Financing Related Programs Appropriations Act, 1995 (Public Law 103-306); and comparable provisions.

“APPLICATION

“SEC. 905. This title shall cease to be effective on the date which is one year after the date of the enactment of this title.”.

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act is amended by adding at the end thereof the following:

“TITLE IX—APPLICATION OF SANCTIONS LAWS TO INTELLIGENCE ACTIVITIES

“Sec. 901. Stay of sanctions.

“Sec. 902. Extension of stay.

“Sec. 903. Reports.

“Sec. 904. Laws subject to stay.

“Sec. 905. Application.”.

SEC. 304. THRIFT SAVINGS PLAN FORFEITURE.

(a) *IN GENERAL.*—Section 8432(g) of title 5, United States Code, is amended by adding at the end the following new paragraph:

“(5) Notwithstanding any other provision of law, contributions made by the Government for the benefit of an employee or Member under subsection (c), and all earnings attributable to such contributions, shall be forfeited if the annuity of the employee or Member, or that of a survivor or beneficiary, is forfeited under subchapter II of chapter 83.”

(b) *EFFECTIVE DATE.*—The amendment made by subsection (a) shall apply to offenses upon which the requisite annuity forfeitures are based occurring on or after the date of the enactment of this Act.

SEC. 305. AUTHORITY TO RESTORE SPOUSAL PENSION BENEFITS TO SPOUSES WHO COOPERATE IN CRIMINAL INVESTIGATIONS AND PROSECUTIONS FOR NATIONAL SECURITY OFFENSES.

Section 8318 of title 5, United States Code, is amended by adding at the end the following:

“(e) The spouse of an individual whose annuity or retired pay is forfeited under section 8312 or 8313 after the date of enactment of this subsection shall be eligible for spousal pension benefits if the Attorney General of the United States determines that the spouse fully cooperated with Federal authorities in the conduct of a criminal investigation and subsequent prosecution of the individual which resulted in such forfeiture.”

SEC. 306. SECRECY AGREEMENTS USED IN INTELLIGENCE ACTIVITIES.

Notwithstanding any other provision of law not specifically referencing this section, a nondisclosure policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum—

(1) require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government; and

(2) provide that the form or agreement does not bar—

(A) disclosures to Congress; or

(B) disclosures to an authorized official of an executive agency that are deemed essential to reporting a violation of United States law.

SEC. 307. LIMITATION ON AVAILABILITY OF FUNDS FOR AUTOMATIC DECLASSIFICATION OF RECORDS OVER 25 YEARS OLD.

(a) *IN GENERAL.*—The Director of Central Intelligence shall use no more than \$25,000,000 of the amounts authorized to be appropriated for fiscal year 1996 by this Act for the National Foreign Intelligence Program to carry out the provisions of section 3.4 of Executive Order 12958. The Director may, in the Director's discretion, draw on this amount for allocation to the agencies within the National Foreign Intelligence Program for the purpose of automatic declassification of records over 25 years old.

(b) *REQUIRED BUDGET SUBMISSION.*—The President shall submit for fiscal year 1997 and each of the following fiscal years

through fiscal year 2000 a budget request which specifically sets forth the funds requested for implementation of section 3.4 of Executive Order 12958.

SEC. 308. AMENDMENT TO THE HATCH ACT REFORM AMENDMENTS OF 1993.

Section 7325 of title 5, United States Code, is amended by adding after "section 7323(a)" the following: "and paragraph (2) of section 7323(b)".

SEC. 309. REPORT ON PERSONNEL POLICIES.

(a) *REPORT REQUIRED.*—Not later than three months after the date of enactment of this Act, the Director of Central Intelligence shall submit to the intelligence committees of Congress a report describing personnel procedures, and recommending necessary legislation, to provide for mandatory retirement for expiration of time in class, comparable to the applicable provisions of section 607 of the Foreign Service Act of 1980 (22 U.S.C. 4007), and termination based on relative performance, comparable to section 608 of the Foreign Service Act of 1980 (22 U.S.C. 4008), and to provide for other personnel review systems for all civilian employees of the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, and the intelligence elements of the Army, Navy, Air Force, and Marine Corps. Such report shall contain a description and analysis of voluntary separation incentive options, including a waiver of the 2 percent penalty reduction for early retirement under certain Federal retirement systems.

(b) *COORDINATION.*—The preparation of the report required by subsection (a) shall be coordinated as appropriate with elements of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(4))).

(c) *DEFINITION.*—As used in this section, the term "intelligence committees of Congress" means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 310. ASSISTANCE TO FOREIGN COUNTRIES.

Notwithstanding any other provision of law, funds authorized to be appropriated by this Act may be used to provide assistance to a foreign country for counterterrorism efforts if—

(1) such assistance is provided for the purpose of protecting the property of the United States Government or the life and property of any United States citizen, or furthering the apprehension of any individual involved in any act of terrorism against such property or persons; and

(2) the Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives are notified not later than 15 days prior to the provision of such assistance.

SEC. 311. FINANCIAL MANAGEMENT OF THE NATIONAL RECONNAISSANCE OFFICE.

(a) *MANAGEMENT REVIEW.*—(1) The Inspector General for the Central Intelligence Agency, assisted by the Inspector General of the Department of Defense, shall undertake a comprehensive review of the financial management of the National Reconnaissance Office to evaluate the effectiveness of policies and internal controls over the

budget of the National Reconnaissance Office, including the use of carry-forward funding, to ensure that National Reconnaissance Office funds are used in accordance with applicable Federal acquisition regulations and the policies of the Director of Central Intelligence and consistent with those of the Department of Defense, the guidelines of the National Reconnaissance Office, and congressional direction.

(2) The review required by paragraph (1) shall—

(A) determine the quality of the development and implementation of the budget process within the National Reconnaissance Office at both the comptroller and directorate level;

(B) assess the advantages and disadvantages of the use of incremental versus full funding for contracts entered into by the National Reconnaissance Office;

(C) assess the advantages and disadvantages of the National Reconnaissance Office's use of carry-forward funding;

(D) determine how the National Reconnaissance Office defines, identifies, and justifies carry-forward funding requirements;

(E) determine how the National Reconnaissance Office tracks and manages carry-forward funding;

(F) determine how the National Reconnaissance Office plans to comply with congressional direction regarding carry-forward funding;

(G) determine whether or not a contract entered into by the National Reconnaissance Office has ever encountered a contingency which required the utilization of more than 30 days of carry-forward funding;

(H) consider the proposal by the Director of Central Intelligence for the establishment of a position of a Chief Financial Officer, and assess how the functions to be performed by that officer would enhance the financial management of the National Reconnaissance Office; and

(I) make recommendations, as appropriate, to improve control and management of the budget process of the National Reconnaissance Office.

(3) The Director of Central Intelligence shall submit a report to the Congress setting forth the findings of the review required by paragraph (1) not later than March 1, 1996, with an interim report provided to the Congress not later than 2 weeks after the enactment of this Act.

(b) REPORT.—(1) Not later than January 30, 1996, the President shall submit a report to the appropriate committees of the Congress on a proposal to subject the budget of the intelligence community to greater oversight by the executive branch of Government.

(2) Such report shall include (among other things)—

(A) consideration of establishing by statute a financial control officer for the National Reconnaissance Office, other elements of the intelligence community, and for the intelligence community as a whole;

(B) recommendations for procedures to be used by the Office of Management and Budget for review of the budget of the National Reconnaissance Office;

(C) a proposed statutory provision that would require the Director of Central Intelligence to establish a policy to restrict the National Reconnaissance Office authority on carry-forward funding in a manner consistent with the restriction on such authority within the Department of Defense; and

(D) an evaluation of how changes proposed as a result of the review required by subsection (a) will affect, directly or indirectly, the National Reconnaissance Office's streamlined acquisition process and, ultimately, program costs.

(c) *DEFINITION.*—As used in this section, the term “intelligence community” has the meaning given to the term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

TITLE IV—CENTRAL INTELLIGENCE AGENCY

SEC. 401. EXTENSION OF THE CIA VOLUNTARY SEPARATION PAY ACT.

(a) *EXTENSION OF AUTHORITY.*—Section 2(f) of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403–4(f)) is amended by striking “September 30, 1997” and inserting “September 30, 1999”.

(b) *REMITTANCE OF FUNDS.*—Section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403–4) is amended by inserting at the end the following new subsection:

“(i) *REMITTANCE OF FUNDS.*—The Director shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund (in addition to any other payments which the Director is required to make under subchapter III of chapter 83 and subchapter II of chapter 84 of title 5, United States Code), an amount equal to 15 percent of the final basic pay of each employee who, in fiscal year 1998 or fiscal year 1999, retires voluntarily under section 8336, 8412, or 8414 of such title or resigns and to whom a voluntary separation incentive payment has been or is to be paid under this section.”

SEC. 402. VOLUNTEER SERVICE PROGRAM.

(a) *GENERAL AUTHORITY.*—The Director of Central Intelligence is authorized to establish and maintain a program from fiscal years 1996 through 2001 to utilize the services contributed by not more than 50 annuitants who serve without compensation as volunteers in aid of the review for declassification or downgrading of classified information by the Central Intelligence Agency under applicable Executive orders governing the classification and declassification of national security information and Public Law 102–526.

(b) *COSTS INCIDENTAL TO SERVICES.*—The Director is authorized to use sums made available to the Central Intelligence Agency by appropriations or otherwise for paying the costs incidental to the utilization of services contributed by individuals under subsection (a). Such costs may include (but need not be limited to) training, transportation, lodging, subsistence, equipment, and supplies. The Director may authorize either direct procurement of equipment, supplies, and services, or reimbursement for expenses, incidental to the effective use of volunteers. Such expenses or services shall be in ac-

cordance with volunteer agreements made with such individuals. Sums made available for such costs may not exceed \$100,000.

(c) *APPLICATION OF CERTAIN PROVISIONS OF LAW.*—A volunteer under this section shall be considered to be a Federal employee for the purposes of subchapter I of title 81 (relating to compensation of Federal employees for work injuries) and section 1346(b) and chapter 171 of title 28 (relating to tort claims). A volunteer under this section shall be covered by and subject to the provisions of chapter 11 of title 18 of the United States Code as if they were employees or special Government employees depending upon the days of expected service at the time they begin volunteering.

SEC. 403. AUTHORITIES OF THE INSPECTOR GENERAL OF THE CENTRAL INTELLIGENCE AGENCY.

(a) *REPORTS BY THE INSPECTOR GENERAL.*—Section 17(b)(5) of the Central Intelligence Act of 1949 (50 U.S.C. 403q(b)(5)) is amended to read as follows:

“(5) In accordance with section 535 of title 28, United States Code, the Inspector General shall report to the Attorney General any information, allegation, or complaint received by the Inspector General relating to violations of Federal criminal law that involve a program or operation of the Agency, consistent with such guidelines as may be issued by the Attorney General pursuant to subsection (b)(2) of such section. A copy of all such reports shall be furnished to the Director.”.

(b) *EXCEPTION TO NONDISCLOSURE REQUIREMENT.*—Section 17(e)(3)(A) of such Act is amended by inserting after “investigation” the following: “or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken”.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

SEC. 501. DEFENSE INTELLIGENCE SENIOR LEVEL POSITIONS.

Section 1604 of title 10, United States Code, is amended to read as follows:

“§ 1604. Civilian personnel management

“(a) *GENERAL PERSONNEL AUTHORITY.*—The Secretary of Defense may, without regard to the provisions of any other law relating to the number, classification, or compensation of Federal employees—

“(1) establish such positions for employees in the Defense Intelligence Agency and the Central Imagery Office as the Secretary considers necessary to carry out the functions of that Agency and Office, including positions designated under subsection (f) as Defense Intelligence Senior Level positions;

“(2) appoint individuals to those positions; and

“(3) fix the compensation for service in those positions.

(b) *AUTHORITY TO FIX RATES OF BASIC PAY; OTHER ALLOWANCES AND BENEFITS.*—(1) The Secretary of Defense shall, subject to subsection (c), fix the rates of basic pay for positions established under subsection (a) in relation to the rates of basic pay provided

in subpart D of part III of title 5 for positions subject to that title which have corresponding levels of duties and responsibilities. Except as otherwise provided by law, an employee of the Defense Intelligence Agency or the Central Imagery Office may not be paid basic pay at a rate in excess of the maximum rate payable under section 5376 of title 5.

“(2) The Secretary of Defense may provide employees of the Defense Intelligence Agency and the Central Imagery Office compensation (in addition to basic pay under paragraph (1)) and benefits, incentives, and allowances consistent with, and not in excess of the levels authorized for, comparable positions authorized by title 5.

“(c) PREVAILING RATES SYSTEMS.—The Secretary of Defense may, consistent with section 5341 of title 5, adopt such provisions of that title as provide for prevailing rate systems of basic pay and may apply those provisions to positions in or under which the Defense Intelligence Agency or the Central Imagery Office may employ individuals described by section 5342(a)(2)(A) of such title.

“(d) ALLOWANCES BASED ON LIVING COSTS AND ENVIRONMENT FOR EMPLOYEES STATIONED OUTSIDE CONTINENTAL UNITED STATES OR IN ALASKA.—(1) In addition to the basic compensation payable under subsection (b), employees of the Defense Intelligence Agency and the Central Imagery Office described in paragraph (3) may be paid an allowance, in accordance with regulations prescribed by the Secretary of Defense, at a rate not in excess of the allowance authorized to be paid under section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute.

“(2) Such allowance shall be based on—

“(A) living costs substantially higher than in the District of Columbia;

“(B) conditions of environment which—

“(i) differ substantially from conditions of environment in the continental United States; and

“(ii) warrant an allowance as a recruitment incentive;

or

“(C) both of those factors.

“(3) This subsection applies to employees who—

“(A) are citizens or nationals of the United States; and

“(B) are stationed outside the continental United States or in Alaska.

“(e) TERMINATION OF EMPLOYEES.—(1) Notwithstanding any other provision of law, the Secretary of Defense may terminate the employment of any employee of the Defense Intelligence Agency or the Central Imagery Office if the Secretary—

“(A) considers such action to be in the interests of the United States; and

“(B) determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of such employee cannot be invoked in a manner consistent with the national security.

“(2) A decision by the Secretary of Defense to terminate the employment of an employee under this subsection is final and may not be appealed or reviewed outside the Department of Defense.

“(3) The Secretary of Defense shall promptly notify the Permanent Select Committee on Intelligence of the House of Representa-

tives and the Select Committee on Intelligence of the Senate whenever the Secretary terminates the employment of any employee under the authority of this subsection.

“(4) Any termination of employment under this subsection shall not affect the right of the employee involved to seek or accept employment with any other department or agency of the United States if that employee is declared eligible for such employment by the Director of the Office of Personnel Management.

“(5) The authority of the Secretary of Defense under this subsection may be delegated only to the Deputy Secretary of Defense, the Director of the Defense Intelligence Agency (with respect to employees of the Defense Intelligence Agency), and the Director of the Central Imagery Office (with respect to employees of the Central Imagery Office). An action to terminate employment of an employee by any such officer may be appealed to the Secretary of Defense.

“(f) DEFENSE INTELLIGENCE SENIOR LEVEL POSITIONS.—(1) In carrying out subsection (a)(1), the Secretary may designate positions described in paragraph (3) as Defense Intelligence Senior Level positions. The total number of positions designated under this subsection, when combined with the total number of positions in the Defense Intelligence Senior Executive Service under section 1601 of this title, may not exceed the total number of positions in the Defense Intelligence Senior Executive Service as of June 1, 1995.

“(2) Positions designated under this subsection shall be treated as equivalent for purposes of compensation to the senior level positions to which section 5376 of title 5 is applicable.

“(3) Positions that may be designated as Defense Intelligence Senior Level positions are positions in the Defense Intelligence Agency and Central Imagery Office that (A) are classified above the GS-15 level, (B) emphasize functional expertise and advisory activity, but (C) do not have the organizational or program management functions necessary for inclusion in the Defense Intelligence Senior Executive Service.

“(4) Positions referred to in paragraph (3) include Defense Intelligence Senior Technical positions and Defense Intelligence Senior Professional positions. For purposes of this subsection—

“(A) Defense Intelligence Senior Technical positions are positions covered by paragraph (3) that involve any of the following:

“(i) Research and development.

“(ii) Test and evaluation.

“(iii) Substantive analysis, liaison, or advisory activity focusing on engineering, physical sciences, computer science, mathematics, biology, chemistry, medicine, or other closely related scientific and technical fields.

“(iv) Intelligence disciplines including production, collection, and operations in close association with any of the activities described in clauses (i), (ii), and (iii) or related activities; and

“(B) Defense Intelligence Senior Professional positions are positions covered by paragraph (3) that emphasize staff, liaison, analytical, advisory, or other activity focusing on intelligence, law, finance and accounting, program and budget, human re-

sources management, training, information services, logistics, security, and other appropriate fields.

“(g) ‘EMPLOYEE’ DEFINED AS INCLUDING OFFICERS.—In this section, the term ‘employee’, with respect to the Defense Intelligence Agency or the Central Imagery Office, includes any civilian officer of that Agency or Office.”.

SEC. 502. COMPARABLE BENEFITS AND ALLOWANCES FOR CIVILIAN AND MILITARY PERSONNEL ASSIGNED TO DEFENSE INTELLIGENCE FUNCTIONS OVERSEAS.

(a) CIVILIAN PERSONNEL.—Section 1605 of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting “(1)” after “(a)”;

(B) by striking “of the Department of Defense” and all that follows through “this subsection,” and inserting “described in subsection (d)”; and

(C) by designating the second sentence as paragraph

(2);

(2) by striking subsection (c) and inserting the following:

“(c) Regulations prescribed under subsection (a) may not take effect until the Secretary of Defense has submitted such regulations to—

“(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

“(2) the Committee on National Security and the Permanent Select Committee on Intelligence of the House of Representatives.”; and

(3) by adding at the end the following new subsection:

“(d) Subsection (a) applies to civilian personnel of the Department of Defense who—

“(1) are United States nationals;

“(2) in the case of employees of the Defense Intelligence Agency, are assigned to duty outside the United States and, in the case of other employees, are assigned to Defense Attaché Offices or Defense Intelligence Agency Liaison Offices outside the United States; and

“(3) are designated by the Secretary of Defense for the purposes of subsection (a).”.

(b) MILITARY PERSONNEL.—Section 431 of title 37, United States Code, is amended—

(1) in subsection (a), by striking “who are assigned to” and all that follows through “of this subsection” and inserting “described in subsection (e)”;

(2) by striking subsection (d) and inserting the following:

“(d) Regulations prescribed under subsection (a) may not take effect until the Secretary of Defense has submitted such regulations to—

“(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

“(2) the Committee on National Security and the Permanent Select Committee on Intelligence of the House of Representatives.”; and

(3) by adding at the end the following new subsection:

“(e) Subsection (a) applies to members of the Armed Forces who—

“(1) are assigned—

“(A) to Defense Attaché Offices or Defense Intelligence Agency Liaison Offices outside the United States; or

“(B) to the Defense Intelligence Agency and engaged in intelligence-related duties outside the United States; and

“(2) are designated by the Secretary of Defense for the purposes of subsection (a).”.

SEC. 503. EXTENSION OF AUTHORITY TO CONDUCT INTELLIGENCE COMMERCIAL ACTIVITIES.

Section 431(a) of title 10, United States Code, is amended by striking “1995” and inserting “1998”.

SEC. 504. AVAILABILITY OF FUNDS FOR TIER II UAV.

All funds appropriated for fiscal year 1995 for the Medium Altitude Endurance Unmanned Aerial Vehicle (Tier II) are specifically authorized, within the meaning of section 504 of the National Security Act of 1947 (50 U.S.C. 414), for such purpose.

SEC. 505. MILITARY DEPARTMENT CIVILIAN INTELLIGENCE PERSONNEL MANAGEMENT SYSTEM.

(a) ESTABLISHMENT OF TRAINING PROGRAM.—Chapter 81 of title 10, United States Code, is amended by adding at the end thereof the following new section:

“§ 1599a. Financial assistance to certain employees in acquisition of critical skills

“(a) TRAINING PROGRAM.—The Secretary of Defense shall establish an undergraduate training program with respect to civilian employees in the Military Department Civilian Intelligence Personnel Management System that is similar in purpose, conditions, content, and administration to the program established by the Secretary of Defense under section 16 of the National Security Act of 1959 (50 U.S.C. 402 note) for civilian employees of the National Security Agency.

“(b) USE OF FUNDS FOR TRAINING PROGRAM.—Any payment made by the Secretary to carry out the program required to be established by subsection (a) may be made in any fiscal year only to the extent that appropriated funds are available for that purpose.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of that chapter is amended by adding at the end thereof the following new item:

“Sec. 1599a. Financial assistance to certain employees in acquisition of critical skills.”.

SEC. 506. ENHANCEMENT OF CAPABILITIES OF CERTAIN ARMY FACILITIES.

(a) AUTHORITY.—(1) In addition to funds otherwise available for such purpose, the Secretary of the Army may transfer or reprogram funds for the enhancement of the capabilities of the Bad Aibling Station and the Menwith Hill Station, including improvements of facility infrastructure and quality of life programs at those installations.

(2) The authority of paragraph (1) may be exercised notwithstanding any other provision of law.

(b) *SOURCE OF FUNDS.*—Funds available for the Army for operations and maintenance for fiscal years 1996 and 1997 shall be available to carry out subsection (a).

(c) *CONGRESSIONAL NOTIFICATION.*—Whenever the Secretary of the Army determines that an amount to be transferred or reprogrammed under this section would cause the total amount transferred or reprogrammed in that fiscal year under this section to exceed \$1,000,000, the Secretary shall notify in advance the Select Committee on Intelligence, the Committee on Armed Services, and the Committee on Appropriations of the Senate and the Permanent Select Committee on Intelligence, the Committee on National Security, and the Committee on Appropriations of the House of Representatives and provide a justification for the increased expenditure.

(d) *STATUTORY CONSTRUCTION.*—Nothing in this section may be construed to modify or obviate existing law or practice with regard to the transfer or reprogramming of funds in excess of \$2,000,000 from the Department of the Army to the Bad Aibling Station and the Menwith Hill Station.

TITLE VI—FEDERAL BUREAU OF INVESTIGATION

SEC. 601. DISCLOSURE OF INFORMATION AND CONSUMER REPORTS TO FBI FOR COUNTERINTELLIGENCE PURPOSES.

(a) *IN GENERAL.*—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by adding after section 623 the following new section:

“§624. Disclosures to FBI for counterintelligence purposes

“(a) *IDENTITY OF FINANCIAL INSTITUTIONS.*—Notwithstanding section 604 or any other provision of this title, a consumer reporting agency shall furnish to the Federal Bureau of Investigation the names and addresses of all financial institutions (as that term is defined in section 1101 of the Right to Financial Privacy Act of 1978) at which a consumer maintains or has maintained an account, to the extent that information is in the files of the agency, when presented with a written request for that information, signed by the Director of the Federal Bureau of Investigation, or the Director’s designee, which certifies compliance with this section. The Director or the Director’s designee may make such a certification only if the Director or the Director’s designee has determined in writing that—

“(1) such information is necessary for the conduct of an authorized foreign counterintelligence investigation; and

“(2) there are specific and articulable facts giving reason to believe that the consumer—

“(A) is a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978) or a person who is not a United States person (as defined in such section 101) and is an official of a foreign power; or

“(B) is an agent of a foreign power and is engaging or has engaged in an act of international terrorism (as that

term is defined in section 101(c) of the Foreign Intelligence Surveillance Act of 1978) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

“(b) IDENTIFYING INFORMATION.—Notwithstanding the provisions of section 604 or any other provision of this title, a consumer reporting agency shall furnish identifying information respecting a consumer, limited to name, address, former addresses, places of employment, or former places of employment, to the Federal Bureau of Investigation when presented with a written request, signed by the Director or the Director’s designee, which certifies compliance with this subsection. The Director or the Director’s designee may make such a certification only if the Director or the Director’s designee has determined in writing that—

“(1) such information is necessary to the conduct of an authorized counterintelligence investigation; and

“(2) there is information giving reason to believe that the consumer has been, or is about to be, in contact with a foreign power or an agent of a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978).

“(c) COURT ORDER FOR DISCLOSURE OF CONSUMER REPORTS.—Notwithstanding section 604 or any other provision of this title, if requested in writing by the Director of the Federal Bureau of Investigation, or a designee of the Director, a court may issue an order ex parte directing a consumer reporting agency to furnish a consumer report to the Federal Bureau of Investigation, upon a showing in camera that—

“(1) the consumer report is necessary for the conduct of an authorized foreign counterintelligence investigation; and

“(2) there are specific and articulable facts giving reason to believe that the consumer whose consumer report is sought—

“(A) is an agent of a foreign power, and

“(B) is engaging or has engaged in an act of international terrorism (as that term is defined in section 101(c) of the Foreign Intelligence Surveillance Act of 1978) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

The terms of an order issued under this subsection shall not disclose that the order is issued for purposes of a counterintelligence investigation.

“(d) CONFIDENTIALITY.—No consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall disclose to any person, other than those officers, employees, or agents of a consumer reporting agency necessary to fulfill the requirement to disclose information to the Federal Bureau of Investigation under this section, that the Federal Bureau of Investigation has sought or obtained the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c), and no consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall include in any consumer report any information that would indicate that the Federal Bureau of Investigation has sought or obtained such information or a consumer report.

“(e) PAYMENT OF FEES.—The Federal Bureau of Investigation shall, subject to the availability of appropriations, pay to the consumer reporting agency assembling or providing report or information in accordance with procedures established under this section a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching, reproducing, or transporting books, papers, records, or other data required or requested to be produced under this section.

“(f) LIMIT ON DISSEMINATION.—The Federal Bureau of Investigation may not disseminate information obtained pursuant to this section outside of the Federal Bureau of Investigation, except to other Federal agencies as may be necessary for the approval or conduct of a foreign counterintelligence investigation, or, where the information concerns a person subject to the Uniform Code of Military Justice, to appropriate investigative authorities within the military department concerned as may be necessary for the conduct of a joint foreign counterintelligence investigation.

“(g) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit information from being furnished by the Federal Bureau of Investigation pursuant to a subpoena or court order, in connection with a judicial or administrative proceeding to enforce the provisions of this Act. Nothing in this section shall be construed to authorize or permit the withholding of information from the Congress.

“(h) REPORTS TO CONGRESS.—On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Select Committee on Intelligence and the Committee on Banking, Housing, and Urban Affairs of the Senate concerning all requests made pursuant to subsections (a), (b), and (c).

“(i) DAMAGES.—Any agency or department of the United States obtaining or disclosing any consumer reports, records, or information contained therein in violation of this section is liable to the consumer to whom such consumer reports, records, or information relate in an amount equal to the sum of—

“(1) \$100, without regard to the volume of consumer reports, records, or information involved;

“(2) any actual damages sustained by the consumer as a result of the disclosure;

“(3) if the violation is found to have been willful or intentional, such punitive damages as a court may allow; and

“(4) in the case of any successful action to enforce liability under this subsection, the costs of the action, together with reasonable attorney fees, as determined by the court.

“(j) DISCIPLINARY ACTIONS FOR VIOLATIONS.—If a court determines that any agency or department of the United States has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation.

“(k) GOOD-FAITH EXCEPTION.—Notwithstanding any other provision of this title, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or identifying information pursuant to this subsection in good-faith reliance upon a certification of the Federal Bureau of Investigation pursuant to provisions of this section shall not be liable to any person for such disclosure under this title, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

“(l) LIMITATION OF REMEDIES.—Notwithstanding any other provision of this title, the remedies and sanctions set forth in this section shall be the only judicial remedies and sanctions for violation of this section.

“(m) INJUNCTIVE RELIEF.—In addition to any other remedy contained in this section, injunctive relief shall be available to require compliance with the procedures of this section. In the event of any successful action under this subsection, costs together with reasonable attorney fees, as determined by the court, may be recovered.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by adding after the item relating to section 623 the following new item:

“624. Disclosures to FBI for counterintelligence purposes.”.

TITLE VII—TECHNICAL AMENDMENTS

SEC. 701. CLARIFICATION WITH RESPECT TO PAY FOR DIRECTOR OR DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE APPOINTED FROM COMMISSIONED OFFICERS OF THE ARMED FORCES.

(a) CLARIFICATION.—Subparagraph (C) of section 102(c)(3) of the National Security Act of 1947 (50 U.S.C. 403(c)(3)) is amended to read as follows:

“(C) A commissioned officer of the Armed Forces on active duty who is appointed to the position of Director or Deputy Director, while serving in such position and while remaining on active duty, shall continue to receive military pay and allowances and shall not receive the pay prescribed for the Director or Deputy Director. Funds from which such pay and allowances are paid shall be reimbursed from funds available to the Director.”.

(b) TECHNICAL CORRECTIONS.—(1) Subparagraphs (A) and (B) of such section are amended by striking “pursuant to paragraph (2) or (3)” and inserting “to the position of Director or Deputy Director”.

(2) Subparagraph (B) of such section is amended by striking “paragraph (A)” and inserting “subparagraph (A)”.

SEC. 702. CHANGE OF DESIGNATION OF CIA OFFICE OF SECURITY.

Section 701(b)(3) of the National Security Act of 1947 (50 U.S.C. 431(b)(3)), is amended by striking “Office of Security” and inserting “Office of Personnel Security”.

And the Senate agree to the same.

From the Permanent Select Committee on Intelligence, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

LARRY COMBEST,
R.K. DORNAN,
BILL YOUNG,
JAMES V. HANSEN,
JERRY LEWIS,
PORTER J. GOSS,
BUD SHUSTER,
BILL MCCOLLUM,
MICHAEL N. CASTLE,
NORMAN DICKS,
BILL RICHARDSON,
JULIAN C. DIXON,
ROBERT G. TORRICELLI,
RON COLEMAN,
DAVID E. SKAGGS,
NANCY PELOSI,

As additional conferees from the Committee on National Security, for consideration of defense tactical intelligence and related activities:

FLOYD SPENCE,
BOB STUMP,

As additional conferees from the Committee on International Relations, for consideration of section 303 of the House bill, and section 303 of the Senate amendment, and modifications committed to conference:

BENJAMIN A. GILMAN,
CHRISTOPHER SMITH,
HOWARD L. BERMAN,

Managers on the Part of the House.

ARLEN SPECTER,
RICHARD G. LUGAR,
RICHARD SHELBY,
MIKE DEWINE,
JON KYL,
JIM INHOFE,
KAY BAILEY HUTCHISON,
CONNIE MACK,
BILL COHEN,
STROM THURMOND,
ROBERT KERREY,
JOHN GLENN,
RICHARD H. BRYAN,
BOB GRAHAM,
JOHN F. KERRY,
MAX BAUCUS,
J. BENNETT JOHNSTON,
CHARLES ROBB,
SAM NUNN,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1655) to authorize appropriations for fiscal year 1996 for intelligence and the intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

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

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

TITLE I—INTELLIGENCE ACTIVITIES

SEC. 101. AUTHORIZATION FOR APPROPRIATIONS.

Section 101 of the conference report lists the departments, agencies, and other elements of the United States Government for whose intelligence and intelligence-related activities the Act authorizes appropriations for fiscal year 1996.

SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.

Section 102 of the conference report makes clear that the details of the amounts authorized to be appropriated for intelligence and intelligence-related activities and applicable personnel ceilings covered under this title for fiscal year 1996 are contained in a classified Schedule of Authorizations. The Schedule of Authorizations is incorporated into the Act by this section. The details of the Schedule are explained in the classified annex to this report.

SEC. 103. PERSONNEL CEILING ADJUSTMENTS.

Section 103 of the conference report authorizes the Director of Central Intelligence, with the approval of the Director of the Office of Management and Budget, in fiscal year 1996 to exceed the personnel ceilings applicable to the components of the Intelligence Community under section 102 by an amount not to exceed two percent of the total of the ceilings applicable under section 102. The Director may exercise this authority only when doing so is necessary to the performance of important intelligence functions. Any

exercise of this authority must be reported to the two intelligence committees of the Congress.

The conferees emphasize that the authority conferred by Section 103 is not intended to permit the wholesale raising of personnel strength in any intelligence component. Rather, the section provides the Director of Central Intelligence with flexibility to adjust personnel levels temporarily for contingencies and for overages caused by an imbalance between hiring of new employees and attrition of current employees. The conferees do not expect the Director of Central Intelligence to allow heads of intelligence components to plan to exceed levels set in the Schedule of Authorizations except for the satisfaction of clearly identified hiring needs which are consistent with the authorization of personnel strengths in this bill. In no case is this authority to be used to provide for positions denied by this bill.

SEC. 104. COMMUNITY MANAGEMENT ACCOUNT.

Section 104 of the conference report authorizes appropriations for the Community Management Account of the Director of Central Intelligence and sets the personnel end-strength for the Intelligence Community Management Staff for fiscal year 1996.

Subsection (a) authorizes appropriations of \$90,713,000 for fiscal year 1996 for the activities of the Community Management Account of the Director of Central Intelligence. It also authorizes funds identified for the Advanced Research and Development Committee and the Environmental Task Force to remain available for two years.

Subsection (b) authorizes 247 full-time personnel for the Community Management Staff for fiscal year 1996 and provides that such personnel may be permanent employees of the Staff or detailed from various elements of the United States Government.

Subsection (c) requires that personnel be detailed on a reimbursable basis except for temporary situations of less than one year.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND
DISABILITY SYSTEM

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

Section 201 authorizes appropriations in the amount of \$213,900,000 for fiscal year 1996 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 of the conference report provides that appropriations authorized by the conference report 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. Section 301 is identical to section 301 of the House bill and section 301 of the Senate amendment.

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 that is not otherwise authorized by the Constitution or laws of the United States. Section 302 is identical to section 302 of the House bill and section 302 of the Senate amendment.

SEC. 303. APPLICATION OF SANCTIONS LAWS TO INTELLIGENCE ACTIVITIES.

Section 303 of the conference report amends the National Security Act of 1947 with a new Title IX to permit the President to stay the imposition of an economic, cultural, diplomatic, or other sanction or related action when the President determines and reports to Congress that to proceed without delay would seriously risk the compromise of an intelligence source or method or an ongoing criminal investigation. Both the House bill and the Senate amendment contained provisions pertaining to deferrals of sanctions.

Section 901 of the new Title IX of the National Security Act of 1947 grants the President the authority to stay the imposition of a sanction or related action. Section 901 requires that when a sanction or related action is to be deferred due to the risk of compromise of a source or method or an ongoing criminal investigation, the source or method or the law enforcement matter in question must be related to the activities giving rise to the sanction. The section allows the President to stay the imposition of a sanction or related action for a specified period not to exceed 120 days.

Section 902 of the new Title IX provides that when the President determines and reports to Congress that a stay of an imposition of a sanction or related action has not afforded sufficient time to obviate the risk to an ongoing criminal investigation or to an intelligence source or method that gave rise to the stay, the President may extend the stay for successive periods of not more than 120 days.

Section 903 of the new Title IX requires that reports to Congress pursuant to section 901 and 902 be submitted promptly upon the President's determination to stay the imposition of a sanction or related action. Reports required under the new title are to be submitted to the Committee on International Relations of the House and the Committee on Foreign Relations of the Senate. Those reports pertaining to determinations related to intelligence sources and methods are also to be submitted to the Permanent Select Committee on Intelligence of the House and the Select Committee on Intelligence of the Senate. Those reports pertaining to determinations related to ongoing criminal investigations are also to be submitted to the Judiciary Committees of the House and Senate. The conferees further recognize that the actual structure and content of the reports to the Senate and House committees of jurisdiction will be achieved as a result of ongoing dialogue between the Congress and the Executive Branch. The conferees expect that the reports submitted pursuant to the new title will indicate the nature of the activities giving rise to the sanction or related action, the applicable law concerned, the country or countries in which the activity took place, and other pertinent details, to the maximum extent practicable consistent with the protection of intelligence sources

and methods. The reports should also include a determination that the delay in the imposition of a sanction or related action will not be seriously prejudicial to the achievement of the United States' nonproliferation objectives or significantly increase the threat or risk to United States' military forces.

Section 904 of the new Title IX enumerates specific nonproliferation laws requiring a sanction or related action, the imposition of which the President may stay pursuant to sections 901 and 902. The section also grants the President the authority to stay the imposition of a sanction or related action contained in laws comparable to the enumerated acts.

Section 905 of the new Title IX states that the title ceases to be effective one year from the date of its enactment. The conferees believe this will afford Congress an opportunity to evaluate the use and effect of this provision in relation to sanctions laws. The Senate bill did not contain a similar provision.

The conferees expect that when the President chooses to exercise the deferral authority, the utmost will be done to resolve sources or methods or law enforcement problems as soon as possible so as to permit sanctions to be imposed as required by law. The intelligence and judiciary committees, as appropriate, should be informed fully of the efforts being made to address the circumstances that led to the delay. The conferees understand that instances where sanctions would be deferred would be rare, and that the deferral authority will be exercised only when an intelligence source or method or a criminal investigation is seriously at risk, and not to protect generic or speculative intelligence or law enforcement interests. Moreover, the presidential determination should not be used as a pretext for some other reason not to impose sanctions such as economic or foreign policy reasons. The President should lift the stay when the President determines that it is no longer necessary to protect against compromise.

The President must have sufficient information to determine whether the risk to intelligence sources and methods or an ongoing criminal investigation is significant and outweighs any potential harm to U.S. nonproliferation objectives. The conferees expect that determinations to invoke a stay authorized under this new title will be preceded by a rigorous interagency review process in which the recommendations of all relevant agencies, together with supporting facts, are made available to the President. The conferees intend to closely monitor the use of the authority provided under this title.

SEC. 305. THRIFT SAVINGS PLAN FORFEITURE.

Section 304 of the conference report adds a new subsection to section 8432(g) of title 5, United States Code, to provide that the Government's contribution to the Thrift Savings Plan under the Federal Employees Retirement System (FERS) and interest earned on that contribution shall be forfeited if the employee's annuity has been forfeited under subchapter II of Chapter 83, title 5, United States Code. This provision closes a loophole that was created when the FERS was established.

Prior to the enactment of the FERS, an employee's retirement annuity was based entirely on contributions made by the employee and by the Government to the applicable retirement fund. Under

subchapter II of Chapter 83, any employee convicted of various national security offenses, including espionage, would forfeit his annuity and be entitled to receive only his monetary contributions to the annuity. A new retirement benefit, however, was created with the establishment of FERS, payable under the Thrift Savings Plan.

The Thrift Savings Plan now permits the employee to contribute into the Government-managed fund and requires that the Government also contribute to the fund on the employee's behalf. When FERS was enacted, the forfeiture provisions of subchapter II were not amended to cover the Government's contributions to the Plan. This situation clearly undermines the intent of subchapter II by permitting an employee convicted of espionage to retain the Government's contributions to the Plan. Section 304 corrects this anomaly by requiring the forfeiture of the Government's contribution to the Plan and attributable earnings on that contribution in situations where an individual's annuity is forfeited under subchapter II. Section 304 is identical to section 304 of the House bill and section 304 of the Senate amendment.

SEC. 305. AUTHORITY TO RESTORE SPOUSAL PENSION BENEFITS TO SPOUSES WHO COOPERATE IN CRIMINAL INVESTIGATIONS AND PROSECUTIONS FOR NATIONAL SECURITY OFFENSES.

Section 305 of the conference report amends section 8318 of title 5, United States Code, to make the spouse of an individual whose annuity or retired pay has been forfeited under section 8312 or 8313 of title 5 eligible for spousal pension benefits if the Attorney General determines that the spouse fully cooperated in the criminal investigation and prosecution of the individual. Enactment of this legislation will help to protect the national security interests of the United States by encouraging the spouses of federal employees who know or suspect that their husband or wife is engaged in espionage activities to inform the Government and to cooperate in a subsequent criminal investigation and prosecution. Current law actually discourages cooperation with the Government, since under current law pension benefits are lost upon conviction and forfeiture of the husband's or wife's annuity, even if the spouse has cooperated with the Government. Section 305 is identical to section 305 of the House bill and section 305 of the Senate amendment.

SEC. 306. SECRECY AGREEMENTS USED IN INTELLIGENCE ACTIVITIES.

Section 306 addresses a problem that CIA has experienced with secrecy agreements in the conduct of authorized intelligence activities. Beginning with the Treasury, Postal Service, and General Government Appropriations Act for fiscal year 1991 and in each year thereafter, Congress has required that agreements to protect classified information must contain certain prescribed language to put the executor on notice that the agreement does not supersede specified laws and Executive Order 12356. The language is as follows:

These restrictions are consistent with and do not supersede, conflict with or otherwise alter the employee obligations, rights or liabilities created by Executive Order 12356; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower

Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse of public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents), and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into the Agreement and are controlling.

Notwithstanding that several of the laws cited apply only to federal employees, the Treasury appropriations acts have required CIA to include the specified language in nondisclosure agreements intended to be executed by private parties. The prescribed language is required in every secrecy agreement entered into, so federal employees and private entities alike must have such language included in the agreement that they sign. The recitation of numerous statutes in the overbearing but required "legalese" has caused confusion, complicated authorized intelligence activities, and even disrupted them when parties refused to sign agreements containing provisions that do not apply to them. The required language is intimidating and has chilled otherwise promising intelligence relationships with private entities.

Consequently, section 306 clarifies that CIA and other intelligence agencies have the flexibility to tailor nondisclosure agreements according to the needs of the intelligence activity at hand, as long as the agreement at a minimum requires nondisclosure without specific authorization by the United States Government. The form or agreement must also make clear that the form or agreement does not bar disclosures to Congress or disclosures to an authorized official of an executive agency that are deemed essential to reporting a violation of United States laws. This section, when enacted, will permit the use of secrecy agreements stated in plain and understandable English and that will not intimidate the layman. The provision will make it easier for people to understand their rights and obligations when signing a secrecy agreement, which will ultimately enhance the protection of national security information.

SEC. 307. LIMITATION ON AVAILABILITY OF FUNDS FOR AUTOMATIC DECLASSIFICATION OF RECORDS OVER 25 YEARS OLD.

Section 307 limits the availability of funds authorized to be appropriated by this Act to implement section 3.4 of Executive Order 12958 to \$25 million in fiscal year 1996. The Director of Central Intelligence, at the Director's discretion, may allocate this amount among the agencies of the National Foreign Intelligence Program for this purpose. Section 307 requires the President to submit budget requests that specifically identify the funds necessary to implement section 3.4 for fiscal years 1997 through 2000.

Given that the conferees have received four different estimates of the cost of implementing section 3.4 since the beginning of the year, the conferees believe there needs to be a continuing effort to fully evaluate the potential costs associated with the declassification review programs. The conferees further urge that this declassification effort be coordinated closely with CIA's Historical Review Program Office so as to enhance the intellectual coherence of the declassification process. In the budget submission for FY1997, the President is to provide a detailed request supported by firm estimates of declassification costs.

Section 307 of the House bill limited each agency of the National Foreign Intelligence Program to \$2.5 million to carry out the provisions of section 3.4. The Senate amendment had no similar provision.

SEC. 308. AMENDMENT TO THE HATCH ACT REFORM AMENDMENTS OF 1993.

Section 308 restores the authority of the Office of Personnel Management (OPM) to extend "de-Hatching" to employees of the agencies listed in 5 U.S.C. § 7323(b)(2)(B)(i).

Previously, under 5 U.S.C. § 7323, OPM had the authority to designate certain municipalities and other political subdivisions in which federal employees in both competitive and excepted services could actively participate in local partisan elections. (Such designation of municipalities and political subdivisions by OPM is commonly referred to as "de-Hatching".) However, when this authority was amended by Public Law 103-94 and recodified in 5 U.S.C. § 7325, the authority was granted only "without regard to the prohibitions in paragraphs (2) and (3) of section 7323(a)". The prohibitions in section 7323(a) apply to the federal employees, both competitive and excepted service. However, employees of NSA, CIA, DIA and the other agencies listed in 5 U.S.C. § 7323(b)(2)(B)(i) are subject to additional prohibitions under section 7323(b)(2)(A) which section 7325 does not permit OPM to disregard. Thus, OPM cannot extend de-Hatching to employees of the listed agencies and the implementing interim regulations issued by OPM (59 Fed. Reg. 5313 (1994) to be codified at 5 C.F.R. Part 733) reflect this restriction.

This provision would amend the "de-Hatching" provision (5 U.S.C. § 7325) to include the excepted services in the category of federal employees that OPM may permit to take an active part in local (not Federal) political campaigns.

Section 308 is identical to section 306 of the Senate amendment. The House bill did not contain a similar provision.

SEC. 309. REPORT ON PERSONNEL POLICIES.

Section 309 of the conference report requires the DCI to report to the intelligence oversight committees within three months detailed personnel procedures that could be implemented across the intelligence community to provide for mandatory retirement at expiration of time in class and termination based on relative performance similar to comparable provisions in sections 607 and 608 of the Foreign Service Act of 1980 (Title 22 U.S.C. 4007 and 4008) for civilian employees.

The Director of Central Intelligence and Secretary of Defense were directed in the FY 1995 Intelligence Authorization Act to pro-

vide a report by December 1, 1994 on the advisability of providing for mandatory retirement at expiration of time in class. The oversight committees have reviewed the issue and determined that a performance-based policy is advisable and are now directing the DCI to develop and report on procedures that could be implemented.

Senate floor action added a provision requiring that the DCI's report include a description and analysis of voluntary separation incentives, including a waiver of the "two percent penalty" reduction for early retirement under certain federal retirement systems. Section 309 is substantially similar to section 307 of the Senate amendment. The House bill did not contain a similar provision.

SEC. 310. ASSISTANCE TO FOREIGN COUNTRIES.

Section 310 of the conference report authorizes assistance to a foreign country for counterterrorism efforts, notwithstanding any other provision of law, for the purpose of protecting the property of the United States Government or the life and property of any United States citizen or furthering the apprehension of any individual involved in any act of terrorism against such property or persons. The appropriate committees of Congress are to be notified not later than 15 days prior to the provision of such assistance. This authority is needed for the purpose of furthering United States interests. By providing this authority, there will be no doubt that the United States will be able to provide assistance to foreign countries that are willing to help identify, track and apprehend persons who have destroyed American property or harmed American citizens. Section 310 is identical to section 308 of the Senate amendment. There was no comparable language in the House bill.

SEC. 311. FINANCIAL MANAGEMENT OF THE NATIONAL RECONNAISSANCE OFFICE.

Section 311 of the conference report seeks to improve accountability and financial management control over the National Reconnaissance Office. The section further requires a review of NRO's financial management by the Inspector General of CIA, assisted by the Inspector General of DOD, to evaluate the effectiveness of policies and internal controls over the NRO budget, particularly with regard to carry-forward funding. It is the intention of the conferees that the Director of Central Intelligence notify the intelligence oversight committees prior to reprogramming, reallocating, and/or rescinding funds previously authorized and appropriated for NRO programs, projects, and activities. The section also requires the President to report no later than January 30, 1996 on a proposal to subject the budget of the Intelligence Community to greater Executive Branch oversight, including the possibility of a statutory financial control officer for the NRO and greater Office of Management and Budget review of the NRO's budget. The report must include an analysis of the option for a statutory provision requiring the DCI to establish a policy to restrict the NRO's authority on carry-forward funding consistent with the restriction on such authority within the Department of Defense. The President shall also report on how changes proposed as a result of this review will affect, directly or indirectly, the NRO's streamlined acquisition process and ultimately, program costs.

Elements of section 311 were added to the Senate amendment in floor action, but the provision has been substantially changed in subsequent discussions among conferees. There was no comparable provision in the House bill.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

SEC. 401. EXTENSION OF THE CIA VOLUNTARY SEPARATION PAY ACT.

Section 401 amends section 2(f) of the CIA Voluntary Separation Pay Act, 50 U.S.C. § 403–4(f), to extend the Agency's authority to offer separation incentives until September 30, 1999. Without this amendment, the Agency's authority to offer such incentives will expire on September 30, 1997.

CIA's separation incentive program has been an effective force reduction tool. It is necessary to extend this authority until September 30, 1999, because CIA, like DOD, will continue to downsize through that year. Enactment of this provision will ensure that CIA can minimize the need to separate employees involuntarily. In light of the conferees' concern that this authority may have been used in the past in lieu of more rigorous personnel policies, this authority is extended with the understanding that the Intelligence Community will be pursuing such policies, and that this authority can be used to ease the transition to the more rigorous, performance-based criteria and policy.

Section 401(b) is designed to offset the direct spending cost of the extension of the authority provided for in the CIA Voluntary Separation Pay Act. Specifically, it establishes procedures to conform with the pay-as-you-go provision, section 252, of the Balanced Budget and Emergency Deficit Control Act, by requiring the Director of Central Intelligence to remit to the Treasury an amount equal to 15 percent of the final basic pay of each employee who, in fiscal year 1998 or fiscal year 1999, retires voluntarily or who resigns and to whom a voluntary separation incentive has been or is to be paid.

Section 401(a) is identical to section 401 of the House bill. Section 401(b) is identical to section 401(b) of the Senate amendment. The House bill did not contain a similar offset provision.

SEC. 402. VOLUNTEER SERVICE PROGRAM.

Section 402 authorizes the Director to establish, as a demonstration project, a limited volunteer service program for fiscal years 1996 through 2001, whereby no more than 50 retirees can volunteer their services to the CIA to assist the Agency in its systematic or mandatory review for declassification or downgrading of classified information under certain Executive Orders and Public Law 102–526. The provision limits expenditures to no more than \$100,000.

This section authorizes the Agency to pay costs incidental to the use of the services of volunteers, such as training, equipment, lodging, subsistence, equipment and supplies. It also ensures that volunteers are covered by workers compensation and the Federal Torts Claim Act. Without this legislation, the CIA would be unable to pay costs incident to the use of gratuitous services provided by volunteers, such as training and equipment. The program established under this section will be temporary and limited. Section 402

is identical to section 402 of the House bill and section 402 of the Senate amendment.

SEC. 403. AUTHORITIES OF THE INSPECTOR GENERAL OF THE CENTRAL INTELLIGENCE AGENCY.

Section 403(a) of the conference report modifies the CIA Inspector General statute to require the IG to report violations of Federal law by any person, as opposed to violations by officers or employees of the CIA. It also allows the reports to go directly from OIG to the Department of Justice, rather than through the DCI, although the DCI must receive a copy of the report. This is consistent with the Inspector General Statute of 1978 and enhances the independence of the IG. The conferees understand that the Inspector General has agreed to give advanced notice to the DCI and the conferees strongly support this agreement. The conferees further understand that this advance notice will not be used to prevent reports from going to the Department of Justice. Section 403(a) is identical to section 403(a) of the Senate amendment. The House bill did not contain a similar provision.

Section 403(b) of the conference report clarifies the CIA Inspector General statute to ensure that the identity of an employee who has been granted confidentiality can be disclosed to the Department of Justice official responsible for determining whether a prosecution should be undertaken. Current law already provides for this but this provision would clarify and simplify the process. Section 403(b) is identical to section 403(b) of the Senate amendment. The House bill did not contain a similar provision.

TITLE V—DEPARTMENT OF DEFENSE

INTELLIGENCE ACTIVITIES

SEC. 501. DEFENSE INTELLIGENCE SENIOR LEVEL POSITIONS.

Section 501 of the conference report amends section 1604 of title 10, United States Code, by authorizing the Secretary of Defense to establish the Defense Intelligence Senior Level (DISL) personnel system for the Defense Intelligence Agency (DIA) and the Central Imagery Office (CIO). Section 1604 currently authorizes the Secretary of Defense to establish positions for civilian officers and employees in DIA and CIO. The rates of basic pay for these positions are fixed in relation to the rates of basic pay provided in the General Schedule under section 5332 of title 5. Section 5332, however, which limits the grades of employees to GS-15, is insufficient for the needs of DIA and CIO.

In 1991, two Army field activities were transferred to DIA. The employees at the Missile and Space Intelligence Center and the Armed Forces Medical Intelligence Center are high-level technical employees. Their positions do not meet the management and program criteria for Senior Executive Service (SES) inclusion, but they do exceed the GS-15 criteria. DIA is also acquiring the Human Intelligence (HUMINT) resources of the Military Services. This functional transfer will add over 1,000 civilian and military personnel to DIA's rolls, and there may be a need to structure at least one senior advisory assignment as part of the Defense HUMINT Service (DHS) architecture. Additionally, the increased Defense intel-

ligence leadership roles of DIA and CIO require increased high level activity in technical analysis, liaison and advisory services.

The primary purpose of DISL positions will be to provide technical expertise and advisory services beyond the GS-15 level established by DIA and CIO. Employees in DISL positions will not be responsible for managerial and program oversight, which are functions of the SES. DISL positions will include Defense Intelligence Senior Technical (DIST) and Defense Intelligence Senior Professional (DISP) assignments. These positions are classifiable above the DIA and CIO GS-15 level but do not involve the organizational or program management functions necessary for the Defense Intelligence Senior Executive Service.

DIST positions are those that involve research and development; test and evaluation; or substantive analysis, liaison, and/or advisory activity focusing on engineering, physical sciences, computer science, mathematics, medicine, biology, chemistry, or other closely related scientific and technical fields; and intelligence disciplines including production, collection, and operations in close association with the preceding or related activities.

DISP positions are those that emphasize staff, liaison, analytical, advisory, or other activity focusing on intelligence, law, finance and accounting, program and budget, human resources management, training, information services, logistics, and other appropriate support fields.

DISL positions will provide DIA and CIO with the flexibility that is essential to recruit effectively and to retain highly competent employees with scientific, technical, or other complex skills. This provision allows the Secretary of Defense to establish a basic rate of pay that does not exceed the rate paid to Executive Level IV. It also authorizes the Secretary of Defense to provide to DIA and CIO employees other benefits, allowances, incentives, or compensation that similarly situated federal employees are eligible to receive under title 5, United States Code. Section 501 is identical to section 501 of the House bill. The Senate amendment did not contain a similar provision.

SEC. 502. COMPARABLE BENEFITS AND ALLOWANCES FOR CIVILIAN AND MILITARY PERSONNEL ASSIGNED TO DEFENSE INTELLIGENCE FUNCTIONS OVERSEAS.

Section 502 of the conference report amends section 1605 of title 10, United States Code, and section 431 of title 37, United States Code, to provide to civilian personnel and members of the armed forces serving with the Defense HUMINT Service outside the United States benefits and allowances comparable to those provided by the Secretary of State to officers and employees of the Foreign Service.

The Secretary of Defense has the authority to provide to civilian personnel and members of the armed forces assigned to the Defense Attaché Offices and the Defense Intelligence Agency Liaison Offices outside the United States benefits and allowances comparable to those provided by the Secretary of State to officers and employees of the Foreign Service. This authority was attained in 1983 (Public Law 98-215) because travel allowances and related benefits for overseas personnel at the Defense Attaché Offices and

the Defense Intelligence Agency Liaison Offices were different from Foreign Service personnel assigned overseas.

With the consolidation of Department of Defense human intelligence into the Defense HUMINT Service, the Defense Intelligence Agency will be responsible for a significant number of employees overseas. Although a number of these employees may be assigned to Defense Attaché Offices or Defense Intelligence Agency Liaison Offices outside the United States, there will be some assigned to other overseas locations. Since the Agency's authority to provide benefits and allowances to overseas employees is limited to the Defense Attaché Office and the Defense Intelligence Agency Liaison Offices, inequities will once again occur. Section 502 ensures comparable benefits for civilian and military personnel assigned to the Defense HUMINT Service overseas. Section 502 is virtually identical to Section 501 of the Senate amendment and section 502 of the House bill.

SEC. 503. EXTENSION OF AUTHORITY TO CONDUCT INTELLIGENCE COMMERCIAL ACTIVITIES.

Section 503 of the conference report would extend for three years, until December 31, 1998, the authority of the Secretary of Defense to initiate intelligence commercial activities to provide cover security to intelligence collection activities undertaken abroad by the Defense Department. This authority permits the Secretary to waive compliance with certain types of federal laws and regulations pertaining to the management and administration of federal entities when he determines that compliance by the commercial cover activity would create an unacceptable risk of compromise of an authorized intelligence collection activity. This authority is similar to the authority granted to the Central Intelligence Agency and the Federal Bureau of Investigation.

The Secretary's intelligence commercial cover authority was originally enacted as part of the FY 1991 Intelligence Authorization Act (Public Law 102-88) August 14, 1991. However, the intelligence commercial cover authority did not become effective until December 2, 1992, after the statutorily required promulgation and submission to Congress of a directive from the Secretary governing the implementation of the statute. Due to a variety of reasons, including the launching of a plan in 1993 to create a new Defense HUMINT Service under which all Defense Department human intelligence activities are being consolidated, this intelligence commercial activities authority has not yet been used, due largely to significant budget cuts effected in December 1992. Recently, however, DoD has enhanced its HUMINT efforts and is working closely with CIA to develop the skills, plans, and infrastructure necessary to effectively utilize this authority. Thus, the conference report extends the sunset provision to December 31, 1998.

The Administration's intelligence authorization legislative proposal sought repeal of the existing "sunset" clause, thus making the Secretary's intelligence commercial activities authority permanent. Senior officials from both the Defense Department and the Central Intelligence Agency testified to the continuing and growing need for the Secretary to have this authority under certain circumstances to provide bona fide commercial cover that can withstand detailed investigation by hostile foreign intelligence services as well as domes-

tic scrutiny. The conferees agreed to the extension of the authority. However, in view of the lack of a record of use thus far, Section 503 extends the authority for three years, instead of the permanent extension originally sought by the Administration. Three years should provide time for the development and oversight of a track record on the use of this authority without encouraging overuse of it, and particularly its more elaborate and sophisticated applications. At the end of that time, and based on its oversight of the record, the Intelligence Committees can address whether to make this authority permanent, extend it for a specific period or allow it to lapse. Section 503 is the same as section 503 of the House bill. Section 502 of the Senate amendment had extended the authority for five years.

SEC. 504. AVAILABILITY OF FUNDS FOR TIER II UAV.

The Fiscal Year 1995 authorization bill authorized full funding of the Defense Department's request for the Tier-2 Medium Altitude Endurance Unmanned Aerial Vehicle (UAV) Advanced Concept Technology Demonstration. The Fiscal Year 1995 defense appropriations bill included appropriations \$20 million above the amount authorized for the program. As these additional funds were not specifically authorized, as required by Section 504 of the National Security Act of 1947, the Department of Defense could not spend them. To remedy this problem, Section 504 of the conference report specifically authorizes an additional \$20 million for this program. Section 504 is identical to section 504 of the House bill. The Senate bill did not contain a similar provision.

SEC. 505. MILITARY DEPARTMENT CIVILIAN INTELLIGENCE PERSONNEL MANAGEMENT SYSTEM.

Section 505 of the conference report authorizes the Secretary of Defense to send civilian employees in the Military Departments' Civilian Intelligence Personnel Management System (CIPMS) to be students at accredited professional, technical, and other institutions of higher learning for training at the undergraduate level. This authority would be similar to that already granted to the Defense Intelligence Agency (DIA) in 10 U.S.C. section 1608 (Public Law 101-93, title V, section 507(a)(1), Nov. 30, 1989, 103 Stat. 1710) and the National Security Agency (NSA) in 50 U.S.C. 402 note. The purpose of the new section is to establish an undergraduate training program, including training which may lead to the baccalaureate degree, to facilitate the recruitment of individuals, particularly minority, women, and handicapped high school students with a demonstrated capability to develop skills critical to the intelligence missions of the Military Departments in areas such as computer science, engineering, foreign language, and area studies. In exchange for this financial assistance from the respective CIPMS organization, the student participant would undertake an obligation to work for a period of one-and-one half years for each year or partial year of schooling.

The missions of the intelligence entities of the United States Government demand employees of extraordinary aptitude and strong undergraduate training. These same entities must compete with a private sector—capable of offering more favorable compensation arrangements—that in most instances has been able to outbid

the USG in terms of attracting qualified minority candidates. Statistics in recent years indicate that the success of the Military Departments' CIPMS to attract minority group candidates has been marginal.

This proposal is designed to enhance the capabilities of the intelligence elements of the Military Departments to: (i) ensure equal employment opportunity with their civilian ranks through affirmative action; (ii) develop and retain personnel trained in the skills essential to the effective performance of their intelligence mission; and, (iii) compete on equal footing with other Intelligence Community entities for personnel with critical skills. Section 505 is identical to section 503 of the Senate amendment. The House bill did not contain a similar provision.

SEC. 506. ENHANCEMENT OF CAPABILITIES OF CERTAIN ARMY FACILITIES.

Section 506 of the conference report is intended to assist the Department of the Army as it assumes executive agent responsibility for the Bad Aibling, Germany and Menwith Hill, England stations. Specifically, this provision would permit the Department of the Army to use up to \$2 million of appropriated operations and maintenance funds to rectify infrastructure and quality of life problems at Menwith Hill and Bad Aibling. At the present time, the Army is prohibited by statute from using appropriated funds to support certain activities. Section 506 was added to the Senate amendment in floor action. The House bill did not include a similar provision.

TITLE VI—FEDERAL BUREAU OF INVESTIGATION

SEC. 601. DISCLOSURE OF INFORMATION AND CONSUMER REPORTS TO FBI FOR COUNTERINTELLIGENCE PURPOSES.

Section 601 of the conference report would amend the Fair Credit Reporting Act (FCRA) (15 U.S.C. 1681f) to grant the Federal Bureau of Investigation (FBI) access to certain information in consumer credit records in counterintelligence investigations.

A similar provision was included in the Intelligence Authorization Act for FY 1995 as reported by the Senate Select Committee on Intelligence. The provision was dropped in conference at the request of the House Committee on Banking, Finance, and Urban Affairs upon assurances that it would pursue similar legislation. The U.S. House of Representatives ultimately adopted H.R. 5143 which was substantially the same as section 601 of this Act. The bill was never acted upon by the Senate during the last Congress. The conferees have recently received a letter from the Chairman of the House Committee on Banking and Financial Services in support of this provision. The language of that letter is as follows:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING AND FINANCIAL SERVICES,
Washington, DC, October 11, 1995.

Hon. NEWT GINGRICH,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I am writing concerning H.R. 1655, the "Intelligence Authorization Act for Fiscal Year 1996" on which the House will soon appoint conferees to reconcile differences with the Senate. Section 601 of H.R. 1655, as added by the Senate amends the Fair Credit Reporting Act (FCRA) and thereby falls under the jurisdiction of the Committee on Banking and Financial Services, as provided for under Rule X of the Rules of the House of Representatives.

Section 601 of the Senate reported bill amends the FCRA to allow the FBI greater access to consumer reports when investigating foreign terrorism. The FCRA imposes certain obligations and liabilities on consumer reporting agencies in assembling, evaluating and maintaining consumer credit reports. Section 601 amends the FCRA to grant authority to the FBI to obtain certain information from a consumer report on a suspected terrorist without a court order.

The section is carefully crafted to protect consumers' rights to privacy while allowing law enforcement agencies to obtain necessary information in order to conduct authorized foreign counterintelligence investigations. This issue was considered by the Banking Committee in the last several Congresses and a provision similar to section 601 was passed by the full House in the 103rd Congress. In addition, Banking Committee conferees were appointed by the House to the Intelligence Authorization conference (H.R. 4299) last Congress on this issue. Given past precedent of the House and the fact that the language of this section was developed in consultation with the House Banking Committee.

I would strongly urge the House conferees to recede to the Senate on Section 601 or to consult with the Banking Committee in the event of any substantive modifications.

Sincerely,

JAMES A. LEACH, *Chairman.*

This provision would provide a limited expansion of the FBI's authority in counterintelligence investigations (including terrorism investigations), to obtain a consumer credit report with a court order. In addition, it would allow the FBI to use a "National Security Letter," i.e. a written certification by the FBI Director or the Director's designee, to obtain from a consumer credit agency the names and addresses of all financial institutions at which a consumer maintains an account, as well as certain identifying information.

Under current law, when appropriate legal standards are met, FBI is able to obtain mandatory access to credit records by means of a court order or grand jury subpoena (see the FCRA, 15 U.S.C. 168b(1)), but such an option is available to the FBI only after a counterintelligence investigation has been converted to a criminal investigation or proceeding. Many counterintelligence investiga-

tions never reach the criminal stage but proceed for intelligence purposes or are handled in diplomatic channels.

In addition, FBI presently has authority to use the National Security Letter mechanism to obtain two types of records; financial institution records (under the Right to Financial Privacy Act, 12 U.S.C. 3414(a)(5)) and telephone subscriber and toll billing information (under the Electronic Communications Privacy Act, 18 U.S.C. 2709). Expansion of this extraordinary authority is not taken lightly by the conferees, but the conferees have concluded that in this instance the need is genuine, the threshold for use is sufficiently rigorous, and, given the safeguards built in to the legislation, the threat to privacy is minimized.

Under a provision of the Right to Financial Privacy Act (RFPA) (12 U.S.C. 3414(a)(5)), the FBI is entitled to obtain financial records from financial institutions, such as banks and credit card companies, by means of a National Security Letter when the Director or the Director's designee certifies in writing to the financial institution that such records are sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the customer or entity whose records are sought is a foreign power or an agent of a foreign power, as those terms are defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

The FBI considers such access to financial records crucial to trace the activities of suspected spies or terrorists. The need to follow financial dealings in counterintelligence investigations has grown as foreign intelligence services increasingly operate under non-official cover, i.e., pose as business entities or executives, and as foreign intelligence service activity has focused increasingly on U.S. economic information.

FBI's right of access under the Right of Financial Privacy Act cannot be effectively used, however, until the FBI discovers which financial institutions are being utilized by the subject of a counterintelligence investigation. Consumer reports maintained by credit bureaus are a ready source of such information, but, although such report are readily available to the private sector, they are not available to FBI counterintelligence investigators. Under section 608 of the Fair Credit Reporting Act, without a court order, FBI counterintelligence officials, like other government agencies, are entitled to obtain only limited information from credit reporting agencies—the name, address, former addresses, places of employment, and former places of employment, of a person—and this information can be obtained only with the consent of the credit bureau.

FBI has made a specific showing to the conferees that the effort to identify financial institutions in order to make use of FBI authority under the Right to Financial Privacy Act can not only be time-consuming and resource-intensive, but can also require the use of investigative techniques—such as physical and electronic surveillance, review of mail covers, and canvassing of all banks in an area—that would appear to be more intrusive than the review of credit reports. FBI has offered a number of specific examples in which lengthy, intensive and intrusive surveillance activity was required to identify financial institutions doing business with a suspected spy or terrorist.

Section 601 of the instant legislation would amend FCRA by adding a new section 624, consisting of 13 paragraphs.

Paragraph 624(a) of the amended FCRA requires a consumer reporting agency to furnish to the FBI the names and addresses of all financial institutions at which a consumer maintains or has maintained an account, to the extent the agency has that information, when presented with a written request signed by the FBI Director or the Director's designee, which certifies compliance with the subsection. The FBI Director or the Director's designee may make such certification only if the Director or the Director's designee has determined in writing that such records are necessary for the conduct of an authorized foreign counterintelligence investigation and that there are specific and articulable facts giving reason to believe that the person whose consumer report is sought is a foreign power, a non-U.S. official of a foreign power, or an agent of a foreign power (as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)) and is engaged in terrorism or other criminal clandestine intelligence activities.

The requirement that there be specific and articulable facts giving reasons to believe that a U.S. person is an agent of a foreign power before FBI can obtain access to a consumer report is consistent with the standards in the Right to Financial Privacy Act, U.S.C. 3414(a)(5)(A), and the Electronic Communications Privacy Act, 18 U.S.C. 2709(b).

However, in contrast to those statutes, the conferees have drafted the FCRA certification requirement to provide that the FBI demand submitted to the consumer reporting agency make reference to the statutory provision without providing the agency with a written certification that the subject of the consumer report is believed to be an agent of a foreign power. FBI would still be required to record in writing its determination regarding the subject, and the credit reporting agency would be able to draw the necessary conclusion, but the conferees believe that this approach would reduce the risk of harm from the certification process itself to the person under investigation. A similar approach is taken in paragraph 624(b) described below.

Section 605 of the FCRA, 15 U.S.C. 1681c, defines "consumer report" in a manner that prohibits the dissemination by credit reporting agencies of certain older information except in limited circumstances. None of these excepted circumstances would apply to FBI access under proposed FCRA paragraph 624(a) (or proposed FCRA paragraph 624(b)). Accordingly, FBI access would be limited to "consumer reports" as defined in section 605.

The term "an authorized foreign counterintelligence investigation" includes those FBI investigations conducted for the purpose of countering international terrorist activities as well as those FBI investigations conducted for the purpose of countering the intelligence activities of foreign powers. Both types of investigations are conducted under the auspices of the FBI's Intelligence Division, headed by an FBI Assistant Director.

As is the case with the FBI's existing National Security Letter authority under the Right to Financial Privacy Act (see Senate Report 99-307, May 21, 1986, p. 16; House Report 99-952, October

1, 1986, p. 23), the conferees expect that, if the Director of the FBI delegates this function under paragraph 624(a), as well as under paragraph 624(b) discussed below, the Director will delegate it no further than the level of FBI Deputy Assistant Director. (There are presently two Deputy Assistant Directors for the National Security Division, one with primary responsibility for counterintelligence investigations and the other with primary responsibility for international terrorism investigations.)

Paragraph 624(b) would give the FBI mandatory access to the consumer identifying information—name, address, former addresses, places of employment, or former places of employment—that it may obtain under current section 608 only with the consent of the credit reporting agency. A consumer reporting agency would be required signed by the FBI Director or the Director's designee, which certifies compliance with the subsection. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing that such information is necessary to the conduct of an authorized foreign counterintelligence investigation and that there is information giving reason to believe that the person about whom the information is sought has been or is about to be, in contact with a foreign power or an agent of a foreign power, as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et. seq.).

FBI officials have indicated that they seek mandatory access to this identifying information in order to determine if a person who has been in contact with a foreign power or agent is a government or industry employee who might have access to sensitive information of interest to a foreign intelligence service. Accordingly, the conferees have drafted this provision to require that such limited information can be provided only in circumstances where the consumer has been or is about to be in contact with the foreign power or agent.

The conferees have also drafted paragraphs 624(a) and 624(b) in a manner intended to make clear the conferees' intent that the FBI may use this authority to obtain this information only as regard those persons who either are a foreign power or agent thereof or have been or will be in contact with a foreign power or agent. Although the consumer records of another person, such as a relative or friend of an agent of a foreign power, or identifying information respecting a relative or friend of a person in contact with an agent of a foreign power, may be of interest to FBI counterintelligence investigators, they are not subject to access under paragraphs 624(a) and 624(b).

It is not the intent of the conferees to require any credit reporting agency to gather credit or identifying information on a person for the purpose of fulfilling an FBI request under paragraphs 624(a) and 624(b). A credit reporting agency's obligation under these provisions is to provide information responsive to the FBI's request that the credit reporting agency already has in its possession.

Paragraph 624(c) provides that, if requested in writing by the FBI, a court may issue an order ex parte directing a consumer reporting agency to furnish a consumer report to the FBI upon a showing in camera that the report is necessary for the conduct of

an authorized foreign counterintelligence investigation and that there are specific and articulable facts giving reason to believe the consumer is an agent of a foreign power and is engaged in international terrorism or clandestine intelligence activities that may involve a crime.

Paragraph 624(d) provides that no consumer reporting agency or officer, employee, or agent of such institution shall disclose to any person, other than those officers, employees or agents of such institution necessary to fulfill the requirement to disclose information to the FBI under subsection 624, that the FBI has sought or obtained a consumer report or financial institution, or identifying information respecting any consumer under paragraphs 624, nor shall such agency, officer, employee, or agent include in any consumer report any information that would indicate that the FBI has sought or obtained such information. The prohibition against including such information in a consumer report is intended to clarify the obligations of the consumer reporting agencies. It is not intended to preclude employees of consumer reporting agencies from complying with company regulations or policies concerning the reporting of information, nor to preclude their complying with a subpoena for such information issued pursuant to appropriate legal authority.

Paragraph 624(d) departs from the parallel provision of the RFPA by clarifying that disclosure is permitted within the contacted institution to the extent necessary to fulfill the FBI request. The conferees have not concluded that, or otherwise taken a position whether, disclosure for such purpose would be forbidden by the RFPA; indeed, practicalities would dictate that the provision not be interpreted to exclude such disclosure. However, the conferees believe that clarification of the obligation for purposes of the FCRA is desirable.

Paragraph 624(e) requires the FBI, subject to the availability of appropriations, to pay to the consumer reporting agency assembling or providing credit records a fee in accordance with FCRA procedures for reimbursement for costs reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced under section 624. The FBI informs the Committee that such reports are commercially available for approximately \$7 to \$25 and that FBI could expect to pay fees in approximately that range. FBI officials have advised the conferees that the costs of such reports would be easily recouped from the savings afforded by the reduced need for other investigative techniques aimed at obtaining the same information.

Paragraph 624(f) prohibits the FBI from disseminating information obtained pursuant to section 624 outside the FBI, except as may be necessary for the approval of conduct of a foreign counterintelligence investigation, or, where the information concerns military service personnel subject to the Uniform Code of Military Justice, to appropriate investigation authorities in the military department concerned as may be necessary for the conduct of a joint foreign counterintelligence investigation with the FBI. Since the military departments have concurrent jurisdiction to investigate and prosecute military personnel subject to the Uniform Code of Mili-

tary Justice, paragraph 624(g) permits the FBI to disseminate consumer credit reports it obtains pursuant to this section to appropriate military investigative authorities where a foreign counterintelligence investigation involves a military service person and is being conducted jointly with the FBI.

Paragraph 624(g) provides that nothing in section 624 shall be construed to prohibit information from being furnished by the FBI pursuant to subpoena or court order, or in connection with judicial or administrative proceeding to enforce the provisions of the FCRA. The paragraph further provides that nothing in section 624 shall be construed to authorize or permit the withholding of information from the Congress.

Paragraph 624(h) provides that on a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence and the Committee on Banking, Finance, and Urban Affairs of the U.S. House of Representatives, and the Select Committee on Intelligence and the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate concerning all requests made pursuant to section 624.

Semiannual reports are required to be submitted to the intelligence committees on (1) use of FBI's mandatory access provision of the RFPA by section 3414(a)(5)(C) of title 15, United States Code; and (2) use of the FBI's counterintelligence authority, under the Electronic Privacy Communications Act of 1986, to access telephone subscriber and toll billing information by section 2709(e) of title 18, United States Code. The conferees expect the reports required by FCRA paragraph 624(h) to match the level of detail included in these reports, i.e., a breakdown by quarter, by number of requests, by number or persons or organizations subject to requests, and by U.S. persons and organizations and non-U.S. persons and organizations.

Paragraphs 624(i) through 624(m) parallel the enforcement provisions of the Right to Financial Privacy Act, 12 U.S.C. 3417 and 3418.

Paragraph 624(i) establishes civil penalties for access or disclosure by an agency or department of the United States in violation of section 624. Damages, costs and attorney fees would be awarded to the person to whom the consumer reports related in the event of a violation.

Paragraph 624(j) provides that whenever a court determines that any agency or department of the United States has violated any provision of section 624 and that the circumstances surrounding the violation raise questions of whether an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was responsible for the violation.

Paragraph 624(k) provides that any credit reporting institution or agent or employee thereof making a disclosure of credit records pursuant to section 624 in good-faith reliance upon a certificate by the FBI pursuant to the provisions of section 624 shall not be liable to any person for such disclosure under title 15, the constitution of

any State, or any law or regulation of any State or any political subdivision of any State.

Paragraph 624(l) provides that the remedies and sanctions set forth in section 624 shall be the only judicial remedies and sanctions for violations of the section.

Paragraph 624(m) provides that in addition to any other remedy contained in section 624, injunctive relief shall be available to require that the procedures of the section are complied with and that in the event of any successful action, costs together with reasonable attorney's fees, as determined by the court, may be recovered.

Section 601 is identical to section 601 of the Senate amendment. The House bill did not contain a similar provision.

TITLE VII—TECHNICAL AMENDMENTS

SEC. 701. CLARIFICATION WITH RESPECT TO PAY FOR DIRECTOR OR DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE APPOINTED FROM COMMISSIONED OFFICERS OF THE ARMED FORCES.

Section 701 of the conference report amends section 102(c)(3)(C) of the National Security Act of 1947 to make clear that a retired military officer appointed as Director or Deputy Director of Central Intelligence can receive compensation at the appropriate level of the Executive Schedule under 5 U.S.C. § 5313 (Director) or 5 U.S.C. § 5314 (Deputy Director). This was clearly the intent of the drafters of this provision. The conferees are aware of the restriction on compensation that applies to active duty military personnel appointed as DCI or DDCI, and in no way wish to change this restriction. Section 701 is similar to Section 601 in the House bill and Section 701 in the Senate amendment.

SEC. 702. CHANGE OF DESIGNATION OF CIA OFFICE OF SECURITY.

Section 702 of the conference report amends the CIA Information Act of 1984 to reflect the recent reorganization of the CIA Office of Security into the Office of Personnel Security and the Office of Security Operations. The amendment will ensure that the Office of Personnel Security, where the records intended to be subject to the Act are kept, will continue to receive the benefit of the Act's exception from search and review under the Freedom of Information Act. Section 701 is similar to Section 602 in the House bill and Section 702 in the Senate amendment.

PROVISIONS NOT INCLUDED IN THE CONFERENCE REPORT

The Senate amendment included, at Section 404, a requirement for an annual report on liaison relationships. While the Conferees are committed to ensuring that the oversight committees are appropriately informed on liaison relationships, they do not believe that a statutory reporting requirement is the best way to achieve that result. Consequently, the conferees agreed to delete section 404.

From the Permanent Select Committee on Intelligence, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

LARRY COMBEST,
R.K. DORNAN,
BILL YOUNG,
JAMES V. HANSEN,
JERRY LEWIS,
PORTER J. GOSS,
BUD SHUSTER,
BILL MCCOLLUM,
MICHAEL N. CASTLE,
NORMAN DICKS,
BILL RICHARDSON,
JULIAN C. DIXON,
ROBERT G. TORRICELLI,
RON COLEMAN,
DAVID E. SKAGGS,
NANCY PELOSI,

As additional conferees from the Committee on National Security, for consideration of defense tactical intelligence and related activities:

FLOYD SPENCE,
BOB STUMP,

As additional conferees from the Committee on International Relations, for consideration of section 303 of the House bill, and section 303 of the Senate amendment, and modifications committed to conference:

BENJAMIN A. GILMAN,
CHRISTOPHER SMITH,
HOWARD L. BERMAN,

Managers on the Part of the House.

ARLEN SPECTER,
RICHARD G. LUGAR,
RICHARD SHELBY,
MIKE DEWINE,
JON KYL,
JIM INHOFE,
KAY BAILEY HUTCHISON,
CONNIE MACK,
BILL COHEN,
STROM THURMOND,
ROBERT KERREY,
JOHN GLENN,
RICHARD H. BRYAN,
BOB GRAHAM,
JOHN F. KERRY,
MAX BAUCUS,
J. BENNETT JOHNSTON,
CHARLES ROBB,
SAM NUNN,

Managers on the Part of the Senate.

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