

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR
2002

DECEMBER 6, 2001.—Ordered to be printed

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

CONFERENCE REPORT

[To accompany H.R. 2883]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2883), to authorize appropriations for fiscal year 2002 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 2002”.*

(b) *TABLE OF CONTENTS.*—*The table of contents of 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. Intelligence Community Management Account.

Sec. 105. Codification of the Coast Guard as an element of the intelligence community.

**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. Sense of Congress on intelligence community contracting.
Sec. 304. Requirements for lodging allowances in intelligence community assignment program benefits.
Sec. 305. Modification of reporting requirements for significant anticipated intelligence activities and significant intelligence failures.
Sec. 306. Report on implementation of recommendations of the National Commission on Terrorism and other entities.
Sec. 307. Judicial review under Foreign Narcotics Kingpin Designation Act.
Sec. 308. Modification of positions requiring consultation with Director of Central Intelligence in appointments.
Sec. 309. Modification of authorities for protection of intelligence community employees who report urgent concerns to Congress.
Sec. 310. Review of protections against the unauthorized disclosure of classified information.
Sec. 311. One-year suspension of reorganization of Diplomatic Telecommunications Service Program Office.
Sec. 312. Presidential approval and submission to Congress of National Counterintelligence Strategy and National Threat Identification and Prioritization Assessments.
Sec. 313. Report on alien terrorist removal proceedings.
Sec. 314. Technical amendments.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

- Sec. 401. Modifications of central services program.*
Sec. 402. One-year extension of Central Intelligence Agency Voluntary Separation Pay Act.
Sec. 403. Guidelines for recruitment of certain foreign assets.
Sec. 404. Full reimbursement for professional liability insurance of counterterrorism employees.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

- Sec. 501. Authority to purchase items of nominal value for recruitment purposes.*
Sec. 502. Funding for infrastructure and quality-of-life improvements at Menwith Hill and Bad Aibling stations.
Sec. 503. Modification of authorities relating to official immunity in interdiction of aircraft engaged in illicit drug trafficking.
Sec. 504. Undergraduate training program for employees of the National Imagery and Mapping Agency.
Sec. 505. Preparation and submittal of reports, reviews, studies, and plans relating to Department of Defense intelligence activities.
Sec. 506. Enhancement of security authorities of National Security Agency.

TITLE I—INTELLIGENCE ACTIVITIES

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2002 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 the Treasury.*

- (8) *The Department of Energy.*
- (9) *The Federal Bureau of Investigation.*
- (10) *The National Reconnaissance Office.*
- (11) *The National Imagery and Mapping Agency.*
- (12) *The Coast Guard.*

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, 2002, 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. 2883 of the One Hundred Seventh 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 2002 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 2 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 notify promptly the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever the Director exercises the authority granted by this section.*

SEC. 104. INTELLIGENCE 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 2002 the sum of \$200,276,000. Within such amount, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for the advanced research and development committee shall remain available until September 30, 2003.*

(b) **AUTHORIZED PERSONNEL LEVELS.**—*The elements within the Intelligence Community Management Account of the Director of Central Intelligence are authorized 343 full-time personnel as of September 30, 2002. Personnel serving in such elements may be permanent employees of the Intelligence Community Management Account or personnel detailed from other elements of the United States Government.*

(c) **CLASSIFIED AUTHORIZATIONS.**—

(1) **AUTHORIZATION OF APPROPRIATIONS.**—*In addition to amounts authorized to be appropriated for the Intelligence Community Management Account by subsection (a), there are*

also authorized to be appropriated for the Intelligence Community Management Account for fiscal year 2002 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts shall remain available until September 30, 2003.

(2) *AUTHORIZATION OF PERSONNEL.*—In addition to the personnel authorized by subsection (b) for elements of the Intelligence Community Management Account as of September 30, 2002, there are hereby authorized such additional personnel for such elements as of that date as are specified in the classified Schedule of Authorizations.

(d) *REIMBURSEMENT.*—Except as provided in section 113 of the National Security Act of 1947 (50 U.S.C. 404h), during fiscal year 2002 any officer or employee of the United States or a member of the Armed Forces who is detailed to the staff of the Intelligence Community Management Account 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.

(e) *NATIONAL DRUG INTELLIGENCE CENTER.*—

(1) *IN GENERAL.*—Of the amount authorized to be appropriated in subsection (a), \$44,000,000 shall be available for the National Drug Intelligence Center. Within such amount, funds provided for research, development, testing, and evaluation purposes shall remain available until September 30, 2003, and funds provided for procurement purposes shall remain available until September 30, 2004.

(2) *TRANSFER OF FUNDS.*—The Director of Central Intelligence shall transfer to the Attorney General funds available for the National Drug Intelligence Center under paragraph (1). The Attorney General shall utilize funds so transferred for the activities of the National Drug Intelligence Center.

(3) *LIMITATION.*—Amounts available for the National Drug Intelligence Center may not be used in contravention of the provisions of section 103(d)(1) of the National Security Act of 1947 (50 U.S.C. 403–3(d)(1)).

(4) *AUTHORITY.*—Notwithstanding any other provision of law, the Attorney General shall retain full authority over the operations of the National Drug Intelligence Center.

SEC. 105. CODIFICATION OF THE COAST GUARD AS AN ELEMENT OF THE INTELLIGENCE COMMUNITY.

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

(1) by striking “and” before “the Department of Energy”; and

(2) by inserting “, and the Coast Guard” before the semicolon.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DIS- ABILITY SYSTEM

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2002 the sum of \$212,000,000.

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. SENSE OF CONGRESS ON INTELLIGENCE COMMUNITY CONTRACTING.

It is the sense of Congress that the Director of Central Intelligence should continue to direct that elements of the intelligence community, whenever compatible with the national security interests of the United States and consistent with operational and security concerns related to the conduct of intelligence activities, and where fiscally sound, should competitively award contracts in a manner that maximizes the procurement of products properly designated as having been made in the United States.

SEC. 304. REQUIREMENTS FOR LODGING ALLOWANCES IN INTELLIGENCE COMMUNITY ASSIGNMENT PROGRAM BENEFITS.

Section 113(b) of the National Security Act of 1947 (50 U.S.C. 404h(b) is amended—

(1) by inserting “(1)” before “An employee”; and

(2) by adding at the end the following new paragraph:

“(2) The head of an agency of an employee detailed under subsection (a) may pay a lodging allowance for the employee subject to the following conditions:

“(A) The allowance shall be the lesser of the cost of the lodging or a maximum amount payable for the lodging as established jointly by the Director of Central Intelligence and—

“(i) with respect to detailed employees of the Department of Defense, the Secretary of Defense; and

“(ii) with respect to detailed employees of other agencies and departments, the head of such agency or department.

“(B) The detailed employee maintains a primary residence for the employee’s immediate family in the local commuting area of the parent agency duty station from which the employee regularly commuted to such duty station before the detail.

“(C) The lodging is within a reasonable proximity of the host agency duty station.

“(D) The distance between the detailed employee’s parent agency duty station and the host agency duty station is greater than 20 miles.

“(E) The distance between the detailed employee’s primary residence and the host agency duty station is 10 miles greater than the distance between such primary residence and the employees parent duty station.

“(F) The rate of pay applicable to the detailed employee does not exceed the rate of basic pay for grade GS-15 of the General Schedule.”.

SEC. 305. MODIFICATION OF REPORTING REQUIREMENTS FOR SIGNIFICANT ANTICIPATED INTELLIGENCE ACTIVITIES AND SIGNIFICANT INTELLIGENCE FAILURES.

Section 502 of the National Security Act of 1947 (50 U.S.C. 413a) is amended—

(1) by inserting “(a) IN GENERAL.—” before “To the extent”; and

(2) by adding at the end the following new subsections:

“(b) FORM AND CONTENTS OF CERTAIN REPORTS.—Any report relating to a significant anticipated intelligence activity or a significant intelligence failure that is submitted to the intelligence committees for purposes of subsection (a)(1) shall be in writing, and shall contain the following:

“(1) A concise statement of any facts pertinent to such report.

“(2) An explanation of the significance of the intelligence activity or intelligence failure covered by such report.

“(c) STANDARDS AND PROCEDURES FOR CERTAIN REPORTS.—The Director of Central Intelligence, in consultation with the heads of the departments, agencies, and entities referred to in subsection (a), shall establish standards and procedures applicable to reports covered by subsection (b).”.

SEC. 306. REPORT ON IMPLEMENTATION OF RECOMMENDATIONS OF THE NATIONAL COMMISSION ON TERRORISM AND OTHER ENTITIES.

(a) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Director of Central Intelligence shall submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report concerning whether, and to what extent, the Intelligence Community has implemented recommendations relevant to the Intelligence Community as set forth in the following:

(1) The report prepared by the National Commission on Terrorism established by section 591 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277).

(2) The report prepared by the United States Commission on National Security for the 21st Century, Phase III, dated February 15, 2001.

(3) The second annual report of the advisory panel to assess domestic response capabilities for terrorism involving weapons of mass destruction established pursuant to section 1405 of the

National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 50 U.S.C. 2301 note).

(b) *RECOMMENDATIONS DETERMINED NOT TO BE ADOPTED.*—In a case in which the Director determines that a recommendation described in subsection (a) has not been implemented, the report under that subsection shall include a detailed explanation of the reasons for not implementing that recommendation.

SEC. 307. JUDICIAL REVIEW UNDER FOREIGN NARCOTICS KINGPIN DESIGNATION ACT.

Section 805 of the Foreign Narcotics Kingpin Designation Act (title VIII of Public Law 106-120; 113 Stat. 1629; 21 U.S.C. 1904) is amended by striking subsection (f).

SEC. 308. MODIFICATION OF POSITIONS REQUIRING CONSULTATION WITH DIRECTOR OF CENTRAL INTELLIGENCE IN APPOINTMENTS.

Section 106(b)(2) of the National Security Act of 1947 (50 U.S.C. 403-6(b)(2)) is amended by striking subparagraph (C) and inserting the following new subparagraphs:

“(C) *The Director of the Office of Intelligence of the Department of Energy.*

“(D) *The Director of the Office of Counterintelligence of the Department of Energy.*”.

SEC. 309. MODIFICATION OF AUTHORITIES FOR PROTECTION OF INTELLIGENCE COMMUNITY EMPLOYEES WHO REPORT URGENT CONCERNS TO CONGRESS.

(a) **AUTHORITY OF INSPECTOR GENERAL OF CENTRAL INTELLIGENCE AGENCY.**—*Section 17(d)(5) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)(5)) is amended—*

(1) in subparagraph (B), by striking the second sentence and inserting the following new sentence: “Upon making such a determination, the Inspector General shall transmit to the Director notice of that determination, together with the complaint or information.”; and

(2) in subparagraph (D)(i), by striking “does not transmit,” and all that follows through “subparagraph (B),” and inserting “does not find credible under subparagraph (B) a complaint or information submitted under subparagraph (A), or does not transmit the complaint or information to the Director in accurate form under subparagraph (B).”

(b) **AUTHORITIES OF INSPECTORS GENERAL OF THE INTELLIGENCE COMMUNITY.**—*Section 8H of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—*

(1) in subsection (b), by striking the second sentence and inserting the following new sentence: “Upon making such a determination, the Inspector General shall transmit to the head of the establishment notice of that determination, together with the complaint or information.”; and

(2) in subsection (d)(1), by striking “does not transmit,” and all that follows through “subsection (b),” and inserting “does not find credible under subsection (b) a complaint or information submitted to the Inspector General under subsection (a), or does not transmit the complaint or information to the head of the establishment in accurate form under subsection (b).”

SEC. 310. REVIEW OF PROTECTIONS AGAINST THE UNAUTHORIZED DISCLOSURE OF CLASSIFIED INFORMATION.

(a) *REQUIREMENT.*—The Attorney General shall, in consultation with the Secretary of Defense, Secretary of State, Secretary of Energy, Director of Central Intelligence, and heads of such other departments, agencies, and entities of the United States Government as the Attorney General considers appropriate, carry out a comprehensive review of current protections against the unauthorized disclosure of classified information, including—

(1) any mechanisms available under civil or criminal law, or under regulation, to detect the unauthorized disclosure of such information; and

(2) any sanctions available under civil or criminal law, or under regulation, to deter and punish the unauthorized disclosure of such information.

(b) *PARTICULAR CONSIDERATIONS.*—In carrying out the review required by subsection (a), the Attorney General shall consider, in particular—

(1) whether the administrative regulations and practices of the intelligence community are adequate, in light of the particular requirements of the intelligence community, to protect against the unauthorized disclosure of classified information; and

(2) whether recent developments in technology, and anticipated developments in technology, necessitate particular modifications of current protections against the unauthorized disclosure of classified information in order to further protect against the unauthorized disclosure of such information.

(c) *REPORT.*—(1) Not later than May 1, 2002, the Attorney General shall submit to Congress a report on the review carried out under subsection (a). The report shall include the following:

(A) A comprehensive description of the review, including the findings of the Attorney General as a result of the review.

(B) An assessment of the efficacy and adequacy of current laws and regulations against the unauthorized disclosure of classified information, including whether or not modifications of such laws or regulations, or additional laws or regulations, are advisable in order to further protect against the unauthorized disclosure of such information.

(C) Any recommendations for legislative or administrative action that the Attorney General considers appropriate, including a proposed draft for any such action, and a comprehensive analysis of the Constitutional and legal ramifications of any such action.

(2) The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 311. ONE-YEAR SUSPENSION OF REORGANIZATION OF DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE.

Notwithstanding any provision of subtitle B of title III of the Intelligence Authorization Act for Fiscal Year 2001 (Public Law 106-567; 114 Stat. 2843; 22 U.S.C. 7301 et seq.), relating to the reorganization of the Diplomatic Telecommunications Service Program Office, no provision of that subtitle shall be effective during

the period beginning on the date of the enactment of this Act and ending on October 1, 2002.

SEC. 312. PRESIDENTIAL APPROVAL AND SUBMISSION TO CONGRESS OF NATIONAL COUNTERINTELLIGENCE STRATEGY AND NATIONAL THREAT IDENTIFICATION AND PRIORITIZATION ASSESSMENTS.

The National Counterintelligence Strategy, and each National Threat Identification and Prioritization Assessment, produced under Presidential Decision Directive 75, dated December 28, 2000, entitled “U.S. Counterintelligence Effectiveness—Counterintelligence for the 21st Century”, including any modification of that Strategy or any such Assessment, may only take effect if approved by the President. The Strategy, each Assessment, and any modification thereof, shall be submitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

SEC. 313. REPORT ON ALIEN TERRORIST REMOVAL PROCEEDINGS.

Section 504 of the Immigration and Nationality Act (8 U.S.C. 1534) is amended by adding after subsection (k) the following new subsection:

“(l) Not later than 3 months from the date of the enactment of this subsection, the Attorney General shall submit to Congress a report concerning the effect and efficacy of alien terrorist removal proceedings, including the reasons why proceedings pursuant to this section have not been used by the Attorney General in the past and the effect on the use of these proceedings after the enactment of the USA PATRIOT Act of 2001 (Public Law 107–56).”

SEC. 314. TECHNICAL AMENDMENTS.

(a) FISA.—The Foreign Intelligence Surveillance Act of 1978 is amended as follows:

(1) Section 101(h)(4) (50 U.S.C. 1801(h)(4)) is amended by striking “twenty-four hours” and inserting “72 hours”.

(2) Section 105 (50 U.S.C. 1805) is amended—

(A) by inserting “, if known” in subsection (c)(1)(B) before the semicolon at the end;

(B) by striking “twenty-four hours” in subsection (f) each place it appears and inserting “72 hours”;

(C) by transferring the subsection (h) added by section 225 of the USA PATRIOT Act (Public Law 107–56; 115 Stat. 295) so as to appear after (rather than before) the subsection (h) redesignated by section 602(b)(2) of the Counterintelligence Reform Act of 2000 (title VI of Public Law 106–567; 114 Stat. 2851) and redesignating that subsection as so transferred as subsection (i); and

(D) in the subsection transferred and redesignated by subparagraph (C), by inserting “for electronic surveillance or physical search” before the period at the end.

(3) Section 301(4)(D) (50 U.S.C. 1821(4)(D)) is amended by striking “24 hours” and inserting “72 hours”.

(4) Section 304(e) (50 U.S.C. 1824(e)) is amended by striking “24 hours” each place it appears and inserting “72 hours”.

(5) Section 402 (50 U.S.C. 1842) is amended—

(A) in subsection (c), as amended by paragraphs (2) and (3) of section 214(a) of the USA PATRIOT Act (115

Stat. 286), by inserting “and” at the end of paragraph (1); and

(B) in subsection (f), by striking “of a court” and inserting “of an order issued”.

(6) Subsection (a) of section 501 (50 U.S.C. 1861), as inserted by section 215 of the USA PATRIOT Act (115 Stat. 287), is amended by inserting “to obtain foreign intelligence information not concerning a United States person or” in paragraph (1) after “an investigation”.

(7) Section 502 (50 U.S.C. 1862), as inserted by section 215 of the USA PATRIOT Act (115 Stat. 288), is amended by striking “section 402” both places it appears and inserting “section 501”.

(8) The table of contents in the first section is amended—

(A) by inserting “Sec.” at the beginning of the items relating to sections 401, 402, 403, 404, 405, 406, and 601; and

(B) by striking the items relating to sections 501, 502, and 503 and inserting the following:

“Sec. 501. Access to certain business records for foreign intelligence and international terrorism investigations.

“Sec. 502. Congressional oversight.”.

(b) TITLE 18, UNITED STATES CODE.—Paragraph (19) of section 2510 of title 18, United States Code, as added by section 203(b)(2)(C) of the USA PATRIOT Act (115 Stat. 280), is amended by inserting “, for purposes of section 2517(6) of this title,” before “means”.

(c) USA PATRIOT ACT.—Effective as of the enactment of such Act and as if included therein as originally enacted, the USA PATRIOT Act (Public Law 107–56) is amended—

(1) in section 207(b)(1) (115 Stat. 282), by striking “105(d)(2)” and “1805(d)(2)” and inserting “105(e)(2)” and “1805(e)(2)”, respectively; and

(2) in section 1003 (115 Stat. 392), by inserting “of 1978” after “Act”.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

SEC. 401. MODIFICATIONS OF CENTRAL SERVICES PROGRAM.

(a) ANNUAL AUDITS.—Subsection (g)(1) of section 21 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u) is amended—

(1) by striking “December 31” and inserting “January 31”; and

(2) by striking “conduct” and inserting “complete”.

(b) PERMANENT AUTHORITY.—Subsection (h) of that section is amended—

(1) by striking paragraph (1);

(2) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively;

(3) in paragraph (1), as so redesignated, by striking “paragraph (3)” and inserting “paragraph (2)”; and

(4) in paragraph (2), as so redesignated, by striking “paragraph (2)” and inserting “paragraph (1)”.

SEC. 402. ONE-YEAR EXTENSION OF CENTRAL INTELLIGENCE AGENCY VOLUNTARY SEPARATION PAY ACT.

Section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403–4 note) is amended—

(1) in subsection (f), by striking “September 30, 2002” and inserting “September 30, 2003”; and

(2) in subsection (i), by striking “or 2002” and inserting “2002, or 2003”.

SEC. 403. GUIDELINES FOR RECRUITMENT OF CERTAIN FOREIGN ASSETS.

Recognizing dissatisfaction with the provisions of the guidelines of the Central Intelligence Agency (promulgated in 1995) for handling cases involving foreign assets or sources with human rights concerns and recognizing that, although there have been recent modifications to those guidelines, they do not fully address the challenges of both existing and long-term threats to United States security, the Director of Central Intelligence shall—

(1) rescind the existing guidelines for handling such cases;

(2) issue new guidelines that more appropriately weigh and incentivize risks to ensure that qualified field intelligence officers can, and should, swiftly and directly gather intelligence from human sources in such a fashion as to ensure the ability to provide timely information that would allow for indications and warnings of plans and intentions of hostile actions or events; and

(3) ensure that such information is shared in a broad and expeditious fashion so that, to the extent possible, actions to protect American lives and interests can be taken.

SEC. 404. FULL REIMBURSEMENT FOR PROFESSIONAL LIABILITY INSURANCE OF COUNTERTERRORISM EMPLOYEES.

Section 406(a)(2) of the Intelligence Authorization Act for Fiscal Year 2001 (Public Law 106–567; 114 Stat. 2849; 5 U.S.C. prec. 5941 note) is amended by striking “one-half” and inserting “100 per cent”.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

SEC. 501. AUTHORITY TO PURCHASE ITEMS OF NOMINAL VALUE FOR RECRUITMENT PURPOSES.

(a) AUTHORITY.—Section 422 of title 10, United States Code, is amended by adding at the end the following:

“(b) PROMOTIONAL ITEMS FOR RECRUITMENT PURPOSES.—The Secretary of Defense may use funds available for an intelligence element of the Department of Defense to purchase promotional items of nominal value for use in the recruitment of individuals for employment by that element.”.

(b) CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

“§ 422. Use of funds for certain incidental purposes”.

(2) Such section is further amended by inserting at the beginning of the text of the section the following:

“(a) COUNTERINTELLIGENCE OFFICIAL RECEPTION AND REPRESENTATION EXPENSES.—”

(3) *The item relating to such section in the table of sections at the beginning of subchapter I of chapter 21 of such title is amended to read as follows:*

“422. *Use of funds for certain incidental purposes.*”

SEC. 502. FUNDING FOR INFRASTRUCTURE AND QUALITY-OF-LIFE IMPROVEMENTS AT MENWITH HILL AND BAD AIBLING STATIONS.

(a) **AUTHORITY.**—

(1) *In addition to funds otherwise available for such purpose, the Secretaries of the Army, Navy, and Air Force may each transfer or reprogram such funds as are necessary—*

(A) *for the enhancement of the capabilities of the Menwith Hill Station and Bad Aibling Station, including improvements of facility infrastructure and quality of life programs at those installations; and*

(B) *at the appropriate time, for costs associated with the closure of the Bad Aibling Station.*

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

(b) **SOURCE OF FUNDS.**—*Funds available for any of the military departments for operation and maintenance shall be available to carry out subsection (a).*

(c) **BUDGET REPORT.**—*The Secretary of each military department shall ensure—*

(1) *that the annual budget request of that military department reflects any funds transferred or reprogrammed under this section for the preceding fiscal year; and*

(2) *that a copy of the portion of the budget request showing each such transfer or reprogramming is transmitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.*

(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 from the Department of the Army, the Department of the Navy, or the Department of the Air Force to the Menwith Hill Station at the Bad Aibling Station.*

SEC. 503. MODIFICATION OF AUTHORITIES RELATING TO OFFICIAL IMMUNITY IN INTERDICTION OF AIRCRAFT ENGAGED IN ILLEGAL DRUG TRAFFICKING.

(a) **CERTIFICATION REQUIRED FOR IMMUNITY.**—*Subsection (a)(2) of section 1012 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 22 U.S.C. 2291-4) is amended by striking “, before the interdiction occurs, has determined” in the matter preceding subparagraph (A) and inserting “has, during the 12-month period ending on the date of the interdiction, certified to Congress”.*

(b) **ANNUAL REPORTS.**—*That section is further amended—*

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

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

“(c) **ANNUAL REPORT.**—(1) *Not later than February 1 each year, the President shall submit to Congress a report on the assistance*

provided under subsection (b) during the preceding calendar year. Each report shall include for the calendar year covered by such report the following:

“(A) A list specifying each country for which a certification referred to in subsection (a)(2) was in effect for purposes of that subsection during any portion of such calendar year, including the nature of the illicit drug trafficking threat to each such country.

“(B) A detailed explanation of the procedures referred to in subsection (a)(2)(B) in effect for each country listed under subparagraph (A), including any training and other mechanisms in place to ensure adherence to such procedures.

“(C) A complete description of any assistance provided under subsection (b).

“(D) A summary description of the aircraft interception activity for which the United States Government provided any form of assistance under subsection (b).

“(2) Each report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.”.

SEC. 504. UNDERGRADUATE TRAINING PROGRAM FOR EMPLOYEES OF THE NATIONAL IMAGERY AND MAPPING AGENCY.

(a) **AUTHORITY TO CARRY OUT TRAINING PROGRAM.**—Subchapter III of chapter 22 of title 10, United States Code, is amended by adding at the end the following new section:

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

“The Secretary of Defense may establish an undergraduate training program with respect to civilian employees of the National Imagery and Mapping Agency 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 Agency Act of 1959 (50 U.S.C. 402 note) for civilian employees of the National Security Agency.”.

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

“462. Financial assistance to certain employees in acquisition of critical skills.”.

SEC. 505. PREPARATION AND SUBMITTAL OF REPORTS, REVIEWS, STUDIES, AND PLANS RELATING TO DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES.

(a) **CONSULTATION IN PREPARATION.**—The Director of Central Intelligence shall ensure that any report, review, study, or plan required to be prepared or conducted by a provision of this Act, including a provision of the classified Schedule of Authorizations or a classified annex to this Act, that involves the intelligence or intelligence-related activities of the Department of Defense shall be prepared or conducted in consultation with the Secretary of Defense or an appropriate official of the Department designated by the Secretary for that purpose.

(b) **SUBMITTAL.**—Any report, review, study, or plan referred to in subsection (a) shall be submitted, in addition to any other committee of Congress specified for submittal in the provision concerned, to the following committees of Congress:

(1) *The Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.*

(2) *The Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate.*

SEC. 506. ENHANCEMENT OF SECURITY AUTHORITIES OF NATIONAL SECURITY AGENCY.

Section 11 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended to read as follows:

“SEC. 11. (a)(1) The Director of the National Security Agency may authorize agency personnel within the United States to perform the same functions as special policemen of the General Services Administration perform under the first section of the Act entitled ‘An Act to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policemen for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes’ (40 U.S.C. 318) with the powers set forth in that section, except that such personnel shall perform such functions and exercise such powers—

“(A) at the National Security Agency Headquarters complex and at any facilities and protected property which are solely under the administration and control of, or are used exclusively by, the National Security Agency; and

“(B) in the streets, sidewalks, and the open areas within the zone beginning at the outside boundary of such facilities or protected property and extending outward 500 feet.

“(2) The performance of functions and exercise of powers under subparagraph (B) of paragraph (1) shall be limited to those circumstances where such personnel can identify specific and articulable facts giving such personnel reason to believe that the performance of such functions and exercise of such powers is reasonable to protect against physical damage or injury, or threats of physical damage or injury, to agency installations, property, or employees.

“(3) Nothing in this subsection shall be construed to preclude, or limit in any way, the authority of any Federal, State, or local law enforcement agency, or any other Federal police or Federal protective service.

“(4) The rules and regulations enforced by such personnel shall be the rules and regulations prescribed by the Director and shall only be applicable to the areas referred to in subparagraph (A) of paragraph (1).

“(5) Not later than July 1 each year, the Director shall submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report that describes in detail the exercise of the authority granted by this subsection and the underlying facts supporting the exercise of such authority, during the preceding fiscal year. The Director shall make each such report available to the Inspector General of the National Security Agency.

“(b) The Director of the National Security Agency is authorized to establish penalties for violations of the rules or regulations prescribed by the Director under subsection (a). Such penalties shall

not exceed those specified in the fourth section of the Act referred to in subsection (a) (40 U.S.C. 318c).

“(c) Agency personnel designated by the Director of the National Security Agency under subsection (a) shall be clearly identifiable as United States Government security personnel while engaged in the performance of the functions to which subsection (a) refers.”.

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:

PORTER J. GOSS,
DOUGLAS BEREUTER,
MICHAEL N. CASTLE,
SHERWOOD BOEHLERT,
JIM GIBBONS,
RAY LAHOOD,
DUKE CUNNINGHAM,
PETE HOEKSTRA,
RICHARD BURR,
SAXBY CHAMBLISS,
NANCY PELOSI,
SANFORD BISHOP,
JANE HARMAN,
GARY CONDIT,
TIM ROEMER,
ALCEE L. HASTINGS (except for
an item listed in the classified
schedule of authorizations),
LEONARD L. BOSWELL,
COLLIN C. PETERSON,

Managers on the Part of the House.

BOB GRAHAM,
JOHN D. ROCKEFELLER IV,
DIANNE FEINSTEIN,
RON WYDEN,
RICHARD DURBIN,
EVAN BAYH,
JOHN EDWARDS,
BARBARA MIKULSKI,
RICHARD SHELBY,
JON KYL,
JAMES INHOFE,
ORRIN G. HATCH,
PAT ROBERTS,
MIKE DEWINE,
FRED THOMPSON,
RICHARD G. LUGAR,

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. 2883), to authorize appropriations for fiscal year 2002 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, 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.

The managers agree that the congressionally directed actions described in the House bill, the Senate amendment, the respective committee reports, and classified annexes accompanying H.R. 2883, should be undertaken to the extent that such congressionally directed actions are not amended, altered, or otherwise specifically addressed in either this Joint Explanatory Statement or in the classified annex to the conference report on the bill H.R. 2883.

Rebuilding the Nation's Intelligence Capabilities

The conferees note that the fiscal year 2002 budget request submitted by the President includes a substantial increase for programs funded in the National Foreign Intelligence Program. This authorization bill further enhances that investment. The conferees believe this funding increase should represent the first installment of at least a five-year effort to correct serious deficiencies that have developed over the past decade in the Intelligence Community. The conferees recognize that these deficiencies existed prior to the events of September 11th and, indeed, they have been consistently highlighting these shortfalls for the past seven years. Put simply, although the end of the Cold War warranted a reordering of national priorities, the steady decline in intelligence funding since the mid-1990s left the nation with a diminished ability to address the emerging threats and technological challenges of the 21st Century.

In this budget, the conferees seek to highlight four priority areas that must receive significant attention in the near term if intelligence is to fulfill its role in our national security strategy.

Those are: (1) revitalizing the National Security Agency (NSA); (2) correcting deficiencies in human intelligence; (3) addressing the imbalance between intelligence collection and analysis; and (4) rebuilding a robust research and development program.

The conferees' top priority last year was the revitalization of the National Security Agency. This continues to be the conferees' number one concern. Within the next five years, the NSA must have the ability to collect and exploit electronic signals in a vastly different communications environment. Along with significant investment in technology, this means closer collaboration with clandestine human collectors. The computer and telecommunications systems that NSA employees use to accomplish their work must be state-of-the-art technology. Analysts must have sophisticated software tools to allow them to exploit fully the amount of data available in the future.

Correcting deficiencies in the area of human intelligence is critical for the Intelligence Community if it is to meet the increasingly complex and growing set of collection requirements within the next five years. The Central Intelligence Agency (CIA) will need to hire case officers capable of dealing with the explosion of technology, both as collection tools and as potential threats. These individuals must be able to operate effectively in the many places around the world. To do that, the CIA must place even greater emphasis on the diversity of the new recruits. As importantly, the emphasis of our human collection must change in such a way that places a priority on being able to access the types of information that reveal the plans and intentions of those who would harm U.S. interests. The human intelligence system also must be integrated more closely with our other collection capabilities.

As we do a better job of collecting intelligence, we also must enhance our ability to understand this information. The percentage of the intelligence budget devoted to processing and analysis has been declining steadily since 1990. Although collection systems are becoming more and more capable, our investment in analysis continues to decline. The disparity threatens to overwhelm our ability to effectively use the information collected. To address this problem, the conferees have added funds to finance promising all-source analysis initiatives across the Community. Over the next five years, the Intelligence Community must rebuild its all-source analytical capability, creating a force that can truly present a global coverage capability.

The conferees' fourth priority, a strong research and development program, supports all of the other initiatives and more. Over the past decade, agencies have allowed research and development accounts to be the "bill payer" for funding shortfalls, and have sacrificed modernization and innovation in the process. The conferees believe that over the next five years, there must be a review of several emerging technologies to determine what will provide the best long-term return on investment, while ensuring that sufficient incentives for "risk" are promoted in order to bring R&D to the "cutting edge." As part of such an effort, the conferees continue to support and encourage a symbiotic relationship between the Intelligence Community and the private sector using innovative approaches such as the Central Intelligence Agency's In-Q-Tel.

Although the conferees believe that this authorization represents a “down payment” for a five-year effort to rebuild our intelligence capabilities, they also believe that, in light of the horrible and tragic terrorist attacks, this year’s authorization represents only a snapshot in time, and does not necessarily represent the critically needed long-term investments sufficient to bolster national security objectives. In fact, the conferees believe that this authorization is only the beginning of what must be a substantial investment if the nation is to have the intelligence capabilities required to protect national security and to provide the first line of defense against terrorism and other transnational issues.

Beyond the four priority areas mentioned above, significant attention is needed elsewhere as well. For example, designing and procuring the appropriate capabilities for technical collection to replace our aging systems must also be addressed. Additionally, there are areas that the Administration must address that are beyond financial investment, and go to instilling, within the Intelligence Community, a focus on ensuring anticipatory access, so as to be able to obtain information on plans and intentions in order to prevent crises. The Intelligence Community must create a “culture” that is less risk averse.

Finally, the conferees believe that any effort to invest in and expand intelligence capabilities will only be marginally successful, at best, if there is not a parallel effort to change the structure of the Community where appropriate. Today’s intelligence structure is not suitable to address current and future challenges, and the conferees look forward to working with the Administration on this issue as well.

TITLE I—INTELLIGENCE ACTIVITIES

SEC. 101. AUTHORIZATION OF 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 2001. Section 101 is identical to section 101 of the House bill and section 101 of the Senate amendment, except for the addition of the Coast Guard, see section 105, *infra*.

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 2002 are contained in a classified Schedule of Authorizations. The classified Schedule of Authorizations is incorporated into the Act by this section. 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 classified annex provides the details of the Schedule. Section 102 is identical to section 102 of the House bill and section 102 of the Senate amendment.

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 2002 to authorize employment of civilian personnel in excess of 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 of Central Intelligence may exercise this authority only if necessary to the performance of important intelligence functions. Any exercise of this authority must be reported to the intelligence committees of the Congress.

The managers emphasize that the authority conferred by section 103 is not intended to permit wholesale increases in 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 managers 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 that 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. Section 103 is identical to section 103 of the House bill and section 103 of the Senate amendment.

SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT

Section 104 of the conference report authorizes appropriations for the Community Management Account (CMA) of the Director of Central Intelligence (DCI) and sets the personnel end-strength for the Intelligence Community management staff for fiscal year 2002.

Subsection (a) authorizes appropriations of \$200,276,000 for fiscal year 2002 for the activities of the CMA of the DCI.

Subsection (b) authorizes 343 full-time personnel for the Community Management Staff for fiscal year 2002 and provides that such personnel may be permanent employees of the Staff or detailed from various elements of the United States Government.

Subsection (c) authorizes additional appropriations and personnel for the CMA as specified in the classified Schedule of Authorizations and permits these additional amounts to remain available through September 30, 2003.

Subsection (d) requires that, except as provided in Section 113 of the National Security Act of 1947, personnel from another element of the United States Government be detailed to an element of the CMA on a reimbursable basis, or for temporary situations of less than one year on a non-reimbursable basis.

Subsection (e) authorizes \$44,000,000 of the amount authorized in subsection (a) to be made available for the National Drug Intelligence Center (NDIC). Subsection (e) requires the DCI to transfer these funds to the Department of Justice to be used for NDIC activities under the authority of the Attorney General and subject to section 103(d)(1) of the National Security Act. Subsection (e) is

similar to subsection (e) of the House bill and subsection (e) of the Senate amendment.

The managers note that since Fiscal Year 1997 the Community Management Account has included authorization for appropriations for the National Drug Intelligence Center (NDIC). The committees periodically have expressed concern about the effectiveness of NDIC and its ability to fulfill the role for which it was created. The managers are encouraged by the NDIC's recent performance and by the refocused role for the organization. The conferees request that the Director of the NDIC provide a spending plan for fiscal year 2002 to the intelligence committees and to the appropriations committees within 90 days of enactment of this Act.

SEC. 105. CODIFICATION OF THE COAST GUARD AS AN ELEMENT OF THE INTELLIGENCE COMMUNITY

Section 105 is identical to Section 105 of the House bill. The Senate amendment had no similar provision. The Senate recedes.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

SEC. 201. AUTHORIZATION OF APPROPRIATIONS

Section 201 is identical to Section 201 of the Senate amendment and section 201 of the House bill.

TITLE III—GENERAL PROVISIONS

Subtitle A—Intelligence Community

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

Section 301 is identical to Section 301 of the Senate amendment and section 301 of the House bill.

SEC. 302 RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES

Section 302 is identical to Section 302 of the Senate amendment and section 302 of the House bill.

SEC. 303 SENSE OF THE CONGRESS OF INTELLIGENCE COMMUNITY CONTRACTING

Section 303 is identical to Section 303 of the House bill. The Senate amendment had no similar provision. The Senate recedes.

SEC. 304. REQUIREMENTS FOR LODGING ALLOWANCES IN INTELLIGENCE COMMUNITY ASSIGNMENT PROGRAM BENEFITS

Section 304 is identical to Section 304 of the House amendment. The Senate amendment had no similar provision. The Senate recedes.

SEC. 305. MODIFICATION OF REPORTING REQUIREMENTS FOR SIGNIFICANT ANTICIPATED INTELLIGENCE ACTIVITIES AND SIGNIFICANT INTELLIGENCE FAILURES

Section 305 is identical to Section 305 of the Senate amendment. The House bill had no similar provision. The House recesses.

SEC. 306. REPORT ON IMPLEMENTATION OF RECOMMENDATIONS OF THE NATIONAL COMMISSION ON TERRORISM AND OTHER ENTITIES

Section 306 is similar to Section 307 of the House bill, which requires a report from the Director of Central Intelligence concerning whether and to what extent, the Intelligence Community has implemented the applicable recommendations set forth by the National Commission on Terrorism (Bremer Commission). The DCI report, which shall be due 120 days after enactment of this legislation, shall include a detailed explanation from the DCI as to the reasons for not implementing Intelligence Community-related recommendations contained within the three commission reports. The Senate amendment had no similar provision. The conferees agree to expand the DCI's reporting requirement to include applicable provisions of the US commission on National Security for the 21st Century and the second annual report of the so-called Gilmore Commission. The Senate amendment had no similar provision. The Senate recesses.

SEC. 307. JUDICIAL REVIEW UNDER FOREIGN NARCOTICS KINGPIN DESIGNATION ACT

Section 307 is identical to Section 303 of the Senate amendment. The House bill had no similar provision. The House recesses.

SEC. 308. MODIFICATION OF POSITIONS REQUIRING CONSULTATION WITH DIRECTOR OF CENTRAL INTELLIGENCE IN APPOINTMENTS

Section 308 is identical to Section 304 of the Senate amendment. The House bill had no similar provision. The House recesses.

SEC. 309. MODIFICATION OF AUTHORITIES FOR PROTECTION OF INTELLIGENCE COMMUNITY EMPLOYEES WHO REPORT URGENT CONCERNS TO CONGRESS

Section 309 is identical to Section 306 of the Senate amendment. The House bill had no similar provision. The House recesses.

SEC. 310. REVIEW OF PROTECTIONS AGAINST THE UNAUTHORIZED DISCLOSURE OF CLASSIFIED INFORMATION

Section 310 is identical to Section 307 of the Senate amendment. The House bill had no similar provision. The House recesses. The conferees expect a report no later than May 1, 2002, from the Attorney General providing a comprehensive review of current protections against the unauthorized disclosure of classified information.

SEC. 311. ONE-YEAR SUSPENSION OF REORGANIZATION OF DIPLOMATIC
TELECOMMUNICATIONS SERVICE PROGRAM OFFICE

Section 311 is identical to Section 309 of the Senate amendment. The House bill had no similar provision. The House recedes.

SEC. 312. PRESIDENTIAL APPROVAL AND SUBMISSION TO CONGRESS OF
NATIONAL COUNTERINTELLIGENCE STRATEGY AND NATIONAL
THREAT IDENTIFICATION AND PRIORITIZATION ASSESSMENTS

Section 312 is identical to Section 310 of the Senate amendment. The House bill had no similar provision. The House recedes.

SEC. 313. REPORT ON ALIEN TERRORIST REMOVAL PROCEEDINGS

Section 313 is identical to section 312 of the Senate amendment. The House bill had no similar provision. The House recedes.

SEC. 314. TECHNICAL AMENDMENTS

Extension of Time to Seek FISA Ratification of Attorney General-authorized Electronic Surveillance and Physical Searches

Under current law, the Attorney General may authorize electronic surveillance or a search without a court order when he concludes, first, that the factual basis for granting such an order exists and, second, that an emergency exists requiring action before a court order may be obtained. 50 U.S.C. §§ 1805(f), 1824(e). Current law requires the Government to prepare a complete FISA application and present it to the FISA court for approval within 24 hours “after the Attorney General authorizes” the surveillance or search. Failure to do so results in the suppression of information from the surveillance or search.

Given the length and complexity of many FISA applications, the need to verify the accuracy of each FISA declaration by review in the field, the requirement that the Government obtain both a written certification from the director of the FBI (or a similar official) and the written approval of the Attorney General, it often is extremely difficult to meet the 24-hour deadline. This is especially true where—as often will be the case—the emergency authorization comes in the midst of a larger emergency requiring the personal attention of the Attorney General and the Director of the FBI. The emergency authorization provision of title III wiretaps, 18 U.S.C. § 2518(7), sets a deadline of 48-hours, and starts the 48-hour clock not at the time of authorization, but only once the interception “has occurred, or begins to occur.”

The conferees agreed to a provision to extend the time for judicial ratification of an emergency FISA surveillance or search from 24 to 72 hours. That would give the Government adequate time to assemble an application without requiring extraordinary effort by officials responsible for the preparation of those applications. The additional 48 hours for FISA applications is appropriate given their complexity and the need for higher-level approval for FISA applications than for applications under title III. The additional time is also appropriate given that the deadline for submission of applications under FISA begins when the Attorney General authorizes the

surveillance or search, rather than when the surveillance or search actually occurs, as is the case under title III.

Multipoint Wiretaps

The multipoint wiretap amendment to FISA in the USA PATRIOT Act (section 206) allows the FISA court to issue generic orders of assistance to any communications provider or similar person, instead of to a particular communications provider. This change permits the Government to implement new surveillance immediately if the FISA target changes providers in an effort to thwart surveillance. The amendment was directed at persons who, for example, attempt to defeat surveillance by changing wireless telephone providers or using pay phones.

Currently, FISA requires the court to “specify” the “nature and location of each of the facilities or places at which the electronic surveillance will be directed.” 50 U.S.C. § 1805(c)(1)(B). Obviously, in certain situations under current law, such a specification is limited. For example, a wireless phone has no fixed location and electronic mail may be accessed from any number of locations.

To avoid any ambiguity and clarify Congress’ intent, the conferees agreed to a provision which adds the phrase, “if known,” to the end of 50 U.S.C. § 1805(c)(1)(B). The “if known” language, which follows the model of 50 U.S.C. § 1805(c)(1)(A), is designed to avoid any uncertainty about the kind of specification required in a multipoint wiretap case, where the facility to be monitored is typically not known in advance.

Non-conformity of FISA Subsections 501(a)(1) and 501(b)(2)

Section 215 of the USA PATRIOT Act of 2001 amended title V of the FISA, adding a new section 501. Section 501(a)(1) now authorizes the director of the FBI to apply for a court order to produce certain records “for an investigation to protect against international terrorism or clandestine intelligence activities.” Section 501(b)(2) directs that the application for such records specify that the purpose of the investigation is to “obtain foreign intelligence information not concerning a United States person.” However, section 501(a)(1), which generally authorizes the applications, does not contain equivalent language. Thus, subsections (a)(1) and (b)(2) now appear inconsistent.

The conferees agreed to a provision which adds the phrase “to obtain foreign intelligence information not concerning a United States person or” to section 501(a)(1). This would make the language of section 501(a)(1) consistent with the legislative history of section 215 of the USA PATRIOT Act (*see* 147 Cong. Res. S11006 (daily ed. Oct. 25, 2001) (sectional analysis)) and with the language of section 214 of the USA PATRIOT Act (authorizing an application for an order to use pen registers and trap and trace devices to “obtain foreign intelligence information not concerning a United States person”).

Clarification of Intelligence Exception

Section 203(b)(2) of the USA PATRIOT Act added a definition of “foreign intelligence information” to chapter 119 of title 18, United States Code. The existing intelligence exception from cer-

tain chapters of title 18—i.e., chapters 119, 121, and 206—is contained in chapter 119 (at 18 U.S.C. § 2511(2)(f)) and uses the term “foreign intelligence information” to define the scope of the exception. As a result, the new definition of “foreign intelligence information” added by section 203(b)(2) could potentially be read to limit the intelligence exception—particularly when compared to the National Security Act definition of “foreign intelligence” (50 U.S.C. § 401(a)).

Other Technical Amendments

The conferees agreed to provisions correcting several drafting problems in the text of the USA PATRIOT Act. First, section 207(b)(1) of the PATRIOT ACT refers to section 105(d)(2) instead of section 105(e)(2) and to 50 U.S.C. § 1805(d)(2) instead of 50 U.S.C. § 1805(e)(2). Second, section 215 (creating new section 502 of FISA) refers to “section 402” instead of “section 501” in the last line of new section 502(a) and in the last line of new section 502(b)(1). Third, section 225 adds a new subsection (h) immediately following 50 U.S.C. § 1805(g), but it should add a new subsection (i) immediately following 50 U.S.C. § 1805(h).

Fourth, the title of section 225 is “Immunity for Compliance with FISA Wiretap” and it is an amendment to 50 U.S.C. § 1805, both of which suggest that it applies only to electronic surveillance and not to physical searches or other activity authorized by FISA. However, the text of section 225 refers to court orders and requests for emergency assistance “under this Act,” which makes clear that it applies to physical searches (and pen-trap requests—for which there already exists an immunity provision, 50 U.S.C. § 1842(f)—and subpoenas) as well as to electronic surveillance.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

SEC. 401. MODIFICATIONS TO CENTRAL INTELLIGENCE AGENCY’S CENTRAL SERVICE PROGRAM

Section 401 is identical to Section 401 of the House bill and Section 402 of the Senate amendment.

SEC. 402. ONE-YEAR EXTENSION OF CENTRAL INTELLIGENCE AGENCY VOLUNTARY SEPARATION PAY ACT

Section 402 is identical to Section 402 of the House bill and section 401 of the Senate amendment.

SEC. 403. GUIDELINES FOR RECRUITMENT OF CERTAIN FOREIGN ASSETS

Section 403 addresses the CIA’s 1995 guidelines on recruitment of foreign assets and sources. The House bill noted the concern that excessive caution and a burdensome vetting process resulting from the 1995 guidelines have undermined the CIA’s ability and willingness to recruit assets, especially those who would provide insights into terrorist organizations and other hard targets.

The conferees believe that the concerns expressed in the House bill are justified and that, despite the changes to the 1995 guidelines that the Director of Central Intelligence made in September, the current guidelines must be rescinded and replaced with new guidelines. The conferees intend that a new balance be struck be-

tween potential gain and risk, a balance that recognizes concerns about egregious human rights behavior and law breaking, while providing much needed flexibility to take advantage of opportunities to gather important information as those opportunities present themselves. Moreover, the conferees believe that the goals and priorities for human collection must be weighted toward collecting the type of information that will provide plans and intentions of those who would threaten American national security, in a timeframe that will allow maximum opportunity to prevent actions against American interests. The conferees acknowledge that it may not always be possible to collect such information in every case, but this must be a focus for planning future HUMINT collection efforts if such collection is going to be preventative in nature rather than reactive. The Senate amendment had no similar provision. The Senate recesses.

SEC. 404. FULL REIMBURSEMENT FOR PROFESSIONAL LIABILITY INSURANCE OF COUNTERTERRORISM EMPLOYEES

Section 404 is identical to Section 404 of the House bill. The Senate amendment had no similar provision. The Senate recesses.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

SEC. 501. AUTHORITY TO PURCHASE ITEMS OF NOMINAL VALUE FOR RECRUITMENT PURPOSES

Section 501 is identical to Section 501 of the House bill. The Senate amendment had no similar provision. The Senate recesses.

SEC. 502. FUNDING FOR INFRASTRUCTURE AND QUALITY-OF-LIFE IMPROVEMENTS AT MENWITH HILL AND BAD AIBLING STATIONS

Section 502 is similar to Section 502 of the House bill. The provision is intended to facilitate the transfer or reprogramming of funds from the Departments of the Army, Air Force, and Navy as necessary to support the enhancement of the infrastructure of Menwith Hill and Bad Aibling stations. The Senate amendment had no similar provision. The Senate recesses.

SEC. 503. MODIFICATION OF AUTHORITIES RELATING TO OFFICIAL IMMUNITY IN INTERDICTION OF AIRCRAFT ENGAGED IN ILLICIT DRUG TRAFFICKING

Section 503 is identical to Section 503 of the House bill and Section 308 of the Senate amendment.

SEC. 504. UNDERGRADUATE TRAINING PROGRAM FOR EMPLOYEES OF THE NATIONAL IMAGERY AND MAPPING AGENCY

Section 504 is identical to Section 504 of the House bill. The Senate amendment had no similar provision. The Senate recesses.

SEC. 505. PREPARATION AND SUBMITTAL OF REPORTS, REVIEWS, STUDIES, AND PLANS RELATING TO DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

Section 505 is identical to Section 311 of the Senate amendment. The House bill had no similar provision. The House recesses.

SEC. 506. ENHANCEMENT OF SECURITY AUTHORITIES OF NATIONAL SECURITY AGENCY

Section 506 authorizes the National Security Agency (NSA) security protective officers to exercise their law enforcement functions 500 feet beyond the confines of NSA facilities. At present, NSA's protective jurisdiction does not extend beyond the territorial bounds of its perimeter fences. Additionally, NSA has to rely on several federal, state, and local jurisdictions to respond to threats that occur just outside its fence line. With so many jurisdictions involved, there is a chance that a necessary response could be slowed and thus ineffective. In addition, under current law (Section 11 of the National Security Agency Act of 1959) the Administrator of General Services, upon the application of the Director of NSA, may provide for the protection of those facilities that are under the control of or use by the National Security Agency. The General Services Administration has delegated this authority to NSA. This amendment to the National Security Agency Act would provide NSA with the organic authority needed to protect its facilities and personnel without having to obtain a delegation of authority from the General Services Administration. This section parallels authority the Central Intelligence Agency currently has in section 15 of the CIA Act of 1949 (50 U.S.C. 403o).

The attacks of September 11, 2001 demonstrated the growing threat of terrorism in the United States. The conferees believe the NSA's authority to have a protective detail should be clarified and enhanced 500 feet beyond the confines of NSA's facilities, but were sensitive to the public's reaction to an unlimited grant of law enforcement jurisdiction outside NSA's borders. Therefore, the exercise of this new authority is expressly limited to only those circumstances where NSA security protective officers can identify specific and articulable facts giving them reason to believe that the exercise of this authority is necessary to protect against physical damage or injury to NSA installations, property, or employees. This provision also expressly states that the rules and regulations prescribed by the Director of the NSA for agency property and installations do not extend into the 500 foot area established by this provision. Thus, there will be no restrictions, for example, on the taking of photographs within the 500 foot zone.

The conferees do not envision a general grant of police authority in the 500 foot zone, but do envision NSA security protective officers functioning as federal police, for limited purposes, within the 500 foot zone with all attendant authorities, capabilities, immunities, and liabilities. The conferees expect the Director of NSA to coordinate and establish Memoranda of Understanding with all federal, state, or local law enforcement agencies with which NSA will exercise concurrent jurisdiction in the 500 foot zones. The Director of NSA shall submit such Memoranda of Understanding to the Select Committee on Intelligence and the Armed Services Committee of the Senate and the Permanent Select Committee on Intelligence and the Armed Services Committee of the House of Representatives. The Director of NSA is also expected to develop a training plan to familiarize the Agency's security protective officers with their new authorities and responsibilities. The Director of

NSA shall submit such plan to the Select Committee on Intelligence and the Armed Services Committee of the Senate and the Permanent Select Committee on Intelligence and the Armed Services Committee of the House of Representatives not later than 30 days after the enactment of this provision.

Section 506 also includes a reporting requirement so that the intelligence committees may closely scrutinize the exercise of this new authority.

Items Not Included

Section 306 of the House bill contained a provision establishing, with respect to the terrorist attacks of September 11, 2001, a federal commission on the national security readiness of the United States. The Senate bill had no similar provision. The House recedes.

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

PORTER J. GOSS,
DOUGLAS BEREUTER,
MICHAEL N. CASTLE,
SHERWOOD BOEHLERT,
JIM GIBBONS,
RAY LAHOOD,
DUKE CUNNINGHAM,
PETE HOEKSTRA,
RICHARD BURR,
SAXBY CHAMBLISS,
NANCY PELOSI,
SANFORD BISHOP,
JANE HARMAN,
GARY CONDIT,
TIM ROEMER,
ALCEE L. HASTINGS (except for
an item listed in the classified
schedule of authorizations),
LEONARD L. BOSWELL,
COLLIN C. PETERSON,

Managers on the Part of the House.

BOB GRAHAM,
JOHN D. ROCKEFELLER IV,
DIANNE FEINSTEIN,
RON WYDEN,
RICHARD DURBIN,
EVAN BAYH,
JOHN EDWARDS,
BARBARA MIKULSKI,
RICHARD SHELBY,
JON KYL,
JAMES INHOFE,
ORRIN G. HATCH,
PAT ROBERTS,
MIKE DEWINE,
FRED THOMPSON,
RICHARD G. LUGAR,

Managers on the Part of the Senate.

