Proposed Intelligence Authorization

Fiscal Year 2013

A Bill

To authorize appropriations for fiscal year 2013 for intelligence and intelligence-related activities of the United States Government and the Office of the Director of National Intelligence, the Central Intelligence Agency Retirement and Disability System, and for other purposes.

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

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE—This Act may be cited as the `Intelligence Authorization Act for Fiscal Year 2013'.

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

SEC. 2. DEFINITIONS.

In this Act:

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

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

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

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

TITLE I—BUDGET AND PERSONNEL AUTHORIZATIONS

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

BILL TEXT

(a) Funds are hereby authorized to be appropriated for fiscal year 2013 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

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

(2) The Central Intelligence Agency.

(3) The Department of Defense.

(4) The Defense Intelligence Agency.

(5) The National Security Agency.

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

(7) The Coast Guard.

(8) The Department of State.

(9) The Department of the Treasury.

(10) The Department of Energy.

(11) The Department of Justice.

(12) The Federal Bureau of Investigation.

(13) The Drug Enforcement Administration.

(14) The National Reconnaissance Office.

(15) The National Geospatial-Intelligence Agency.

(16) The Department of Homeland Security.

SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.

BILL TEXT

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

SEC. 103. PERSONNEL CEILING ADJUSTMENTS.

BILL TEXT

(a) AUTHORITY FOR INCREASES.—The Director of National Intelligence may authorize the employment of civilian personnel in excess of the number of full-time equivalent positions for fiscal year 2013 authorized by the classified Schedule of Authorizations referred to in section 102(a) if the Director of National 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 5 percent of the number of civilian personnel authorized under such section for such element.

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

(1) IN GENERAL.— In addition to the authority in subsection (a) and subject to paragraph (2), if the head of an element of the Intelligence Community makes a determination that activities currently being performed by contract personnel should be performed by employees of such element, the Director of National Intelligence, in order to reduce a comparable number of contract personnel, may authorize for that purpose employment of additional full-time equivalent personnel in such element equal to the number of full-time equivalent contract personnel performing such activities.

(2) The authority described in paragraph (1) may not be exercised unless the Director of National Intelligence concurs with the determination described in such paragraph.

(c) TREATMENT OF CERTAIN PERSONNEL– The Director of National Intelligence shall establish guidelines that govern, for each element of the Intelligence Community, the treatment

under the personnel levels authorized under section 102(a), including any exemption from such personnel levels, of employment or assignment in—

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

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

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

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

SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.

BILL TEXT

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Intelligence Community Management Account of the Director of National Intelligence for fiscal year 2013 the sum of $540,252,000.

(b) CLASSIFIED AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated for the Intelligence Community Management Account by subsection (a), there are authorized to be appropriated for the Community Management Account for fiscal year 2013 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts for advanced research and development shall remain available until September 30, 2014.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

BILL TEXT

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2013 the sum of $514,000,000.

TITLE III—GENERAL INTELLIGENCE COMMUNITY MATTERS

SUBTITLE A—PERSONNEL MATTERS

SEC. 301. NON-REIMBURSABLE DETAILS.

BILL TEXT

Section 113A of the National Security Act of 1947 (50 U.S.C. §404h-1) is amended to read as follows:

A civilian employee of the United States may be detailed to the staff of an element of the Intelligence Community funded through the National Intelligence Program from another element of the intelligence community or from another element of the United States Government on a non-reimbursable basis, as jointly agreed to by the heads of the receiving and detailing elements, for a period not to exceed two years. Members of the Armed Forces may be detailed to the staff of an element of the Intelligence Community funded through the National Intelligence Program on a non-reimbursable basis, as jointly agreed to by the head of the receiving and detailing elements, for a period not to exceed three years. This section does not limit any other source of authority for reimbursable or non-reimbursable details. A non-reimbursable detail made under this section shall not be considered an augmentation of the appropriations of the receiving element of the Intelligence Community.

SECTIONAL ANALYSIS

Joint Duty assignments benefit the Intelligence Community as a whole, each element of the Intelligence Community, Departments and agencies containing elements of the Intelligence Community, and the officers and employees who participate in Joint Duty assignments. Accordingly, this section provides that such joint duty assignments shall not be construed as an augmentation of the receiving element's appropriations.

In addition, the proposed legislative change in the length of service from two to three years for members of the Armed Forces detailed to the Intelligence Community will align this statutory provision with 10 USC §664(a) (relative to officers) and provide the IC and DoD with mission critical flexibility in an increasingly integrated operational environment. Section 664(a) provides that a joint duty assignment for all military officers, other than general and flag officers, shall be no less than three years. This length of time is inconsistent with the current time limitation for nonreimbursable details as set forth in section 113A of the National Security Act (50 U.S.C. §404h-1).

SUBTITLE B—REPORTING REQUIREMENTS

SEC. 302. LIMITATION ON APPLICABILITY OF FUTURE REPORTING REQUIRMENTS.

BILL TEXT

(a) TERMINATION.—Any provision of law enacted after the date of enactment of this section that requires the Director of National Intelligence, the head of a department or agency containing an element of the Intelligence Community or the head of an element of the Intelligence Community to submit to Congress (or any committee of Congress) a periodic report relating to programs or activities of the Intelligence Community shall cease to be effective, with respect to that requirement, three years after the date of the enactment of that provision of law.

(b) EXCEPTIONS.— Subsection (a) shall not apply to the following reporting requirements:

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

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

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

(4) a provision of law containing a requirement for the submittal of a periodic report if that provision of law expressly states that the requirement is indefinite in nature; or

(5) a provision of law containing a requirement for the submittal of a periodic report if that provision of law specifies a number of years (in excess of three) for which the report is required or states a specific termination date for the report requirement.

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

SECTIONAL ANALYSIS

Section 302 ensures that future enacted reporting requirements are only required on a continuing basis under certain narrow circumstances (e.g., if specifically required by statute).

SEC. 303. REPEAL OR MODIFICATION OF CERTAIN REPORTING REQUIREMENTS.

BILL TEXT & SECTIONAL ANALYSES

(a) REPEAL OF CERTAIN REPORTING REQUIREMENTS.

(1) REPEAL OF REPORTING REQUIREMENT REGARDING ACQUISITION OF TECHNOLOGY RELATING TO WEAPONS OF MASS DESTRUCTION AND ADVANCED CONVENTIONAL MUNITIONS.—Section 721 of the Intelligence Authorization Act for Fiscal Year 1997 (P.L. 104-293) is repealed.

Justification: This reporting requirement should be repealed because it is 15 years old and the Intelligence Community routinely provides finished intelligence products, regular Congressional Notifications, and briefings on this topic. This approach ensures that significant developments are brought to the timely attention of Congress, rather than waiting for an annual report. Furthermore, this topic is addressed in the Annual Threat Assessment hearing.

(2) REPEAL OF REPORTING REQUIREMENT REGARDING THE THREAT OF ATTACK ON THE UNITED STATES USING WEAPONS OF MASS DESTRUCTION.—Section 821 of the Intelligence Authorization Act for Fiscal Year 2003 (P.L. 107-306) is repealed.

Justification: This reporting requirement is 10 years old, and the Intelligence Community routinely provides finished intelligence products, regular Congressional Notifications, and briefings on this topic. This approach ensures that significant developments are brought to the timely attention of Congress, rather than waiting for an annual report. In addition, due to the sensitivity of this topic, the Intelligence Community would alert Congress of any significant changes to the threat of attack on the United States from weapons of mass destruction. This topic is also addressed in the Annual Threat Assessment hearing. Furthermore, a new reporting requirement regarding the analytic capability of DoD regarding ballistic missile threats was included as Section 1079 of the National Defense Authorization Act for Fiscal Year 2012 (P.L. 112-81).

(3) REPEAL OF REPORTING REQUIREMENT REGARDING INTELLIGENCE COMMUNITY BUSINESS SYSTEMS BUDGET INFORMATION.—Section 506D(e) of the National Security Act of 1947, as added by Section 322(a) of the Intelligence Authorization Act for Fiscal Year 2010 (P.L. 111-259) is repealed.

Justification: This reporting requirement should be repealed because it requires information already provided to Congress within the business system registry provided with the DNI budget.

(4) REPEAL OF REPORTING REQUIREMENT REGARDING ANNUAL PERSONNEL LEVEL ASSESSMENTS FOR THE INTELLIGENCE COMMUNITY.—Section 506B of the National Security Act of 1947, as added by Section 305 of the Intelligence Authorization Act for Fiscal Year 2010 (P.L. 111-259), is repealed.

Justification: This reporting requirement should be repealed because the ODNI now routinely provides strategic-level workforce information for the Intelligence Community as part of the annual budget submission.

(5) REPEAL OF REPORTING REQUIREMENTS REGARDING SECURITY CLEARANCES.—Section 506H of the National Security Act of 1947, as added by Section 367 of the Intelligence Authorization Act for Fiscal Year 2010 (P.L. 111-259), is repealed.

Justification: Section 506H includes two enduring reporting requirements. The requirement for a quadrennial audit of positions requiring security clearances should be repealed because the National Counterintelligence Executive, in partnership with other agencies with similar responsibilities, examines the manner in which security clearance requirements are determined more frequently than once every four years. Rather than submit a report regarding a quadrennial activity, the executive branch can provide more frequent briefings, as requested, if congressional interest persists.

With regard to the annual reporting requirement on security clearance determinations, the Executive Branch as a whole has made significant progress in expediting and streamlining the security clearance process since the passage of the Intelligence Reform and Terrorism Prevention Act, thus reducing the saliency of this report. This reporting requirement should be replaced by briefings, as requested, if congressional interest persists.

(6) REPEAL OF REPORTING REQUIREMENT REGARDING ADVISORY INTELLIGENCE COMMITTEES.—Section 410(b) of the Intelligence Authorization Act for Fiscal Year 2010 (P.L. 111-259) is repealed.

Justification: This reporting requirement should be repealed because the information sought can be provided through regular Congressional Notifications, and additional information can be provided through briefings, as requested, if congressional interest persists.

(7) REPEAL OF REPORTING REQUIREMENT REGARDING ANALYTIC INTEGRITY.—Section 1019(c) of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) is repealed.

Justification: This reporting requirement is several years old and should be replaced with briefings, as requested, if congressional interest persists.

(8) REPEAL OF REPORTING REQUIREMENT REGARDING THE ROLE OF ANALYSTS AT FEDERAL BUREAU OF INVESTIGATION HEADQUARTERS AND FIELD LOCATIONS.—Section 2001(g)(3) of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) is repealed.

Justification: This reporting requirement is more than seven years old and was enacted while the establishment of a robust intelligence analysis capability at the FBI was in its initial stages. The FBI has since made great strides in building its intelligence analyst corps at both headquarters and in the field. In addition, similar information is reported to Congress through the reporting requirement in section 445 of the Intelligence Authorization Act for Fiscal Year 2010 (P.L. 111-259) on "Transformation of FBI Intelligence Capabilities." This reporting requirement should be replaced with briefings, as requested, if congressional interest persists.

(9) REPEAL OF REPORTING REQUIREMENT REGARDING FEDERAL BUREAU OF INVESTIGATION INFORMATION SHARING.—Section 2001(g)(4) of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) is repealed.

Justification: This reporting requirement is more than seven years old and was enacted when information sharing "firewalls" between the FBI and other Intelligence Community elements were a reality and an obstacle to information sharing across the intelligence enterprise. Since then the institutional barriers to information sharing between the FBI and the Intelligence Community have been largely addressed and a great deal of progress has been made. In addition, information on FBI's National Security Branch is reported to Congress through the reporting requirement in section 445 of the Intelligence Authorization Act for Fiscal Year 2010 (P.L. 111-259) on "Transformation of FBI Intelligence Capabilities." This reporting requirement should be replaced with briefings, as requested, if congressional interest persists.

(10) REPEAL OF REPORTING REQUIREMENT REGARDING JOINT INTERAGENCY REVIEW OF GLOBAL NUCLEAR DETECTION ARCHITECTURE.—Section 1907(b) of the Homeland Security Act of 2002 (P.L. 107-296), as added by Section 1103 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53), is repealed.

Justification: This reporting requirement is several years old, is onerous to produce, and should be replaced with briefings, as requested, if congressional interest persists.

(11) REPEAL OF REPORTING REQUIREMENT REGARDING CUSTOMER FEEDBACK ON DEPARTMENT OF HOMELAND SECURITY INTELLIGENCE REPORTING.—Section 210A(g)(2) of the Homeland Security Act of 2002 (P.L. 107-296), as added by Section 511 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53), is repealed.

Justification: This reporting requirement is several years old. It should be replaced with briefings, as requested, if congressional interest persists.

(12) REPEAL OF REPORTING REQUIREMENT REGARDING INTELLIGENCE INFORMATION SHARING.—Section 102A(g)(4) of the National Security Act is repealed.

Justification: This reporting requirement should be repealed for two reasons. First, independent of this reporting requirement, the DNI will notify the President of any statute, regulation, policy, or practice that impedes the most effective sharing of intelligence information within the Intelligence Community. Second, independent of this reporting requirement, the DNI will notify the Congress of any policy changes necessary to improve intelligence information sharing in the Intelligence Community and the Executive Branch through the Administration's annual budget and intelligence authorization requests.

(13) REPEAL OF REPORTING REQUIREMENT REGARDING MEASURES TO PROTECT THE IDENTITIES OF COVERT AGENTS.—Section 603 of the National Security Act (50 U.S.C. 423) is repealed.

Justification: This reporting requirement should be repealed because the same information is provided in a more timely manner through regular Congressional Notifications. Furthermore, the information can also be provided through briefings, as requested, if congressional interest persists.

(14) REPEAL OF REPORTING REQUIREMENT REGARDING THE SAFETY AND SECURITY OF RUSSIAN NUCLEAR FACILITIES AND NUCLEAR MILITARY FORCES.—Section 114(a) of the National Security Act of 1947 is repealed.

Justification: This reporting requirement should be repealed because it is a decade old and the Intelligence Community routinely provides finished intelligence products, regular Congressional Notifications, and briefings on this topic. This approach ensures that significant developments are brought to the timely attention of Congress. In addition, due to the sensitivity of this topic, the Intelligence Community would alert Congress of any significant changes to the safety and security of Russian nuclear facilities and

nuclear military forces. In addition, the National Defense Authorization Act for Fiscal Year 2012, P.L. 112-81, section 1240, includes a new, similar reporting requirement on Russian nuclear forces.

(15) REPEAL OF REPORTING REQUIREMENT REGARDING ACQUISITION OF MAJOR SYSTEMS.—Section 102A(q)(1)(C) of the National Security Act of 1947 is repealed.

Justification: This reporting requirement is seven years old and has been superseded by a similar and more comprehensive reporting requirement in the Intelligence Authorization Act for Fiscal Year 2010, P.L. 111-259, section 325, and a reporting requirement in the Intelligence Authorization Act for Fiscal Year 2012, P.L. 112-87, Section 306.

(16) REPEAL OF REPORTING REQUIREMENT REGARDING UNCONTROLLED TREATY-LIMITED EQUIPMENT.—Section 2(5)(E of the U.S. Senate Resolution on advice and consent to the Treaty 105-5, Flank Agreement to the CFE Treaty, May 14, 1997, is repealed.

Justification: This reporting requirement is almost 15 years old and of declining relevance given the level of peace and stability in Europe. This reporting requirement should be replaced by briefings, as requested, if congressional interest persists.

(17) REPEAL OF REPORTING REQUIREMENT REGARDING COMMERCE WITH, AND ASSISTANCE TO, CUBA FROM OTHER FOREIGN COUNTRIES.—Section 108 of the Cuban Liberty and Democratic Solidarity Act of 1996 (P.L. 104-114) is repealed.

Justification: This reporting requirement should be repealed because it is 16 years old and the Intelligence Community regularly publishes timely, classified strategic analysis of Cuba's economic, political, and military sectors, as well as on its leadership and foreign relations. In addition, virtually all the information in this report comes from open sources.

(18) REPEAL OF REPORTING REQUIREMENT REGARDING THE DIVERSION OF CERTAIN GOODS, SERVICES AND TECHNOLOGIES TO IRANIAN END-USERS OR IRANIAN INTERMEDIARIES.—Section 302 of the Comprehensive Iran Sanctions, Accountability, and Investment Act of 2010 (P.L. 111-195) is repealed.

Justification: This reporting requirement should be repealed because the Intelligence Community regularly produces timely finished intelligence products on violations of

United Nations Security Council Resolutions and the provision of prohibit goods and services to Iran. This approach ensures that significant developments are brought to the attention of Congress in a timely manner, rather than awaiting an annual report. In addition, due to the sensitivity of this topic, the Intelligence Community would alert Congress of any significant changes to economic activity in Iran.

(19) REPEAL OF REPORTING REQUIREMENT REGARDING STEPS TAKEN IN RESPONSE TO ESPIONAGE AND OTHER INTELLIGENCE ACTIVITIES BY THE PEOPLE'S REPUBLIC OF CHINA.—Section 3151 of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106-65) is repealed.

Justification: This reporting requirement should be repealed because it is over a decade old. The Intelligence Community has a robust counterintelligence program designed to address such threats. This reporting requirement should be replaced with briefings, as requested, if congressional interest persists.

(20) REPEAL OF REPORTING REQUIREMENT REGARDING COUNTERINTELLIGENCE AND SECURITY PRACTICES AT THE NATIONAL LABORATORIES.—Section 3152 of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106-65) is repealed.

Justification: This reporting requirement should be repealed because it is over a decade old and the Secretary of Energy and the National Counterintelligence Executive can provide the information requested through briefings, as requested, if congressional interest persists.

(21) REPEAL OF REPORTING REQUIREMENT REGARDING SECURITY VULNERABILITIES OF NATIONAL LABORATORY COMPUTERS.—Section 3153 of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106-65) is repealed.

Justification: This reporting requirement should be repealed because it is over a decade old and significant internal advances have been made in the intervening period. The Department of Energy has established strong partnerships with the National Security Agency, the Department of Homeland Security, and other agencies to protect its computer systems. As a result, the relative value provided by the annual reviews established a decade ago has been considerably diminished. At the same time, this reporting requirement draws resources and effort from multiple agencies that might otherwise be devoted to developing and implementing the broader, comprehensive,

integrated security architecture that is being established across the Executive Branch and within key components of our national security industrial base.

(22) REPEAL OF REPORTING REQUIREMENT REGARDING WAIVERS OF CONDITIONS FOR DISQUALIFICATION FOR SECURITY CLEARANCES.—Section 3002(c)(4) of the Intelligence Reform and Terrorism Prevention Act of 2004, as added by section 1072 of the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181), is repealed.

Justification: This reporting requirement should be repealed because it is of limited informational value. The Intelligence Community had very few, if any, waivers over the past several years. For example, the Department of Defense reported a single waiver pursuant to this reporting requirement over the last three years. The information sought through the reports can be provided through briefings, as requested, if congressional interest persists.

(23) REPEAL OF REPORTING REQUIREMENT REGARDING IRAN'S CAPABILITY TO PRODUCE NUCLEAR WEAPONS.—Section 1234 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (P.L. 110-417) is repealed.

Justification: This reporting requirement should be repealed because the Intelligence Community routinely provides finished intelligence products, regular Congressional Notifications, and briefings on this topic. This approach ensures that significant developments are brought to the timely attention of Congress, rather than waiting for an annual report. In addition, due to the sensitivity of this topic, the Intelligence Community would alert Congress of any significant changes regarding Iran's capability to produce nuclear weapons. In addition to routinely providing finished intelligence products on select aspects of Iran's nuclear activities, the Intelligence Community has produced National Intelligence Estimates of Iran's nuclear intentions and capabilities every two years since 2005 and will continue to do so. These Estimates represent the Intelligence Community's most comprehensive and authoritative assessment of Iran's nuclear activities and address all of the matters designated for inclusion in section 1234.

(24) REPEAL OF REPORTING REQUIREMENT REGARDING BANDWIDTH REQUIREMENTS FOR MAJOR DEFENSE ACQUISITION PROGRAMS AND MAJOR SYSTEM ACQUISITION PROGRAMS.—Section 1047(d)(2) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009

(Public Law 110-417), as amended by Section 1033 of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84), is repealed.

Justification: This reporting requirement should be repealed because the information sought by Congress can be provided through regular briefings, as requested, if congressional interest persists.

(25) REPEAL OF REPORTING REQUIREMENT REGARDING NUCLEAR ASPIRATIONS OF NON-STATE ENTITIES AND RELATED MATTERS.—Section 1055 of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84) is repealed.

Justification: This reporting requirement should be repealed because the Intelligence Community routinely provides finished intelligence products, regular Congressional Notifications, and briefings on this topic. This approach ensures that significant developments are brought to the timely attention of Congress, rather than waiting for a biennial report. In addition, due to the sensitivity of this topic, the Intelligence Community would alert Congress of any significant changes regarding the nuclear capabilities of non-state entities. In addition, elements of the required biennial report, on issues such as ballistic missiles, are the subject of other more recent enacted reporting requirements (see National Defense Authorization Act for Fiscal Year 2012, P.L. 112-81, section 1079).

(26) REPEAL OF ANNUAL COUNTERTERRORISM STATUS REPORT.—Section 1242 of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84) is repealed.

Justification: This reporting requirement should be repealed because the classified annex to the Intelligence Authorization Act of Fiscal Year 2012 (P.L. 112-87) requires the National Counterterrorism Center to provide a similar (although not identical) report 120 days from the enactment of the Act (report due early May 2012).

(27) REPEAL OF REPORTING REQUIREMENT REGARDING SUBMISSION AND REVIEW OF SPACE SCIENCE AND TECHNOLOGY STRATEGY.—Section 2272(a)(5) of title 10, United States Code, is repealed.

Justification: This reporting requirement should be repealed because information regarding space science and technology strategy is already communicated through other means to Congress, such as the annual budget submission, and a variety of space science and technology-related acquisition programs for which Congress is briefed and updated

on a regular basis. The information sought by Congress through this reporting requirement can be replaced by regular briefings, as requested, if congressional interest persists.

(b) MODIFICATION OF CERTAIN REPORTING REQUIREMENTS.

(1) SUNSET OF REPORTING REQUIREMENT REGARDING INTELLIGENCE COMMUNITY BUSINESS SYSTEM TRANSFORMATION.—Section 322(j) of the Intelligence Authorization Act for Fiscal Year 2010 (P.L. 111-259) is amended by striking "2015" and inserting "2013".

Justification: This modification would sunset a reporting requirement two years earlier than current law, providing for reports in fiscal years 2011, 2012, and 2013. Thereafter, the reporting requirement can be replaced by briefings, as requested, if congressional interest persists.

(2) SUNSET OF REPORTING REQUIREMENT REGARDING THE TRANSFORMATION OF THE INTELLIGENCE CAPABILITIES OF THE FEDERAL BUREAU OF INVESTIGATION.—Section 445(b)(1) of the Intelligence Authorization Act for Fiscal Year 2010 (P.L. 111-259) is amended by striking "five years" and inserting "three years".

Justification: This reporting requirement should be shortened to three years vice five because the FBI has been "transforming" itself ever since 9/11 to adjust to the threat of foreign terrorism within the US. While further transformation is planned, any changes within the next few years will likely be, comparatively speaking, far less sweeping in scope than those that occurred in the first 10 years after 9/11. Therefore, this reporting requirement should be limited to three years, with the report replaced by regular Congressional Notifications and briefings, as requested, if congressional interest persists.

(3) MODIFICATION OF REPORTING REQUIREMENT REGARDING THE ACTIVITIES OF PRIVACY AND CIVIL LIBERTIES OFFICERS.—Section 1062(f)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) is amended by striking "quarterly" and inserting "semiannually".

Justification: The periodicity of this reporting requirement should be modified because it has proven burdensome to submit these reports on a quarterly basis, particularly with limited staff. Changing the periodicity to semiannually will ensure that Congress

continues to receive regular updates on the activities of privacy and civil liberties officers. (Note: this reporting was established in the Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, section 803.)

SECTIONAL ANALYSIS

These proposals represents the ODNI's efforts to reduce the burden these reporting requirements place on the Intelligence Community (IC) while ensuring that the Congress continues to receive the information it requires.

Section 303 proposes repeal or modification of specific previously enacted reporting requirements.

The reduction of reporting requirements will assist in keeping staff and resources focused on more mission-oriented work and allow the IC to better address those items of current interest to Congress.

SEC. 304. UPDATE TO REPORTS ON ACQUISITION OF MAJOR SYSTEMS.

BILL TEXT

Section 506E of the National Security Act of 1947 (50 U.S.C. 413 et seq.) is amended as follows:

(a) in Definitions subsection (a) (3) (A) change (iii) to (iv);

(b) in Definitions subsection (a) (3) (A) insert new (iii) "approved by the Director, or a designee of the Director, and in consultation with the Office of Management and Budget, for an authorized scope increase pursuant to section 506E(i) at a subsequent milestone decision, or as a result of a major program restructure; or"

(c) in Definitions subsection (a) add new term and definition "(12) The term 'authorized scope increase' means an increase to major system scope that is reviewed and approved by the Director, or designee of the Director, and that either: (a) addresses an emergent mission imperative; or (b) effectuates a material decrease to expected overall life-cycle cost.";

(d) change subsection (i) to "(k)";

(e) change subsection (j) to "(l)";

(f) insert new subsection "(i) Treatment of Cost Increase Due To Authorized Scope Increase.—(1) Whenever the Director, or designee of the Director, approves an

authorized scope increase on a major system, a written notification to Congress shall be provided within 30 days of the approval.

(2) The major system revised current baseline estimate reflective of the authorized scope increase reported in (1) shall be the baseline used for measuring increases in total acquisition cost.

(3) The major system revised current baseline reported in (1) shall not include any cost increases unrelated to the authorized scope increase."

(g) insert new subsection (j) "The Director of National Intelligence, in consultation with the Office of Management and Budget, shall issue guidance for the implementation of subsection (i), to include criteria to identify mission imperatives.

SECTIONAL ANALYSIS

Section 506E of the National Security Act of 1947 (50 U.S.C. 413 et seq) has heightened reporting requirements when a major system experiences significant (≥ 15%) or critical (≥ 25%) cost growth. In both cases, the reporting requirements focus on detailed assessments identifying and remedying the causes of the major system cost growth. In the more onerous reporting requirements for critical cost growth, the Director has to conduct additional assessments and provide accompanying certifications. Overarching in the response to these requirements is the statutory timeline for reporting to the Congress.

During execution of a major system, there may be a need to modify program scope to respond to an emergent mission imperative or an opportunity to decrease life cycle costs requiring a modification of program scope. The current language in 506C does not allow for such exigencies. Currently, for a major system, incorporating a response to these exigencies would be viewed as poor execution management since it increases the total acquisition cost. If the change results in meeting significant or critical cost growth thresholds, the major system will also have to devote scarce resources to completing the required assessments and meeting the statutory timeline for reporting to Congress. These changes would only be made at a milestone or milestone equivalent, or as part of a program restructuring.

The proposed amendment would exempt specific categories of changes, while preserving heightened scrutiny for cost growth. Although notification to Congress remains intact under this proposal, increases in total acquisition cost due to authorized scope increases would be treated

as legitimate, and the current baseline cost estimate would be adjusted to reflect the increase. The Director of National Intelligence or his designee, in consultation with the Office of Management and Budget would have to approve any such baseline adjustments.

The amendment does not result in any changes to existing IC acquisition policy. However, the ODNI, in consultation with OMB, plans to issue guidelines to further define the types of activities that would qualify as an 'authorized scope increase'.

TITLE IV—MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE COMMUNITY

SEC. 401. SECTION 5(A)(1) OF THE CENTRAL INTELLIGENCE AGENCY ACT OF 1949.

BILL TEXT

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

SECTIONAL ANALYSIS

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

SEC. 402. WORKING CAPITAL FUND AMENDMENTS.

BILL TEXT

Section 21 of the CIA Act of 1949 (50 U.S.C § 403u) is amended as follows:

In subsection (b)(1) by adding a new subsection (D) which reads, "(D) authorize such providers to advertise their services to the entities specified in section (a) through Government-owned websites. This authority shall not include the authority to distribute gifts or promotional items."

In subsection (c)(3)(B) by adding “s” to “subsection” and “and (b)(1)(D)” after “(f)(2)”.

In subsection (c)(2)(E) by striking the phrase “from the sale or exchange of equipment or property of a central service provider” and inserting in its place “from the sale or exchange of equipment, recyclable materials, or property of a central service provider.”

SECTIONAL ANALYSIS

Amendment (a) provides authority for service providers operating under the Central Services Program to use their resources to advertise their capabilities to their authorized customer base using mechanisms typically and customarily available to Government entities. Without this authority, service providers in the Fund are not able to maximize their efficiencies by operating at capacity and provide the lowest possible cost to their customers. This authority shall not be used to purchase gifts or giveaway items, such as mugs, t-shirts, caps, and holiday greetings.

Amendment (b) authorizes service providers to pay the costs of advertising from the Working Capital Fund.

Amendment (c) clarifies that service providers operating under the Central Services Program are authorized to deposit receipts from the sale of service provider-owned recyclable materials into the Fund. Although the current law authorizes the deposit of proceeds from “property” sales, it is unclear whether this authority extends to the sale of recyclable materials. Proceeds from recycling are subject to government-wide use restrictions (Section 706 of Public Law 111-117) which would not allow deposit of such proceeds directly into the Working Capital Fund. While the Agency could interpret “property” in the current law to include items in scrap condition, thus justifying the retention of their sales proceeds, we would prefer to bring the law’s text directly in line with this interpretation.

SEC. 403. CENTRAL INTELLIGENCE AGENCY INSPECTOR GENERAL AUTHORITIES.

BILL TEXT

Section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. §403q) is amended as follows:

(a) in subsection (e) (7) by designating the existing paragraph as paragraph “(A)”; and

(b) by inserting after the newly designated paragraph (A), the following new paragraph:

"(B) (B) Notwithstanding 50 U.S.C. §403a(d)(1), for the purposes of applying the provisions of 5 U.S.C. §§8335(b), 8331(20),8401(17), and 8425(b), the Inspector General may exercise the functions, powers, and duties of an agency head or appointing authority with respect to the Office of Inspector General."

SECTIONAL ANALYSIS

Authorize the Inspector General for the Central Intelligence Agency to designate positions within the Office of Inspector General as eligible for certain law enforcement retirement entitlements under 5 U.S.C. Chapters 83 and 84.

Section 403 amends the Central Intelligence Agency (CIA) Act of 1949 to authorize the CIA Inspector General to designate positions held by criminal investigators as meeting the qualifications under 5 Code of Federal Regulations §§831.902, 831.903, 831.904, 842.802, and 842.803 – so that retirement annuity and eligibility, mandatory retirement, Government contributions to retirement, and payroll deductions are calculated in accordance with the provisions applicable to law enforcement officers in 5 U.S.C. Chapters 83 and 84. In addition, persons transferring from law enforcement officer positions in other agencies into the CIA Office of Inspector General would not lose their eligibility to participate in the law enforcement officer retirement scheme as long as they occupied a position designated as law enforcement officer position and performed qualifying duties, in either a primary or secondary position, as defined in 5 C.F.R. §842.802.

The "notwithstanding 50 U.S.C. §403-4a(d)(1)" language clarifies that the law enforcement proviso prohibiting the DCIA from exercising law enforcement powers does not prevent the CIA Inspector General from exercising the functions, powers, and duties of the agency head or appointing authority to designate qualifying OIG personnel as law enforcement officers for retirement benefit purposes.

TITLE V—TECHNICAL AMENDMENTS

SEC. 501. TECHNICAL AMENDMENT FOR STATUTORY DEFINITION OF AGENCY.

BILL TEXT

(A) Subsection (a)(2)(C)(ii) of Section 2302 of Title 5 is amended by inserting ", the Office of the Director of National Intelligence," after "the Central Intelligence Agency.".

(B) Subsection (a)(1)(B) of section 3132 of Title 5 is amended by inserting ", the Office of the Director of National Intelligence," after "the Central Intelligence Agency.".

SECTIONAL ANALYSIS

Sections 2302 and 3132 exclude from the definition of "agency" under those chapters certain specifically enumerated Executive agencies. In addition, Sections 2302 and 3132 exclude from the definition of "agency" those Executive agencies that the President determines have as their principal function "the conduct of foreign intelligence or counterintelligence activities." The ODNI constitutes such an Executive agency through its principal foreign intelligence role as recognized by the Intelligence Reform and Terrorism Prevention Act, Pub. L. 108-458, and Executive Order 12333.

This technical fix to Sections 2302 and Section 3132 of Title 5 expressly identify the ODNI as an Executive agency excluded from the definition of "agency" under those chapters.

SEC. 502. TECHNICAL AMENDMENT FOR DEFINITION OF INTELLIGENCE AGENCY.

BILL TEXT

Section 606 of the National Security Act of 1947, (50 U.S.C. 426) is amended—

by deleting subsection (5), and inserting the following—

"(5) The term "intelligence agency" means the elements of the intelligence community as that term is defined in section 3(4) of the National Security Act.".

SECTIONAL ANALYSIS

This Amendment will revise the definition of "intelligence agency" in section 606 of the National Security Act of 1947, as amended, to include all of the elements of the Intelligence Community. The current definition of "intelligence agency" in section 606 does not include the counterintelligence elements of the Department of Defense (DoD) or the intelligence and counterintelligence components of other elements of the Intelligence Community. The revised definition would conform the definition of "intelligence agency" to include all elements of the Intelligence Community, as defined in section 3(4) of the National Security Act, and thus include such foreign intelligence (FI) and counterintelligence (CI) elements of the DoD and the counterintelligence (CI) elements of the Federal Bureau of Investigation (FBI).

The definition in section 606 is limited in its application to Title VI of the National Security Act on the protection of certain national security information. Title VI imposes criminal penalties for the disclosure of the identity of covert agents, thereby affording the individual agent protection as well as

maintaining the security of the operation. The definition of a covert agent includes a present or retired officer or employee of an intelligence agency, a U.S. citizen whose intelligence relationship to the U.S. is classified, or a non-U.S. citizen whose past or present intelligence relationship to the U.S. is classified or is a present or former source of operational assistance to an intelligence agency.

In the U.S., the FBI and the CI elements of the DoD are authorized to conduct counterintelligence activities, to include investigations and operations. Although these counterintelligence activities are often conducted jointly, DoD is authorized to conduct certain counterintelligence activities unilaterally, after coordination with the FBI or Central Intelligence Agency. Despite the fact that the CI component of the DoD and FBI may conduct activities jointly or similar activities unilaterally, the current statute provides protection for the CI employees, assets, and operations of the FBI only. The risk to an employee or asset of a DoD CI element, or of a CI component of another element of the IC, is the same as that of an employee or asset of a FBI CI component, and yet inexplicably, the statute provides a different level of protection. The Amendment will extend the protections of the CI components of the FBI and the FI elements of the DoD to the CI elements of the DoD and other IC elements.

This Amendment is consistent with Executive Order (EO) 12333, as amended, which assigns roles and responsibilities to the Intelligence Community. The EO defines the Intelligence Community to include the "intelligence and counterintelligence elements" of DoD.

Budget Implications: This section has no budget implications.