

Section-by-Section Description of Changes to H.R. 1892 Contained in the Rules Committee Print

Section 103. Personnel Ceiling Adjustments

Section 103 is intended to provide additional flexibility to the DNI in managing the civilian personnel of the Intelligence Community. Section 103(a) provides that the DNI may authorize employment of civilian personnel (expressed as full-time equivalent positions) in fiscal year 2012 in excess of the number of authorized fulltime equivalent positions by an amount not exceeding 3 percent of the total limit applicable to each IC element under Section 102. The DNI may do so only if necessary to the performance of important intelligence functions.

Section 103(b) further provides additional flexibility when the heads of IC elements determine that work currently performed by contract personnel should be performed by government employees. It does so by authorizing the DNI to authorize employment of additional full-time equivalent personnel in a number equal to the number of full-time equivalent contract personnel currently performing that work. Exercise of this authority should result in an actual reduction of the number of contract personnel and not a shift of resources to hire other contract personnel. The DNI must report the decision to allow an IC element to exceed the personnel ceiling or to convert contract personnel under Section 103(a) and (b) in advance to the congressional intelligence committees.

Section 303. Annual Report on Hiring of ‘National Security Education Program’ Participants.

This provision limits the requirement to Fiscal Years 12, 13, 14.

Section 304. Enhancement of authority for flexible personnel management among the elements of the Intelligence Community

Section 304 adds a subsection to Section 102A of the National Security Act of 1947 to promote the ability to manage all the elements of the IC as a single cohesive community. The new Subsection 102A(v) enables the DNI, with the concurrence of the head of the covered department concerned and in coordination with the Director of the Office of Personnel Management, to convert competitive service positions within an IC element of the covered department to excepted positions and to establish new positions in the excepted service within an IC element of a covered department.

Under Section 304, an incumbent occupying a position on the date of enactment selected to be converted to the excepted service shall have the right to refuse the conversion. Once such individual no longer occupies the position, the position may be converted. Because of their unique intelligence, investigative and national security missions, most IC elements are in the excepted civil service. However, civilian employees in several smaller IC elements are still covered under competitive service rules. The ability to convert those positions to the excepted service will enable the IC to maintain a system throughout the Intelligence Community that is responsive to the needs of the IC both for secrecy and the ability to quickly respond to personnel requirements. The DNI has requested a similar authority in the past. Under Section 304, the covered departments are the Department of Energy, the Department of Homeland Security, the Department of State, and the Department of the Treasury.

Although new positions in the excepted service may be created within an element of the Intelligence Community within the covered departments under this authority, the personnel ceilings referred to in Section 102(a) still apply to the number of personnel in an element. The Committee does not intend for this conversion authority to be used to increase the number of full-time equivalent personnel in an intelligence element above the applicable personnel ceilings.

Section 305. Preparation of nuclear proliferation assessment statements

Section 305 requires the DNI to provide to the President and Congress an addendum to each Nuclear Proliferation Assessment Statement accompanying a civilian nuclear cooperation agreement, containing a comprehensive analysis of the country's export control system.

Section 306. Cost Estimates

Section 306 amends Section 506A of the National Security Act of 1947 to require that independent cost estimates include all costs associated with a major system acquisition even when a service or capability to deliver end-to-end functionality will be provided by another Intelligence Community agency or element. This additional requirement in the preparation of the independent cost estimate full cost of an acquisition, including the costs to process, exploit, disseminate, and store the information such major system collects. The amendments made by Section 304 become effective 180 days after enactment.

Section 307. Detainees held at United States Naval Station, Guantanamo Bay, Cuba

Section 307 modifies the notification requirements in Section 552(e) of the Department of Homeland Security Appropriations, 2010 (Public Law 111–83) and Section 428(e) of the Department of Interior, Environment and Related Agencies Appropriations, 2010 (Public Law 111–88) to require 30 days notice to Congress, rather than 15 days, of a transfer of a detainee to another country. In addition, the notification shall include the terms of any monitoring assurance provided by the receiving country and identify the agency or department of the United States that is to ensure any agreement between the United States and the receiving country is carried out.

Section 308. Updates of intelligence relating to terrorism recidivism of detainees held at United States Naval Station, Guantanamo Bay, Cuba

Section 334 of the Intelligence Authorization Act for fiscal year 2010, Public Law 111–259, required the Director of National Intelligence, along with the CIA Director and the Director of the Defense Intelligence Agency, to make publicly available, on a one-time basis, an unclassified summary that includes the intelligence relating to former Guantanamo detainees. At the same time, the President is required under Section 319 of the Supplemental Appropriations Act of 2009, Public Law 111–32, to submit classified quarterly reports to Congress that include classified information about detainees’ recidivist activities.

Section 308 requires the semiannual updating of the Section 334 report. The initial update shall be made publicly available not later than 10 days after the date that the first report following enactment is submitted to members and committees pursuant to Section 319 of the Supplemental Appropriations Act, 2009. The summary will be prepared by the DNI, in consultation with the Director of the CIA and the Director of the Defense Intelligence Agency, and will include the number of individuals confirmed or suspected of returning to terrorist activities.

Section 309. Submission of information on Guantanamo Bay detainee transfers

Section 309 requires that not later than 45 days after the date of enactment, the DNI, in coordination with the Secretary of State, shall submit information to the congressional intelligence committees concerning the transfer or potential transfer of individuals who are or have been detained by the United States at Naval Station, Guantanamo Bay, Cuba. This information is to include the following: (1) an assessment of the sufficiency of the monitoring undertaken by each foreign country to which a detainee has been transferred; (2) any written or verbal agreement between the Secretary of State and the government of a foreign country that describes monitoring and security assurances related to a detainee transferred to such country; and (3) each Department of State cable, memorandum, or report relating to or describing the threat such an individual may or may not pose. S307 Updates of intelligence relating to terrorist recidivism of detainees held at United States Naval Station, Guantanamo Bay, Cuba

Section 310. Enhanced procurement authority to manage supply chain risk

Section 310 authorizes the heads of those elements of the Intelligence Community outside the Department of Defense to take certain procurement actions under certain circumstances to reduce the risk that an adversary may sabotage, maliciously introduce unwanted functions, or otherwise subvert information systems so as to surveil, deny, disrupt or otherwise degrade them. Section 309 is based on Section 806 of the Ike Skelton National Defense Authorization Act for fiscal year 2011 (Public Law 111–383).

Section 310(a) defines the following terms: covered agency, covered item of supply, covered procurement, covered procurement action, covered system, and supply chain risk. The definitions of these terms are substantially the same as the same terms in Public Law 111–383. Under subsection (b), the head of a covered agency is authorized to carry out a covered procurement action and limit the disclosure of information concerning the basis for such action. Covered procurement actions are subject to the conditions in subsection (c), which include appropriate consultation with procurement officials within the agency and a determination that the use of the authority is necessary to protect national security. In addition, there must be a determination that less intrusive measures are not reasonably available.

The head of the covered agency must give notice to the congressional intelligence committees of a determination, including a summary of the basis for a determination to take a covered procurement action. Subsection (c) provides that

the authority under the section is in addition to any authority under any other provision of law. The authority provided in Section 310 is not intended to limit other procurement authorities available to an intelligence agency head to protect the national security.

The requirements of Section 310 go into effect 180 days after enactment and expire on the date that Section 806 of the Ike Skelton National Defense Authorization Act for fiscal year 2011 expires, which will occur in January 2014.

Section 311. Modification of certain reporting requirements

The Congress frequently requests information from the Intelligence Community in the form of reports, the contents of which are specifically defined by statute. The reports prepared pursuant to these statutory requirements provide Congress with an invaluable source of information about specific matters of concern. Section 311 eliminates certain reports that were particularly burdensome to the Intelligence Community when the information in the reports could be obtained through other means. It also modifies reporting requirements to set a date certain for their repeal.

Subtitle A--ODNI

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

Section 402 provides a limited grace period for the ODNI in meeting the requirements of 31 U.S.C. 3515, which requires the ODNI to prepare and submit to the Congress and the Director of the Office of Budget and Management an audited financial statement for the preceding fiscal year by the following March 1st, until fiscal year 2013. The DNI in requesting this legislative provision stated that the grace period will allow time for the implementation of system improvements as well as process changes in the financial management system currently supporting the ODNI. Together these efforts are intended to yield financial statements that meet the prescribed legal and audit standards.

Section 403. Public availability of information regarding the Inspector General of the Intelligence Community

Section 403 requires the DNI to establish and maintain on the publicly accessible ODNI website information relating to the Inspector General (IG) for the

Intelligence Community including methods to contact the IG. Section 403 is based on a similar requirement in Section 8L of the Inspector General Act, as added by the Inspector General Reform Act of 2008, 5 U.S.C. App., and is similar to Section 415. The information about the IG is to be obvious and facilitate accessibility to the IG.

Section 404. Clarification of status of Chief Information Officer in the Executive Schedule

Section 404 amends 5 U.S.C. 5315 to establish the salary level of the Chief Information Officer of the Intelligence Community at Level IV of the Executive Schedule, the level of other chief information officers in the federal government with comparable duties and responsibilities. The Chief Information Officer of the Intelligence Community is a position established in Section 103G of the National Security Act, added by section 303 of Public Law 108–487, the Intelligence Authorization Act for fiscal year 2005, and amended by Section 404 of Public Law 111–259, the Intelligence Authorization Act for fiscal year 2010.

Subtitle B CIA

Section 412. Acceptance of Gifts

Section 412 amends Section 12 of the CIA Act to authorize the Director (or the Director’s designee) both to accept gifts and to use them for the welfare of employees injured in the line of duty without legal concern whether those actions are for the general welfare of the CIA employee population as a whole. It also provides that gifts may be used for the assistance of the family of CIA officers who were injured or who died from hostile or terrorist activities or in connection with other intelligence activities having a substantial element of risk. All of the authority under Section 12 shall be made according to regulations developed by the CIA Director in consultation with the Director of the Office of Government Ethics, consistent with all relevant ethical constraints and principles.

Section 413. Foreign language proficiency requirements for Central Intelligence Agency officers

Section 413 makes amendments in Section 104A(g) of the National Security Act of 1947 which imposes foreign language requirements on certain personnel within the

CIA. Section 411 is intended to tie the need for foreign language skills to officers in occupations where foreign language ability is most important, rather than to specific positions, within the Directorate of Intelligence career service or National Clandestine Service career service. It is intended to eliminate the need for the Director of the CIA to approve waivers for the promotion, appointment, or transfer of personnel such as attorneys or human resources officers for whom the requirement is not intended to apply. Section 411 sets the language proficiency at the objective level of level 3 on the Interagency Language Roundtable Language Skills Level or a commensurate proficiency level.

Section 413 requires the Director of the CIA to report to the congressional intelligence committees on the number of personnel transferred into the Directorate of Intelligence career service or National Clandestine Service career service who did not meet the foreign language requirements of Section 104A(g). It also makes technical corrections to delete outdated references to the Directorate of Operations.

Section 414. Public availability of information regarding the Inspector General of the Central Intelligence Agency

Section 414 requires the Director of the CIA to establish and maintain on the publicly accessible CIA website information relating to the CIA IG including methods to contact the IG. Section 413 is based on a similar requirement in the Inspector General Reform Act, 5 U.S.C. App. 8L, and is similar to Section 403. The information about the IG is to be obvious and facilitate accessibility to the IG. Given that most of the IG's reports will be classified, Section 413 does not require that IG reports and audits be posted on the publicly accessible website. Section 413 is based upon a request of the CIA IG.

Section 416. Recruitment of personnel in the Office of the Inspector General

Section 416 requires the Director of the CIA, in consultation with the Inspector General of the CIA, to conduct a study of the personnel issues of the Office of the Inspector General. The study shall include identification of any barriers and disincentives to the recruitment or retention of experienced investigators within the Office of the Inspector General. The Director shall compare the personnel authorities of the CIA Inspector General with the personnel authorities of other federal Inspectors General, including a comparison of the benefits available to experienced investigators within such offices with those available to investigators

within the Office of the CIA Inspector General, and shall take such administrative actions as may be appropriate to address such disparities. The Director shall report to the congressional intelligence committees on the administrative actions taken based on the results of the study and the Director's recommendations for legislative action, if any, within 90 days of enactment.

Subtitle B—Other Elements

Section 421. Confirmation of appointment of the Director of the National Security Agency.

Section 421 amends the National Security Agency Act of 1959 to provide that the Director of the National Security Agency (NSA) shall be appointed by the President by and with the advice and consent of the Senate. Under present law and practice, the President appoints the Director of the NSA.

Section 422. Additional authorities for National Security Agency security personnel.

Section 422 amends Section 11 of the National Security Agency Act of 1959 to authorize NSA security personnel to transport apprehended individuals from NSA premises to law enforcement officials. Under current law, when NSA security personnel apprehend an individual, they must wait with the individual until local law enforcement personnel arrive to complete the transfer of custody. Section 422 provides a limited expansion of authority for NSA security personnel to transport apprehended individuals to local law enforcement within 30 miles of NSA premises.

Section 432. Federal Bureau of Investigation participation in the Department of Justice leave bank

Section 432 provides for participation of employees of the Federal Bureau of Investigation (FBI) in the Department of Justice's Voluntary Leave Bank Program. The Voluntary Leave Bank Program allows federal employees to donate to and to receive donations from a leave "bank" to cover absences necessitated by extraordinary medical conditions. Under Section 432, the Director may consider the protection of sources and methods in allowing for participation in the leave bank program.

Section 433. Accounts and transfer authority for appropriations and amounts for intelligence elements of the Department of Defense

Section 433 authorizes the Secretary of Defense to transfer defense appropriations into an account or accounts established for receipt of such funds. This section is intended to ensure improved auditing of defense intelligence appropriations.

Title V—Other Matters

Section 502. Technical amendments to the National Security Act of 1947

Section 502 updates certain references in sections 3(6), 506(b) and 506A of the National Security Act of 1947 from the “Director of Central Intelligence” and the “National Foreign Intelligence Program” to the “Director of National Intelligence” and the “National Intelligence Program.”

Section 503. Technical amendments to Title 18, United States Code

Section 503 updates references in 18 U.S.C. 351(a) to the Director and Deputy Director of Central Intelligence and provides that the amended section includes the DNI, the Principal Deputy DNI, and the Director and Deputy Director of the CIA among officials covered by the provision.