

AUTHORIZING APPROPRIATIONS FOR FISCAL YEAR 1985 FOR INTELLIGENCE ACTIVITIES OF THE U.S. GOVERNMENT, THE INTELLIGENCE COMMUNITY STAFF, THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM (CIARDS), AND FOR OTHER PURPOSES

MAY 24 (legislative day, MAY 21), 1984.—Ordered to be printed

MR. BAKER (for Mr. GOLDWATER), from the Select Committee on Intelligence, submitted the following

REPORT

[To accompany S. 2713]

The Select Committee on Intelligence, having considered the original bill (S. 2713) authorizing appropriations for fiscal year 1985 for intelligence activities of the U.S. Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

This bill would:

- (1) Authorize appropriations for fiscal year 1985 for (a) intelligence activities of the United States, (b) the Intelligence Community Staff, and (c) the CIA Retirement and Disability System;
- (2) Authorize the personnel end-strength as of September 30, 1985 for (a) the Central Intelligence Agency, and (b) the Intelligence Community Staff;
- (3) Make certain improvements in the civilian personnel management system of the Defense Intelligence Agency; and
- (4) Strengthen U.S. counterintelligence capabilities by providing for substantial equivalence between official representation in the United States on the part of foreign governments which engage in intelligence activities harmful to the national security of the United States, and U.S. official representation in such countries.

OVERALL SUMMARY OF COMMITTEE ACTION

[In millions of dollars]

	Fiscal year 1984	Budget request	Committee recommends	Committee recommended changes
Intelligence activities				
Intelligence Community Staff	17.3	21.8	21.8	0
CIARDS	86.3	99.3	99.3	0
Total				

THE CLASSIFIED REPORT

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

The Committee has prepared a classified report which describes the full scope and intent of its action, and the specific amounts authorized for each of the various intelligence programs of the U.S. Government. The Committee intends that the classified report, although not available to the public, will have the full force of any Senate Report, and that the Intelligence Community will fully and completely comply with the recommendation, guidelines, directions, and limitations contained therein.

The Classified Report is available for review by any Member of the Senate, subject to the provisions of Senate Resolution 400.

SCOPE OF COMMITTEE REVIEW

The Committee, through its Budget Subcommittee, conducted a detailed review of the Intelligence Community's fiscal year 1985 budget request. This included:

Hearings involving some 22 hours of testimony, which included the Director of Central Intelligence, the principal program managers, and senior officials from the Departments of Defense, Treasury, and Commerce;

Detailed examination of over 2,000 pages of budget justification material;

Review of written answers from the Intelligence Community to several hundred questions for the record;

Numerous briefings and interviews with officials on major topics of interest.

The Subcommittee continued to examine the U.S. intelligence system on a functional basis, as has been its practice since 1981. This year, in-depth hearings were conducted to examine key initiatives in Community programs involving: analysis and production; technical and human collection of foreign intelligence; counterintelligence; and covert action. In addition, the Subcommittee held a detailed hearing on the subject of arms control intelligence.

During the course of the review, the Subcommittee focused attention on the following major areas:

Key challenges facing the Intelligence Community over the longer term to include countermeasures to U.S. technical collection and growing requirements for intelligence on a global basis;

The ability of the Community to meet these challenges and the adequacy of outyear plans;

Major gaps in current and programmed capabilities;

Steps proposed in the fiscal year 1985 budget to overcome existing deficiencies and to improve the Community's long-term performance.

OVERALL COMMITTEE FINDINGS AND RECOMMENDATIONS

The Committee believes the continued growth of U.S. intelligence capabilities should remain among the nation's highest priorities. The Committee has consistently supported major investments, proposed over the past four years, needed to respond to the challenges U.S. foreign policymakers will face in the late 1980's and into the 1990's. This assessment has not changed; because no lessening of tension with our principal adversaries is expected. In this connection, developments in the Third World countries, combined with issues of global significance, will continue to grow in importance.

By the late 1970's, resource constraints and the effects of inflation seriously degraded the Intelligence Community's capability to adequately support U.S. foreign policymaking objectives. Additional funding beginning in the late 1970's and continuing through fiscal year 1984, has worked to improve that situation. Deficiencies remain and additional investments will be necessary to revitalize intelligence capabilities throughout the 1980's. Major investments have been continued in the fiscal year 1985 budget to continue development of advanced collection systems, expand human source collection abroad, improve analysis, enhance counterintelligence capabilities and modernize the support apparatus upon which the total system capabilities depend.

EVALUATION OF REGULATORY IMPACT

In accordance with Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee finds no regulatory impact will be incurred in implementing the provisions of this legislation.

CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT

The Committee has complied with Section 403 of the Congressional Budget and Impoundment Control Act of 1974 to the extent possible.

TITLE I—NATIONAL INTELLIGENCE PROGRAM

Committee recommendations

The details of Committee recommendations affecting the amounts to be appropriated for national intelligence activities under this title are contained in the Committee's classified report.

TITLE II—INTELLIGENCE COMMUNITY STAFF

Fiscal year:	<i>Millions</i>
1984 program-----	\$17.3
1985 request-----	21.8
Committee recommended change-----	0
Committee recommendation-----	21.8

Authorization request

The Intelligence Community Staff requested \$21.8 million and 232 staff personnel for fiscal year 1985 to support the Director of Central Intelligence in fulfilling his overall responsibilities for management and direction of the Intelligence Community.

Committee recommendation

The Committee recommends an appropriation in the amount of \$21,800,000 for the Intelligence Community Staff for fiscal year 1985. This amount provides an increase of \$4,500,000 or 25 percent over the fiscal year 1984 program.

In fiscal year 1985, the Committee recommends a personnel end-strength ceiling of 232 full time employees. They can be permanent employees or employees on detail from other elements of the U.S. Government. Any employee who is detailed to the Intelligence Community Staff from another organization of the U.S. Government shall be detailed on a reimbursable basis. However, an employee can be detailed on a non-reimbursable basis for less than one year to perform temporary duties as requested by the Director of Central Intelligence.

TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND
AND DISABILITY SYSTEM

Fiscal year:	<i>Millions</i>
1984 program-----	\$86.3
1985 request-----	99.3
Committee recommended change-----	0
Committee recommendation-----	99.3

Authorization request

The Central Intelligence Agency requested \$86.3 million in fiscal year 1985 for the CIA Retirement and Disability Fund to finance the cost of: (1) interest on the unfunded liability, (2) annuities attributable to credit allowed for military services, (3) benefits not met by employee/employer contributions, and (4) the increase in unfunded liability resulting from liberalized benefits and Federal pay raises.

The Central Intelligence Agency Retirement Act of 1964 for certain employees (Public Law 88-643, October 13, 1964) authorized the establishment of a Central Intelligence Agency Retirement and Disability System for a limited number of Agency employees, and authorized the establishment and maintenance of a fund from which benefits would be paid to qualified beneficiaries.

The benefits structure of CIARDS is essentially the same as for the civil service retirement system with only minor exceptions. These exceptions are: (a) annuities are based upon a straight 2 percent of high-3 average salary for each year of service, not exceeding 35; (b) under stipulated conditions, a participant may, with the consent of the Director, retire or at his discretion be retired at age 50 with 20 years of service, or a participant with 25 years of service may be retired by the Director regardless of age; and (c) retirement is mandatory at age 65 for personnel in grades GS-18 or above and at age 60 for personnel in grades GS-17 and below, except that the Director may in the public interest extend service up to 5 years.

In order to provide for the continuing solvency of the CIARDS fund, financing legislation comparable to that enacted for the Foreign Service retirement and disability fund was enacted as Public Law 94-522 (October 17, 1976).

Committee recommendation

The Committee recommends appropriations of the full amount requested for the CIA Retirement and Disability fund for fiscal year 1985.

TITLE IV—ADMINISTRATIVE PROVISIONS RELATING TO INTELLIGENCE AGENCIES

Section 401 adjusts the executive level of the positions of Director and Deputy Director of Central Intelligence. Section 5312 of title 5, United States Code, currently lists fourteen positions which have an annual rate of basic pay at level I of the Executive Schedule. Subsection 401(a) would add the Director of Central Intelligence to the list. Section 5313 of title 5, United States Code, sets forth those positions which have an annual rate of basic pay at level II of the Executive Schedule. The Director of Central Intelligence is presently included in this listing. Subsection 401(b) would change the listed position of Director of Central Intelligence to Deputy Director of Central Intelligence. Given the addition of Deputy Director of Central Intelligence to the Executive Schedule level II positions listed in Section 5313, it becomes necessary to amend Section 5314 of title 5, United States Code, to strike the Deputy Director of Central Intelligence from the positions listed as receiving an annual rate of basic pay at level III of the Executive Schedule. Subsection 401(c) accomplishes this.

Section 402 transfers to the Central Intelligence Agency from the Administrator of General Services authority to protect Agency facilities, property and personnel with the powers provided the General Services Administration (GSA) in section 318 of title 40, United States Code. GSA is responsible for providing uniformed security officers to guard federal buildings and other facilities. However, because of resource limitations and difficulties associated with recruiting candidates who can meet CIA's stringent security standards, GSA has not found it possible to meet CIA's guard requirements. As a result the current security force at CIA is working excessive overtime.

To remedy this problem, the Executive Branch has determined that CIA should assume GSA's security protection responsibilities under 40 U.S.C. 318. Under section 318, GSA guards on CIA and other federal property have the same power as sheriffs and constables to enforce laws enacted for the protection of persons and property, to prevent breaches of the peace and otherwise to enforce rules and regulations promulgated by GSA for the protection of Government property. However, a question has been raised concerning the CIA's ability to assume such responsibilities in view of the proviso in section 102(d) (3) of the National Security Act of 1947 that the Agency may exercise "no police, subpoena, law-enforcement powers, or internal security functions . . ."

Section 402 would eliminate any doubt by transferring the GSA's function under 40 U.S.C. 318¹ "notwithstanding any other provision of law." It should be emphasized that the CIA will be limited to authorities essential to ensure the safety and protection of Agency property and the persons thereon. The transfer of these limited responsibilities is not in any way meant to detract from the fundamental thrust of the proviso in section 102(d)(3) of the National Security Act of 1947 prohibiting the Agency's exercise of internal security functions.

Section 402 also authorizes the Agency to exercise GSA's power under section 318a of title 40² to promulgate rules and regulations for the protection of any property under the Agency's charge and control. The authority to promulgate rules and regulations permits the CIA to tailor to the needs of the Agency those GSA regulations which are in effect for federal property under GSA custody and control. This section also contains an important proviso which requires that the Attorney General approve any rules and regulations the Agency may adopt pursuant to this delegation. The penalty provisions of section 318c of title 40 would apply with respect to rules and regulations promulgated by the Agency and approved by the Attorney General.

The CIA has advised the Committee that it currently plans to employ its own security guards at its Headquarters, the National Photographic Interpretation Center and two other facilities. The Committee expects the Agency to give it prior notice before deploying such guards to any of its other locations.

The Committee intends that the authority conferred by section 402 be narrowly construed to permit CIA to undertake only those security guard duties now performed by GSA.³ This provision will allow uniformed CIA security guards only to protect persons while on Agency premises, as well as the premises themselves and personal property

¹ Section 318 of Title 40 provides that: "The Federal Works Administrator [Administrator of General Services] or officials of the Federal Works Agency [General Services Administration] duly authorized by him may appoint uniformed guards of said Agency [Administration] as special policemen without additional compensation for duty in connection with the policing of public buildings and other areas under the jurisdiction of the Federal Works Agency [General Services Administration]. Such special policemen shall have the same powers as sheriffs and constables upon such Federal property to enforce the laws enacted for the protection of persons and property, and to prevent breaches of the peace, to suppress affrays or unlawful assemblies, and to enforce any rules and regulations made and promulgated by the Administrator or such duly authorized officials of the Federal Works Agency [General Services Administration] for the property under their jurisdiction: *Provided*, That the jurisdiction and policing powers of such special policemen shall not extend to the service of civil process and shall be restricted to Federal property over which the United States has acquired exclusive or concurrent criminal jurisdiction."

² Section 318a of Title 40 provides that: "The Federal Works Administration [General Services Administration] or officials of the Federal Works Agency [General Services Administration] duly authorized by him are hereby authorized to make all needful rules and regulations for the government of the Federal property under their charge and control, and to annex to such rules and regulations such reasonable penalties, within the limits prescribed in section 4 of this Act [40 USCS 318c], as will ensure their enforcement: *Provided*, That such rules and regulations shall be posted and kept posted in a conspicuous place on such Federal property." A person who violates such regulations may be fined not more than \$50, or imprisoned for not more than 30 days, or both. (40 U.S.C. 318c).

³ The Committee wishes to note that the "National Intelligence Act of 1980" (S. 2284, 96th Cong., 2d Sess.) sponsored by Senator Huddleston contained similar authority. Section 217(g) of that bill provided that the "Agency may employ or contract for security officers to police and protect the security or Agency personnel, installations, and grounds owned or utilized by the Agency . . . and such security officers shall have the same powers as sheriffs and constables for the protection of persons and property, to prevent breaches of the peace, to suppress affrays or unlawful assemblies, and to enforce any rule or regulation the Director of the Agency may promulgate for the protection of such installations and grounds. The jurisdiction and police powers of such security officers shall not, however, extend to the service of civil process."

thereon. It would enable CIA guards to stop, detain, and question persons found on Agency property without reasonable explanation, and to conduct physical searches and make arrests on Agency facilities in appropriate circumstances.

As indicated above, the limited authority conferred by section 402 does not extend beyond Agency facilities. Thus, for example, CIA security officers would not be empowered to conduct physical searches of persons and property located outside of Agency premises in connection with an investigation of stolen classified documents. Nor does this section authorize any expansion of Agency intelligence collection activities that are governed by Executive Order 12333 and related procedures.⁴ The requirement for Attorney General approval of CIA regulations will help to assure that the Committee's intent is carried out. In this connection, the Committee directs the Director of Central Intelligence to submit any regulations he may adopt pursuant to section 402 to the Committee at least 30 days before they become effective.

TITLE V—DEFENSE INTELLIGENCE AGENCY PERSONNEL MANAGEMENT IMPROVEMENTS

Title V of the bill is intended to improve the management of civilian personnel within the Defense Intelligence Agency. This would be accomplished by amending chapter 83 of title 10, United States Code, to exempt DIA from civil service classification provisions, authorize compensation for DIA civilian personnel, exempt DIA from certain disclosure requirements, and authorize the Secretary of Defense to terminate the employment of DIA civilian personnel when he considers such action to be in the interests of the United States and other provisions of law cannot be invoked consistent with the national security.

During its hearings on the Intelligence Authorization Act for fiscal year 1982, the Select Committee considered the personnel management systems of three major components of the United States Intelligence Community—CIA, the National Security Agency, and the Defense Intelligence Agency—and their impact on the quality of intelligence analysis. It was evident from this review that the Defense Intelligence Agency does not have the same flexibility currently available to the CIA and NSA under applicable statutes. As a consequence, DIA has been significantly handicapped in its ability to recruit and reward outstanding analysts and other intelligence specialists and otherwise to operate an equally effective civilian personnel system. If the benefits of "competitive analysis," a concept which both the Administration and the Select Committee strongly support, are to be realized, it is imperative that DIA have analytical capabilities comparable to its sister agencies.

To respond to this problem, the Select Committee included in S. 1127, the Intelligence Authorization Act for fiscal year 1982 as reported by the Committee on May 7, 1981, specific provisions for the improvement of DIA personnel management. These provisions were subsequently approved by the Governmental Affairs and Armed Serv-

⁴ It should be noted that GSA's authority under 40 U.S.C. 316d for its nonuniformed police to conduct investigations and make arrests is not among the functions transferred to CIA by section 402.

ices Committees and were included in S. 1127 as passed by the Senate. However, the comparable House bill, H.R. 3454, contained no such provisions. The Conference Report on the Intelligence Authorization Act for fiscal year 1982 adopted some of the DIA personnel management provisions of the Senate bill, but omitted several provisions. The Joint Explanatory Statement of the Committee of Conference stated:

The Conferees agreed not to include the other portions of the Senate amendment but agreed that these proposals deserve the scrutiny of regular hearings and consultation among all Committees of appropriate jurisdiction.

S. 2488, passed by the Senate on May 5, 1982, during the 2d Session of the 97th Congress, carried forward the recommendation of the Conference Committee and contained the DIA personnel management provisions from S. 1127 that were not included in the Intelligence Authorization Act for fiscal year 1982 as enacted. S. 2488 exempted DIA from classification provisions of civil service laws, established rates of compensation for DIA employees, exempted DIA from certain government-wide disclosure laws, and gave authority to the Secretary of Defense to terminate the employment of any DIA civilian employee if he deemed it advisable in the interests of the United States. Unfortunately, that bill was not acted upon in the House before the adjournment of the 97th Congress. The Intelligence Authorization Act for fiscal year 1985 contains essentially the same authorities as S. 2488, with some additional clarifying language and technical and conforming amendments.

The U.S. intelligence system is unique and complex, and by its nature dictates unusual personnel management processes in order to attain maximum effectiveness. The analysis of foreign intelligence requires a wide variety and combination of academic disciplines and skills. DIA must be able to compete effectively in the job market for these skills and offer rewarding career prospects to retain personnel. Intelligence personnel management systems also need to be flexible to adjust to changing intelligence interests as driven by a dynamic world environment. Further, the protection of highly classified information is of paramount importance. The ability to meet security requirements and minimize the risk of compromise of dedicated intelligence personnel must be an important feature of the personnel management system. These factors have long been recognized in the personnel systems established for both CIA and NSA which, along with DIA, make up a triumvirate of national level intelligence agencies that compete for similar personnel and must have similar personnel management system flexibilities. By maintaining personnel program balance among these agencies pursuing their respective missions, the Intelligence Community can best satisfy U.S. intelligence consumer needs.

CIA conducts its personnel program under its enabling statutory authority, which allows CIA to develop and operate a personnel management system tailored to its needs. CIA operates without overview by the Office of Personnel Management, and CIA has its own procedures for determining qualifications and pay. CIA management can exercise broad discretion for termination of employees. The National

Security Agency also has a flexible system, which by statute operates differently from other Defense Department elements that function under Office of Personnel Management policies. Like CIA, NSA has its own procedures for determining qualifications and pay, and has special termination authority peculiar to its needs.

The Defense Intelligence Agency should be able to operate its personnel management system on an equal footing with its two sister intelligence agencies. Today, DIA operates under policies and procedures prescribed by the Office of Personnel Management. Fundamentally, these policies and procedures involve three basic concepts. They are (1) competitive, (2) excepted, and (3) political appointed for certain executive level and supporting positions. The competitive system is restrictive in its application and applies to most federal positions. The excepted system, commonly referred to as Schedule A or excepted service, is somewhat less restrictive but still administered under common guidelines and procedures issued by OPM. Excepted authority grants DIA some flexibility with respect to hiring and removal of employees. However, the excepted service authority does not permit the internal prerogatives under which CIA and NSA operate.

DIA must function under the general personnel administrative procedures, principally with respect to job classification, applicable to most of the rest of the government service. DIA removal authority under the excepted service, while somewhat less cumbersome than under the competitive system, still provides for external appeal in cases involving preference eligibles. The public nature of the DIA personnel system also imposes constraints which adversely affect its operations. The true nature and importance of key civilian assignments must be given such high levels of security classification that it is often difficult to present requirements to reviewing officials who do not possess required access authority. Accordingly, to present and justify grade level and position descriptions in an unclassified manner may result in a failure to adequately understand the true nature and scope of the assignment. The public disclosure of personnel information can also expose employees to increased risk of compromise. Therefore, as with CIA and NSA, the Defense Intelligence Agency should be exempted from statutory requirements involving disclosure of organizational, functional, and personnel matters which require protection in the interest of national security.

The Select Committee believes that the proposed addition to chapter 83 of title 10 contained in section 501 of the bill would enhance DIA's capabilities to attract and retain high quality personnel in competition with other intelligence agencies. Classification authority would be granted to permit establishment of compensation based on individual capabilities and to ensure timely assignment and utilization of high quality personnel to meet changing intelligence requirements. By exempting DIA from certain disclosure requirements the personnel systems could function more effectively and ensure essential protection of national security information. Finally, DIA would achieve maximum utilization of authorized manpower through enhanced and simplified authority for termination of employees determined to be unacceptable. In combination with the provisions already enacted in the Intelligence Authorization Act for fiscal year 1982, the new

provisions would correct the statutory imbalance among personnel systems in the Intelligence Community.

As stated in the Select Committee's reports on S. 1127 (S. Rept. No. 95-57, p. 20) and S. 2488 (S. Rept. No. 97-380, p. 5), the additional costs resulting from these provisions are estimated to be relatively small and will be absorbed within authorized appropriation levels. It is anticipated that such costs will be offset by efficiencies to be realized by relief from current cumbersome procedures.

Section 501 of the bill amends chapter 83 of title 10, United States Code, by adding a new section 1604 on "Civilian Personnel Management." Chapter 83 of title 10 is entitled "Defense Intelligence Agency Civilian Personnel" and contains the provisions on the Defense Intelligence Senior Executive Service and DIA merit pay system enacted as Title VII of the Intelligence Authorization Act for fiscal year 1982.

Subsections (a) through (d) of the new section 1604 would authorize the Secretary of Defense to establish a flexible personnel management system for those personnel not in the Defense Intelligence Senior Executive Service. Salaries and pay would be fixed in relation to the General Schedule and Wage Grade (prevailing rate) system. A flexible classification system would be established which would incorporate the concepts of both position classification and rank in the person. The system would be structured to permit assignment, movement, and career development without cumbersome classification and related administrative procedures. These flexibilities would permit DIA to rapidly deploy and focus its best talent to vital intelligence areas.

Subsection (a) authorizes the Secretary of Defense to establish civilian positions in the Defense Intelligence Agency and to appoint individuals to such positions, without regard to civil service requirements.

Subsection (b) authorizes the Secretary of Defense to fix pay for positions established under subsection (a) in relation to the General Schedule (GS) rates.

Subsection (c) authorizes a prevailing rate system of basic compensation for positions in or under which the Agency may employ individuals in a trade, craft, or manual labor occupation.

Subsection (d) authorizes additional compensation for employees stationed outside the continental United States or in Alaska at rates not to exceed those authorized by 5 U.S.C. 5941(a). Such allowance shall be based on living costs substantially higher than in the District of Columbia or conditions of environment which differ from those in the continental United States.

Subsection (e) of new section 1604 permits DIA to withhold disclosure of information on its organization, function, and personnel, except for information required by Congress to accomplish its functions. Under this provision the Secretary of Defense, or his designee, would establish systems similar to the CIA and NSA to preclude disclosure of organizations, functional, and personnel data and information through general administrative reporting systems. At the same time, this provision ensures that necessary information will continue to be made available for effective Congressional oversight under section 501 of the National Security Act of 1947, as amended (50 U.S.C.

413). This authority is intended to reduce the potential for compromise of sensitive information and to permit DIA to include security compartmented data and information in a variety of personnel and organizational records and documents for more accurate description and evaluation.

Subsection (f) of new section 1604 authorizes the Secretary of Defense to terminate employment of any civilian officer or employee of DIA whenever he considers that action in the interests of the United States and determines that the procedures prescribed in other provisions of law that authorize the termination of such employment cannot be invoked in a manner consistent with the national security. Termination authority may be delegated only to the Deputy Secretary of Defense, the Director of DIA, or both. Termination action would be appealable to the Secretary of Defense whose decision would be final. This provision is intended to permit timely and responsive removal of unsatisfactory or unacceptable personnel while preserving basic due process. The intelligence environment requires unusually high standards of conduct and performance to ensure the accuracy and reliability of intelligence products. Tolerance of marginal performance is necessarily low. The flexibility granted by this provision would relieve DIA from the external public review procedures to which preference eligible members would otherwise be entitled upon appeal to the Merit Systems Protection Board. The DIA system, however, would provide strict safeguards to assure internal appeal to the Secretary of Defense thereby ensuring equity and consistency.

Section 502 of the bill makes technical and conforming changes to title 5 of the United States Code.

The foregoing provisions relate only to the Defense Intelligence Agency. However, the Committee is pleased to note a recent development which should lead to improvements in the management of military service intelligence programs. The Secretary and the Chief of Staff of the Army recommended to the President that the rank of the Assistant Chief of Staff for Intelligence be raised from major general to lieutenant general. The President approved this request and has submitted for Senate confirmation the promotion of Major General William Odom to lieutenant general. This change is fully consistent with the increasing complexity of the intelligence mission and the importance of intelligence in military decision making. Further, it provides the Army intelligence staff the same stature as the staff elements that oversee operations, personnel, and logistics. The Committee expects Army staff coordination to be improved significantly by this upgrade of the ACSI position and encourages the other Services to take similar action.

TITLE VI—COUNTERINTELLIGENCE AND OFFICIAL REPRESENTATION

Section 601 of the bill was proposed by Senators Huddleston and Leahy and is intended to provide bipartisan Congressional support for Executive Branch efforts to strengthen U.S. counterintelligence capabilities by reducing disparities between the official representation in the U.S. of foreign governments that engage in intelligence activities harmful to our national security and U.S. official representation in such countries.

The Administration's requests for increased funds for the FBI foreign counterintelligence program in fiscal year 1984 and fiscal year 1985 have been based on clear evidence of substantial growth in the hostile intelligence presence within the United States. At the same time, in countries that pose serious intelligence threats to the United States, our representatives are sometimes fewer in number and subject to restrictions and conditions that do not exist with respect to the representatives of those countries in the United States.

Subsection (a) of section 601 would express the sense of the Congress that such disparities should be eliminated. Subsection (b) would require the President to eliminate such disparities with regard to the number of individuals performing official functions for diplomatic or consular missions unless he determines that other national interests justify an imbalance. Subsection (c) would require regular reports to the appropriate Congressional Committees on actions taken to implement these objectives. Subsection (d) would repeal statutory provisions that bar persons having primarily intelligence or counterintelligence experience from serving as Director of the Office of Foreign Missions.

The FBI estimates that 39-40 percent of the official representatives from Soviet Bloc countries in the U.S. are intelligence officers. Their operations include all forms of espionage aimed at national secrets and private technological data with military applications, and they have done severe and extensive damage to U.S. national security. Counterintelligence resources, despite significant actual and planned increases, will not be adequate to provide full coverage of these operations. Thus, the growing hostile intelligence threat makes it especially important to reduce disparities in official representation.

These disparities and actions that have been and can be taken to reduce them are discussed in a classified State Department report submitted to the Senate Foreign Relations Committee, the House Foreign Affairs Committee, and the House and Senate Intelligence Committees on March 15, 1984. This report was requested in 1983 by the State Department Authorization Bill Conference Committee as a substitute for Senator Huddleston's amendment in the Senate bill calling for equivalence between Soviet and U.S. official representation.

There is a substantial imbalance in the number of Soviet nationals permanently assigned to embassy and consulate positions in the United States, and the number of U.S. nationals permanently assigned to embassy and consulate positions in the Soviet Union. The Soviets have about 300 such personnel, while we have about 200. Other disparities involve official treatment, recreation facilities, informal travel limits, office locations, and housing accommodations.

The U.S. employs about 220 Soviet and third-country personnel to perform support tasks at our diplomatic and consular installations. Common tasks performed by these employees are those of clerk, receptionist, telephone operator, driver, gardener, translator, mechanic, charforce, laborer, painter, plumber, electrician, carpenter, and rug-layer. The Soviets hire virtually no local American staff and depend on their own nationals to perform the functions we normally assign to locally hired and third-country personnel.

In other East European countries the U.S. has some advantages. However, U.S. personnel must sometimes arrange domestic travel through government-controlled agencies. In the case of Poland, there is a wide disparity in commercial representation. Some 60-70 Polish commercial employees are permanently assigned to the 18 companies in the U.S. owned wholly or in part by the Polish Government. The Bell-Zacharski case demonstrated that Polish intelligence uses such firms for espionage purposes. Although 22 American companies are represented in Poland, no U.S. citizen businessmen are permanently assigned to Poland.

The Executive Branch has begun to remedy these problems, and further steps are under consideration. The Foreign Missions Act of 1982 gave the State Department additional statutory authority to impose reciprocal controls on facilities, accommodations, travel, and services. The February 1984 annual report of the Office of Foreign Missions summarizes the accomplishments thus far. The Office has, for example, imposed additional travel controls and surcharges on Soviet diplomats in response to Soviet treatment of U.S. diplomats. According to the report, "This has had a national security benefit, has improved the morale of our people in the USSR, and has offset the cost of controls on U.S. diplomats in the USSR." Other actions to enforce reciprocity with Soviet-bloc countries are under study.

The Foreign Missions Act does not regulate the number of official representatives of foreign governments in the U.S., nor does the Office of Foreign Missions play a direct role in determining the size of either foreign missions in the U.S. or U.S. missions abroad. The question of whether to set a goal of eliminating disparities in this area is a matter for high-level policy decision.

The intent of section 601 is to establish a long-term objective endorsed by the Congress, and to ensure accountability for moving toward that goal. Rather than single out any particular countries, the language refers to "any foreign government that engages in intelligence activities within the United States harmful to the national security of the United States." The policy aim with respect to such countries is that the numbers, status, privileges and immunities, travel, accommodations and facilities within the U.S. of their official representatives should not exceed the number, status, privileges and immunities, travel accommodations and facilities of official U.S. representatives within those countries.

Subsection (a) expresses the sense of Congress that this should be the policy objective.

Subsection (b) makes the President responsible for action to achieve this goal with respect to the number of persons granted diplomatic status, privileges and immunities and the right of entry into the United States for the performance of official functions for diplomatic or consular missions. The President is to determine for the purposes of this provision which countries are engaged in intelligence activities within the United States harmful to the national security of the United States. When such a determination is made, the number of official representatives of the country involved must not be allowed to exceed the number of United States nationals granted comparable status and rights in that country.

The exception in subsection (b) (1) recognizes that the President may require some flexibility in this area in order to accommodate other foreign policy and national security interests. Thus, additional persons may be granted right of entry and diplomatic status upon determination by the President that such action would be in the best interests of the United States.

The Committee is cognizant that a number of practical factors bear upon the pace and means by which numerical equivalence in diplomatic status can be reached. These include: the existing (1972) U.S.-Soviet agreement providing for full diplomatic status to all administrative personnel of both countries' diplomatic and consular missions; the U.S. effort to reduce reliance on Soviet nationals in certain support categories in our embassy and consulate in the USSR; and the greater need for full diplomatic protection for American personnel serving in a country which does not recognize many of the legal rights of the individual fundamental to U.S. law.

It is intended that equalization could be accomplished over a period of time. Possible methods include negotiated changes in existing ceilings; gradual attrition; refusal to allow replacements after expulsion for espionage; and other gradual measures. Numbers could also be equalized in part by requiring that more support staff in the U.S. be hired locally, and by increasing the number of U.S. diplomats and support staff in the particular country.

The Committee does expect, however, that the Administration will demonstrate substantial and continuous momentum toward achieving equivalence and reciprocity, and that the President's annual report to the Select Committee on Intelligence and the Committee on Foreign Relations and Foreign Affairs will identify progress made in the preceding year and goals for the following year.

The Committee views equivalence and reciprocity to be the basic and desirable norm in bilateral representation in U.S.-Soviet relations. The effort to achieve substantially equivalent and reciprocal bilateral representation is consistent with the President's effort to improve relations with the Soviet Union. Indeed, the Committee believes that equality, balance, and mutual interest are essential elements of improved relations.

Subsection (c) provides for annual reports by the President to the appropriate Congressional Committees on the actions taken to implement the objectives of subsections (a) and (b). Such reports should identify those countries that engage in intelligence activities within the United States harmful to our national security and any countries determined by the President to meet this standard for the purpose of subsection (b). In other respects, the reports should provide the type of information and analysis contained in the State Department report of March 15, 1984, with respect to all countries whose intelligence activities in the U.S. are harmful to the national security, regardless of whether or not such countries have been determined by the President to meet this standard for the purposes of subsection (b).

Subsection (d) affirms the importance of the position of Director of the Office of Foreign Missions in achieving the objectives of this proposal. The State Department Authorization Act passed in 1983 (P.L. 98-164) required that the Director be appointed by the President and

confirmed by the Senate, gave the Director the rank of ambassador, and required that the Director be "a member of the Foreign Service, who has been a member of the Foreign Service for at least ten years, who has significant administrative experience, and who has served in countries in which the United States has had significant problems in assuring the secure and efficient operations of its missions as the result of the actions of other countries." Subsection (d) repeals the Foreign Service qualifications so as not to foreclose appointment of an official having significant foreign intelligence or counterintelligence experience. It would also change the requirement that the Deputy Director of the Office of Foreign Missions have Intelligence Community experience by specifying that either the Director or the Deputy Director have such experience.

The first Director, James Nolan, was Deputy Assistant Director for the FBI Intelligence Division and one of the most experienced and widely respected counterintelligence experts in the U.S. Government. There is no indication that he has done less than an excellent job, as demonstrated by the accomplishments described in the first annual report of the Office of Foreign Missions.

No change would be made in the requirement of Senate confirmation, which makes the appointment subject to the scrutiny of the Senate Foreign Relations Committee, or in the granting of ambassador status.

Subsection (e) would make the amendments made by subsection (d) applicable with respect to any Director or Deputy Director of the Office of Foreign Missions appointed after the date of enactment of section 601.

CHANGES IN EXISTING LAW

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

