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99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 99-690
Part 1INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR
1987

JULY 17, 1986.—Ordered to be printed

Mr. HAMILTON, from the Permanent Select Committee on
Intelligence, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 4759]

The Permanent Select Committee on Intelligence, to whom was referred the bill (H.R. 4759) to authorize appropriations for fiscal year 1987 for the intelligence and intelligence-related activities of the U.S. Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes, having considered the same, report favorably thereon and recommend that the bill do pass with an amendment

PURPOSE

The bill would:

- (1) Authorize appropriations for fiscal year 1987 for (a) the intelligence and intelligence-related activities of the U.S. Government, (b) the Intelligence Community Staff and (c) the Central Intelligence Agency Retirement and Disability System;
- (2) Authorize the personnel ceilings on September 30, 1987, for the intelligence and intelligence-related activities of the U.S. Government;
- (3) Permit the Director of Central Intelligence to authorize personnel ceilings in fiscal year 1987 for any intelligence elements up to 2 percent above the authorized levels;
- (4) Provide restrictions on support for military or paramilitary operations in Nicaragua and Angola;

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Director of Central Intelligence awards authorized by Section 4503 of Title 5 or pursuant to Section 402 of that Act may be paid and accepted without regard to Section 5536 of title 5, which prohibits additional compensation for the performance of duties by federal civilian and military personnel without specific legislative and appropriations act authorizations.

The Committee is aware of the general policy that military personnel are not eligible to receive monetary awards for extraordinary performance. After carefully considering this policy in light of national intelligence needs, the Committee concluded that the purpose of the Director of Central Intelligence awards, i.e., creation of a special incentive for extraordinary performance by intelligence personnel in meeting national intelligence needs by establishing a small number of substantial cash awards for extraordinary intelligence service, justifies permitting a member of the armed forces to be eligible to receive a cash award in addition to normal pay and allowances on the same basis as his civilian counterparts doing identical work. The Committee notes that the small number of awards authorized by the Director of Central Intelligence prevents the awards program from becoming a substantial outlay drawing on scarce intelligence resources.

The amendment to Section 402 of the FY 1984 Intelligence Authorization Act made by Section 503 of the bill also provides that the Director of Central Intelligence awards authorized by Section 4503 of Title 5 or pursuant to Section 402 of that Act may be paid and accepted without regard to the death, separation, or retirement of the employee or the member of the Armed Forces whose conduct gave rise to the award, or the assignment of such member to duties other than foreign intelligence duties. Thus the subsequent death or change in status of an employee or member of the armed forces does not disqualify the employee or member (or the employee's or member's estate) from receiving the award for which he would otherwise have been eligible, a problem which arises due to the lag time between an individual's performance of extraordinary service and the Director's approval of the award for that service, or due to the lag time between the Director's approval of the award and issuance of the funds to the individual representing the award.

Section 504: Management of Civilian Intelligence Personnel of the Military Departments

Section 504 of the bill enacts a new Section 1590 in Title 10 of the United States Code to authorize the Secretary of Defense to provide for management of civilian intelligence personnel of the military departments, notwithstanding certain civil service laws. The provision is based on Section 1604 of Title 10, enacted in 1984, which grants similar authority to the Secretary of Defense with respect to Defense Intelligence Agency civilian personnel. Section 504 brings civilian intelligence personnel in the military departments within the same type of personnel management system as applies to civilians in the rest of the elements of the Intelligence Community. In the aggregate, the provision affects only a very small fraction of the total Army, Navy, and Air Force civilian workforces (see

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authorized by Section 4503 of that Act may be paid and title 5, which prohibits the performance of duties by federal employees under specific legislative and administrative

policy that military personnel receive awards for extraordinary performance. In light of this policy, the committee has concluded that the purpose of the award is to recognize performance by intelligence personnel needs by establishing a separate award for extraordinary intelligence personnel of the armed forces to recognize performance to normal pay and to recognize counterparts doing the same work. The small number of intelligence personnel prevents a substantial outlay drawing

The 1964 Intelligence Authorization Act also provides that awards authorized by Section 4503 of that Act may be paid to a member of the Armed Forces whose performance is such that the award is in the interest of the employee or member of the Armed Forces for receiving the award for extraordinary performance. The individual's performance must be approved by the Director of the Central Intelligence Agency and the individual representing

Intelligence Personnel of the

Section 1590 in Title 10 of the United States Code, Secretary of Defense to recognize personnel of the Central Intelligence Agency in civil service laws. Title 10, enacted in 1964, provides that the Secretary of Defense with respect to personnel Section 504 of the Intelligence Personnel Act. The military departments management system as applies to the Central Intelligence Agency only a very small fraction of the civilian workforces (es-

timated personnel affected Army—2692, Navy—1377, Air Force—1671) Although the affected population is small, it performs vital national and departmental intelligence functions

Granting the Secretary of Defense authority for personnel management of Army, Navy, and Air Force civilian intelligence personnel will improve the quality of intelligence collection and production within the military departments by improving the ability of their intelligence elements to attract and retain skilled civilian intelligence personnel. The military departments have advised the Committee that, due to civil service regulations and policies promulgated by the Office of Personnel Management which do not sufficiently take account of the special needs for management of their civilian intelligence personnel, the military departments often cannot retain intelligence professionals within their specialties or promote them to higher-grade General Schedule positions. The Committee notes that the Office of Personnel Management General Schedule 132 intelligence position classification standards series (GS-132-0), which currently applies to positions for civilian intelligence personnel in the military departments, was issued by the Civil Service Commission (OPM's predecessor) in April 1960.

According to the military departments, to promote an intelligence specialist to a higher-grade position, they often must make the specialist a manager with supervisory responsibility. The military departments find that their inability to keep civilian intelligence specialists within their specialties and offer them the possibility of promotion creates substantial management difficulties and discourages specialists from remaining with the military departments in their specialties. The military departments find this shortcoming particularly damaging with respect to their intelligence analysis and their human intelligence (HUMINT) collection case officers, specialties in which longevity and experience are essential to superior performance.

The military departments have advised the Committee that, under current civilian personnel management constraints, they have difficulty retaining their skilled civilian intelligence personnel in light of opportunities elsewhere in government. The military departments state that they have experienced a significant outflow of their trained civilian personnel to the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency in part because those agencies already enjoy the civilian personnel management flexibility the military departments seek and can therefore offer more attractive career development opportunities. Thus, the military departments spend significant time and fiscal resources to recruit, clear, and train civilian intelligence personnel, only to lose them to other intelligence agencies. The military departments expect to avoid significant recruitment, clearance and training costs as a result of increased civilian personnel retention under the new personnel management systems permitted by Section 504 of the bill.

The Department of the Navy's recent difficulties in recruiting and retaining civilian intelligence personnel illustrates the difficulties the military departments face. The Department of the Navy informed the Committee that, during the past two years, the Naval Intelligence Command has had difficulty recruiting qualified appli-

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cants in the electronic engineer, electrical engineer, and computer science fields. In one specific instance, the Naval Intelligence Support Center interviewed 82 people for a computer science position and made offers to 17 candidates without success. Of the 17, five took positions with the National Security Agency and two took positions with the Central Intelligence Agency, for salaries in the \$24,000 to \$36,000 range. The Naval Intelligence Support Center was able to offer a maximum salary of only \$17,824 to those individuals. The Naval Intelligence Support Center also has attempted unsuccessfully for over a year to fill four positions involving analysis of foreign communications antennae and equipment and of missile guidance systems. During the past three years, the Naval Intelligence Command has lost 82 analysts in grades GS-11 through GS-14 to the Defense Intelligence Agency, the Central Intelligence Agency, and the National Security Agency. According to the Navy, most of the individuals involved in this outflow to other intelligence agencies were employees at the GS-11 level (20 individuals) and at the GS-12 level (49 individuals) who left solely because of the greater promotional opportunities at DIA, CIA, and NSA. In one case, a GS-12 Naval Intelligence Support Center analyst left for a GS-14 position at NSA.

As a general matter, inability to retain experienced civilian personnel has an especially detrimental effect in the military departments due to the personnel practice of the armed forces of rotating military personnel into and out of intelligence assignments in the military departments. Because the military personnel rotate so frequently, the military departments must rely upon their civilian intelligence personnel to provide the element of continuity essential to the effective performance of intelligence functions. Accordingly, retention of civilian intelligence personnel takes high priority within the military departments' intelligence programs.

The Committee notes that Section 504 of the bill would permit the Secretary of Defense to create separate Army, Navy, and Air Force civilian intelligence personnel management systems. Alternatively, Section 504 would permit the Secretary, exercising his authority under Section 1590 of Title 10 as enacted by Section 504 in combination with his authority under Section 1605 of Title 10 with respect to DIA civilians and under the National Security Agency Act of 1959 (50 U.S.C. 402 note) with respect to NSA civilians, to consolidate the civilian intelligence personnel management systems of some or all of these DOD intelligence components if he deems it advisable.

Section 504(a) of the bill would amend Title 10 of the United States Code by adding a new section 1590 to authorize the Secretary of Defense to provide for management of civilian intelligence personnel of the military departments.

Subsection 1590(a) of Title 10 as contained in Section 504 of the bill authorizes the Secretary of Defense to establish positions for civilian intelligence personnel of the military departments to carry out the intelligence functions of those departments, to appoint individuals to such positions, and to pay those individuals, notwithstanding laws relating to the number, classification, or compensation of employees. The Secretary of Defense thus may exempt civilian intelligence positions in the military departments, and the per-

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personnel occupying such positions, from the civil service laws relating to numbers, classification and compensation of employees.

Subsection 1590(b) requires the Secretary of Defense, in exercising his authority under subsection 1590(a), to fix the rates of basic pay for military department civilian intelligence personnel positions in relation to the civil service General Schedule rates for positions with corresponding levels of duties and responsibilities. Subsection 1590(b) also sets a ceiling, equal to the highest General Schedule basic pay rate, on the basic compensation of non-Senior Executive Service military department civilian intelligence personnel.

Subsection 1590(c) authorizes the Secretary of Defense to employ prevailing rates systems of basic pay, similar to those prescribed in Subchapter IV of Chapter 53 of Title 5 of the United States Code, for civilian intelligence personnel meeting the description of "prevailing rate employee" contained in Section 5342(a)(2)(A) of Title 5. Section 5342(a)(2)(A) defines as a prevailing rate employee "an individual employed in or under an agency in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semi-skilled or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement."

Subsection 1590(d) authorizes payment of allowances based on living costs and conditions of environment to civilian intelligence personnel of the military departments assigned outside the continental United States or assigned in Alaska. Such compensation is in addition to basic compensation and is based upon living costs substantially higher than those in the District of Columbia and/or upon environmental conditions substantially different from those of the lower 48 continental United States if such conditions warrant the additional compensation as a recruitment incentive.

Subsection 1590(e)(1) grants the Secretary of Defense special authority during fiscal year 1987 to terminate a military department civilian intelligence officer or employee whenever he considers it advisable in the interests of the United States and he determines that procedures prescribed in other termination statutes cannot be invoked in a manner consistent with national security. Such decisions by the Secretary are final and not subject to appeal or review outside the Department of Defense. The Secretary of Defense must notify the intelligence committees of the Congress promptly when the special termination authority is exercised. The requirement for notification to the intelligence committees facilitates oversight of the use of the special termination authority and may provide information useful in determining whether to place in permanent law this authority granted for a single fiscal year.

Subsection 1590(e)(2) provides that an officer or employee's termination by the exercise of the special termination authority does not affect his right to seek or accept employment with a federal department or agency (other than that from which he was terminated) if the Director of the Office of Personnel Management declares him eligible for such employment.

Subsection 1590(e)(3) permits the Secretary of Defense to delegate the special termination authority only to the Deputy Secretary of

Defense and/or the Secretaries of the Military Departments for the personnel of their respective departments. If the Secretary of Defense delegates the authority to his Deputy or to the service secretaries, any termination under such delegation is appealable to the Secretary of Defense.

Section 504(b) of the bill makes a conforming amendment to the table of sections of chapter 81 of Title 10 of the United States Code.

Section 505. NSA Acquisition of Critical Skills

Section 505 of the bill amends the National Security Agency Act of 1959 to authorize the Secretary of Defense to send NSA civilian employees to be students at accredited professional, technical and other institutions of higher learning for training at the undergraduate level. The purpose of Section 505 is to establish an undergraduate training program, including training which may lead to the baccalaureate degree, to facilitate the recruitment of individuals, particularly minority high school students, with a demonstrated capability to develop skills critical to NSA's mission.

Section 505 is designed to increase the capability of NSA to achieve simultaneously two of its important personnel objectives (1) ensuring equal employment opportunity within NSA through affirmative action and (2) developing and retaining personnel trained in the skills essential to effective performance of NSA's mission.

The NSA mission demands employees of extraordinary aptitude and strong basic undergraduate training in certain disciplines such as mathematics, computer science, engineering and foreign languages. The institutions of higher learning in the United States currently do not produce a sufficient pool of such graduates to satisfy the personnel requirements of the private sector and of government agencies. Given the short supply of qualified college graduates in these disciplines, NSA has difficulty satisfying its essential needs for such personnel. Within this general requirement for skilled personnel, the Agency has even greater difficulty recruiting sufficient qualified minority graduates to meet the Agency's obligation to ensure equal employment opportunity through affirmative action. The Agency has difficulty competing with other employers and particularly private sector employers who can offer more favorable compensation arrangements, to attract these graduates.

Section 505 presents a workable solution to the problem the Agency has in attracting sufficient numbers of high aptitude college graduates, particularly minorities, trained in critical basic disciplines. Under Section 505, the Agency can identify high aptitude high school graduates, with special efforts to identify minority high school students, and offer them NSA employment and an undergraduate education funded by NSA.

Section 505 enacts a new Section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) to establish the NSA undergraduate training program.

Subsection 16(a) states the purpose of the section, which is to establish an undergraduate training program, including training which may lead to the baccalaureate degree, to facilitate the recruitment of individuals, and particularly minority high school stu-