

**SEC. 306. ENHANCING PERSONNEL FLEXIBILITIES  
THROUGHOUT THE INTELLIGENCE COMMUNITY**

Section 102A of the National Security Act of 1947 (50 U.S.C. 403-1) is amended by adding the following new subsections (t), (u), and (v):

`` (t) AUTHORITY TO ESTABLISH POSITIONS IN THE INTELLIGENCE COMMUNITY EXCEPTED SERVICE.—

`` (1) The Director of National Intelligence, at the request of the head of the department or agency concerned, and in coordination with the Director of the Office of Personnel Management, may—

`` (A) convert such competitive service and non-Intelligence Community excepted service positions and their incumbents within elements of the Intelligence Community in their respective department or agency to Intelligence Community excepted service positions as the head of the department or agency concerned determines necessary to carry out the intelligence functions of such elements of the Intelligence Community; and

`` (B) establish new positions in the Intelligence Community excepted service within the elements of the Intelligence Community in their respective department or agency, if the head of the department or agency concerned determines such positions are necessary to carry out the intelligence functions of such elements of the Intelligence Community.

`` (2) For the purposes of this section, the 'Intelligence Community excepted service' shall have the same coverage as applicable to employees of the Office of the Director of National Intelligence as referred to in 50 U.S.C. 403-3 (d)

`` (3) Those employees of an element of the Intelligence Community occupying positions identified for conversion to the Intelligence Community excepted service pursuant to (1)(A) above shall have the right to refuse to be personally subject to the excepted service while remaining in that position. However, once such individual no longer occupies the position, all future employees occupying the position will be subject to the excepted service.

"(4) Exercise of a granted authority is at the discretion of the head of the employing department or agency concerned."

"(u) EXTENDING PERSONNEL FLEXIBILITIES THROUGHOUT THE INTELLIGENCE COMMUNITY.—

"(1) Notwithstanding the provisions of any other law and in order to ensure the equitable treatment of employees across the Intelligence Community, the Director of National Intelligence, at the request of the head of the department or agency concerned, and for those matters that fall under 5 U.S.C., in coordination with the Director of the Office of Personnel Management, may authorize an element or elements of the Intelligence Community, as defined in 50 U.S.C. §401a(4), to adopt compensation authority, performance management authority, and scholarship authority that have been authorized for any other element of the Intelligence Community, *provided that*—

"(A) the Director of National Intelligence determines that such adoption would improve the management and performance of the Intelligence Community; and

"(B) the Director of National Intelligence notifies the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence at least 60 days

before any such particular authority is to take effect, and provides those committees with a description of the authority to be extended and an estimate of the associated costs.

“(2) To the extent that an existing compensation authority within the Intelligence Community is limited to a particular category of employees or a particular situation, that authority may be adopted in another element of the Intelligence Community only for employees in an equivalent category or in an equivalent situation.

“(3) For the purpose of this subsection, the term ‘compensation authority’ means authority involving basic pay(including position classification), premium pay, awards, bonuses, incentives, allowances, differentials, student loan repayments, and special payments, excluding—

‘(A) authorities related to benefits such as leave, separation pay, retirement, and insurance;

“(B) the authority to grant Presidential Rank Awards provided under 5 U.S.C. 4507 and 4507a, 5 U.S.C 3151(c), or any other statute; and

“(C) compensation authorities and performance management authorities provided under statutes pertaining to the Senior Executive Service or under 5

U.S.C. 5376 relating to senior-level and scientific or professional positions.''

“(4) Exercise of a granted authority is at the discretion of the head of the employing department or agency concerned.”

“(v) PAY AUTHORITY FOR CRITICAL POSITIONS.-

“(1) Notwithstanding any pay limitation established under any other provision of law applicable to employees in elements of the Intelligence Community, the Director of National Intelligence, at the request of the head of the department or agency concerned, and in consultation with the Directors of the Office of Personnel Management and the Office of Management and Budget, may grant authority to fix the rate of basic pay for 1 or more department or agency positions within the Intelligence Community at a rate in excess of any applicable limitation, subject to the conditions set forth in this subsection. Exercise of a granted authority is at the discretion of the head of the employing department or agency concerned, subject to the conditions set forth in this subsection and any conditions established by the Director of National Intelligence when granting the authority.

“(2) Authority under this subsection may be granted or exercised--

“(A) only with respect to a position which requires an extremely high level of expertise and is critical to successful accomplishment of an important mission; and

“(B) only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position.

“(3) The rate of basic pay may not be fixed under this subsection at a rate greater than the rate payable for level II of the Executive Schedule, except upon written approval of the Director of National Intelligence or as otherwise authorized by law.

“(4) The rate of basic pay may not be fixed under this subsection at a rate greater than the rate payable for level I of the Executive Schedule, except upon written approval of the President in response to a request by the Director of National Intelligence or as otherwise authorized by law.

“(5) The authority granted under this subsection for a position shall terminate at the discretion of the Director of National Intelligence.

## **SECTIONAL ANALYSIS:**

This proposal would add three new sections to the National Security Act of 1947, as amended, to make enhanced human capital flexibilities available to all IC agencies and elements, especially those IC elements that still have employees covered by Title 5 of the United States Code. The ODNI is pursuing policies that will create a ``level playing field'' with regard to personnel flexibilities across the IC. This proposal is an important part of that effort. It is necessary to build a unified and cohesive IC workforce as well as ensure that some IC elements do not have a statutory advantage in their personnel management to the detriment of other IC elements.

The new section (t) would authorize the Director of National Intelligence (DNI), at the request of the head of a department or agency which includes IC employees, to convert current positions or establish new positions of that intelligence element in the ``Intelligence Community excepted service'' if the department head determines such action is necessary to carry out the intelligence function of the department's intelligence element. Conversion or establishment of IC excepted service positions cannot be imposed by the DNI. Rather, to take such action, the department head would require the concurrence of the DNI and would have to coordinate with the Director of the Office of Personnel Management (OPM). For the purpose of this proposal, ``Intelligence Community excepted service'' means the same coverage as is applicable to employees of the Office of the Director of National Intelligence.

The employees of most IC elements (and the vast majority of IC employees) are in the ``excepted'' civil service because of their unique intelligence, investigative, and national security missions (with their attendant secrecy and security requirements). Employees in the excepted service are thus exempt from the requirements of the ``competitive'' civil service regarding the appointment, assignment, promotion, demotion, and removal.

However, the civilian employees of several IC elements (Department of Energy Office of Intelligence and Counterintelligence; Department of Homeland Security Office of Intelligence and Analysis and the U.S. Coast Guard;

Department of State Bureau of Intelligence and Research; and Department of the Treasury Office of Intelligence and Analysis) are still covered under competitive service rules. These rules do not adequately take into account the IC's stringent security clearance requirements, the requirement for secrecy with respect to organizational size, missions and functions, and the needs of these IC elements to have agile and responsive systems to hire and reassign employees, and, when necessary, remove unsuitable employees. This proposal would allow the heads of the departments in which these intelligence elements reside to convert their intelligence employees to the excepted service. This would serve to unify the intelligence workforce by placing all civilian employees under the same appointing authority and provide managers with greater discretion to manage their employees.

In addition, the non-law enforcement IC employees of the Department of Justice Federal Bureau of Investigation and Drug Enforcement Administration are currently in a version of the excepted service which does not provide as much flexibility as the Intelligence Community excepted service. For reasons similar to those outlined above, this proposal would allow positions in those two agencies to be converted to the IC excepted service.

The new section (u) would grant broad authority to the Director of National Intelligence (DNI) to authorize elements of the IC, at the request of the head of the department or agency concerned and in coordination with the Director of OPM for those matters that fall within Title 5 of the United States Code, to adopt compensation, performance management, and scholarship authority that have been authorized for any other element of the IC if the DNI determines that such adoption would improve the management and performance of the IC. The DNI would be required to notify the congressional intelligence committees at least 60 days before any such adopted authority is to take effect. For the purpose of this subsection, the term 'in coordination with the Director of OPM' means the Director of OPM will be provided a reasonable opportunity to review and comment on a proposal to authorize the adoption of a compensation authority in another element of the IC. Consistent with section (u), the Community may determine that an appropriate occupational series code does not currently exist (e.g., cybersecurity). Therefore, under subsection (1), the DNI must coordinate with the Director

of OPM in creating a new series code. The DNI will take the comments of the Director of OPM into account and provide him or her with reasonable advance notice of the final decision and planned effective date of that decision. In the case of objections by the Director of OPM to a proposal that affects the coverage of employees under provisions of law administered by OPM, the DNI will not proceed with adoption of the proposal for such employees until the disagreement is resolved within the Administration.

The primary use of this authority would be to allow the heads of departments which include IC employees still covered by Title 5 to take advantage of the greater compensation and classification authorities of IC elements, such as the ODNI, to implement the National Intelligence Civilian Compensation Program. The authority could have broader application for other flexibilities in areas such as scholarships and certain types of pay incentives (such as foreign incentive pay).

The new section (v) would authorize the DNI, at the request of the head of a department or agency which includes IC employees, to allow the heads of IC elements to fix the rate of basic pay for positions which require an extremely high level of expertise and which are critical to the accomplishment of an important mission. Rates of pay in excess of level II of the Executive Schedule would require the approval of the DNI; rates of pay in excess of level I of the Executive Schedule would require the approval of the President, or approval as otherwise authorized by law. This authority is similar to that given to the Director of the Office of Personnel Management to fix the rates of pay for critical positions under 5 U.S.C. 5377.