



# The Intelligence Appropriations Process: Issues for Congress

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October 27, 2011

**Congressional Research Service**

7-5700

[www.crs.gov](http://www.crs.gov)

R42061

## Summary

It is now publicly acknowledged that intelligence appropriations are a significant component of the federal budget, over \$80 billion in FY2010 for both the national and military intelligence programs. In an era of fiscal austerity, it is likely that Members of Congress will review intelligence programs to ensure they are both effective and affordable. The appropriation process for intelligence activities is, however, complex and not widely understood. Critics charge that it does not permit the Director of National Intelligence, or any other official, to provide overall management and direction, reduce inefficiencies, and undertake necessary transfers and reprogrammings to respond to a rapidly changing global environment. Others, including the 9/11 Commission, have argued that strengthening congressional oversight of intelligence, and especially intelligence appropriations, is a difficult and important problem.

A number of changes have been proposed. Some, such as the proposal by the 9/11 Commission to combine authorization and appropriation responsibilities in a single committee, would be inconsistent with congressional practice during the past century. Other proposals to separate intelligence appropriations from defense appropriations are less radical, but meet with considerable opposition not only from those who defend the current appropriations subcommittee jurisdiction and practice, but also from observers who argue that many, even most, intelligence systems are so closely related to defense systems that removing them into a separate appropriations act (or even a separate title in an appropriations act) would make oversight more, rather than less, difficult.

Over 90% of intelligence appropriations are included (or “hidden”) within the budget of the Department of Defense (DOD). However, budget submissions prepared by DOD differ in format from those prepared by the Office of the Director of National Intelligence. In addition, there is significant overlap between national and military intelligence as well as between intelligence and some communications and weapons programs. It has proved difficult both in the executive and legislative branches to ensure a coherent and seamless approach to funding and executing intelligence programs.

Making total amounts of intelligence spending public has, however, occurred at a time, unlike the situation in some earlier decades, when there is a general consensus regarding the importance of the nation’s intelligence effort given the persistence of terrorist threats. Despite this consensus, there are likely to be those who argue that intelligence activities must be reduced in line with reductions in other government programs. Others, however, may argue that as active duty force levels are reduced, intelligence assets become more important to provide better awareness of foreign threats and allow more efficient force dispositions. According to this view, intelligence accounts should be spared major reductions.

As a result, the congressional intelligence appropriations process is likely to receive continued attention. Congress may choose to review appropriations procedures to ensure that they most effectively enable decision making at a time when both national budgets and international conditions are grave matters of public concern.

This report will be updated as new developments occur.

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## **Introduction**

Appropriations for intelligence activities amounted to over \$80 billion in FY2010; in FY2011, levels were somewhat higher. They represent a significant part of the federal budget at a time of growing fiscal austerity. Until recent years, the appropriations process for intelligence activities was completely shrouded in secrecy. Today, overall totals of intelligence spending are made public, but the process for appropriating funds for intelligence activities remains complicated and not well understood.

The existing process has been challenged in two major ways. Some argue that funds are appropriated in Department of Defense (DOD) intelligence accounts that cannot be effectively managed by the Director of National Intelligence (DNI). It is widely assumed that there will be pressures to reduce intelligence spending at a time of overall budgetary cutbacks even though there is an argument that as military forces are scaled back, the need for intelligence actually increases. Some express concern that in the current appropriation process funding for essential intelligence programs might be reduced to support major military systems.

There have been a number of proposals for changing the current intelligence appropriations process. One, recommended by the 9/11 Commission, would be to combine authorization and appropriations responsibilities in one committee and/or to establish separate appropriations subcommittees for intelligence. Another would be the enactment of a separate annual intelligence appropriations act. A variant of this proposal would be a separate title for intelligence programs within annual defense appropriations acts. None of these proposals has overwhelming support.

The intelligence appropriations process remains complicated and not well understood, but intelligence is an important and sizable part of the federal budget and will undoubtedly be addressed as Congress considers various alternatives for spending. This report reviews the intelligence appropriations process, describes various changes that have been proposed, and analyzes the issues associated with the proposals.

## **The Intelligence Appropriations Process**

Intelligence appropriations are inherently complicated because of the nature of both the intelligence community and the budgeting and execution processes that have developed over time. A somewhat extended background discussion is necessary to address current concerns.

The Intelligence Reform Act (P.L. 108-458) provides for guidance from the DNI to the heads of departments and agencies in the preparation of budgets for the National Intelligence Program (NIP), “based on priorities set by the President.” The NIP is defined as programs, projects, and activities of the intelligence community but does not include programs, projects, or activities of the military departments to support tactical combat operations.<sup>1</sup> Intelligence support to tactical military operations is funded through the Military Intelligence Program (MIP), which is included

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<sup>1</sup> 50 USC 401a(6). Intelligence efforts to support tactical military operations comprise the Military Intelligence Program (MIP) are mostly funded in the budgets of the military departments.

in the budget submissions of the Army, Navy, Marine Corps, and the Air Force.<sup>3</sup> The DNI then develops and determines the NIP budget and presents it to the President for his approval “together with any comments from the heads of departments containing agencies or organizations.”<sup>4</sup> The President’s annual budget is then submitted to Congress in early February of each year. Congress reviews the President’s budgets and appropriates funds for intelligence mostly in defense appropriations legislation, which have always included the vast bulk of intelligence spending—probably well over 90% of the NIP.

For FY2012, the Obama Administration requested some \$55 billion for the NIP.<sup>5</sup> The FY2012 topline amount requested for the MIP by the Secretary of Defense has not yet been made public; the FY2010 appropriation was \$27 billion. Taken together, the NIP and MIP are likely to amount to over \$82 billion, but this report focuses on the NIP figure since it presents more complicated budgetary considerations.

Once appropriations legislation (or a continuing resolution) is enacted prior to the end of the fiscal year, the Office of Management and Budget (OMB) apportions funds to the various agencies with national intelligence programs based on the Administration request and congressional adjustments. Although the DNI has a statutory responsibility to manage NIP funds, the Office of the Secretary of Defense also has a major

role in budget execution, to some extent sharing responsibility with the DNI. The Intelligence Reform Act provides that the DNI “shall be responsible for managing appropriations for the National Intelligence Program by directing the allotment or allocation of such appropriations,”<sup>6</sup>

### **The U.S. Intelligence Community**

- Central Intelligence Agency (CIA)
- Bureau of Intelligence and Research (INR), Department of State
- National Security Agency (NSA)
- Defense Intelligence Agency (DIA)
- National Geospatial-Intelligence Agency (NGA)
- National Reconnaissance Office (NRO)
- Army Intelligence
- Navy Intelligence
- Air Force Intelligence
- Marine Corps Intelligence
- Coast Guard Intelligence
- Federal Bureau of Investigation (FBI), National Security Branch
- Drug Enforcement Agency (DEA), Office of National Security Intelligence
- Department of Energy, Office of Intelligence & Counterintelligence
- Department of the Treasury, Office of Intelligence & Analysis
- Department of Homeland Security (DHS), Office of Intelligence and Analysis<sup>2</sup>

<sup>2</sup> 50 USC 401a(4) lists agencies included in the Intelligence Community; see also the ODNI website [http://odni.gov/members\\_IC\\_3.htm](http://odni.gov/members_IC_3.htm).

<sup>3</sup> The MIP is defined by DOD Directive 5205.12; by statute the DNI has authority to participate in the development of the MIP budget by the Secretary of Defense (50 USC 403-1(c)(3)(A)). (The MIP replaced the Joint Military Intelligence Program (JMIP) and Tactical Intelligence and Related Activities (TIARA).)

<sup>4</sup> 50 USC 403-1(c)(1).

<sup>5</sup> Office of the Director of National Intelligence, DNI Releases Budget Figure for FY 2012 Appropriations Requested for the National Intelligence Program, ODNI News Release No. 4-11, February 14, 2011.

<sup>6</sup> 50 USC 403-1(c)(5)(A).

but also provides that this be done in a manner “that respects and does not abrogate the statutory responsibilities” of heads of departments.<sup>7</sup>

One issue is the built-in ambiguity that can result in disagreements among executive branch agencies that may impede intelligence missions, although major disagreements can be referred to the President. This is primarily an issue for the major intelligence agencies of the DOD, including NSA, the NRO, and the NGA. Appropriations for the Central Intelligence Agency (CIA) are included in defense appropriations acts, but are transferred directly to the Director of the CIA, and the Defense Department has no role in the apportionment or allocation of CIA funds. Funding for intelligence activities of some departments, *viz.* State, Justice, Homeland Security, Energy, and the Treasury is provided in other appropriations measures, as indicated below:

A second issue is the potential for competing goals and different priorities that may derive from the respective roles of the DNI and the Secretary of Defense in preparing the annual budgets for intelligence agencies and for allocating appropriated funds for intelligence activities within national-level DOD agencies. Some observers have suggested that intelligence appropriations should be separated from defense appropriations and that Congress should consider a separate appropriations act (or a separate title in a larger appropriations act) for intelligence. Such an approach, its proponents maintain, would provide a better opportunity for Congress to consider the national intelligence effort as a collective whole and give the DNI a greater role in ensuring that government-wide requirements are not sacrificed to meet the immediate needs of DOD programs. On the other hand, skeptics argue that a separate intelligence appropriation act is unnecessary, that it would provide the DNI no new insights that he cannot currently obtain, and that it would complicate ties between intelligence programs and closely related non-intelligence DOD programs such as satellite launch programs.

<b>Agency</b>	<b>Funding Source</b>
CIA	Defense Appropriations
INR	State and Foreign Operations Appropriations
NSA	Defense Appropriations
DIA	Defense Appropriations
NGA	Defense Appropriations
NRO	Defense Appropriations
Army Intelligence	Defense Appropriations
Navy Intelligence	Defense Appropriations
Air Force Intelligence	Defense Appropriations
Marine Corps Intel.	Defense Appropriations
Coast Guard Intel.	Homeland Security Appropriations
FBI	Commerce, Justice, Science Appropriations
DEA	Commerce, Justice Science Appropriations
Dept. of Energy	Energy and Water Appropriations
Dept. of the Treasury	Financial Services, General Government Appropriations
DHS	Homeland Security Appropriations

Although a separate intelligence appropriations bill would not automatically require separate intelligence appropriations subcommittees, the possibility of appropriations subcommittee realignment has been controversial. Some argue that a separate subcommittee would be the logical vehicle to manage an intelligence appropriations bill inasmuch as defense appropriations subcommittees inevitably focus on key military programs, including major weapons systems, arguably at the expense of intelligence systems. They further maintain that a separate intelligence

<sup>7</sup> P.L. 108-458, sec. 1018.

subcommittee would permit a sustained and more systematic focus on an intelligence effort that extends far beyond DOD. Others counter that another subcommittee would unnecessarily expand and complicate the congressional appropriations process. Further, in their view, the national intelligence agencies within DOD have major responsibilities for supporting the combat forces and use systems that are shared with the rest of DOD; there are also some programs supported by both intelligence funds and non-intelligence funds (although details about the extent of such shared responsibilities are not available). Disentangling funding streams for such programs could pose complex challenges.

## **Budget Formulation: The NIP and the MIP**

DNIs, and, previously, Directors of Central Intelligence, have had the responsibility of putting together the NIP,<sup>8</sup> consisting of the “programs, processes, and activities” of the national agencies. Although there are areas where duplication of effort is desirable (especially in analysis), the NIP process is intended to reduce waste and unnecessary duplication of effort while covering major intelligence targets. Finished intelligence products are usually built on pieces of information including signals intelligence (sigint), human intelligence (humint), imagery intelligence (imint), and other types of information that are collected by different agencies at different times.

Under current statutory procedures, funds for the large national-level intelligence agencies—CIA, NSA, the NRO, the NGA, and DIA—are included in the NIP.<sup>9</sup> The NIP also includes funding for the State Department’s Bureau of Intelligence and Research (INR) and intelligence efforts in other civilian agencies, including the Federal Bureau of Investigation (FBI) and the Departments of Justice, Commerce, and the Treasury, appropriations which are not included in defense appropriations acts. Funds for the intelligence collection and analysis efforts of the military services are described as the Military Intelligence Program (MIP) that is separate from the NIP and is also incorporated in defense appropriations acts. MIP appropriations are much more closely related to other defense programs, and are only indirectly addressed in this report.

Distinctions between national and military intelligence are important for the budgeting process in both the legislative and executive branches, but have, to some extent, been superseded by operational practice in the post-Cold War, post-9/11 context. Intelligence systems are used for both national and tactical purposes, by consumers from the White House to the military command posts in the Afghan mountains. As recently noted by a Government Accountability Office (GAO) report, the same system can be funded from the NIP, the MIP, and other sources; examples include the Air Force Reaper program, the Navy’s P-3 Orion patrol aircraft, and a biometric program.<sup>10</sup> Separate components can be funded in different budget accounts. According to the GAO, even identifying and tracking the sources of funding presents major challenges to Pentagon intelligence offices and to the DNI’s office.<sup>11</sup> The separate processes are, however, designed to ensure that intelligence is provided to disparate consumers with different priorities. The distinctions and the operational realities do, however, greatly complicate the appropriations processes.

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<sup>8</sup> 50 USC 401a(6). An earlier version was known as the National Foreign Intelligence Program (NFIP).

<sup>9</sup> 50 USC 401a(6).

<sup>10</sup> Government Accountability Office, *Intelligence, Surveillance, and Reconnaissance: Actions are Needed to Increase Integration and Efficiencies of DOD’s ISR Enterprise*, GAO-11-465, June 2011, p. 11.

<sup>11</sup> *Ibid.*, p. 7.

There is a close relationship between the capabilities acquired for the NIP and the weapons (and communications) systems of the military services. There is concern that programs acquired for the operating forces might be rendered ineffective if complementary intelligence programs were eliminated or significantly reduced. One hypothetical example might be reducing the procurement of expensive sensor systems for an unmanned aerial vehicle (UAV) while maintaining procurement rates unchanged for the UAV, resulting in the acquisition of UAVs that are useless for their intended missions. (In this example, the sensor might be procured as part of the NIP, whereas the UAV would be obtained outside of the NIP.) Ensuring that intelligence budgets are considered by the same appropriations subcommittee arguably works to reduce that concern.

An inherently complicating factor is that there are two separate budget processes for the major national intelligence agencies, one undertaken by the Office of the Secretary of Defense (OSD) and the other by the Office of the Director of National Intelligence (ODNI). These processes are different in their purposes and procedures. The OSD-led procedures, known as the Planning, Programming, Budgeting, and Execution (PPBE) process, are designed to provide funds to organize, train, and equip military forces for combat and to cover all necessary support missions (which include intelligence). The ODNI's procedures, the Intelligence Planning, Programming, Budgeting, and Evaluation (IPPBE) system, are designed to fund intelligence capabilities in various intelligence "disciplines" (e.g., sigint, imint, humint, among others).<sup>12</sup> The disciplines are managed by program managers who coordinate intelligence programs that may be undertaken by more than one agency. Both PPBE and the IPPBE processes contribute to the preparation of the President's annual budget submission that is the basis for annual appropriations bills, but complex efforts are required to "crosswalk" programs to ensure consistency in data presentations to the OMB and Congress. Some observers express concern that the dual process may produce inconsistent results.

Within the ODNI, NIP programs "compete" only against other national intelligence programs within the total amount planned for national intelligence; in DOD, however, MIP programs can be traded off with non-intelligence defense programs. Through the FY2012 budget process, funding requests to Congress for NIP agencies within DOD have been incorporated in DOD's traditional budget categories (Procurement, Operations and Maintenance, Research, Development, Testing and Evaluation, and Military Personnel).<sup>13</sup> Whether this practice will also prevail for the FY2013 budget is uncertain.

## **Congressional Actions**

When the President's budget is submitted, usually in early February, Congress often adjusts the President's requests in accordance with its own assessment of national priorities and budgetary realities. As is the case with all government activities, Congress must not only authorize but also appropriate funds for intelligence activities. Intelligence activities have been authorized by stand-alone intelligence authorization acts since 1978 after the establishment of separate intelligence committees in both the House and Senate.<sup>14</sup> Defense appropriations subcommittees, having

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<sup>12</sup>In general, sigint is undertaken by NSA, imagery is collected by the NRO and analyzed by the NGA, and humint is the responsibility of the CIA and DIA.

<sup>13</sup> According to the GAO, military personnel are not included in the NIP or MIP. See Government Accountability Office, *Intelligence, Surveillance, and Reconnaissance: Actions are Needed to Increase Integration and Efficiencies of DOD's ISR Enterprise*, GAO-11-465, June 2011, p. 13.

<sup>14</sup> For a description of the intelligence budget process in the Truman and Eisenhower Administrations, see David M. (continued...)



reviewed the Administration's request and usually with the benefit of the actions taken in the intelligence authorization process, can alter requested amounts to increase or reduce intelligence accounts within the constraints of overall allocations made to the defense subcommittee in accordance with Section 302(b) of the Congressional Budget Act.<sup>15</sup>

A provision in the National Security Act, usually referred to as Section 504,<sup>16</sup> requires that appropriated funds available to an intelligence agency be "specifically authorized" for an intelligence or intelligence-related activity. This provision ensures congressional authorization of intelligence activities rather than just a general authorization for agency operations. Appropriations acts often include a provision that funds appropriated by this act "are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 USC 414) during the current fiscal year until enactment of the intelligence authorization act for this fiscal year." This practice occasionally results in different amounts of funds being appropriated and authorized. In such cases (known as "A/Not A") additional legislation and coordination among authorization and appropriations committees can be required to ensure that programs can be funded.

Largely as a result of congressional disagreements involving the treatment of detainees by intelligence agencies, intelligence authorization bills were not enacted for fiscal years 2005 through 2009. Instead, appropriations acts contained a blanket authorization of intelligence activities.<sup>17</sup> Blanket authorization provisions are often included in appropriations measures that are enacted prior to authorizing legislation for the same fiscal year. For fiscal years when there is no intelligence authorization bill enacted, brief provisions in appropriations laws have to serve the same statutory function as a more extensive authorization act.

## **Adjustments After Enactment**

Once NIP funds are allocated to an agency, there can be problems because the executing agency officials are not, usually, intelligence officials and there can be a temptation to use NIP funds to fill shortfalls in non-intelligence programs. The DNI has the statutory authority to prevent this from occurring, but may not have sufficient visibility into defense accounts to know the extent to which this is occurring.

To help mitigate such problems, after enactment of appropriations measures, NIP funds allocated to DOD agencies are "fenced"; that is, they cannot be moved from one account to another without the consent of the DNI, but MIP funds can be reprogrammed with the consent of the Under

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(...continued)

Barrett, *The CIA and Congress: the Untold Story from Truman to Kennedy* (Lawrence, KS: University Press of Kansas, 2005). After the creation of the CIA in 1947, unofficial appropriations subcommittees consisting of a handful of Members reviewed CIA budget requests; subsequently appropriations subcommittees on defense would address CIA and defense intelligence budgets. See Barrett, pp. 25-32; L. Britt Snider, *The Agency and the Hill: CIA's Relationship with Congress, 1946-2004* (Washington, DC: Central Intelligence Agency, Center for the Study of Intelligence, 2004), p. 8. For further discussion of the CIA subcommittees, see Stephen Horn, *Unused Power: the Work of the Senate Committee on Appropriations* (Washington: Brookings Institution, 1970), pp. 38-40.

<sup>15</sup> See CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*.

<sup>16</sup> 50 USC 414.

<sup>17</sup> See CRS Report R40240, *Intelligence Authorization Legislation: Status and Challenges*. The Intelligence Authorization Act for FY2010, P.L. 111-259, was signed in October 2010 and did not actually authorize FY2010 activities because FY2010 had already ended.

Secretary of Defense for Intelligence (USD(I)) and with appropriate congressional notifications. Discussions regarding the rates at which allocations are made, reprogramming, or decisions not to seek reprogrammings, are kept within classified channels, but one knowledgeable observer indicates that, as a result of the extent of the programs involved, “issues constantly arise regarding the NIP fence and its application.”<sup>18</sup> Concerns have been raised about differences between the DNI’s presentation of the NIP to Congress and the format of the budget requests that are part of the annual defense budget request (see the section “Caution in the House,” below).

A major challenge is ensuring accurate data to permit insight into funding sources for particular programs (i.e., to identify NIP [or MIP] associated programs within the defense budget).<sup>19</sup> Tracking NIP funds through the appropriations and allocation process has proven difficult both for the Under Secretary of Defense for Intelligence and the ODNI, and for congressional committees. DOD’s Financial Management Regulations require that the CJBs for the NIP identify program elements with NIP projects through “crosswalk exhibits,”<sup>20</sup> but this effort appears to present ongoing challenges. One issue appears to be future years projections; Congressional Budget Justification Books that have been publicly released do not reflect future years requirements,<sup>21</sup> but the Defense Appropriation Act, H.R. 2219, passed by the House in July 2011, mandates a future-years intelligence program reflecting estimated expenditures and proposed appropriations for the year requested and four succeeding fiscal years.

## **Recommendations of the 9/11 Commission**

Many of the proposed changes to the intelligence appropriations process are linked to recommendations of the 9/11 Commission (the National Commission on Terrorist Attacks Upon the United States), which submitted its highly publicized and widely read report in July 2004. The 9/11 Commission surveyed the executive branch’s organization for countering the terrorist threat and, in large measure, supplied the momentum and the structural framework for the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458), including, as has been noted, the position of DNI and the National Counterterrorism Center. Reviewing the role of the legislative branch in regard to the intelligence community, the commission concluded:

So long as oversight [of intelligence efforts] is governed by current congressional rules and resolutions, we believe the American people will not get the security they want and need. The United States needs a strong, stable, and capable congressional committee structure to give America’s national intelligence agencies oversight, support, and leadership.<sup>22</sup>

The commission saw the challenges involved: “few things are more difficult to change in Washington than congressional committee jurisdiction and prerogatives.”<sup>23</sup>

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<sup>18</sup> See Dan Elkins, *Managing Intelligence Resources*, 2<sup>nd</sup> ed., (Alexandria, VA: DWE Press, 2006), pp. 4-20.

<sup>19</sup> GAO-11-465, pp. 21-23.

<sup>20</sup> DOD Financial Management Regulations, Vol. 2B, 160203.

<sup>21</sup> See, for instance the FY2011 CJB for the National Reconnaissance Office released in response to a Freedom of Information Act request, <http://www.fas.org/irp/nro/fy2011cbjb.pdf>. The CJB contained a redacted separate exhibit entitled “Crosswalk to DOD Budget Line Numbers.”

<sup>22</sup> National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (Washington: Government Printing Office, 2004), p. 419.

<sup>23</sup> *Ibid.*

The 9/11 Commission concluded that major changes in congressional rules were needed but provided no specific overall plan, noting that they had considered various alternatives:

A joint committee on the old model of the Joint Committee on Atomic Energy is one. A single committee in each house of Congress, combining authorizing and appropriating authorities, another.<sup>24</sup>

The commission did recommend that

- the total level of funding for intelligence be made public;
- there be established an intelligence committee subcommittee “specifically dedicated to oversight, freed from the consuming responsibility of working on the budget”;
- each of four Members of the intelligence committee or committees also serve on each of the defense subcommittee of the appropriations committee, and the armed services, judiciary, foreign affairs committees;<sup>25</sup>
- Members should serve indefinitely on intelligence committees instead of the then-existing term limits; and
- the committees should be smaller—perhaps seven or nine Members in each chamber.<sup>26</sup>

Although other recommendations of the 9/11 Commission regarding congressional oversight were at least partially adopted in the 109<sup>th</sup> Congress, combining authorizing and appropriations responsibilities in a single committee proved to be controversial.<sup>27</sup> Concern about this issue remains; in September 2011, 10 years after 9/11, the co-chairs of the National Security Preparedness Group, former Representative Lee Hamilton and former New Jersey Governor Thomas Kean, who had also chaired the 9/11 Commission, reiterated the recommendation that intelligence authorizing and appropriating powers be combined.<sup>28</sup>

In the 2011 reissue of the *9/11 Commission Report*, Philip Zelikow, who had served as executive director of the commission, reviewed the recommendations that had been made in 2004, concluding:

For intelligence, the biggest congressional weakness was the inability to pair oversight with power over the intelligence community budget. Agencies listen to the people who control

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<sup>24</sup>Ibid., p. 420.

<sup>25</sup>The House Rule governing the Permanent Select Committee on Intelligence required that at least one seat on HPSCI be reserved for a Member of each the Appropriations, Armed Services, International Relations and Judiciary Committees (H.Res. 658, 95<sup>th</sup> Congress). The Resolution creating the Senate Select Committee on Intelligence in 1976 specified that it be composed of two Members (one majority, one minority) from each of the Appropriations, Armed Services, Foreign Relations, and Judiciary Committees in addition to other Senators selected at large (S.Res. 400, 94<sup>th</sup> Congress).

<sup>26</sup>*9/11 Commission Report*, pp. 420-421.

<sup>27</sup>Allowing one committee to report both authorization and appropriations legislation, although once common, was largely phased out in the 20<sup>th</sup> century; see CRS Report RL32659, *Consolidating Intelligence Appropriation and Authorization in a Single Committee: 9/11 Commission Recommendation and Alternatives*.

<sup>28</sup>National Security Prepared Group, *Tenth Anniversary Report Card: The Status of the 9/11 Commission Recommendations*, September 2011, pp. 16-17.

their budget. Because that budget was hidden in the Defense Department appropriation, a watch over the intelligence budget was just one more set of tasks among the huge duties of the defense subcommittee of the appropriations committees in each house of Congress. The old, fundamental obstacle is now gone: the intelligence budget is no longer secret. It should now be possible for Congress to grant specialized budgetary responsibility to a new subcommittee of the appropriations committees. Or, better still, to adopt the Commission's original recommendation and consolidate both oversight and budgetary authority in a single committee of each house or a joint committee for the Congress as a whole.<sup>29</sup>

Responding to the 9/11 Commission's recommendations about intelligence appropriations, Congress undertook a number of initiatives, as described in the **Appendix**, but some measures have not been implemented and others have been reversed. None appears to have fundamentally altered the process.

## **Declassification of the Intelligence Budget**

There has been a significant shift in regard to public information on the extent of intelligence spending. Although there had been efforts over several decades to require public disclosure of total spending on intelligence,<sup>30</sup> the 9/11 Commission's recommendation that "the overall amounts of money being appropriated for national intelligence and to its component agencies should no longer be kept secret"<sup>31</sup> appears to have provided significant impetus to the proposal. In July 2007 legislation, P.L. 110-53, Implementing Recommendations of the 9/11 Commission Act, required that the aggregate amount funded for the NIP for a fiscal year be made public not later than 30 days after the end of a fiscal year in question. In October 2007, the DNI announced that the aggregate amount appropriated to the NIP for FY2007 was \$43.5 billion.<sup>32</sup> In October 2008, he announced that the aggregate amount appropriated to the NIP for FY2008 was \$47.5 billion.<sup>33</sup> In October 2009, the figure released for FY2009 was \$49.8 billion, and in October 2010, the FY2010 total was announced as \$53.1 billion.<sup>34</sup> Section 364 of the FY2010 Intelligence Authorization Act (P.L. 111-259), enacted in October 2011, amended P.L. 110-53 to provide that the President must disclose to the public the amount requested for the National Intelligence Program when submitting the annual budget to Congress. This requirement is in addition to the requirement established earlier to disclose the amount actually appropriated within 30 days after the end of the fiscal year. In February 2011, the DNI announced that the budget request for the NIP in FY2012 would be \$55 billion.<sup>35</sup> The act also includes provisions for a waiver or postponement of notification, if the President submits a statement to the two intelligence committees that disclosure would damage national security.<sup>36</sup>

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<sup>29</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report, the Attack from Planning to Aftermath* (New York: W.W. Norton, 2011), p. 545.

<sup>30</sup> For historical background, see the archived CRS Report 94-261, *Intelligence Spending: Public Disclosure Issues*.

<sup>31</sup> *9/11 Commission Report*, p. 416.

<sup>32</sup> Office of the Director of National Intelligence (ODNI) News Release No. 22-07, October 30, 2007.

<sup>33</sup> ODNI News Release No. 17-08, October 28, 2008.

<sup>34</sup> ODNI News Release No. 33-09, October 30, 2009; ODNI News Release No. 21-10, October 28, 2010.

<sup>35</sup> ODNI News Release No. 4-11, February 14, 2011. Figures requested for the NIP for FY2011 were not released prior to legislative consideration of the FY2011 intelligence budget. According to the GAO, the NIP does not include military personnel expenses; see Government Accountability Office, *Intelligence, Surveillance, and Reconnaissance: Actions are Needed to Increase Integration and Efficiencies of DOD's ISR Enterprise*, GAO-11-465, June 2011, p. 13.

<sup>36</sup> P.L. 111-259, Section 601; 50 USC 415c.

With the statutory requirement to publish information about the extent of intelligence spending, some argue that there is no need to “hide” intelligence spending in various defense accounts and that funds for intelligence activities should be appropriated in essentially the same manner as funds for other government activities. Admittedly, there is the difference that only topline figures will be made public without the detailed breakouts that characterize most appropriations measures. Nevertheless, observers argue that the topline numbers are adequate for appropriations acts. In any event, many observers argue that the official availability of intelligence budget data makes possible a new and more visible approach to intelligence appropriations.

## **Proposed Changes to Intelligence Appropriations**

The complexities of the intelligence appropriations process have led to a number of proposals for different approaches. The key issue appears to be whether Congress endorses efforts by the DNI to gain better insight into, and managerial control of, intelligence budget preparation and execution. An enhanced role for the DNI was seen by the 9/11 Commission and many outside observers as necessary to ensure that the intelligence community is prepared for the counterterrorism mission in particular. The current emphasis on the need for budgetary discipline will undoubtedly lead some to argue that the DNI is in the best position to ensure that intelligence requirements are met to the best extent possible. Given the continuing challenge of counterterrorism and budgetary realities, there is likely to be continued interest in reviewing proposals that address the intelligence appropriations process.

### **Intelligence Appropriations Subcommittees?**

Some suggest that a separate intelligence appropriations bill would call for a separate appropriations subcommittee for intelligence. As noted above, both the House and Senate took steps in this direction, but ultimately neither established separate subcommittees for intelligence. However, a single subcommittee combining both defense and intelligence could theoretically report separate bills for defense and intelligence appropriations or a separate bill for NIP appropriations.

A separate intelligence appropriations subcommittee would be given a separate budget allocation in accordance with Section 302(b) of the Congressional Budget Act that would limit spending levels in bills that could be enforced with a parliamentary point of order on the House (or Senate) floor.<sup>37</sup> Thus, with a separate intelligence appropriations subcommittee, it would be difficult to shift intelligence funds to defense activities. Raising intelligence spending limits or transferring funds from defense to intelligence programs can now be done as long as overall defense budget allocations are not exceeded and congressional notifications are made.

### **A Separate Intelligence Appropriations Act?**

The 9/11 Commission, in addition to recommending that amounts appropriated for national intelligence not be kept secret, urged that “Congress should pass a separate appropriations act for intelligence, defending the broad allocation of how these tens of billions of dollars have been

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<sup>37</sup> See CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*.

assigned among the varieties of intelligence work.”<sup>38</sup> Amounts requested and appropriated are now made public—funds requested for the NIP for FY2012 amounted to \$55 billion.<sup>39</sup> This development arguably facilitates the preparation of a separate intelligence appropriations act.

A stand-alone intelligence appropriations act would entail the separation of appropriations for the NIP from the DOD budget. Although not calling for a separate appropriations bill, the DNI, James R. Clapper, spoke favorably of separating the NIP from the DOD budget during his confirmation hearing as DNI in July 2010. Responding to a question from Senator Russ Feingold, DNI Clapper, who had previously served as the USD(I), stated:

I would support and I’ve also been working and have had dialogue with actually taking the National Intelligence Program out of the DOD budget since the reason, the original reason for having it embedded in the department’s budget was for classification purposes. Well, if it’s going to be publicly revealed, that purpose goes away. And it also serves the added advantage of reducing the topline of DOD department budget, which is quite large, as you know and that’s a large amount of money that the department really has no real jurisdiction over.<sup>40</sup>

Four months later, in November 2010, Mr. Clapper suggested that this would be the Administration’s approach beginning with the budget submission for FY2013 that will be forwarded to Congress in February 2012.<sup>41</sup> To facilitate this, DNI Clapper approved Intelligence Community Directive Number 116, *Intelligence Planning, Programming, Budgeting and Evaluation System*, on September 14, 2011. Directive 116 provides that the ODNI develops the NIP portion of the President’s budget and presents, justifies, and defends the NIP budget to the Office of Management and Budget (OMB) and Congress. Despite ICD 116, however, DNI Clapper indicated in an address to the Geospatial Intelligence Foundation in October 2011 that the NIP would not be placed in a separate category under the DNI.<sup>42</sup> Although he provided no details regarding the decision, it is possible that concerns reflected in House-passed legislation, as noted below, may have affected the decision.

Those continuing to advocate a stand-alone intelligence appropriation point to a number of considerations that, they maintain, suggest the need for change, including the potential encouragement of better multi-year planning. A result of the complexity of the intelligence appropriations (and authorization) process has often been an inability to lay out multi-year plans

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<sup>38</sup> *9/11 Commission Report*, p. 416.

<sup>39</sup> ODNI News Release No. 4-11, February 14, 2011.

<sup>40</sup>“Hearing of the Senate (Select) Intelligence Committee, Subject: *Nomination of Lieutenant General James Clapper to be Director of National Intelligence*,” Federal News Service, July 20, 2010.

<sup>41</sup>In response to a question during a symposium on November 2, 2010, Director Clapper stated, “I’ve secured at least a conceptual agreement with the [S]ecretary of Defense to take the National Intelligence Program out of the Defense budget. And we plan to do—try to do that in 2013. I mention that because I think that’s a—one specific way that we’ll accrue more authority actually through ODNI, and the oversight and execution of that funding.... It’s been \$50 billion off the top line of the DOD. And it certainly gives, I think, ODNI a lot more authority and insight and transparency over that number.” Office of the Director of National Intelligence, *Remarks and Q & A by Director of National Intelligence Mr. James Clapper, 2010 Geospatial Intelligence Symposium, New Orleans, Louisiana*, November 2, 2010.

<sup>42</sup> When asked, “Last year at [the Geoint Conference], you spoke about the importance of changing the budget structure and potentially putting the NIP in a separate category under the DNI. Can you give us a status update on that effort?” Clapper responded, “Ain’t gonna happen.” Office of the Director of National Intelligence, *Remarks as delivered by Mr. James R. Clapper, Director of National Intelligence, GEOINT 2011 Symposium*, October 17, 2011.

for the acquisition of intelligence systems. For instance, in 2008, the House Armed Services Committee noted that:

The lack of a long-term, 10-15 year, vision of what ISR capabilities are required to achieve strategic goals also makes it difficult for the [Defense] Department to assess investment options to achieve the most efficient and effective use of ISR capabilities and make informed decisions on an appropriate mix of national overhead systems, such as satellites and manned and unmanned platforms. As a result, the Department is making considerable investments in unmanned aircraft without the benefit of a longer-term vision.<sup>43</sup>

Developing an acquisition strategy for intelligence systems, especially multi-billion dollar satellites and sophisticated UAVs, continues to present a major challenge at a time of significant pressures to limit or reduce defense expenditures.<sup>44</sup> Congress has expressed concern on a number of occasions about the need for comprehensive plans for meeting ISR requirements. For example, in 2003, Congress mandated the production of an ISR Integration Roadmap to guide the development and integration of ISR capabilities over a 15-year period.<sup>45</sup>

Some suggest that the defense appropriations legislative process that involves very limited numbers of staff addressing intelligence issues may not provide an opportunity for a much-needed comprehensive focus on ISR programs and the contributions of specific systems to the overall intelligence effort. They argue that separate intelligence appropriations legislation could provide a greater opportunity for such a review and ultimately result in a better-developed approach to the acquisition of intelligence systems, encompassing significant cost savings.

Another issue is a determination to ensure that NIP funds are not diverted to non-intelligence functions. A separate intelligence appropriations act would more distinctly separate NIP funds from other funding in the DOD budget. The extensive co-mingling, proponents of change argue, has made it difficult for the DNI to effectively manage the NIP and audit the dispersal of funds.<sup>46</sup> The fact that defense appropriations legislation contains NIP funds and non-NIP funds, that the bulk of NIP funds goes to DOD agencies, and that those responsible for maintaining the integrity of the NIP are not necessarily in DOD has arguably increased the challenges facing the DNI in maintaining the integrity of the NIP. In addition, there have been problems in auditing defense spending accounts, and observers consider that it would be very difficult to provide an audit of intelligence programs if NIP funds cannot be identified within larger defense accounts.

Language contained in Section 433 of the FY2012 Intelligence Authorization Bill, H.R. 1893, passed by the House on September 9, 2011, would permit the establishment of separate accounts in the Treasury to which intelligence funds could be transferred and separately accounted for. This capability was advocated by DNI Clapper as a means to improve the management of the NIP in his September 2011 testimony. “Specifically, managing this program as a coherent whole would improve efficiency, transparency and accountability.” He added at another point in the

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<sup>43</sup> U.S. Congress, House of Representatives, 110<sup>th</sup> Congress, 2d session, Committee on Armed Services, *Duncan Hunter National Defense Authorization Act for Fiscal Year 2009*, H.Rept. 110-652, May 16, 2008, p. 423.

<sup>44</sup> See CRS Report R41284, *Intelligence, Surveillance, and Reconnaissance (ISR) Acquisition: Issues for Congress*.

<sup>45</sup> P.L. 108-136, Section 923. The limitations of the ISR Roadmaps produced by DOD are described in GAO-11-465, pps. 17-21.

<sup>46</sup> Although many federal agencies, including DOD, have faced challenges in accomplishing audits, Section 369 of the FY2010 Intelligence Authorization Act (P.L. 111-259) required a full, unqualified audit of each element of the intelligence community by the end of September 2013.

hearing that “it is a challenge to watch execution. And a lot of it is because we simply don’t have the auditable tools in order to watch how the money’s actually being spent.”<sup>47</sup>

## **An Intelligence Title Within Defense Appropriations Acts?**

Another option would be for defense appropriations subcommittees, as presently constituted, to report a defense appropriation bill that would include a separate title for the NIP. Current defense appropriations bills include a Title VII, Related Agencies, that provides funding for the CIA Retirement and Disability System Fund and for the Intelligence Community Management Account (which includes the ODNI and the National Counterterrorism Center (NCTC)).<sup>48</sup> A new title could be established, or Title VII could be expanded, to include all NIP funding, with corresponding reductions in other defense accounts. This approach would not necessarily require separate 302(b) allocations, but would give greater visibility to NIP funding levels.

## **Caution in the House**

Proposals for separating intelligence appropriations from defense appropriations or even initiatives to provide procedures for identifying intelligence programs have encountered significant resistance. In particular, the defense appropriations bill, H.R. 2219, passed by the House in July 2011, appears to be directed at deterring efforts to encourage separate treatment of NIP appropriations in the preparation of legislation and after enactment.

One concern relates to classification. Although the topline intelligence budget request may be public, any floor consideration of an intelligence appropriation bill would be severely hampered by an inability to discuss specific programs or the effects of percentage reductions.

Under current law, the DNI can transfer or reprogram funds only if they do not exceed \$150 million from a department or agency in a single year and are less than 5% of the NIP amounts available to that department or agency in a single year.<sup>49</sup> However, Section 8091 of H.R. 2219 would further limit transfers or reprogrammings to \$1 million or 10%, whichever is less for FY2012 and prior year appropriations unless the two appropriations committees are notified 15 days in advance. This provision apparently reflects concern that transfers or reprogrammings may be (or have been) initiated without full consultation with the appropriations committees.<sup>50</sup>

It is apparent that a major concern reflected in the bill is with the manner in which requests for funding the NIP are forwarded to Congress. The CBJB for the NIP, prepared by the ODNI, does not follow the formats used by DOD in submitting the defense budget request consistent with the DOD Financial Management Regulation (DFMR) that prescribes detailed cost information on

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<sup>47</sup> Testimony of James R. Clapper, Jr. before the Senate Select Committee on Intelligence and House Permanent Select Committee on Intelligence, September 13, 2011, CQ Transcription.

<sup>48</sup> See, for instance, P.L. 111-118, the Department of Defense Appropriations Act, 2010. The CIA retirement fund received some \$290 million; the ODNI received some \$707; the two combined represented about one-fiftieth of the NIP.

<sup>49</sup> 50 USC 403-1(d)(5). These amounts can be exceeded with the concurrence of the department or agency head.

<sup>50</sup> By contrast, Section 8005 of H.R. 2219 limits transfers by the Secretary of Defense to \$4 billion.



specific line items. Section 8088 of H.R. 2219 would require that henceforth the DNI submit budget requests for major items using DFAR formats.

In the October 2011 speech to the Geospatial Intelligence Foundation, DNI Clapper suggested that special attention is being given to coordinating the NIP and the MIP. He stated:

Dr. Mike Vickers, who succeeded me as Under Secretary of Defense for Intelligence—we have worked hand-in-glove with the USD/I staff, and we’ve kept both programs, the NIP and the MIP, as we go through this exercise, completely transparent to one another. So anything—any decisions we make in the NIP, any decisions that DOD makes in the MIP, are completely transparent to each other, and there’s good reason for that. It’s to ensure—to try to prevent unintended consequences, and make sure the left hand and the right hand are in sync, particularly when it comes to shared funding. And there are a lot of things where we share funding.<sup>51</sup>

The more general question of a separate standalone request for the NIP is addressed in Section 8116 of H.R. 2219, which provides that:

None of the funds appropriated in this or any other Act may be used to plan, prepare for, or otherwise take any action to undertake or implement the separation of the National Intelligence Program budget from the Department of Defense budget.

These provisions in H.R. 2219 as passed by the House have been sharply criticized by executive branch officials. In a June 2011 statement, Robert Litt, General Counsel of the Office of the DNI, advised the Senate Intelligence Committee that the House bill “would significantly erode the DNI’s ability to reprogram funds.” The provisions, he maintained

would seriously impede the Intelligence community’s ability to adjust for day-to-day operational requirements and to surge for unanticipated events, such as the recent unrest in North Africa and the Middle East. Furthermore, these restrictions are particularly burdensome in a constrained fiscal environment where the Intelligence Community does not have the flexibility to internally realign with reprogramming.<sup>52</sup>

Similar provisions were not included in the version of the FY2012 defense appropriations bill that was reported in the Senate on September 15, 2011. However, Representative Dicks, the ranking Member of the defense appropriations subcommittee, has been quoted as predicting that the issue will be addressed in conference.<sup>53</sup> As noted above, DNI Clapper indicated in his October 2011 address that the placing of the NIP in “a separate category” would not happen. Furthermore, he did not indicate if the decision referred just to the budget submission for FY2013 in February 2012 or if the entire initiative was being reconsidered.

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<sup>51</sup> Remarks by the Director of National Intelligence, October 17, 2011.

<sup>52</sup> Robert S. Litt, Statement for the Record on the Administration’s Fiscal Year 2012 Intelligence Authorization Proposal, Senate Select Committee on Intelligence, June 2011.

<sup>53</sup> Tim Starks, “Clearer Picture of Spy Community Budget Plans Emerges at Joint Hearing, *Congressional Quarterly, CQ Today Online News*, September 13, 2011.

## Conclusion

In the 1950s, the practice emerged whereby CIA funding was quietly included in defense appropriations bills by senior Members of appropriations committees. A pattern of exceptionality was established that has persisted into the 21<sup>st</sup> century even though intelligence funding is vastly larger and extends across some 16 federal agencies. The public release of intelligence budget totals and the potential requirement to adjust intelligence spending to reflect budgetary limitations have led observers to suggest significant changes in the intelligence appropriations process. Some advocate requirements for reformed and more consistent cost data on intelligence programs to permit better congressional oversight. Others seek a more expansive role of the DNI in both the preparation and execution of intelligence budgets.

Specific proposals to reach these goals have thus far been controversial. Efforts to establish new committees with both authorization and appropriations responsibilities appear to have generated little interest. A separate appropriations subcommittee for intelligence was approved by the Senate but never established, nor has the House created an entirely separate subcommittee. There is strong resistance to separate intelligence appropriations bills, and little attention has as yet been given to a separate title for the NIP within defense appropriations legislation.

DNI Clapper has apparently dropped plans to submit a separate budget request for the FY2013 NIP, perhaps influenced by the deep concerns, especially within the House Appropriations Committee, about this initiative. However, downward pressures on both defense and intelligence spending will likely keep the issues of the intelligence appropriations process alive.

Any ultimate decisions on intelligence appropriations will be greatly facilitated by the availability of consistent data presentations for both intelligence and defense programs. Arguably, there needs to be additional experience in preparing budget requests that include transparent presentations of both NIP and MIP programs and in establishing effective working relationships between appropriators and the Office of the DNI. In the ongoing effort to reduce defense and intelligence programs, Members of Congress will undoubtedly seek to ensure to the maximum extent possible that national intelligence priorities are protected and necessary intelligence support for military operations is available. This effort will necessarily be influenced by the intelligence appropriations process.

## Appendix. Actions Taken in Response to the Recommendations of the 9/11 Commission

### House Initiatives

Both the House and Senate responded to the 9/11 Commission's recommendations regarding appropriations. H.Res. 35 of the 110<sup>th</sup> Congress established a Select Intelligence Oversight Panel within the House Appropriations Committee. The panel was to consist of not more than 13 Members of whom no more than 8 came from the same political party, including the chairman and ranking Member of the Appropriations Committee, the chairman and ranking Members of the defense appropriations subcommittee, six additional Members of the Appropriations Committee and three Members of the intelligence committee. The select panel was established to:

Review and study on a continuing basis budget requests for and execution of intelligence activities; make recommendations to relevant subcommittees of the Committee on Appropriations; and, on an annual basis, prepare a report to the Defense Subcommittee of the Committee on Appropriations containing budgetary and oversight observations and recommendation for use by such subcommittee in preparation of the classified annex to the bill making appropriations for the Department of Defense.

Proponents of H.Res. 35 indicated their determination to support the intent of the recommendations of the 9/11 Commission and pointed to three principal concerns:

The first was that the intelligence authorizing committee was routinely ignored by the administration and the intelligence community because they didn't provide the money. In this town, people follow the money.

Secondly, the Appropriations Committee, frankly, was negligent in its responsibilities for oversight. . . .

The third problem that we faced is that there was grossly insufficient staff on the part of the Appropriations Committee to have decent congressional oversight. . . . The other problem was that there was not sufficient emphasis on intelligence matters by the Defense Appropriations Subcommittee because they had a lot of other things to do.<sup>54</sup>

Opponents argued that the proposal did not significantly change the previously existing structure: "Rather than consolidating oversight authority into a single committee that has both authorizing and appropriating authority, it just creates a new committee that has neither, doesn't have either of those powers."<sup>55</sup>

In July 2008, the chairman of the panel, Representative Rush Holt, described the panel's recommendations to the Defense Appropriations Subcommittee, claiming that "in the course of a year and [a] half since the creation of this Panel we have directly influenced the intelligence fund for five bills. Three of these bills were supplemental appropriations and this is the second annual appropriations bill that we have acted upon." He indicated that the panel forwarded

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<sup>54</sup> Remarks by Representative Obey, *Congressional Record*, January 9, 2007, p. H202.

<sup>55</sup> Remarks by Representative Dreier, *Congressional Record*, January 9, 2007, p. H201.

recommendations higher than the previous year's levels but lower than the Administration's request. The panel's recommendations sought, he maintained, to require the ODNI to better manage the budget and enhance the role of Congress in reviewing the budget request and overseeing the DNI's performance. Rush argued: "One of the problems of past Congressional oversight has been that the Intelligence Community was forced to cut or add programs based on the changing whims of Congress. The creation of this Panel and stronger budgetary oversight over intelligence programs will hopefully provide stability for our nation's intelligence professionals." Representative Holt also noted that the panel recommended changes to space programs and encouraged a robust investment in foreign language training.<sup>56</sup>

In January 2011, the 112<sup>th</sup> Congress eliminated the Select Intelligence Oversight Panel in H.Res. 5. In March 2011, the chairman of the House Permanent Select Committee on Intelligence, Representative Mike Rogers, announced a plan to permit three Members of the Appropriations Committee to participate in HPSCI hearings and briefings. The goal of the initiative, according to Representative Rogers, was to "knit together the Intelligence Committee with the Appropriators and ... allow key appropriators important insights into the intelligence committee which they fund."<sup>57</sup> The proposal did not, however, change the responsibilities of the two committees.

## **Senate Initiatives**

The Senate also recognized the need to respond to the 9/11 Commission's recommendations. In January 2004, the Senate adopted S.Res. 445 to improve the effectiveness of the Senate Select Committee on Intelligence and for other purposes. Section 402 of the resolution, which passed by a vote of 79-6-15, established a Subcommittee on Intelligence within the Senate Appropriations Committee "as soon as possible after the convening of the 109<sup>th</sup> Congress." S.Res. 445 did not, however, actually constitute a change to the Senate Rules, and the 109<sup>th</sup> Congress reshuffled appropriations subcommittees and jurisdictions without creating a subcommittee on intelligence.

In considering intelligence authorization in 2009, however, the Senate returned to the issue. The Intelligence Committee reported its version of FY2010 authorization legislation, S. 1494, which included a provision (Section 341) to express the sense of the Senate that a Subcommittee on Intelligence should be established within the Committee on Appropriations with the responsibility for approving an annual appropriations bill for the National Intelligence Program that would be considered by the full Appropriations Committee "without intervening review by any other subcommittee." The intelligence subcommittee would, however, automatically include the chairman and ranking Member of the Subcommittee on Defense. This provision was the subject of conversations between the Chair of the Intelligence Committee and the ranking Member of the Appropriations Committee, and Section 341 was dropped from the bill before it passed the Senate by unanimous consent on September 16, 2009.<sup>58</sup> (The provision was not included in the final version of the FY2010 Intelligence Authorization Act, P.L. 111-259, that was eventually enacted in October 2010.)

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<sup>56</sup> Chairman Holt Statement, Panel Report to the Defense Subcommittee, Intelligence Activities in the FY 2009 Defense Appropriations Bill, July 11, 2008, reproduced at [http://www.fas.org/irp/congress/2008\\_cr/holt071108.html](http://www.fas.org/irp/congress/2008_cr/holt071108.html).

<sup>57</sup> House of Representatives, Permanent Select Committee on Intelligence, Press Release, "Chairman Rogers Announces Strategic Partnership with House Appropriators," March 23, 2011.

<sup>58</sup> See remarks by Senator Feinstein, *Congressional Record*, September 16, 2009, p. S9447-S9448.

During consideration of S.Res. 445 and on other occasions, it was argued that it would be difficult to create a subcommittee with a classified budget.<sup>59</sup> The actions taken by the Senate reflect the fact that classification has always been a key consideration in the congressional approach to intelligence appropriations. There has been little public discussion of the extent to which other factors relating to subcommittees' jurisdiction may have been important.

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<sup>59</sup> See CRS Report RL33742, *9/11 Commission Recommendations: Implementation Status*, and CRS Report RS21955, *S.Res. 445: Senate Committee Reorganization for Homeland Security and Intelligence Matters*.