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Intelligence Spending and Appropriations: Issues for Congress

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Summary

It is now publicly acknowledged that intelligence appropriations are a significant component of the federal budget, over \$78 billion in FY2012 for both the national and military intelligence programs. Limited publicly available data suggests intelligence spending, measured in constant 2014 dollars, has roughly doubled since the September 11, 2001, terrorist attacks and, before declines over the last three years, was almost double spending at its peak at the end of the cold war. The recent disclosure by *the Washington Post* of details from the Administration's FY2013 National Intelligence Program (NIP) budget request may spark further debate about intelligence spending. In the new era of fiscal austerity, the intelligence community will almost certainly face its share of budget cuts and it is likely that Members of Congress will review intelligence programs to ensure they are both effective and affordable.

Fiscal pressures today will require intelligence officials to more clearly establish priorities and to make difficult choices between different intelligence collection platforms and agencies. Such choices may not have been required during the past decade, during which additional funding could be found to address new threats and to fix organizational weaknesses. In the 1990s, during a previous round of budget cuts and prior to the establishment of the Director of National Intelligence (DNI), it was argued that the intelligence community lacked a rigorous system to establish priorities and to tailor the intelligence budgets to meet those priorities. It remains unclear whether intelligence reforms after September 11, 2001, sufficiently addressed this issue. A key question for Members is whether the DNI exercises his full authority to shape priorities or whether intelligence budgets still reflect disparate aims of different components of the intelligence community.

Intelligence spending is spread across the seventeen organizations comprising the intelligence community. Over 90% of NIP funding, which focuses on strategic needs of decision makers and is notionally under DNI control, falls within the Department of Defense (DOD) budget. DOD members of the intelligence community also receive funding for tactical intelligence from the Military Intelligence Program (MIP), which is under the authority of the Secretary of Defense but which may fund intelligence collection platforms that could be used for both tactical and strategic purposes. The remaining portions of the NIP fall within several other cabinet departments and two independent agencies. These overlaps complicate both budget formulation and the congressional appropriation process.

The appropriations process for intelligence activities is complex and not widely understood. A number of changes have been proposed that would streamline the process or disentangle the NIP from the Department of Defense budget. Some, such as the proposal by a 9/11 Commission to combine authorization and appropriation responsibilities in a single committee, would be inconsistent with congressional practices during the past century. Other proposals to separate intelligence appropriations from defense appropriations, or to establish a separate intelligence title within defense appropriations acts, are less radical, but have met with opposition.

As a result, the congressional intelligence appropriations process is likely to receive continued attention. Congress may choose to review the DNI budget formulation process and appropriations procedures to ensure that they maximize effective decision making at a time when both national budgets and international threats to the United States remain issues of major public concern.

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Introduction

Appropriations for intelligence activities represent a significant part of both the federal and defense budget at a time of growing fiscal austerity. In the past, spending levels for intelligence activities were 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.

Steady, yearly increases in intelligence funding in last decade helped create an intelligence apparatus that, many experts agree, has been effective at accomplishing its ultimate goal of preventing another terrorist attack on the scale of 9/11. But in the new era of fiscal limits, intelligence officials and Members of Congress are addressing ways to reduce intelligence spending while ensuring continued effectiveness against al-Qaeda and while adapting to new priorities other than counterterrorism. Director of National Intelligence (DNI) James R. Clapper Jr. recently stated that sequestration would require a 7% cut, or roughly \$4 billion, to the National Intelligence Program (NIP) budget and warned of reduced global coverage and decreased human and technical intelligence collection. Mr. Clapper also warned of repercussions similar to those that occurred in the 1990s when, in concert with a one-third decrease in active duty military personnel, the intelligence community saw a 23% cut in its budget, resulting in what he characterized as a “damaging downward spiral.”¹

The Washington Post on August 29, 2013, published details about the Administration’s FY2013 NIP budget request, based on a document provided by former NSA contractor Edward Snowden. Because the document leaked to the news media is classified, CRS is unable to provide a discussion of the specific detail of that budget submission. Nonetheless, the disclosure may drive further public debate about the size of the intelligence budget and about the effectiveness of intelligence spending. This report discusses the historic trend in intelligence spending, as well as broader issues concerning the intelligence budgeting process, and may help Members of Congress contextualize information concerning the FY2013 budget.

Intelligence Spending: An Overview and Trends

Total intelligence spending can be understood as the combination of (1) the NIP, which covers the programs, projects, and activities of the intelligence community oriented towards the strategic needs of decision makers, and (2) the Military Intelligence Program (MIP), which funds defense intelligence activity intended to support tactical military operations and priorities.² Later sections of this report describe these programs in more detail. It is important to recognize that public comments about intelligence spending do not always distinguish between the NIP, the MIP, and the total of the two, complicating discussions on a subject about which there are already few details.

¹ U.S. Congress, Senate Select Committee on Intelligence, “Current and Projected National Security Threats to the United States,” March 12, 2013.

² 50 USC 401a(6).

The 9/11 Commission recommended that the amount of money spent on national intelligence be released to the public.³ In accordance with the Implementing the Recommendations of the 9/11 Commission Act, the Director of National Intelligence (DNI) in 2007 began to announce each year the amount of money appropriated for the NIP.⁴ The Intelligence Authorization Act of 2010 also required the President to publicly disclose the amount requested for the NIP in his budget.⁵ The Secretary of Defense began to release annual MIP appropriations figures in 2010 and specified those figures back to 2007.⁶ These actions have provided public access to previously classified budget numbers for national and military intelligence efforts. **Table 1** provides these recently released figures in both nominal and constant 2014 dollars. Unless otherwise noted, values in this report are in constant dollars.⁷

Trends in Recent Years

Table 1. Intelligence Spending, FY2007-FY2013

In Billions of Nominal and Constant 2014 Dollars

		2007	2008	2009	2010	2011	2012	2013 requested	FY2013 – FY2010
NIP	Nominal	43.50	47.50	49.80	53.10	54.60	53.90	52.60	-.50
	Constant	49.25	52.56	54.41	57.43	57.84	56.07	53.60	-3.83
MIP	Nominal	20.0	22.90	26.40	27.00	24.00	21.50	19.20	-7.80
	Constant	22.64	25.34	28.84	29.20	25.42	22.37	19.56	- 9.64
Total	Nominal	63.50	70.40	76.20	80.10	78.60	75.40	71.80	-8.30
	Constant	71.90	77.90	83.25	86.63	83.26	78.44	73.16	- 13.47

Sources: DNI & DOD press release.

Notes: Constant figures are deflated using the GDP index. Table 5-1 of DOD's National Defense Budget Estimate for FY2014, available at http://comptroller.defense.gov/defbudget/fy2014/FY14_Green_Book.pdf, provides a GDP price index with 2014 as the base year. Figures for 2013 are as requested by the President, without adjustment for sequestration.

Appropriations for intelligence activities amounted to over \$78 billion in FY2012, the last year for which there is complete data.⁸ The President's budget requested \$73 billion for FY2013.⁹ This

³ 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. 416. For more information about these recommendations and congressional responses, see the appendix to this report.

⁴ The Implementing the Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53), enacted August 3, 2007. The Office of the Director of National Intelligence, "DNI Releases Budget Figure for National Intelligence Program," press release, October 3, 2007.

Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845, P.L. 108-458), enacted December 17, 2004.

⁵ The Intelligence Authorization Act of 2010 (P.L. 111-259), enacted October 7, 2010.

⁶ The U.S. Department of Defense, "DOD Releases Military Intelligence Program Top Line Budget for Fiscal 2007, 2008, 2009," March 11, 2011, available at <http://www.defense.gov/releases/release.aspx?releaseid=14328>.

⁷ Constant dollars adjust for the effects of inflation and show real increases or decreases in purchasing power.

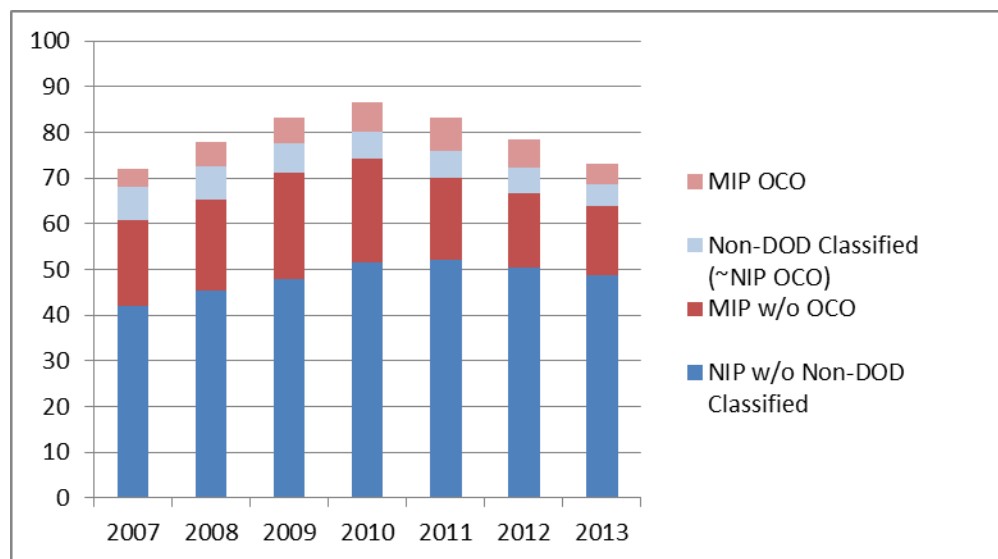
⁸ The Office of the Director of National Intelligence, "DNI Releases FY2012 Appropriated Budget Figure for the National Intelligence Program," press release, October 30, 2012, available at <http://www.dni.gov/index.php/newsroom/press-releases/96-press-releases-2012>. The U.S. Department of Defense, "DOD Releases Military Intelligence Program Appropriated Top Line Budget for Fiscal 2012," press release, October (continued...)

does not take into account sequestration, and actual appropriated amounts are not yet available for 2013. Since peaking in 2010, total intelligence spending has fallen by at least 15%, which largely reflects a decrease in military intelligence spending.

The NIP and MIP figures above include funding for Overseas Contingency Operations (OCO)—roughly \$10 billion annually for intelligence activities. It can be useful to distinguish OCO funding, including OCO funding for military intelligence, from other defense spending because that funding pays for wartime-related activities that differ from activities funded by the DOD base budget. For broader intelligence spending in the NIP, however, it is not clear what activity is supported by NIP OCO funds or to what extent that activity is qualitatively different than other intelligence operations taking place across the globe. **Figure 1** breaks out OCO funds from other MIP and NIP funding. Base budget intelligence spending grew by more than \$10 billion, peaking in FY2010, while OCO intelligence spending grew by about \$3 billion, peaking in FY2011.¹⁰

Figure 1. Total Intelligence Spending, FY2007-FY2013

In Billions of 2014 Dollars



Sources: DNI and DOD press releases. MIP and NIP OCO figures are from yearly OCO budget requests available through the DOD Comptroller.

Notes: Deflated using the GDP index. Figures for 2013 are as requested by the President, without adjustment for sequestration.

(...continued)

30, 2012, available at <http://www.defense.gov/releases/release.aspx?releaseid=15648>.

⁹ The Office of the Director of National Intelligence, “DNI Releases Budget Figure for FY 2013 Appropriations Requested for the National Intelligence Program,” press release, February 13, 2012, available at <http://www.dni.gov/index.php/newsroom/press-releases/96-press-releases-2012/337-dni-releases-budget-figure-for-fy-2013-appropriations-requested-for-the-national-intelligence-program>. The U.S. Department of Defense, “DOD Releases Military Intelligence Program Requested Top Line Budget for Fiscal 2013,” press release, February 13, 2012, available at <http://www.defense.gov/releases/release.aspx?releaseid=150581>.

¹⁰ DOD’s budget justifications for Overseas Contingency Operations specify an amount requested for the MIP. They also include a “non-DOD classified” component that outside observers believe is a proxy for NIP OCO funding. For example, see page 6-5 of DOD’s FY2013 budget request overview, available at http://comptroller.defense.gov/defbudget/fy2013/FY2013_Budget_Request_Overview_Book.pdf

Policymakers have remarked that intelligence spending has doubled since September 11, 2001.¹¹ CRS analysis suggests that the NIP slightly more than doubled in real terms from 2001 to 2012 while the MIP grew at a slower pace. The NIP budget in 2001 (then referred to as the National Foreign Intelligence Program—NFIP) was roughly \$24 billion in constant 2014 dollars, or less than half of the NIP budget for FY2012.¹² After sequestration, the NIP budget from 2001 to 2013 will have roughly doubled.¹³ Publicly available data suggests the total intelligence budget in FY2001 was roughly \$37 billion, or almost half of the \$78 billion intelligence budget for FY2012.¹⁴

Trends Since 1980

Total intelligence spending previously peaked in 1989, at 125% above spending in 1980, before declining in the mid-1990s to 80% above spending in 1980.¹⁵ It is possible to estimate that total intelligence spending in 1980 was slightly less than \$21 billion, in current dollars. Spending appears to have quadrupled between 1980 and 2010 before declining over the last three years. These estimates are based on information provided by the 1996 Commission on the Roles and Capabilities of the U.S. Intelligence Community, which described the trend in intelligence spending from 1980 to the mid-1990s and the projected spending trend from the mid-1990s to 2001. The Commission specified the percentage change at key points in time but not actual spending levels. The Director of Central Intelligence (DCI) also publicly disclosed the amount appropriated for intelligence for FY1997 and FY1998. Using the trends described by the Commission and the figure for FY1997, CRS estimated spending in 1980 and 1989.¹⁶ The methodology for the estimates is further explained in the “notes” below **Figure 2**. Both the DCI disclosures and the Commission appear to combine national and military intelligence spending.¹⁷ Data are not available specifically for national intelligence over this extended timeframe.

¹¹ The Office of Senator Dianne Feinstein, “Senator Feinstein Vows to Cut Waste, Duplication from Intelligence Budget,” press release, October 28, 2010. U.S. Congress, Senate Select Committee on Intelligence, Confirmation Hearing on the Nomination of James R. Clapper to be Director of National Intelligence, 111th Congress, 1st sees., July 20, 2010.

¹² This FY2001 figure is based on a 1995 House Appropriations Committee (HAC) disclosure, adjusted for inflation. The Committee indicated that the Administration’s FY1995 NFIP request was for \$16.3 billion. According to the Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001, p. 254, “As Chart 1.0 shows, the Intelligence Community budget fell or remained even in constant dollars throughout the 1990s.” The chart referred to shows funding for the National Foreign Intelligence Program. The FY1995 figure is therefore a useful proxy for the NFIP budget in FY2001.

¹³ DNI Clapper stated in testimony before the Senate Select Committee on Intelligence in March that sequestration would cut more than \$4 billion from the NIP, bringing FY2013 intelligence spending to roughly \$49 billion.

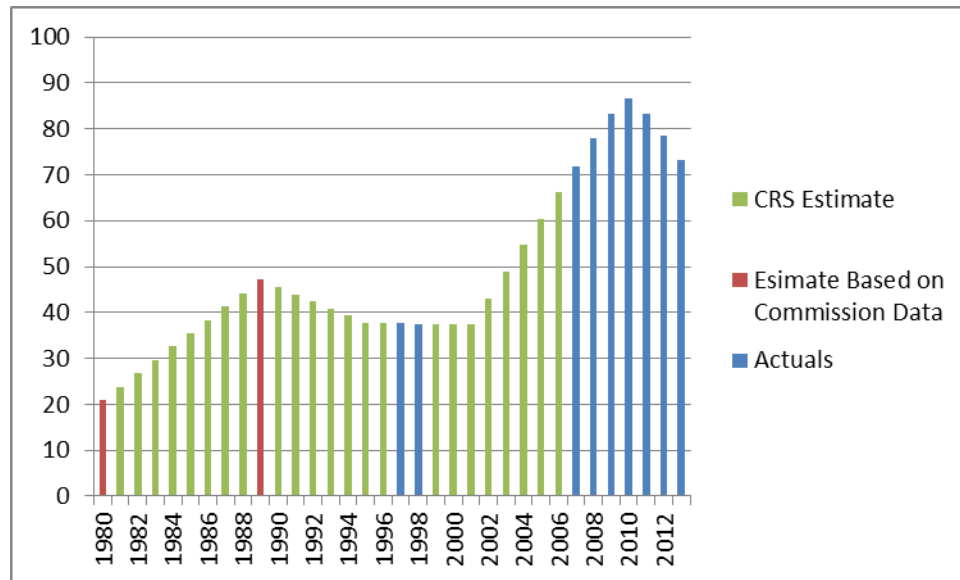
¹⁴ In March 1998, DCI George Tenet announced that the FY1998 intelligence budget was \$26.7 billion. The DCI statement referred to “aggregate amount appropriated for intelligence and intelligence-related activities.” Using this of \$26.7 billion figure as a baseline and adjusting for inflation provides an estimate of \$37.38 billion in FY2001. For further analysis of the DCI statement, see footnote 16 below.

¹⁵ Commission on the Roles and Capabilities of the U.S. Intelligence Community, *Preparing for the 21st Century: An Appraisal of U.S. Intelligence*, March 1, 1996. Since this report was published in 1996, the decline referred to here may have taken place between 1989 and 1995. The report discusses total intelligence funding—likely the NFIP as well as what was then called Tactical Intelligence and Related Activities (TIARA). A third program, the Joint Military Intelligence Program (JMIP), was established by DOD in 1995. The JMIP and TIARA were subsequently combined to form the MIP.

¹⁶ CRS requested but did not receive confirmation of these estimates from the Office of the DNI.

¹⁷ The Commission refers to “total intelligence (national, defense-wide, tactical) spending.” The DCI statements refer to “aggregate amount appropriated for intelligence and intelligence-related activities.” Of note, these DCI figures - (continued...)

Figure 2. Estimated and Actual Total Intelligence Spending Since 1980
In Billions of 2014 Dollars



Notes: Deflated using the GDP index. Figures for 2013 are as requested by the President, without adjustment for sequestration. For 1980 and 1989, estimates use data provided by the 1996 Commission on the Roles and Capabilities of the U.S. Intelligence Community, coupled with total intelligence spending figures provided for FY1997. The Commission indicated that “total intelligence funding grew by 125% in real (constant dollar) terms from 1980 to 1989 but declined thereafter to its current level of 80% above 1980.” Total intelligence spending in FY1997 can therefore be used to estimate spending in 1989 and 1980. Because the Commission indicated that spending was projected to remain flat or decrease from the mid-90s through 2001, CRS estimates from 1995 to 2001 are derived by using figures for FY1997 and FY1998 and adjusting for inflation. The graph assumes equal yearly increases and decreases to estimate intelligence spending between 1980 and 1989, between 1989 and 1995, and between 2001 and 2007. For additional information, see page 131 of the Commission’s report, available at <http://www.gpo.gov/fdsys/pkg/GPO-INTELLIGENCE/pdf/GPO-INTELLIGENCE-17.pdf>.

Comparison with National Defense Spending

The vast majority of intelligence spending falls within the national defense function—the budget category that includes the military activities of DOD as well as other national security activities. Using the estimates above, it is possible to separate total intelligence spending from the national defense function and to compare the growth in intelligence spending to the growth in national defense spending without intelligence.¹⁸ Total intelligence spending grew more sharply than other

(...continued)

\$26.6 billion in nominal dollars for FY1997 and \$26.7 billion in nominal dollars for FY1998 – are close to figures disclosed by the House Appropriations Committee in 1994. According to HAC, the President’s budget requested \$16.3 billion for the NFIP and \$10.4 billion for TIARA, for a total of \$26.7 billion in nominal dollars for FY1995. This indicates (1) that the DCI’s later disclosures are equivalent to national plus military intelligence and (2) that, in real terms assuming the amount appropriated for FY1995 was close to the amount requested, there was a slight decrease in total intelligence spending from FY1995 to FY1997.

¹⁸ This analysis subtracts estimates for total intelligence spending from national defense spending—budget function 050—for each year since 1980. We use budget function 050, instead of budget function 051—Defense Department spending—because 050 includes defense-related spending for the Federal Bureau of Investigation and the Department of Homeland Security, along with spending for other members of the intelligence community, according to Office of Management and Budget materials available at (continued...)

national defense spending in both the 1980s and after 2001. As noted, total intelligence spending previously peaked in 1989, at 125% above spending in 1980, before declining in the mid-1990s to 80% above spending in 1980. In comparison, national defense excluding intelligence grew by 55% from 1980 to its peak in 1985 before declining in the mid-1990s to roughly equal that in 1980. Total intelligence spending grew by about 110% from 2001 to 2012. National defense excluding intelligence grew by 55% over that time period. As a result of these trends, total intelligence spending grew by 274% from 1980 to 2012, while national defense spending without intelligence grew by 82% over that time period.

Developing and Enforcing Intelligence Spending Priorities

DNI James R. Clapper, in March 2013 testimony before the Senate Select Committee on Intelligence, stated that “In my almost 50 years in intelligence, I do not recall a period in which we’ve confronted a more diverse array of threats, crises and challenges around the world... Threats are more interconnected and viral.”¹⁹ The challenge for Congress and the intelligence community in light of this assessment may be to better establish priorities and to align relevant budgets accordingly. Absent such a process, resources may not be focused on the most critical issues, making it difficult to respond effectively to the myriad threats that the intelligence community argues are in need of attention.

During a previous round of budget cuts in the 1990s and prior to the establishment of the DNI, some critics argued that the intelligence community lacked a rigorous system to establish priorities and to shape the intelligence budgets to meet those priorities. The intelligence community at the time was overseen by the Director of Central Intelligence, who also served as the head of the Central Intelligence Agency (CIA) and who many argue was too focused on the CIA, to the detriment of his broader duties. This by some accounts made it difficult to adapt to the new fiscal realities of the 1990s when spending fell in response to the dissolution of the Soviet Union.

A 1996 report from the Council on Foreign Relations questioned the role of intelligence community management in priority setting, stating that, “Intelligence requirements are most often set by intelligence producers or by relatively junior officials in the policymaking departments.”²⁰ The 1996 Commission on the Roles and Capabilities of the United States Intelligence Community found that not only were requirements often set by lower level staff, but any guidance from the DCI may often have come too late in the process to affect program priorities:

The [Director of Central intelligence] is charged by law to "provide guidance to elements of the Intelligence Community for the preparation of their annual budgets." Usually, this guidance is issued by the DCI's staff or jointly with the Office of the Secretary of Defense

(...continued)

http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/32_1.pdf. Those budget materials indicate 050 does not include funding for the Department of State and the Department of Treasury and therefore may not include funding for those department’s intelligence community components. Nonetheless, the budgets for those intelligence community components are generally believed to be a very small portion of the national intelligence budget.

¹⁹ U.S. Congress, Senate Select Committee on Intelligence, “Current and Projected National Security Threats to the United States,” March 12, 2013.

²⁰ Richard Haass, Independent Task Force of the Council on Foreign Relations, *Making Intelligence Smarter: The Future of U.S. Intelligence*, 1996.

after an overall level of funding has been decided by the Secretary of Defense and the DCI, and takes into account presidentially directed needs and priorities, statements of national security strategy, analyses of intelligence "gaps" and future needs, and other pertinent direction. Often, however, this guidance comes after the program and budget process has begun, and the program managers have already incorporated their own assumptions about intelligence requirements into budget estimates.²¹

Similarly, a House Permanent Select Committee on Intelligence (HPSCI) report from 1996 referred to a problem of the "tail trying to wag the dog," with respect to the intelligence budget process, meaning that community-level staff would compile the budget proposals of different agencies but exercised little oversight or control over those budgets.²² Thus, individual intelligence community components were able to establish their intelligence priorities and to shape their budgets to meet those priorities without effective overall rationalization of effort. Some observers believed the community-level staff under the DCI lacked sufficient authority and insight into the budget of individual agencies while others believed the DCI had significant budgetary authority that he never used effectively.

In part because of the concerns above, the Intelligence Reform and Terrorism Prevention Act of 2004 created the DNI and arguably expanded its budgetary authorities beyond those previously possessed by the DCI. While the Act stated that the DNI would "develop and determine an annual consolidated National Intelligence Budget," that language almost matched the budget formulation authorities granted to the DCI. However, the 2004 law also granted the DNI additional reprogramming authority and the means to monitor and execute the NIP, authorities the DCI lacked.²³

Since 2004, the DNI has adopted two primary administrative mechanisms to establish intelligence priorities and then allocate resources towards those priorities, the National Intelligence Priorities Framework (NIPF) and the Intelligence Planning, Programming, Budgeting, and Evaluation (IPPBE) process.

The National Intelligence Priorities Framework

The NIPF, which was developed under the DCI and adopted by the DNI in 2005, is the process by which the DNI identifies intelligence topics relevant to policymakers and assigns priorities to intelligence targets based on those topics. The NIPF is designated as "the DNI's sole mechanism for establishing national intelligence priorities."²⁴ Members of the intelligence community are directed to allocate collection and analytic resources in accordance with the NIPF. The DNI Chief Financial Officer is responsible for ensuring that NIP resources are allocated towards priorities identified in the NIPF.²⁵ However, some have questioned the effectiveness of this process. Ambassador Robert Hutchings, the chairman of the DNI's National Intelligence Council from

²¹ *Preparing for the 21st Century: An Appraisal of U.S. Intelligence*, p. 79.

²² U.S. Congress, House Permanent Select Committee on Intelligence, *IC21: The Intelligence Community in the 21st Century*, 104th Congress, 2nd Sess., June 5, 1996, p. 79, available at <http://www.gpo.gov/fdsys/pkg/GPO-IC21/content-detail.html>

²³ P.L. 102-496 previously granted the DCI the authority to "develop and present to the President the annual budget for the National Foreign Intelligence Program of the United States."

²⁴ Intelligence Community Directive 204, "Roles and Responsibilities for the National Intelligence Priorities Framework," September 13, 2007.

²⁵ *Ibid.*

2003 to 2005, stated in a 2007 hearing before the House Permanent Select Committee on Intelligence that the NIPF was “little more than diplomatic or bureaucratic busywork.”²⁶ A point to stress is that there is little publicly available information that would help corroborate or refute the Ambassador’s claim.

The Intelligence Planning, Programming, Budgeting, and Evaluation

Intended to parallel DOD’s programming and budgeting process, the IPPBE system is the budgetary mechanism used to develop the NIP. Of note, the intelligence community directive that describes the IPPBE does not mention the NIPF, suggesting the DNI’s key mechanism for developing intelligence priorities might have a limited role in the budget formulation process. The planning phase of the IPPBE does involve an analysis of intelligence community priorities and gaps, although how and to what extent the NIPF informs that analysis is unknown. After IPPBE analysis is completed by the DNI’s staff, it is then used to provide programmatic guidance to members of the intelligence community and such guidance should be reflected in responses provided to the DNI that are used to actually formulate the NIP.²⁷

Potential Oversight Issues for Congress

Before the creation of the DNI, the reports discussed in the previous section suggested that administrative mechanisms intended to establish intelligence priorities were perfunctory exercises. Priorities and corresponding budget allocations reflected the priorities in individual agencies. Such was the situation prior to intelligence reform in 2004 and the establishment of a DNI with expanded budgetary authorities over the different components of the intelligence community.

Recently, observers have raised concerns that the intelligence community has become too focused on counterterrorism and support to the military, to the detriment of other, more strategic intelligence priorities. A press account published in early 2013 alleged that a classified report prepared by the President’s Intelligence Advisory Board (PIAB) in 2012 found that, after a decade of counterterrorism and intelligence support to the wars in Iraq and Afghanistan, the CIA and other members of the intelligence community had become too focused on tactical operations.²⁸

In light of these considerations and growing budgetary pressures, Congress may act to examine the NIPF and IPPBE processes to determine their effectiveness at shaping the NIP.²⁹ Possible oversight questions include:

²⁶ U.S. Congress, House Permanent Select Committee on Intelligence, Hearing on the Director of National Intelligence’s 500-Day Plan, December 6, 2007.

²⁷ Intelligence Community Directive 116, “Intelligence Planning, Programming, Budgeting, and Evaluation System,” September 14, 2011.

²⁸ Greg Miller, “Secret Report Raises Alarms on Intelligence Blind Spots because of AQ focus,” *The Washington Post*, March 20, 2013, available at http://articles.washingtonpost.com/2013-03-20/world/37873177_1_drone-strikes-secret-report-national-security-agency.

²⁹ See for example Greg Miller, “Secret Report Raises Alarms on Intelligence Blind Spots Because of AQ focus,” *The Washington Post*, March 20, 2013. According to the article, a classified report prepared by the President’s Intelligence Advisory Board (PIAB) in 2012 allegedly found that, after a decade of counterterrorism and intelligence support to the wars in Iraq and Afghanistan, the CIA specifically and the intelligence community more generally has now become too (continued...)

- How and to what extent does the NIPF affect the collection and analytic priorities of individual agencies?
- Does the DNI's staff exercise its full authority over the budgets of individual intelligence agencies?
- To what extent do individual agencies incorporate the planning guidance from the DNI when formulating their budgets?
- After intelligence community components provide their budget proposals, to what extent does the DNI adjust budget submissions in accordance with intelligence community priorities?

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. Funds for the large national-level intelligence agencies—CIA, the National Security Agency (NSA), National Reconnaissance Office (NRO), National Geospatial-Intelligence Agency (NGA), and Defense Intelligence Agency (DIA)—are included in the NIP and are generally believed to consume a large portion of annual intelligence funding.³⁰ 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. Funds for the intelligence components of the Military

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

(...continued)

focused on tactical operation and military. Some observers believe the community has neglected its traditional functions of gathering and analyzing intelligence on more strategic topics.

³⁰ 50 USC 401a(6).

Departments are included in the MIP. In addition, the MIP includes some funds for the tactical intelligence activities of the NSA, NRO, NGA, and DIA.³¹

The DNI 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.”³² The President’s annual budget is then submitted to Congress, normally in early February of each year.

Congress reviews the President’s budgets and appropriates funds for intelligence mostly in defense appropriations legislation, which has always included the vast bulk of intelligence spending—probably well over 90% of the NIP. Appropriations for the 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.

Once appropriations legislation (or a continuing resolution) is enacted prior to the beginning of the new 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.

Reprogramming After Enactment

Reprogrammings and transfers are others tools that the DNI can use to manage intelligence resources by transferring funds to meet unanticipated, higher priority needs.³³ The Intelligence Reform and Terrorism Prevention Act of 2004 provided the DNI with the authority to reprogram or transfer NIP funds to a higher priority intelligence activity, with the approval of the Director of the Office of Management and Budget and after consultation with the heads of affected agencies or organizations.³⁴ Cumulative reprogrammings or transfers out of any department or agency must be less than \$150 million and less than five percent of the NIP budget for that department or agency. The DNI may exceed these limits with the concurrence of the relevant department head. In addition, the Consolidated Appropriations Act of 2012, (P.L. 112-74) and the Consolidated and Further Continuing Appropriation Act of 2013 (P.L. 113-6) stated that the DNI could transfer at most \$2 billion of NIP funds appropriated for FY2012 and FY2013.³⁵

Proposed Changes to Intelligence Appropriations

The complexities of the intelligence appropriations process have led to a number of proposals for different approaches that seek in various ways to disentangle national intelligence funding from the defense budget. Although the DNI has a statutory responsibility to manage NIP funds, the

³¹ See Dan Elkins, *Managing Intelligence Resources*, 3rd ed., (Dewy, AZ: DWE Press, 2010), pp. 4-16

³² 50 USC 403-1(c)(1).

³³ Reprogramming refers to the movement of NIP funds within an appropriations account. Transfer refers to the movement of NIP funds between a appropriations account.

³⁴ P.L. 108-458, The Intelligence Reform and Terrorism Prevention Act, § 1011.

³⁵ P.L. 112-74, § 8117. P.L. 113-6, § 8107

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,”³⁶ but also provides that this be done in a manner “that respects and does not abrogate the statutory responsibilities” of heads of departments.³⁷

A key issue here 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. The “does not abrogate” language creates a level of ambiguity regarding the respective budgetary authorities of the DNI and Secretary of Defense. While the DNI effectively has authority over the NIP today, in the event of major changes to the budgets of the DOD component of the intelligence community, this ambiguity in the statute could result in challenges to the DNI’s stewardship of the intelligence community. Even absent such changes, the fact that much of the NIP is buried within defense budget might complicate budget formulation and execution.

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. Others have suggested establishing separate intelligence appropriations subcommittees. Such approaches, 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 these changes would provide the DNI no new insights that he cannot currently obtain, and that they would complicate ties between intelligence programs and closely related non-intelligence DOD programs such as satellite launch programs. Sections below discuss these proposals in more detail.

An Intelligence Title Within Defense Appropriations Acts?

One option for policy makers 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 Office of the DNI and the National Counterterrorism Center (NCTC)).³⁸ 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 give greater visibility to NIP funding and would not necessarily require separate 302(b) allocations, which set limits for each appropriations subcommittee as part of the congressional budget process. A major advantage of this approach is that it would require fewer changes to the intelligence appropriations process compared to the two proposals discussed below.

³⁶ 50 USC 403-1(c)(5)(A).

³⁷ P.L. 108-458, §1018.

³⁸ 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.

A Separate Intelligence Appropriations Act?

The 9/11 Commission, in addition to recommending that amounts appropriated for national intelligence be disclosed, 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 assigned among the varieties of intelligence work.”³⁹ Overall amounts requested and appropriated are now made public.⁴⁰ This development arguably facilitates the preparation of a separate intelligence appropriations act.

The option of 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, DNI 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, 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.⁴¹

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 2012.⁴² 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 budgetary category under the DNI.⁴³ Although he provided no details regarding the decision, it is possible that concerns reflected in House-passed legislation may have affected the decision.

To improve tracking of the NIP, Section 433 of the FY2012 Intelligence Authorization Bill, H.R. 1893, (P.L. 112-87) which was signed by the President on January 3, 2012, permits the establishment of separate accounts in the Treasury to which intelligence funds could be

³⁹ *9/11 Commission Report*, p. 416.

⁴⁰ ODNI News Release No. 4-11, February 14, 2011.

⁴¹ “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.

⁴² 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.

⁴³ 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.

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 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.”⁴⁴

Separate Intelligence Appropriations Subcommittees?

Some suggest that a separate intelligence appropriations bill would call for a separate appropriations subcommittee for national intelligence. Both the House and Senate took steps in this direction, but ultimately neither established separate subcommittees for intelligence. 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.⁴⁵ Furthermore, with a separate intelligence appropriations subcommittee, it would be difficult to shift intelligence funds to defense activities. This option would probably encounter opposition in Congress because it would require changes to the appropriations committee structure.

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 congressional resistance in the past. In particular, language in the FY2012 defense appropriations bill, H.R. 2219, passed by the House in July 2011, appeared to prohibit efforts to separate the NIP from DOD funding. Section 8116 of H.R. 2219 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.

A similar provision was not included in the version of the FY2012 defense appropriations bill that was reported in the Senate on September 15, 2011. However, this provision survived the conference committee and was included in H.R. 3671, the Consolidated Appropriations Act, 2012, which became law in January 2012 (P.L. 112-74). The same language was included in H.R. 933, the Consolidated and Further Continuing Appropriations Act, 2013, which became law in March 2013 (P.L. 113-6). The House version of the FY2014 National Defense Authorization Act (H.R. 1960) went further. The Act precluded the use of DOD funds to move to NIP out of the DOD budget, to consolidate the NIP budget within DOD, or establish a new appropriations account for the NIP. The Senate has not yet passed its authorization act.

⁴⁴ 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.

⁴⁵ These limits can be enforced with a parliamentary point of order raised on the House or Senate floor. See CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, by Jessica Tollestrup.

Conclusion

Specific proposals to change the intelligence appropriations process have been controversial. 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 separate the NIP from DOD's budget. Moreover, the intelligence oversight structure, which the 9/11 Commission characterized as "dysfunctional," has remained largely unchanged. Efforts to establish new congressional 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. Thus, for the moment, Members of Congress have to work with existing intelligence appropriations and oversight mechanisms to help shepherd the intelligence community into a new fiscal era.

These issues also raise broader questions about the extent and sufficiency of DNI authorities, a topic of much debate in the years immediately following intelligence reform, especially as it related to the personnel and funding of the Department of Defense elements of the intelligence community. Regarding the proposal to move the intelligence community out of DOD's budget, DNI Clapper stated that it would give "ODNI a lot more authority and insight and transparency over [the NIP]," suggesting he currently lacks sufficient authority and insight.⁴⁶

There currently appears to be little appetite for a debate about an expansion of DNI authorities, probably in part because of unanswered questions about the current remit and effectiveness of the Office of the DNI. Nonetheless, DNI authorities may be more critical now, when declining budgets force choices between different intelligence platforms and agencies, as opposed to when the DNI faced the relatively easy process of managing a decade of budgetary growth.

⁴⁶ Remarks and Q & A by Director of National Intelligence Mr. James Clapper, 2010 Geospatial Intelligence Symposium, New Orleans, Louisiana, November 2, 2010.

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

The 9/11 Commission recommendations included a variety of changes intended to strengthen congressional oversight of intelligence and streamline the intelligence budgeting process. Responding to those recommendations about intelligence appropriations, Congress undertook a number of initiatives, but some measures have not been implemented and others have been reversed. None appears to have fundamentally altered the process.

House Initiatives

Both the House and Senate responded to the 9/11 Commission's recommendations to set up separate appropriations subcommittees for intelligence. H.Res. 35 of the 110th 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.⁴⁷

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

⁴⁷ Remarks by Representative Obey, *Congressional Record*, January 9, 2007, p. H202.

and appropriating authority, it just creates a new committee that has neither, doesn't have either of those powers."⁴⁸

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 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.⁴⁹

In January 2011, the 112th 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 House Permanent Select Committee on Intelligence 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."⁵⁰ 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 109th Congress." S.Res. 445 did not, however, actually constitute a change to the Senate Rules, and the 109th 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

⁴⁸ Remarks by Representative Dreier, *Congressional Record*, January 9, 2007, p. H201.

⁴⁹ 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.

⁵⁰ House of Representatives, Permanent Select Committee on Intelligence, Press Release, "Chairman Rogers Announces Strategic Partnership with House Appropriators," March 23, 2011.

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, 2009.⁵¹ (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.)

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.⁵² 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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⁵¹ See remarks by Senator Feinstein, *Congressional Record*, September 16, 2009, p. S9447-S9448.

⁵² 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*.