

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR  
2000

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MAY 7, 1999.—Ordered to be printed  
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Mr. GOSS, from the Permanent Select Committee on Intelligence,  
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 1555]

[Including cost estimate of the Congressional Budget Office]

The Permanent Select Committee on Intelligence, to whom was referred the bill (H.R. 1555) to authorize appropriations for fiscal year 2000 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the “Intelligence Authorization Act for Fiscal Year 2000”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—INTELLIGENCE ACTIVITIES**

Sec. 101. Authorization of appropriations.  
 Sec. 102. Classified schedule of authorizations.  
 Sec. 103. Personnel ceiling adjustments.  
 Sec. 104. Community Management Account.  
 Sec. 105. Authorization of emergency supplemental appropriations for fiscal year 1999.

**TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM**

Sec. 201. Authorization of appropriations.

**TITLE III—GENERAL PROVISIONS**

Sec. 301. Increase in employee compensation and benefits authorized by law.  
 Sec. 302. Restriction on conduct of intelligence activities.  
 Sec. 303. Sense of Congress on intelligence community contracting.

**TITLE IV—CENTRAL INTELLIGENCE AGENCY**

Sec. 401. Two-year extension of CIA central services program.

**TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES**

Sec. 501. Protection of operational files of the National Imagery and Mapping Agency.

**TITLE I—INTELLIGENCE ACTIVITIES**

**SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

Funds are hereby authorized to be appropriated for fiscal year 2000 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

(1) The Central Intelligence Agency.

- (2) The Department of Defense.
- (3) The Defense Intelligence Agency.
- (4) The National Security Agency.
- (5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
- (6) The Department of State.
- (7) The Department of the Treasury.
- (8) The Department of Energy.
- (9) The Federal Bureau of Investigation.
- (10) The National Reconnaissance Office.
- (11) The National Imagery and Mapping Agency.

**SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.**

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL CEILINGS.—The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 2000, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared to accompany the bill H.R. 1555 of the One Hundred Sixth Congress.

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.—The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the Executive Branch.

**SEC. 103. PERSONNEL CEILING ADJUSTMENTS.**

(a) AUTHORITY FOR ADJUSTMENTS.—With the approval of the Director of the Office of Management and Budget, the Director of Central Intelligence may authorize employment of civilian personnel in excess of the number authorized for fiscal year 2000 under section 102 when the Director of Central Intelligence determines that such action is necessary to the performance of important intelligence functions, except that the number of personnel employed in excess of the number authorized under such section may not, for any element of the intelligence community, exceed two percent of the number of civilian personnel authorized under such section for such element.

(b) NOTICE TO INTELLIGENCE COMMITTEES.—The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever he exercises the authority granted by this section.

**SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.**

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Intelligence Community Management Account of the Director of Central Intelligence for fiscal year 2000 the sum of \$193,572,000. Within such amount, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for the Advanced Research and Development Committee shall remain available until September 30, 2001.

(b) AUTHORIZED PERSONNEL LEVELS.—The elements within the Community Management Account of the Director of Central Intelligence are authorized 348 full-time personnel as of September 30, 2000. Personnel serving in such elements may be permanent employees of the Community Management Staff or personnel detailed from other elements of the United States Government.

(c) CLASSIFIED AUTHORIZATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated for the Community Management Account by subsection (a), there are also authorized to be appropriated for the Community Management Account for fiscal year 2000 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts shall remain available until September 30, 2001.

(2) AUTHORIZATION OF PERSONNEL.—In addition to the personnel authorized by subsection (b) for elements of the Community Management Account as of September 30, 2000, there are hereby authorized such additional personnel for such elements as of that date as are specified in the classified Schedule of Authorizations.

(d) REIMBURSEMENT.—Except as provided in section 113 of the National Security Act of 1947 (50 U.S.C. 404h), during fiscal year 2000, any officer or employee of the United States or a member of the Armed Forces who is detailed to the staff of the Community Management Account from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, em-

ployee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

(e) NATIONAL DRUG INTELLIGENCE CENTER.—

(1) IN GENERAL.—Of the amount appropriated pursuant to the authorization in subsection (a), the amount of \$27,000,000 shall be available for the National Drug Intelligence Center. Within such amount, funds provided for research, development, test, and evaluation purposes shall remain available until September 30, 2001, and funds provided for procurement purposes shall remain available until September 30, 2002.

(2) TRANSFER OF FUNDS.—The Director of Central Intelligence shall transfer to the Attorney General of the United States funds available for the National Drug Intelligence Center under paragraph (1). The Attorney General shall utilize funds so transferred for the activities of the National Drug Intelligence Center.

(3) LIMITATION.—Amounts available for the National Drug Intelligence Center may not be used in contravention of the provisions of section 103(d)(1) of the National Security Act of 1947 (50 U.S.C. 403–3(d)(1)).

(4) AUTHORITY.—Notwithstanding any other provision of law, the Attorney General shall retain full authority over the operations of the National Drug Intelligence Center.

**SEC. 105. AUTHORIZATION OF EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR 1999.**

(a) AUTHORIZATION.—Amounts authorized to be appropriated for fiscal year 1999 under section 101 of the Intelligence Authorization Act for Fiscal Year 1999 (Public Law 105–272) for the conduct of the intelligence activities of elements of the United States Government listed in such section are hereby increased, with respect to any such authorized amount, by the amount by which appropriations pursuant to such authorization were increased by an emergency supplemental appropriation in a supplemental appropriations Act for fiscal year 1999 that is enacted after May 1, 1999, for such amounts as are designated by Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)).

(b) RATIFICATION.—For purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414), any obligation or expenditure of those amounts deemed to have been specifically authorized by Congress in the Act referred to in subsection (a) is hereby ratified and confirmed.

## **TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM**

**SEC. 201. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2000 the sum of \$209,100,000.

## **TITLE III—GENERAL PROVISIONS**

**SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.**

Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

**SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.**

The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States.

**SEC. 303. SENSE OF CONGRESS ON INTELLIGENCE COMMUNITY CONTRACTING.**

It is the sense of Congress that the Director of Central Intelligence should continue to direct that elements of the intelligence community, whenever compatible with the national security interests of the United States and consistent with operational and security concerns related to the conduct of intelligence activities, and where fiscally sound, should competitively award contracts in a manner that maxi-

mizes the procurement of products properly designated as having been made in the United States.

## TITLE IV—CENTRAL INTELLIGENCE AGENCY

### SEC. 401. TWO-YEAR EXTENSION OF CIA CENTRAL SERVICES PROGRAM.

Section 21(h)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u(h)(1)) is amended by striking out “March 31, 2000.” and inserting “March 31, 2002.”.

## TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

### SEC. 501. PROTECTION OF OPERATIONAL FILES OF THE NATIONAL IMAGERY AND MAPPING AGENCY.

(a) IN GENERAL.—Subchapter I of chapter 22 of title 10, United States Code, is amended by adding at the end the following new section:

#### “§ 446. Protection of operational files

“(a) EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—(1) The Director of the National Imagery and Mapping Agency, with the coordination of the Director of Central Intelligence, may exempt operational files of the National Imagery and Mapping Agency from the provisions of section 552 of title 5 (Freedom of Information Act), which require publication, disclosure, search, or review in connection therewith.

“(2)(A) Subject to subparagraph (B), for the purposes of this section, the term ‘operational files’ means files of the National Imagery and Mapping Agency (hereinafter in this section referred to as ‘NIMA’) concerning the activities of NIMA that before the establishment of NIMA were performed by the National Photographic Interpretation Center of the Central Intelligence Agency (NPIC), that document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems.

“(B) Files which are the sole repository of disseminated intelligence are not operational files.

“(3) Notwithstanding paragraph (1), exempted operational files shall continue to be subject to search and review for information concerning—

“(A) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 of title 5, or section 552a of title 5 (Privacy Act of 1974);

“(B) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5; or

“(C) the specific subject matter of an investigation by the any of the following for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity:

“(i) The Permanent Select Committee on Intelligence of the House of Representatives.

“(ii) The Select Committee on Intelligence of the Senate.

“(iii) The Intelligence Oversight Board.

“(iv) The Department of Justice.

“(v) The Office of General Counsel of NIMA.

“(vi) The Office of the Director of NIMA.

“(4)(A) Files that are not exempted under paragraph (1) which contain information derived or disseminated from exempted operational files shall be subject to search and review.

“(B) The inclusion of information from exempted operational files in files that are not exempted under paragraph (1) shall not affect the exemption under paragraph (1) of the originating operational files from search, review publication, or disclosure.

“(C) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under paragraph (1) and which have been returned to exempted operational files for sole retention shall be subject to search and review.

“(5) The provisions of paragraph (1) may not be superseded except by a provision of law which is enacted after the date of enactment of this section, and which specifically cites and repeals or modifies its provisions.

“(6)(A) Except as provided in subparagraph (B), whenever any person who has requested agency records under section 552 of title 5, alleges that NIMA has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5.

“(B) Judicial review shall not be available in the manner provided for under subparagraph (A) as follows:

“(i) In any case in which information specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by NIMA, such information shall be examined *ex parte*, in camera by the court.

“(ii) The court shall, to the fullest extent practicable, determine the issues of fact based on sworn written submissions of the parties.

“(iii) When a complainant alleges that requested records are improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission based upon personal knowledge or otherwise admissible evidence.

“(iv)(I) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, NIMA shall meet its burden under section 552(a)(4)(B) of title 5, by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsible records currently perform the functions set forth in paragraph (2).

“(II) The court may not order NIMA to review the content of any exempted operational file or files in order to make the demonstration required under subsection (I), unless the complainant disputes NIMA’s showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

“(v) In proceedings under clauses (iii) and (iv), the parties may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36.

“(vi) If the court finds under this paragraph that NIMA has improperly withheld requested records because of failure to comply with any provision of this subsection, the court shall order NIMA to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, and such order shall be the exclusive remedy for failure to comply with this subsection.

“(vii) If at any time following the filing of a complaint pursuant to this paragraph NIMA agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

“(viii) Any information filed with, or produced for the court pursuant to clauses (i) and (iv) shall be coordinated with the Director of Central Intelligence prior to submission to the court.

“(b) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—(1) Not less than once every ten years, the Director of the National Imagery and Mapping Agency and the Director of Central Intelligence shall review the exemptions in force under subsection (a)(1) to determine whether such exemptions may be removed from the category of exempted files or any portion thereof. The Director of Central Intelligence must approve any determination to remove such exemptions.

“(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

“(3) A complainant that alleges that NIMA has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court’s review shall be limited to determining the following:

“(A) Whether NIMA has conducted the review required by paragraph (1) before the expiration of the ten-year period beginning on the date of the enactment of this section or before the expiration of the ten-year period beginning on the date of the most recent review.

“(B) Whether NIMA, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter I of chapter 22 of title 10, United States Code, is amended by adding at the end the following new item:

“446. Protection of operational files.”

## PURPOSE

The bill would:

- (1) Authorize appropriations for fiscal year 2000 for (a) the intelligence and intelligence-related activities of the U.S. Government, (b) the Community Management Account, and (c) the Central Intelligence Agency Retirement and Disability System;
- (2) Authorize the personnel ceilings on September 30, 2000 for the intelligence and intelligence-related activities of the U.S. Government and permit the Director of Central Intelligence to authorize personnel ceilings in Fiscal Year 2000 for any intelligence element up to two percent above the authorized levels, with the approval of the Director of the Office of Management and Budget;
- (3) Authorize \$27 million for the National Drug Intelligence Center in Johnstown, Pennsylvania;
- (4) Authorize increased appropriations included in the currently pending "Kosovo" emergency supplemental appropriations bill for the conduct of intelligence and intelligence-related activities by the United States Government by the amount therein appropriated as emergency supplemental appropriations;
- (5) Authorize the continuation of the CIA Central Services Program through March 31, 2002; and
- (6) Authorize the protection of the operational files of the National Imagery and Mapping Agency.

OVERALL PERSPECTIVE ON THE INTELLIGENCE BUDGET AND  
COMMITTEE INTENT

The classified annex to this public report includes the classified Schedule of Authorizations and its associated language. The committee views the classified Annex as an integral part of this legislation. The classified Annex contains a thorough discussion of all budget issues considered by the committee, which underlies the funding authorization found in the Schedule of Authorizations. The committee intends that all intelligence programs discussed in the classified Annex to this report be conducted in accord with the guidance and limitations set forth as associate language therein. The classified Schedule is incorporated directly into this legislation by virtue of section 102 of the bill. The classified Annex is available for review by all Members of the House of Representatives, subject to the requirements of clause 13 of Rule XXIV of the House.

SCOPE OF COMMITTEE REVIEW

U.S. intelligence and intelligence-related activities under the jurisdiction of the committee include the National Foreign Intelligence Program (NFIP), and the Tactical Intelligence and Related Activities (TIARA) and the Joint Military Intelligence Program (JMIP) of the Department of Defense.

The NFIP consists of all programs of the Central Intelligence Agency, as well as those national foreign intelligence and/or counterintelligence programs conducted by: (1) the Department of Defense; (2) the Defense Intelligence Agency; (3) the National Security Agency; (4) the Departments of the Army, Navy, and Air Force; (5)

the Department of State; (6) the Department of the Treasury; (7) the Department of Energy; (8) the Federal Bureau of Investigation; (9) the National Reconnaissance Office; and (10) the National Imagery and Mapping Agency.

The Department of Defense TIARA are a diverse array of reconnaissance and target acquisition programs that are a functional part of the basic military force structure and provide direct information support to military operations. TIARA, as defined by the Joint Chiefs of Staff and the Secretary of Defense, include those military intelligence activities outside the General Defense Intelligence Program that respond to the needs of military commanders for operational support information, as well as to national command, control, and intelligence requirements. The Armed Services Committee in the House of Representatives has joint oversight and authorizing jurisdiction of the programs comprising TIARA.

The JMIP was established in 1995 to provide integrated program management of defense intelligence elements that support defense-wide or theater-level consumers. Included within JMIP are aggregations created for management efficiency and characterized by similarity, either in intelligence discipline (e.g., Signals Intelligence (SIGINT), Imagery Intelligence (IMINT)), or function (e.g., satellite support, aerial reconnaissance). The following aggregations are included in the JMIP: (1) the Defense Cryptologic Program (DCP); (2) the Defense Imagery and Mapping Program (DIMAP); (3) the Defense General Intelligence Applications Program (DGIAP), which itself includes (a) the Defense Airborne Reconnaissance Program (DARP), (b) the Defense Intelligence Tactical Program (DITP), (c) the Defense Intelligence Special Technologies Program (DISTP), (d) the Defense Intelligence Counterdrug Program (DICP), and (e) the Defense Space Reconnaissance Program (DSRP). As with TIARA programs, the Armed Services Committee in the House of Representatives has joint oversight and authorizing jurisdiction of the programs comprising the JMIP.

#### COMMITTEE FINDINGS AND RECOMMENDATIONS

The committee completed its review of the President's fiscal year 2000 budget, carrying out its annual responsibility to prepare an authorization based on close examination of intelligence programs and proposed expenditures. The review reflected the committee's continuing belief that intelligence activities must be examined by function, as well as by program. Thus, the committee's review was again structured across program lines and intelligence disciplines and themes. The committee held nine full committee budget-related hearings. Issues addressed included: acquisition of overhead collection systems, Signals Intelligence (SIGINT), Imagery Intelligence (IMINT), Human Intelligence (HUMINT), Analysis and Production, and Covert Action. A separate hearing was also held that dealt with support to military operations. Two hearings were held addressing the DCI's overall budget submission and the state of health of the Intelligence Community. The Director of Central Intelligence (DCI), and the Deputy Director of Central Intelligence for Community Management (DDCI/CM) testified in order to personally explain their views and plans for the future of intelligence and the Intelligence Community. The committee also had six "capa-



bilities” demonstrations and briefings that presented to the committee a variety of operational capabilities associated with all aspects of intelligence collection and analysis. There were, in addition, numerous individual briefings of Members and over 100 staff briefings on programs, specific activities, and budget requests.

The committee continued to place heavy emphasis on understanding and addressing the future needs of the Intelligence Community, and the several distinct roles that it plays in national security. For the past four years, the committee has discussed the fact that our national security is affected by a set of international issues more diverse than those emphasized during the Cold War. Heretofore, some of these issues have not been identified so readily with our global interests. Throughout our review, there has been a constant theme: the threats we face demand that the Intelligence Community be vigilant on both the strategic and tactical levels and the Intelligence Community must maintain a world-wide view, with a highly flexible set of resources.

The fact remains, however, that our intelligence capabilities have dwindled since the breakup of the Soviet Union, and we have failed to build new capabilities that will become increasingly critical. This is especially true in the areas of espionage, covert action, and in our toughest SIGINT activities. We, as a nation, cannot continue this course. Therefore, since the beginning of the 104th Congress, the committee has focused on increasing investments for intelligence. The committee has highlighted not only areas of greatest immediate priority, but also stressed the need for enhancing global coverage areas to rebuild important indications and warning capabilities for policy makers and military commanders. Given the rapidly changing nature of intelligence targets, the growing demands made of the Intelligence Community and recent, real-world tests of our intelligence capabilities, we believe that significant additional investments will be necessary. Specifically, this year, we have focused investments in the following areas:

- Correcting the imbalances between collection—on the one hand—and tasking, processing, exploitation and dissemination (TPED), and analysis—on the other;

- Recapitalizing SIGINT, also emphasizing the need to finalize a strategic plan for SIGINT and taking steps to implement changes in process and management;

- Innovating paradigms for imagery, to include commercial resources;

- Building a stronger and more extensive clandestine HUMINT capability; and

- Putting new tools in the covert action “toolbox.”

The Intelligence Community truly represents our nation’s first line of defense. The world that we face today, and that we will be facing in the next 10–15 years, poses different threats to national security from those prevalent in preceding decades. Although it is true that we are at less risk of a massive nuclear confrontation, other aspects of our security are at greater risk. For instance, there is a growing possibility that a rogue nation or group will acquire the ability to attack U.S. interests, or the United States itself, with a nuclear, biological, or chemical device, or some other weapon of mass destruction. These possibilities place increasing and complex

demands on the Intelligence Community, and require flexible and robust intelligence capabilities. The increasing assaults on our national security posed by terrorism (international and domestic), narcotics trafficking, international organized crime, proliferation of weapons of mass destruction and conventional weapons, illicit arms sales and foreign intelligence activities must be countered decisively. To do so requires a solid foundation of intelligence collection and analysis, and, sometimes, under proper Presidential direction, actions by the Intelligence Community itself.

In all cases, the Intelligence Community's consumers expect the Community to retain its traditional role of providing strategic intelligence. Whenever possible, the Intelligence Community is expected to provide insightful warning of impending crises, whether diplomatic, commercial, political, or military. Such early indicators increase the likelihood that a crisis will be resolved with words instead of weapons.

For the military, however, the revolutionary nature of modern warfare, the altered global threat, and the increasing demands of contingency operations (i.e., peacekeeping, peace enforcement, and humanitarian relief) prove the need for balance between strategic and tactical intelligence support, always remembering that intelligence is a low cost force protector and force multiplier. Similarly, the law enforcement community has come to expect the Intelligence Community to focus heavily on providing actionable tactical intelligence, as well as direct support to joint and multilateral operations. Ensuring that this balance exists is critical. Therefore, while ensuring that the military has the best possible intelligence, proper attention also must be given to maintaining the capabilities for strategic intelligence that are critical for policy planning, crisis control, and mission success.

Intelligence, tactical and strategic, is needed to address the salient threats of the day. The United States continues to face a dilemma in its dealings with leaders like Saddam Hussein, who possess various weapons of mass destruction and have demonstrated a will to use them. Saddam Hussein has consistently threatened the stability of a strategically important region. The United States must have the intelligence that would not only support a policy decision and its implementation, but would also provide the information necessary to develop options. The fact is that we do not have the intelligence we need and Saddam Hussein and others like him will continue to challenge our foreign policy objectives and threaten our national security. Perhaps more frightening still are the individuals and transnational groups who may also acquire similar capabilities. The only certainty is that, as these individuals' and groups' resources increase, their capabilities will grow more fearsome, and their tactics will become harder to detect. But, we cannot look at these threats alone.

The most demanding circumstances in which the Intelligence Community must operate are those in which U.S. military forces and official personnel are deployed in potentially hostile situations, such as currently in the former Yugoslavia. The role of intelligence in operations conducted in Kosovo and the Balkans, generally, is extensive. It ranges from building target "folders" to assessing damage; enhancing force protection to predicting and assessing the

impact of the mass migration of refugees; understanding the plans and attentions of key leaders, to provide the President with options between sending a demarche, and launching a cruise missile. And, all the while, the President, his cabinet and military commanders expect that the Community will be the bellwether for identifying the next areas of crisis or concern around the globe. Moreover, the Intelligence Community may not, for a moment, ignore the more traditional geo-political and military threats such as in North Korea and China and in a Russia that may yet collapse.

As a result of these demands, the Committee has evaluated the budget submission on a program-by-program basis, assessing each program in terms of its capabilities and how it fits into the overall capabilities of the Intelligence Community, now and into the future. At this time, as a consequence of the demands and challenges faced by the Intelligence Community, we recommend an authorization that is approximately one percent above the President's request.

#### AREAS OF SPECIAL INTEREST

##### *The Threat From the People's Republic of China*

The committee is very concerned about the alarming allegations of espionage and illegal technology acquisition directed by the People's Republic of China. It also has serious concerns about corresponding weaknesses in U.S. counterintelligence and security programs, and about insufficient Intelligence Community counterintelligence capabilities. As a result, the committee has taken a series of aggressive steps in the Intelligence Authorization Act for Fiscal Year 2000 that are designed to counter the growing Chinese intelligence threat to U.S. national security interests. These measures include specifically targeted funding increases and directed oversight of key Intelligence Community functions.

In the area of intelligence analysis, the committee has emphasized the need for more competitive analysis. As part of this effort, the committee has authorized additional funds specifically to subject the China-Taiwan Issues Group in the Central Intelligence Agency's Directorate of Intelligence to rigorous external competitive analysis to ensure that this key analytical component is held to the highest analytic standards possible. The committee has directed the Deputy Director for Intelligence to expose CIA's China analysts to "contrary thinking" to challenge their suppositions and analytical methodologies more aggressively, and to forestall any possibility of "group think." Furthermore, to facilitate the determination of future resource and oversight requirements, the committee has asked the Deputy Director for Intelligence for bi-annual progress reports on the application of alternative contrary-type analysis to the China-Taiwan Issues Group.

For some time, the committee has been troubled by the level of resources that the Department of Energy (DoE) dedicates to analysis of technical subject matter relating to foreign nuclear weapons programs and capabilities. The Chinese and Russian nuclear weapons programs are of utmost interest to U.S. policymakers responsible for nonproliferation and other important national security programs, yet analysis of these programs at DoE has not kept pace

with demand. The committee believes that comprehensive intelligence analysis of foreign nuclear programs should be considered an integral part of an effective counterintelligence program at DoE, and has authorized a substantial funding increase for this purpose that focuses on the Chinese and Russian nuclear programs, and on proliferation analysis. The committee also sustained requests for a substantial increase in funding for DoE's Office of Counterintelligence, and approved a subsequent adjusted request to increase funding for a new counterintelligence cyber information security program at DoE.

Other relevant committee initiatives address counterintelligence shortcomings at the Federal Bureau of Investigation (FBI) and the Department of Defense (DoD), and provide increased funds for related offensive intelligence collection by CIA that will enhance U.S. counterintelligence capabilities. The committee, for example, has provided a substantial increase in funds to enhance counterintelligence and investigative agent training at the FBI, which is becoming increasingly overwhelmed by the broad-based and unorthodox intelligence collection methods employed by the Chinese. The committee has sustained a very large increase in funding proposed by the President to enhance DoD security by improving acquisition protection, information systems protection, and overall counterintelligence capabilities. The committee has also provided a substantial funding increase for CIA operations directed against hostile foreign intelligence services, and has authorized additional funds to enhance CIA's understanding of foreign Denial and Deception (D&D) techniques. And in the area of linguistic support to collection and analysis, the committee has added substantial funding for language training so as to ameliorate linguistic weaknesses across the Intelligence Community.

#### *National Security Agency*

The Director of Central Intelligence (DCI) has stated to the committee that recapitalization of SIGINT capabilities is one of the top priorities for the Intelligence Community. The recently retired, former Director of NSA suggested that a significant amount of investment will be required in order to revitalize the overall SIGINT system. The committee believes that the DCI and the former Director of NSA are correct in terms of priority and funding requirements. The committee notes, however, that money and priority alone will not revive NSA, nor the overall SIGINT system. In the last two Congresses, the committee has been direct in its identification of process and management problems that require attention. The committee believes that NSA management has not yet stepped up to the line. There have been some efforts at reform, but there are still several areas where change is not only needed but is critical for NSA's future.

The committee believes that NSA is in serious trouble. The committee has devoted considerable attention to this issue in the classified annex to this report. The committee believes that NSA has very talented people dedicated to an exciting mission, whose creativity can be unleashed and properly directed, in concert with private industry, to build a bright future. The committee looks forward to the opportunities for change that present themselves with

the introduction of a new Director of NSA. The committee salutes the efforts by the former Director, who we credit for starting some of the changes that we have seen. But, there is much more to do. The committee hopes that the new Director will find the specific points and observations in the classified annex to this report of value as he seeks to effect needed changes.

#### *National Imagery and Mapping Agency*

In the Intelligence Authorization Act for Fiscal Year 1999, the committee approved the Administration's proposal to proceed with the Future Imagery Architecture (FIA), within some specified boundaries and on the condition that the Administration take vigorous steps to provide for the essential tasking, exploitation, and dissemination (TPED) functions necessary to respond to the huge increase in imagery collection capabilities promised in FIA. Despite the committee's emphasis on the TPED issues, the committee believes that the Administration has not adequately responded. Specifically, the committee has not seen a serious commitment to fund TPED solutions—costs the committee believes will be in the billions of dollars. The committee credits the Director of NIMA for his continued efforts at arriving at a TPED modernization plan. The committee hopes that this plan will emerge in the very near future, so that there can be a better understanding of the shortfalls and the difficulties ahead.

The committee feels it is necessary in this authorization report to reemphasize its position on TPED and its contingent support for FIA for two basic reasons. First, at its hearing on support to military operations, representatives from three Commanders-in-Chief told the committee that, although they generally supported new collection systems, they had concerns that the massive amounts of data collected would be relatively useless without the necessary analytic mechanisms and manpower. The second reason is that the committee believes TPED shortfalls may well come before FIA. In fact, TPED shortfalls related to deployment of the Enhanced Imagery System (EIS), planned for deployment much sooner than FIA, threaten to overwhelm existing analytical resources almost immediately.

The committee believes that TPED shortfalls cannot best be solved solely by hiring hundreds of additional imagery analysts, although there will probably be a need to hire and train many more than are currently projected. A commitment to development and deployment of analytical tools and infrastructure as well as, research into other areas or capabilities that might cue an imagery analyst, are other areas where solutions beyond mere personnel increases are in order.

#### *Oversight Issues*

The committee, in its oversight of the National Security Agency, verbally requested access to documents in the files of the Office of the General Counsel. While some material has been provided to the committee, the General Counsel of the National Security Agency has argued that there may be other documents to which the government attorney-client privilege applies. The committee finds this claim of privilege peculiar and urges the Office of the General

Counsel to review both the law of attorney-client privilege as it applies to congressional inquiries and the history of congressional oversight of U.S. intelligence agencies. The committee would be extremely displeased to conclude that a general counsel of an intelligence agency was interfering with the legitimate and constitutional rights of the committee to oversee the intelligence activities of an executive branch agency through an erroneous assertion of privilege. Under such circumstances, the committee would fully exercise the many prerogatives at its disposal to remedy the situation.

#### JOINT MILITARY INTELLIGENCE PROGRAM

##### *Ground-Based Common Sensor/Prophet: Fence \$12.8 million*

The budget request contained \$12.8 million in PE 35885G for the ground based common sensor (GBCS)/Prophet tactical signals intelligence (SIGINT) system.

The committee notes that the Army terminated the GBCS program in November 1999 for lack of performance, and that the service wants to move to the new, less complicated Prophet program. The committee is concerned that the GBCS effort, begun over seven years ago, was unsuccessful because of a lack of achievable requirements and an overly sophisticated technical approach.

The committee has received limited formal explanation of the evolving Prophet concept. However, the Army's approach to Prophet is more simplistic than GBCS, but appears to be inadequate to properly collect and process modern battlefield SIGINT necessary to provide useful tactical intelligence. Furthermore, the committee questions the need for a ground-based tactical SIGINT collection capability to supplement the Army's airborne efforts.

The committee directs that no authorized or appropriated funds be obligated or expended until the Secretary of the Army provides the congressional defense and intelligence committees a detailed concept of operations for Prophet together with a detailed program definition and technical approach for this ground-based, tactical SIGINT collection system.

The committee recommends the budget request.

##### *Aerial Common Sensor: -\$2.7 million*

The budget request included \$14.7 million in PE 35885G for the Army's aerial common sensor (ACS).

The committee notes that it has received insufficient information on the specific plan, concept of operation, and programmatics for the ACS. Further, the Army has not yet decided on the aircraft it will use for ACS. This will directly affect the costs of procurement, sensors and their integration, and operations and maintenance. Until such basic decisions are made, the committee cannot determine the overall worth of the program, and therefore, cannot provide a blanket authorization.

Therefore, the committee authorizes \$12.0 million in this PE, a decrease of \$2.7 million for ACS. However, no funds authorized or appropriated for ACS are to be obligated or expended, until 30 days after the congressional defense and intelligence committees have been provided a report that includes the following:

- (1) The specific aircraft selected for the ACS.
- (2) The specific ACS concept of operations and program plan. The program plan must include the projected funding over the five-year defense plan, and expected total cost.
- (3) Identification of the generic sensor suites and development/acquisition plan to provide these sensors.
- (4) Certification from the Director, National Security Agency, that ACS conforms to the requirements of the 2010 Unified Cryptologic Architecture.

*National Technology Alliance: +\$5.0 million*

The budget request contained \$88.4 million in PE 35102BQ for the Defense Imagery Analysis Program, and included for \$8.1 million for National Imagery Mapping Agency (NIMA) technology investment.

The committee is aware that the NIMA National Technology Alliance (NTA) program continues to demonstrate its worth within the Intelligence Community while it has expanded to address the needs of the Department of Defense. NTA innovation in a variety of technologies, with applications that cross department, service and agency boundaries, is reducing costs, increasing performance, and saving precious funds.

The committee continues to support the NTA's efforts to provide solutions based on advances in technology for both the Department of Defense and the Intelligence Community. The committee recommends \$93.4 million in PE 35102BQ, an increase of \$5.0 million for the NTA.

*Joint Airborne SIGINT Program: -\$1.6 million*

The budget request contained \$81.6 million in PE 35206F for joint signals intelligence (SIGINT) avionics family (JSAF).

The committee notes that JSAF funding provides resources for developing the two components of the future airborne SIGINT collection system as well as the program office operations and engineering costs. The committee also notes that the current program office has approximately 70 personnel including both government and contracted advisory and assistance services employees, which the committee finds to be significantly more dedicated manpower than other similar programs.

The committee recommends \$80.0 million in PE 35206F for the JSAF program, a reduction of \$1.6 million. This reduction is to be applied solely to reducing the JSAF program office management staff. No reduction is to be applied to system developments.

*Tactical Control System: +\$3.0 million / earmark \$4.5 million*

The budget request contained \$69.7 million in PE 35204N for tactical unmanned aerial vehicles (UAV) and included \$24.6 million for the tactical control system (TCS). No funding was provided for the operation of the UAV systems integration laboratory (SIL) or to continue its development of the multiple UAV simulation environment (MUSE).

The committee continues to be supportive of the TCS and notes that TCS software is the key to interoperability for future medium altitude and tactical UAVs and their payloads. Further, the com-

mittee is supportive of the TCS objective to interface with high altitude UAVs.

The committee notes that the Naval Surface Warfare Center program office continues to develop most of the TCS software and expend most of the TCS developmental funding in-house. The committee believes that the TCS program could be more efficiently managed if the TCS developments, including software engineering and maintenance, were to be outsourced in whole to the prime system integration contractor. Further, the committee believes such outsourcing would allow for a smaller and more efficient government program office. The committee believes that holding a prime contractor responsible for total system performance has demonstrated success with many other programs.

Finally, the committee notes that the U.S. Atlantic Command (USACOM) has been without a TCS capability for its UAV testing, and that an additional \$3 million is required to provide such a capability.

Therefore, the committee recommends \$72.7 million in PE 35204N, an increase of \$3 million for procuring a TCS ground station for USACOM. Further, the committee directs a reallocation of \$4.5 million within this PE specifically to realize the program office efficiencies discussed above and to move software development and maintenance responsibility to the prime contractor. This funding is to be reapplied within the TCS program to fund the SIL MUSE efforts.

*Multi-Function Self-Aligned Gate Technology: +\$6.0 million*

The budget request included \$69.7 million in PE 35204N for tactical unmanned aerial vehicles (UAV) and \$9.4 million in 35207F for manned reconnaissance systems. No funding was provided in either program element for the multi-function self-aligned gate (MSAG) active aperture antenna (AAA) technology.

Congress has supported this AAA technology for several years, and the committee is pleased with the successful MSAG antenna demonstration completed in August 1998. During this unprecedented demonstration, the MSAG provided wide-band, duplex, communications links simultaneously to a ground vehicle, an aircraft, and a satellite surrogate.

The committee believes that a single, electronically steered antenna array that can provide multiple wide-band communications links would be a cost-effective solution to numerous Department of Defense communications requirements. However, the committee is disturbed to note that the Department has failed to provide even minimal funding for this technology.

The committee understands that the Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence) is considering initiation of an advanced concept technology demonstration of the MSAG technology and that the Air Force is supportive of testing this antenna technology on reconnaissance aircraft.

Therefore, the committee recommends an increase of \$3.0 million in PE 35204N for operational evaluation of the MSAG AAA on the tactical control station and the Predator UAV. The committee also



recommends an increase of \$3.0 million in PE 35207F for evaluation of the MSAG AAA onboard the RC-135 Rivet Joint aircraft.

*Common Imagery Processor*

The budget request included \$4.9 million in PE 35208F for the common imagery processor (CIP).

The committee understands that the CIP has been manufactured with a known design input/output limitation that precludes it from processing real-time imagery from current and future high-data rate digital cameras. The committee does not understand why the Department of Defense pursued a common government solution to digital imagery processing without ensuring a capability to process the high data rates from current and future digital cameras. Further, the committee is aware that the Naval Research Laboratory (NRL) has integrated commercial imagery processing technologies into a system that can process these high data-rates in real-time. These commercial solutions are not only less expensive, but provide an upgrade path for future requirements.

The committee notes the partnering relationships now being fostered between the government contractor and the NRL to provide a CIP that is more commercially-based and capable of processing modern digital imagery. The committee strongly supports this relationship, and it expects the Air Force and Navy to work more closely together to ensure that modern digital camera systems can be fully exploited in real-time by the CIP.

The committee supports the budget request.

*Global Hawk High Altitude Endurance Unmanned Aerial Vehicle: +\$25.0 million*

The budget request contained \$70.8 million in PE 35205F for endurance unmanned aerial vehicles (UAV), including funding for Global Hawk and DarkStar air vehicles.

Since the budget request was developed, the Air Force has terminated the DarkStar aircraft, leaving Global Hawk as the only endurance UAV program. While some residual funding may result, termination costs for DarkStar are yet to be determined. However, the committee understands the Air Force plans to use any residual funds for Global Hawk testing and evaluation.

Recently, a Global Hawk test air vehicle crashed, destroying with it the only integrated reconnaissance sensor package. The committee notes the importance of resuming the user evaluation and testing of Global Hawk, and of sustaining the industrial base until completion of the user evaluation.

The committee recommends \$95.8 million in PE 35205F, an increase of \$25.0 million for Global Hawk.

*Predator Unmanned Aerial Vehicle: +\$20.0 million*

The budget request contained \$38.0 million for three Predator unmanned aerial vehicles (UAV) and one ground control station (GCS).

The Predator continues to be the Department of Defense's only operational UAV. The committee notes that the Predator has been flying support missions in Bosnia, and now Kosovo, for over three and one-half years, logging more than 11,000 total flight hours. Be-

cause of its importance to theater commanders' intelligence needs, a solid Predator production base must be continued, attrition reserve air vehicles must be maintained and improvements must be made to fully exploit the system's potential. For example, the committee believes the laser designator upgrades now being integrated into some aircraft for immediate contingency needs should be integrated fleet-wide.

Although Predator operations are expected to be expanded to other theaters and operational areas, the committee understands Predator is currently not deployable worldwide because of some host-nation communications frequency restrictions. Consequently, the committee believes the Air Force needs to add the tactical common data link (TCDL) to the air vehicles and the GCS to overcome this operational limitation.

Finally, the committee notes that when using the satellite communications link with the aircraft, the GCS can only control a single air vehicle. This situation precludes dual aircraft control for on-station relief. The committee believes that a dual-channel, beyond-line-of-sight satellite communications capability needs to be retrofitted into existing aircraft.

Therefore, the committee recommends \$58.0 million, an increase of \$20.0 million, to procure two additional attrition reserve UAVs, production versions/kits of the laser designator, the TCDL and the dual-channel satellite communications suite.

*Electro-Optical Framing Technologies: +\$5.0 million*

The budget request contained \$5.0 million in PE 35206N for airborne reconnaissance systems, including \$2.0 million for electro-optic (EO) framing technologies.

The committee continues to support development of the revolutionary digital EO framing technologies with on-chip forward motion compensation (FMC). The committee notes the Navy F-14 Tactical Air Reconnaissance Podded System—Completely Digital (TARPS CD) demonstration system using this technology has recently been successfully employed at sea. Based on this success, the committee believes there is a need for additional TARPS CD risk-reduction pods and that the Navy should expand this effort. Further, the committee believes that the EO framing with on-chip FMC should be fully developed and improved to satisfy current and future applications on aircraft such as tactical unmanned aerial vehicles and other tactical fighter aircraft.

Therefore the committee recommends \$10.0 million in PE35206N, an addition of \$5 million, for continued development of EO framing with on-chip FMC technologies. These efforts shall include development of the high quantum efficiency infrared framing chip, precision strike improvements, and step-framing technologies.

*Joint Reserve Intelligence Program: +\$250,000*

The budget request contained \$10.1 million for operation of the Joint Reserve Intelligence Program (JRIP).

The committee notes the superb intelligence analysis and production support the JRIP has continued to provide the active forces. The committee is acutely aware of the JRIP support to producing imagery exploitation keys, the cataloging of specific equipment and

facilities for rapid identification for targeting. This imagery key production has significant positive impact for ongoing crisis support. However, the JRIP is not properly funded for the numbers of man-days necessary to continue this effort.

The committee recommends \$10.3 million, an increase of \$250,000 for this purpose.

#### TACTICAL INTELLIGENCE AND RELATED ACTIVITIES

##### *All Source Analysis System (ASAS): –\$4.7 million*

The budget request contained \$43.7 million, an increase of \$14.9 million from the fiscal year 1999 appropriated amount, in PE 64321A for ASAS.

The committee recognizes the importance of the ASAS capability, but it is troubled by the development costs of this intelligence support system, particularly when compared to the modest costs for the other services' intelligence systems. Therefore, the committee recommends \$39.0 million in PE64321A, a decrease of \$4.7 million.

##### *Semi-Automated Imagery Processor: +\$2.5 million*

The budget request contained no funding in PE 63766A for tactical electronic surveillance systems.

The committee notes that the semi-automated imagery processor (SAIP) is an advanced concept technology demonstration (ACTD) designed to provide automatic target cueing to support imagery analysts. Further, the tool provides a limited capability for automated target recognition. While the SAIP is not perfected, the committee notes the development effort and results to date. The committee remains concerned that current and future imagery collection systems are overwhelming the limited number of imagery analysts available to put "eyes on target." Automated capabilities to reduce imagery analyst workloads are critically needed. The committee believes that the SAIP represents the best effort to date to provide such radar imagery automation. However, the Department has, again, failed to provide sufficient funding for the transition of a needed ACTD capability to an operational application.

The committee recommends \$35.7 million in PE63766A, an increase of \$2.5 million for the transition of the SAIP effort from an ACTD to an operational capability. The committee notes that the SAIP is not a total solution and expects the Army to continue efforts to refine and improve the SAIP.

##### *Advanced Tactical Air Reconnaissance System: Fence \$60.0 million*

The budget request contained \$60.0 million for the Advanced Tactical Air Reconnaissance System (ATARS).

The committee is fully aware of this program's troubled history and technical problems. The committee is not pleased that the operational evaluation, originally scheduled for fiscal year 1998, has been delayed once again, pushing the production decision into fiscal year 2000. In light of its poor performance and reliability track record, the committee cannot support continued funding until a thorough independent test and evaluation of the system has been completed.

The committee recommends the amount requested, but directs that none of these funds may be obligated or expended until 30 days after the Department of Defense has provided a report to the congressional defense and intelligence committees on the completion of a successful formal operational evaluation of the ATARS. Further, the committee believes that no amounts authorized and appropriated in fiscal year 1999 for production system procurement should be used to procure additional low rate initial production (LRIP-3) systems before completion of the operational evaluation.

*Hyper-Spectral Analysis: +\$8.0 million*

The budget request contained \$12.1 million in PE 65867N and \$10.1 million in PE 27247F for Navy Force and Air Force Tactical Exploitation of National Capabilities (TENCAP).

The committee has learned of a revolutionary new spectral exploitation technology that has been tested on a limited scale on-board Navy intelligence collection aircraft. This technology provides real-time, automated, hyperspectral, wide-area search functionality. By searching for spectral anomalies, it provides users with automated target nominations without a priori information. This could dramatically cut imagery analyst workloads, while greatly improving real-time targeting and threat warning. The committee believes such a capability is needed to exploit the vast amount of imagery data that the intelligence community is able to provide.

Therefore, the committee recommends \$16.1 million in PE 65867N and \$14.1 million in PE 27247F, an increase in each of \$4.0 million respectively for the services to procure and test multi-spectral sensors and exploitation tools. The goal is to eventually transition this as an operational technology to the services for advancing imagery cueing and analysis.

*Beartrap Nonlinear Dynamics And Environmental Characterization: +\$6.0 million*

The budget request contained \$17.8 million in PE 63254N for anti-submarine warfare (ASW) system developments, including \$5.3 million for Project Beartrap.

The committee notes that that the budget request for Beartrap supports hardware and software developments for advanced capability acoustic and non-acoustic sensors, as well as data collection and analysis for threat assessment and environmental characterization. The committee understands that basic research in nonlinear dynamic stochastic resonance (NDSR), supported by the Office of Naval Research, has advanced to the point that it offers explanations for many observed physical phenomena and it offers the potential to develop significantly improved acoustic and non-acoustic ASW sensor systems. The committee believes that NDSR technology offers a significant opportunity to enhance the capabilities of Beartrap at a time when evolving ASW requirements indicate the critical need to integrate these latest relevant technologies. Specific areas include characterization of the ocean nonlinear dynamics environment, application of NDSR technology in advanced Beartrap sensors and validation of NDSR ASW performance.

The committee also notes that the Navy requires extensive environmental data to achieve effective performance from the extended echo ranging (EER) devices used in shallow littoral waters. These active acoustic devices are key to naval airborne ASW performance. The Beartrap program is well suited to collect this environmental data.

The committee recommends \$23.8 million in PE 63254N for ASW systems development, an increase of \$6 million for Project Beartrap for the purposes outlined above.

*Ocean Surveillance Information System: +\$4.0 million*

The budget request contained \$41.6 million in PE 64231N, including \$2.1 million for the ocean surveillance information system (OSIS).

The committee understands the need for improving analytic software search tools, particularly as the information populating intelligence databases continues to increase exponentially. The committee notes that the intuitive database search tool known as the contiguous connection model (CCM) being incorporated into the Army's all source analysis system (ASAS) provides a significant advance in providing such automated search functionality, for both formatted and unformatted data. The committee believes the CCM would significantly improve Navy intelligence analyst effectiveness, and that it should be incorporated into the OSIS evolutionary development.

The committee recommends \$45.6 million in this program element, an increase of \$4.0 million for this purpose.

*Distributed Surveillance System: +\$19.0 million*

The budget request contained \$14.9 million in PE 64784N for continued development of the distributed surveillance system.

The Integrated Undersea Surveillance System (IUSS) program includes both fixed and relocatable acoustic sensor systems to detect and track diesel and nuclear powered submarines. The Fixed Distributed System (FDS) is a series of permanently installed acoustic arrays and the Advanced Deployable System (ADS), currently under development, will comprise sensors that can be rapidly deployed in littoral environments.

The committee understands that the incorporation of fiber optic sensor technologies in acoustic arrays can greatly reduce maintenance requirements for these systems. Littoral anti-submarine warfare (ASW) operations pose complex challenges in the evaluation and analysis of acoustic sensor data due to the high volume of traffic and diverse environmental conditions. The committee is concerned that the ADS program does not adequately address the issues of automation of detection and tracking functions and connectivity to the Global Command and Control System (GCCS) and web-based network centric warfare systems.

Accordingly, the committee recommends \$33.9 million, an increase of \$19.0 million for the distributed surveillance system; \$8.0 million for the continued application of remote-powered fiber optic sensor technologies for FDS acoustic arrays, and \$11.0 million for the development of improved detection and tracking algorithms to

provide increased automation for the ADS and an interface with the GCCS and other network centric warfare systems.

*Mobile Electronic Warfare Support System: +\$5.0 million*

The budget request contained \$5.0 million for procurement of the Marine Corps' mobile electronic warfare support system (MEWSS).

The committee notes that the Army and the Marine Corps were working together to field a modern ground signals intelligence collection capability. The committee notes that the Army recently terminated its portion of this program, the ground based common sensor (GBCS). This has had a direct impact on the Marine Corps' MEWSS, increasing costs and affecting the fielding schedule. The committee understands that the Army has decided to mitigate this additional cost by providing GBCS residual equipment to the Marine Corps. However, this equipment will have to be retrofitted into the MEWSS vehicle and modifications to the equipment will have to be made. This will come at additional cost, which the Marine Corps could not have anticipated.

The committee recommends \$10.0 million, an addition of \$5.0 million for the Marine Corps to accept and modify the GBCS sensors systems into the MEWSS.

*Space-Based Infrared System-High*

The budget request contained \$328.7 million in PE 64441F for the space-based infrared system-high (SBIRS High).

The committee notes that the budget request for SBIRS High reflects a reduction of \$235.5 million when compared to the projections in the fiscal year 1999 budget request. The Air Force also delayed the first launch of SBIRS High from fiscal year 2002 to fiscal year 2004. The Air Force justified this delay partly because deployment of a National Missile Defense (NMD) program, that SBIRS High will support, was delayed from fiscal year 2003 to fiscal year 2005, and partly because the Defense Satellite Program (DSP) satellites, that SBIRS High will replace, are lasting longer than expected.

The delay will increase SBIRS High program costs by \$500 million to \$1 billion in the outyears. Further, although the NMD date now proposed by the Administration is two years later than it proposed last year, the committee understands that the deployment date could be accelerated if the NMD test program proceeds well. SBIRS High will also support theater missile defenses, particularly in meeting the growing threat posed by longer range missiles, against which the United States has only very limited defensive capabilities. Finally, with first launch in fiscal year 2004, the full constellation of SBIRS High would not be available to support a 2005 NMD deployment. The committee strongly supports the SBIRS High mission and concludes that the restructuring and delay of this program are unjustified.

The committee also strongly objects to the manner in which the Air Force implemented a work slowdown in anticipation of approval of its proposed fiscal year 2000 program reduction. The committee was not informed of this decision until after the contractor had been ordered to restructure the program spending rates to accommodate the proposed schedule change. This procedure pre-

cluded any realistic opportunity for congressional review of the Air Force decision and preempted congressional oversight prerogatives. The committee recognizes that restoring SBIRS High to a first launch date of fiscal year 2002 is now impossible, and to restore the date to fiscal year 2003 would require approximately \$400 million in additional funding in fiscal year 2000.

The committee believes that, because of the delay in the program and the substantial cost growth that results, the Department will have the opportunity to examine competitive alternatives that may be available to achieve comparable or superior capabilities at comparable or lower costs. Therefore, of the funds authorized for SBIRS High, the committee directs that \$10.0 million may be used only for airborne and space experiments of a sensor technology described in the classified annex.

To sustain the SBIRS High program in the most effective manner and assure that it is accorded a high priority in the future, the committee recommends \$168.7 million for a new SBIRS High program element in the Ballistic Missile Defense Organization, 64XXXC, and \$160.0 million for PE 64441F. The committee believes that an alternate management and funding structure, in which BMDO provides management oversight, the Air Force serves as executive agent, and both share funding responsibility, would provide the most thorough assessments of SBIRS High importance in the future.

#### *Space Based Infrared System-Low*

The budget request contained \$151.4 million in PE 63441F and \$77.7 million in 64442F for the space based infrared system-low (SBIRS Low).

The committee notes that the Air Force substantially restructured the SBIRS Low program, terminating two planned demonstration projects and delaying the first launch of SBIRS Low from 2004 to 2006. The Air Force argues that the cancellations were justified because much had been learned from the effort to develop the demonstrators, that proof of principle had already been established in earlier experiments, and that schedule delays and cost growth in the demonstration projects had increased program risk and cost.

The committee believes that deployment of SBIRS Low is critical to meeting the growing long-range ballistic missile threats, and that the delay is very damaging to the U.S. effort to field capable systems in response to these threats in a timely manner. The committee is also informed that the Navy Theater Wide (NTW) missile defense system will rely on SBIRS Low for discrimination and external cueing. The SBIRS Low delay could seriously degrade the capabilities of the currently planned interim NTW system known as Block I and could slow progress toward the NTW objective system.

The committee strongly objects to the manner in which the Air Force carried out the SBIRS Low program restructuring. The Air Force informed the congressional defense committees the day prior to notifying the contractors of the cancellations of the demonstration projects, effectively precluding review of an important decision in a program of high congressional interest. Further, the committee

believes that the Ballistic Missile Defense Organization (BMDO) was not adequately consulted concerning the decision.

To ensure that SBIRS Low is accorded the high priority the committee believes is warranted by wider military requirements and to ensure that other service and DOD equities in the program are protected, the committee recommends \$110.0 million in a new BMDO program element, 63XXXC, \$41.8 million in PE 63441F, and \$77.7 million in PE 64442F for SBIRS Low. The committee believes that an arrangement, in which BMDO provides management oversight, the Air Force serves as executive agent, and both share funding responsibility, provides the best chance of success in the future.

*Air Force/National Reconnaissance Office Partnership: -\$2.9 million*

The budget request contained \$2.9 million in PE 63856F for the Air Force/National Reconnaissance Office (NRO) partnership program.

The Air Force/NRO partnership program funds studies and analyses of opportunities to better integrate the activities of the two organizations. The committee believes that the leadership structure of the two organizations is appropriate to foster such integration, and that each organization should be highly motivated to leverage the investments of the other as a means of conserving scarce resources. The committee believes that the activities funded in this program should be part of the regular order of business for both the NRO and the Air Force. The committee recommends no funding in PE 63856.

*Special Operations Forces Reconnaissance: +\$2.1 million*

The budget request contained \$1.4 in PE 116405BB for Special Operations Command (SOCOM) intelligence research and development. No funds were requested for the special operations tactical video system (SOTVS) digital, underwater camera.

The committee notes that a commercial camera system for the joint SOTVS digital, still camera requirement is not available and that the commercial market gives no sign of providing an off-the-shelf solution.

Further, a digital imagery capability would provide near-real-time information support to special operations forces (SOF) and would not require a wet-film processing requirement as do the current film-based cameras. The committee believes this is a capability that needs to be provided to the SOF as quickly as possible. The committee believes a government-funded digital camera is the only potential near-term solution to this reconnaissance requirement. The committee understands that \$4.1 million is required to complete development of a camera that meets all joint requirements.

The committee recommends \$3.5 million in PE116405BB, an increase of \$2.1 million for the SOTVS digital underwater camera. The committee recommends the Commander in Chief, SOCOM, seek reprogramming authority to fund the remainder of the joint requirement.



## SECTION BY SECTION

## TITLE I: INTELLIGENCE ACTIVITIES

*Section 101—authorization of appropriations*

Section 101 lists those elements of the United States Government for whose intelligence and intelligence-related activities the Act authorizes appropriations for fiscal year 2000.

*Section 102—classified schedule of authorizations*

Section 102 incorporates by reference the classified Schedule of Authorizations. That schedule sets forth the specific amounts authorized to be appropriated for specific intelligence and intelligence-related activities and personnel ceilings for fiscal year 2000 for those United States government elements listed in section 101. The details of the Schedule are explained in the classified annex to this report. The Schedule of Authorizations correlates to the President's classified budget submission to Congress.

*Section 103—personnel ceiling adjustments*

Section 103 authorizes the Director of Central Intelligence, with the approval of the Director of the Office of Management and Budget ("OMB"), in fiscal year 2000, to exceed the personnel ceilings applicable to the components of the intelligence community under section 102 by an amount not to exceed two percent of the total of the ceilings otherwise applicable under section 102. The Director may exercise this authority only when necessary to the performance of important intelligence functions. Any exercise of this authority must be reported to the two intelligence committees of the Congress.

The committee emphasizes that the authority conferred by section 103 is not intended to permit the wholesale raising of personnel strength in any intelligence component. Rather, the section provides the Director of Central Intelligence with flexibility to adjust personnel levels temporarily for contingencies, and for overages caused by an imbalance between hiring of new employees and attrition of current employees. The committee does not expect the Director of Central Intelligence to allow heads of intelligence components to plan to exceed levels set in the Schedule of Authorizations, except for the satisfaction of clearly identified hiring needs that are consistent with the authorization of personnel strengths in this legislation. In no case is this authority to be used to provide for positions otherwise denied by Congress.

*Section 104—community management account*

Section 104 details the amount and composition of the Community Management Account ("CMA") of the Director of Central Intelligence.

Subsection (a) of section 104 authorizes appropriations in the amount of \$193,572,000 for fiscal year 2000 for the staffing and administration of various components under the CMA. Subsection (a) also authorizes funds identified for the Advanced Research and Development Committee to remain available for two years.

Subsection (b) authorizes a total of 348 full-time personnel for elements within the CMA for fiscal year 2000 and provides that such personnel may be permanent employees of the CMA element or detailed from other elements of the United States Government.

Subsection (c) explicitly authorizes the classified portion of the CMA.

Subsection (d) requires that personnel be detailed on a reimbursable basis, with certain exceptions.

Subsection (e) authorizes \$27,000,000 of the amount authorized for the CMA under subsection (a) to be made available for the National Drug Intelligence Center (“NDIC”) in Johnstown, Pennsylvania. Subsection (e) requires the Director of Central Intelligence to transfer the \$27,000,000 to the Department of Justice to be used for NDIC activities under the authority of the Attorney General, and subject to section 103(d)(1) of the National Security Act.

*Section 105—authorization of emergency supplemental appropriations for fiscal year 1999*

Section 105 specifically authorizes any intelligence and intelligence-related activities for which emergency supplemental appropriations are expected to be included in the “Kosovo” supplemental appropriations bill under consideration by the Appropriations Committee in the House at the time of the Intelligence Committee’s consideration of the fiscal year 2000 intelligence authorization act. This provision is intended to meet the requirements of section 504 of the National Security Act of 1947, as amended, which mandates specific authorization for the conduct of all intelligence and intelligence-related activities by the United States Government. This provision should not be read to authorize any subsequent emergency supplemental appropriations bills for Fiscal Year 1999 that may include funds for intelligence and intelligence-related activities. Such subsequent bills will require individual authorization to satisfy the requirements of section 504.

TITLE II: CENTRAL INTELLIGENCE AGENCY RETIREMENT AND  
DISABILITY SYSTEM

*Section 201—authorization of appropriations*

Section 201 authorizes appropriations in the amount of \$209,100,000 for fiscal year 2000 for the Central Intelligence Agency Retirement and Disability Fund.

TITLE III: GENERAL PROVISIONS

*Section 301—increase in employee compensation and benefits authorized by law*

Section 301 provides that appropriations authorized by this Act for salary, pay, retirement and other benefits for federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

*Section 302—restriction on conduct of intelligence activities*

Section 302 provides that the authorization of appropriations within the Act does not constitute authority for the conduct of any

intelligence activity that is precluded by the Constitution or other laws of the United States.

*Section 303—Sense of Congress regarding intelligence community contracting*

Section 303 expresses the sense of Congress that the DCI should continue to direct elements of the intelligence community to award contracts in a manner that would maximize the procurement of products produced in the United States, when such action is compatible with the national security interests of the United States, consistent with operational and security concerns, and fiscally sound.

TITLE IV: CENTRAL INTELLIGENCE AGENCY

*Section 401—two-year extension of CIA central services program*

Section 401 extends the Central Intelligence Agency's authority to carry out the Central Services Program first authorized as part of the fiscal year 1998 authorization Act, P.L. 105–107. This provision extends the termination date of the Central Services Program to March 31, 2002.

TITLE V: DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

*Section 501—protection of operational files of the National Imagery and Mapping Agency*

Section 501 provides for the protection of the operational files of the National Imagery and Mapping Agency (NIMA) to the same extent those files were protected under the Central Intelligence Agency (CIA) pursuant to 50 U.S.C. 431 prior to NIMA's creation. Furthermore, this provision grants an exemption under the Freedom of Information Act (FOIA) from searching, reviewing, publishing, or disclosing its operational files. This new provision includes those NIMA files, including imagery and imagery intelligence, previously maintained by the National Photographic Interpretation Center (NPIC) of the Central Intelligence Agency. This statutory language was inadvertently omitted when the statutes creating NIMA were enacted.

COMMITTEE POSITION

On April 28, 1999, in open session, a quorum being present, the Permanent Select Committee on Intelligence, by a recorded vote of 14 ayes to 0 noes, approved the bill, H.R. 1555, as amended by an amendment in the nature of a substitute offered by Chairman Goss. By that vote, the committee ordered the bill, as amended, reported favorably to the House. On that vote, the Members present recorded their votes as follows:

Mr. Goss (Chairman)—aye; Mr. Lewis—aye; Mr. McCollum—aye; Mr. Castle—aye; Mr. Boehlert—aye; Mr. Bass—aye; Mr. Gibbons—aye; Mr. LaHood—aye; Ms. Wilson—aye; Mr. Dixon—aye; Ms. Pelosi—aye; Mr. Bishop—aye; Mr. Sisisky—aye; Mr. Roemer—aye.

FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON  
GOVERNMENT REFORM

With respect to clause 3(c)(4) of rule XIII of the House of Representatives, the committee has not received a report from the Committee on Government Reform and Oversight pertaining to the subject of this bill.

OVERSIGHT FINDINGS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee held nine full-committee hearings, as well as six full-committee briefings, on the classified budgetary issues raised by H.R. 1555. Testimony was taken from the Director of Central Intelligence, the Acting Director of the National Security Agency, the Director of the Defense Intelligence Agency, the Deputy Director of Central Intelligence, the Deputy Directors for Operations and Intelligence, numerous program managers, and various other knowledgeable witnesses on the activities and plans of the intelligence community covered by the provisions and authorizations, both classified and unclassified, of the Intelligence Authorization Act for Fiscal Year 2000. The bill, as reported by the committee, reflects conclusions reached by the committee in light of this oversight activity.

FISCAL YEAR COST PROJECTIONS

The committee has attempted, pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, to ascertain the outlays that will occur in fiscal year 2000 and the five years following if the amounts authorized are appropriated. These estimates are contained in the classified annex and are in accordance with those of the executive branch.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

In compliance with clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives, and pursuant to sections 308 and 402 of the Congressional Budget Act of 1974, the committee submits the following estimate prepared by the Congressional Budget Office:

HOUSE OF REPRESENTATIVES,  
PERMANENT SELECT COMMITTEE ON INTELLIGENCE,  
*Washington, DC, May 4, 1999.*

Mr. DAN L. CRIPPEN,  
*Director, Congressional Budget Office,  
Ford House Office Building, Washington, DC.*

DEAR MR. CRIPPEN: In compliance with the Rules of the House of Representatives, I am writing to request a cost estimate of H.R. 1555, the "Intelligence Authorization Act for Fiscal year 2000," pursuant to sections 308 and 403 of the Congressional Budget Act of 1974. I have attached a copy of the bill as approved by the House Permanent Select Committee on Intelligence on April 28, 1999.

As I hope to bring this legislation to the House floor in the very near term, I would very much appreciate an expedited response to

this request by the CBO's staff. Should you have any questions related to this request, please contact Patrick B. Murray, the Committee's Chief Counsel. Thank you in advance for your assistance with this request.

Sincerely,

PORTER J. GOSS, *Chairman.*

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U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 5, 1999.*

Hon. PORTER J. GOSS,  
*Chairman, Permanent Select Committee on Intelligence,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1555, the Intelligence Authorization Act for Fiscal Year 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dawn Sauter.

Sincerely,

BARRY B. ANDERSON  
(For Dan L. Crippen, Director).

Enclosure.

*H.R. 1555—Intelligence Authorization Act for Fiscal Year 2000*

Summary: H.R. 1555 would authorize appropriations for fiscal year 2000 for intelligence activities of the United States government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System (CIARDS). The bill would also authorize such sums as may be necessary to fund an emergency supplemental appropriation for fiscal year 1999.

This estimate addresses only the unclassified portion of the bill. On that limited basis, CBO estimates that enacting H.R. 1555 would result in additional spending of \$194 million over the 2000–2004 period, assuming appropriation of the authorized amounts. CBO has no basis for determining the cost of an emergency supplemental appropriation for fiscal year 1999. The unclassified portion of the bill would not affect direct spending or receipts; thus, pay-as-you-go procedures would apply.

The Unfunded Mandates Reform Act (UMRA) excludes from application of that act legislative provisions that are necessary for the national security. CBO has determined that the unclassified provisions of this bill either fit within that exclusion or do not contain intergovernmental or private-sector mandates as defined by UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of the unclassified portions of H.R. 1555 is shown in the following table. CBO cannot obtain the necessary information to estimate the costs for the entire bill because parts are classified at a level above clearances held by CBO employees. For the purposes of this estimate, CBO assumes that H.R. 1555 will be enacted by October 1, 1999, and that the authorized amounts will be appropriated for fiscal year 2000.

	By fiscal years, in millions of dollars—					
	1999	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law for Intelligence Community Management:						
Budget Authority .....	102	0	0	0	0	0
Estimated Outlays .....	104	39	9	2	0	0
Proposed Changes:						
Authorization Level .....	0	194	0	0	0	0
Estimated Outlays .....	0	120	58	12	4	0
Spending Under H.R. 1555 for Intelligence Community Management:						
Authorization Level <sup>1</sup> .....	102	194	0	0	0	0
Estimated Outlays .....	104	159	67	14	4	0

<sup>1</sup>The 1999 level is the amount appropriated for that year.

Outlays are estimated according to historical spending patterns. The costs of this legislation fall within budget function 050 (national defense).

The bill would authorize appropriations of \$194 million for the Intelligence Community Management Account, which funds the coordination of programs, budget oversight, and management of the intelligence agencies. In addition, the bill would authorize \$209 million for CIARDS to cover retirement costs attributable to military service and various unfunded liabilities. The payment to CIARDS is considered mandatory, and the authorization under this bill would be the same as assumed in the CBO baseline.

Section 501 of the bill would allow the Director of the National Imagery and Mapping Agency (NIMA), in coordination with the Director of the Central Intelligence Agency (CIA), to exempt certain documents from provisions of the Freedom of Information Act (FOIA). The bill would allow exemptions for files concerning the activities of NIMA that, prior to its creation in 1996, were performed by the National Photographic Interpretation Center (NPIC) within the CIA and that document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems. H.R. 1555 would also require a decennial review under rules and procedures similar to those governing operational files of the CIA.

CBO believes that section could result in discretionary savings from reduced administrative and legal costs that NIMA might otherwise incur to respond to FOIA requests. These potential savings could be partially offset by any future legal costs arising from the limited judicial review that H.R. 1555 would permit. (Judicial review would allow legal challenges of NIMA's decisions to exempt certain files.) H.R. 1555 would also require NIMA to review the exempt status of operational files every 10 years, but CBO believes that the resulting cost would be small, considering the classification reviews that occur under current law. CBO cannot estimate the budgetary impact of section 501 because we have no information about the number of files that this section would affect or the unit cost for NIMA to review them.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: The Unfunded Mandates Reform Act (UMRA) excludes from application of the act legislative provisions that are necessary for the national security.

CBO has determined that the unclassified provisions of this bill either fit within the exclusion or do not contain intergovernmental or private-sector mandates as defined by UMRA.

Estimate prepared by: Federal Costs: Dawn Sauter. Impact on State, Local, and Tribal Governments: Teri Gullo. Impact on the Private Sector: Eric Labs.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### COMMITTEE COST ESTIMATES

The committee agrees with the estimate of the Congressional Budget Office.

#### SPECIFIC CONSTITUTIONAL AUTHORITY FOR CONGRESSIONAL ENACTMENT OF THIS LEGISLATION

The intelligence and intelligence-related activities of the United States government are carried out to support the national security interests of the United States, to support and assist the armed forces of the United States, and to support the President in the execution of the foreign policy of the United States. Article I, section 8, of the Constitution of the United States provides, in pertinent part, that “Congress shall have power \* \* \* to pay the debts and provide for the common defence and general welfare of the United States; \* \* \* “; “to raise and support Armies, \* \* \* “; “to provide and maintain a Navy; \* \* \* “ and “to make all laws which shall be necessary and proper for carrying into execution \* \* \* all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” Therefore, pursuant to such authority, Congress is empowered to enact this legislation.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### **SECTION 21 OF THE CENTRAL INTELLIGENCE AGENCY ACT OF 1949**

##### CENTRAL SERVICES PROGRAM

SEC. 21. (a) \* \* \*

\* \* \* \* \*

(h) TERMINATION.—(1) The authority of the Director to carry out the program under this section shall terminate on March 31, [2000] 2002.

**CHAPTER 22 OF TITLE 10, UNITED STATES CODE**  
**CHAPTER 22—NATIONAL IMAGERY AND MAPPING**  
**AGENCY**

\* \* \* \* \*

SUBCHAPTER I—MISSIONS AND AUTHORITY

Sec.

441. Establishment.

\* \* \* \* \*

446. *Protection of operational files.*

\* \* \* \* \*

**§ 446. *Protection of operational files***

(a) *EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—(1) The Director of the National Imagery and Mapping Agency, with the coordination of the Director of Central Intelligence, may exempt operational files of the National Imagery and Mapping Agency from the provisions of section 552 of title 5 (Freedom of Information Act), which require publication, disclosure, search, or review in connection therewith.*

(2)(A) *Subject to subparagraph (B), for the purposes of this section, the term “operational files” means files of the National Imagery and Mapping Agency (hereinafter in this section referred to as ‘NIMA’) concerning the activities of NIMA that before the establishment of NIMA were performed by the National Photographic Interpretation Center of the Central Intelligence Agency (NPIC), that document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems.*

(B) *Files which are the sole repository of disseminated intelligence are not operational files.*

(3) *Notwithstanding paragraph (1), exempted operational files shall continue to be subject to search and review for information concerning—*

(A) *United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 of title 5, or section 552a of title 5 (Privacy Act of 1974);*

(B) *any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5; or*

(C) *the specific subject matter of an investigation by any of the following for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity:*

(i) *The Permanent Select Committee on Intelligence of the House of Representatives.*

(ii) *The Select Committee on Intelligence of the Senate.*

(iii) *The Intelligence Oversight Board.*

(iv) *The Department of Justice.*

(v) *The Office of General Counsel of NIMA.*

(vi) *The Office of the Director of NIMA.*

(4)(A) *Files that are not exempted under paragraph (1) which contain information derived or disseminated from exempted operational files shall be subject to search and review.*



(B) *The inclusion of information from exempted operational files in files that are not exempted under paragraph (1) shall not affect the exemption under paragraph (1) of the originating operational files from search, review publication, or disclosure.*

(C) *Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under paragraph (1) and which have been returned to exempted operational files for sole retention shall be subject to search and review.*

(5) *The provisions of paragraph (1) may not be superseded except by a provision of law which is enacted after the date of enactment of this section, and which specifically cites and repeals or modifies its provisions.*

(6)(A) *Except as provided in subparagraph (B), whenever any person who has requested agency records under section 552 of title 5, alleges that NIMA has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5.*

(B) *Judicial review shall not be available in the manner provided for under subparagraph (A) as follows:*

(i) *In any case in which information specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by NIMA, such information shall be examined ex parte, in camera by the court.*

(ii) *The court shall, to the fullest extent practicable, determine the issues of fact based on sworn written submissions of the parties.*

(iii) *When a complainant alleges that requested records are improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission based upon personal knowledge or otherwise admissible evidence.*

(iv)(I) *When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, NIMA shall meet its burden under section 552(a)(4)(B) of title 5, by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsible records currently perform the functions set forth in paragraph (2).*

(II) *The court may not order NIMA to review the content of any exempted operational file or files in order to make the demonstration required under subclause (I), unless the complainant disputes NIMA's showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.*

(v) *In proceedings under clauses (iii) and (iv), the parties may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36.*

(vi) *If the court finds under this paragraph that NIMA has improperly withheld requested records because of failure to comply with any provision of this subsection, the court shall order NIMA to search and review the appropriate exempted operational file or files for the requested records and make such*

records, or portions thereof, available in accordance with the provisions of section 552 of title 5, and such order shall be the exclusive remedy for failure to comply with this subsection.

(vii) If at any time following the filing of a complaint pursuant to this paragraph NIMA agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

(viii) Any information filed with, or produced for the court pursuant to clauses (i) and (iv) shall be coordinated with the Director of Central Intelligence prior to submission to the court.

(b) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—(1) Not less than once every ten years, the Director of the National Imagery and Mapping Agency and the Director of Central Intelligence shall review the exemptions in force under subsection (a)(1) to determine whether such exemptions may be removed from the category of exempted files or any portion thereof. The Director of Central Intelligence must approve any determination to remove such exemptions.

(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

(3) A complainant that alleges that NIMA has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court's review shall be limited to determining the following:

(A) Whether NIMA has conducted the review required by paragraph (1) before the expiration of the ten-year period beginning on the date of the enactment of this section or before the expiration of the ten-year period beginning on the date of the most recent review.

(B) Whether NIMA, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.

\* \* \* \* \*

## ADDITIONAL VIEWS OF CHAIRMAN PORTER J. GOSS

Recently, and perhaps for the first time in the committee's history, an Intelligence Community element of the United States Government asserted a claim of attorney-client privilege as a basis for withholding documents from the committee's review. Similarly, various agencies within the Intelligence Community have asserted, with disturbing frequency, a "deliberative process" or "pre-decisional" argument as a basis for attempting to keep requested documents from the committee's scrutiny. These claims are unpersuasive and dubious.

As part of its regular oversight responsibilities and preparatory to the committee's legislative action on this bill, the committee was questioning the National Security Agency's (NSA) application of current operational guidelines in light of the enormous technological advances that have been made in the past several years. The committee was seeking to ensure that the NSA was carrying out its signals intelligence mission in consonance with the law, relevant executive orders, guidelines, and policy directives. At bottom, the committee sought to assure itself that the NSA General Counsel's Office was interpreting NSA's legal authorities correctly and that NSA was not being arbitrary and capricious in its execution of its mission.<sup>1</sup>

If the NSA General Counsel provided too narrow an interpretation of the agency's authorities, it could hamper the collection of significant national security and intelligence information. If, on the other hand, in its effort to provide timely intelligence to the nation's policy makers, the NSA General Counsel construed the Agency's authorities too permissively, then the privacy interests of the citizens of the United States could be at risk. To that end, the committee asked the NSA General Counsel to provide the committee with legal memoranda, opinions rendered, and other documents in the General Counsel's Office that established that the advice it was providing to the NSA's technicians, operators, and management was effective in helping the NSA achieve its mission goals and objectives.

The committee's oral request for some of these documents was met by the NSA General Counsel's claim of a "government attorney-client privilege." The claim was made on behalf of the Director of the NSA, and the NSA, corporately. Shortly thereafter, the com-

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<sup>1</sup>In the 1970s it was learned that the NSA, as well as other elements of the United States intelligence community, engaged in serious abuses of the privacy interests of U.S. persons. The congressional hearings on these and other matters led directly to the establishment of the Senate Select committee on Intelligence; see S. Res. 400, 94th Congress; and the House Permanent Select Committee on Intelligence (HPSCI); see H. Res. 658, 95th Congress. Additionally, as a result of those inquiries, executive orders were issued and guidelines and policy statements were promulgated defining the mission of the NSA and its legal obligations and responsibilities pursuant to the Constitution and other laws of the United States. See *Legislative Oversight of Intelligence Activities: The U.S. Experience*, Senate Select Committee on Intelligence, 103rd Cong., 2d Sess., at 2-6 (Comm. Print)(October 1994).

mittee was again advised by a representative of the NSA—at a budget hearing concerning the NSA’s fiscal year 2000 budget request—that the agency was working on the document request, but that some documents would not be made available because of the operation of the attorney-client privilege.

During additional conversations with employees of the NSA General Counsel’s Office, the Committee reminded the NSA lawyers of the agency’s statutory obligations under section 502 of the National Security Act of 1947, as amended. That statute provides, in pertinent part, that the heads of all Intelligence Community elements are obligated to furnish “any information or material concerning intelligence activities \* \* \* which is requested by either of the intelligence committees in order to carry out its authorization responsibilities.” 50 USC § 413a(2). These admonitions to the NSA about its responsibilities under the law were met by the argument that “common law privileges,” i.e., the attorney-client privilege, survive even mandatory and unambiguous statutory language in the absence of express language to the contrary.

The NSA General Counsel’s Office contended, therefore, that its legal opinions, decisional memoranda, and policy guidance, all of which govern the operations and mechanisms of that federal agency, are free from scrutiny by Congress. This would result in the envelopment of the executive in a cloak of secrecy that would insulate the executive branch from effective oversight. It would also undermine the intent of the 94th and 95th Congresses to establish stringent congressional oversight of the Intelligence Community. This outcome would seriously hobble the legislative oversight process contemplated by the Constitution.

Congress has broad constitutional investigative powers. The Constitution provides that “Each House may determine the Rules of its Proceedings.” U.S. Const., art. I, § 5, cl. 2. Each chamber delegates the authority to rule on objections to the production of documents, such as claims of attorney-client privilege, to its various committees. The rules of judicial procedure are not applicable to congressional inquiries. *United States v. Fort*, 443 F.2d 670, 679–80 (D.C. Cir. 1970). There is no law that forbids a congressional committee from exercising its discretion to reject claims of attorney-client privilege. Long standing precedents grant legislative bodies prerogatives and a level of discretion on such matters not commonly found in adjudicatory bodies.

At common law, for instance, English courts were bound by an assertion of attorney-client privilege; Parliament was not. See *Proceedings Against Ralph Bernstein and Joseph Bernstein* (“Contempt Report”), H.R. Rep. No. 462, 99th Cong., 2d Sess. at 12–13 (1986) (contempt proceedings against Ferdinand Marcos’ lawyers for refusal to disclose to House subcommittee any legal communications had with their client). American commentators have long accepted the English common law custom as the practice established and followed in the Congress and other legislative bodies of the United States. See L. Cushing, *Elements of the Law and Practice of the United States of America*, 390 (1856 ed., reprinted 1971) (“A witness cannot excuse himself from answering \* \* \* because the matter was a privileged communication to him, as where an attorney is called upon to disclose the secrets of his client \* \* \*”).

In fact, Congress has, from time to time, set aside assertions by private lawyers and private witnesses that their legal communications should be shielded from disclosure in a Congressional hearing based on the attorney-client privilege. See *Contempt Report* at 13; *Attorney-Client Privilege: Memoranda Opinions of American Law Division, Library of Congress: Hearings before Subcomm. on Oversight and Investigations of the House Comm. on Energy and Commerce* (“Attorney-Client Privilege Memorandum Opinions”), 98th Cong., 1st Sess. (Committee Print)(1983); *Health Care Fraud/Medicare Secondary Payer Program: Hearing Before the Permanent Subcomm. on Investigations of the Senate Comm. On Governmental Affairs* (“Health Care Fraud Hearings”), 101st Cong., 2d Sess., at 1–11 (1990), *aff’d sub nom.*, *In the Matter of Provident Life and Accident Insurance Co.*, CIV–1–90–219 (E.D. Tenn. June 13, 1990); *Attorney-Client Privilege and the Right of Congressional Access to Documents for Oversight Purposes in the Case of the Supervision of the Telephone Loan Program by the U.S. Department of Agriculture: Subcomm. on Conservation, Credit, and Rural Development of the House Committee on Agriculture* (“Congressional Access Report”), 102d Cong., 1st Sess., (Committee Print)(1991).

Furthermore, there is no clear principle in our jurisprudence that a “government attorney-client privilege” has as broad a scope as its non-governmental counterpart. In fact, the opinion rendered by the U.S. Court of Appeals for the 8th Circuit established the converse principle. See *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910 (8th Cir. 1997), *cert. denied sub nom. Office of the President v. Office of the Independent Counsel*, 117 S. Ct. 2482 (1997). See also *In re Bruce R. Lindsey (Grand Jury Testimony)*, 148 F.3d 1100 (D.C. Cir. 1998). Moreover, memoranda and other documents that form the basis of working law within an agency must be made available to Congress when requested. See *Afshar v. Department of State*, 702 F.2d 1125, 1139, 1141 (D.C. Cir. 1983); *Schlefer v. United States*, 702 F.2d 277 (D.C. Cir. 1983); *Briston v. Department of State*, 636 F.2d 600, 605 (D.C. Cir. 1980); *Bristol-Myers Co. v. Federal Trade Commission*; 598 F.2d 18, 24 (D.C. Cir. 1978); *Jordan v. Department of Justice*, 591 F.2d 753, 774 (D.C. Cir. 1978) (en banc).

The documents for which the claim was asserted are presumably key interpretive memoranda and opinions utilized by agency officers to carry out their governmental duties in conformity with the law. The committee’s constitutional and statutory authority to conduct oversight of the Intelligence Community provides a compelling rationale for the rejection of any claim that the government attorney-client privilege protects any documents within the possession of an intelligence community entity from disclosure to this committee. See U.S. Const., art I, §5, cl. 2; 50 U.S.C. §413a(2). The fact that the privilege was asserted by government lawyers, on behalf of other government officials, vitiates the availability of the asserted privilege.

The efforts of NSA, described above, and any other similar effort by Intelligence Community elements, to shield its own interpretations of their agency’s legal obligations and decisional memoranda from congressional review must be rejected. Former Attorney Gen-

eral Cushing once aptly described the realities of our system of governance. He stated:

[T]he relation of the departments to Congress is one of the great elements of responsibility and legality in their own action. They are created by law; most of their duties are prescribed by law; *Congress may at all times call on them for information or explanations in matters of official duty*; and it may, if it sees fit, interpose by legislation concerning them, when required by the interests of the Government.—“Office and Duties of Attorney General,” 6 Opinion of the Attorney General 326, 334 (1854)(emphasis added).

This is a concise statement of our governmental scheme. The executive interprets and carries out the laws enacted by Congress. Therefore, to the extent that an agency’s documents serve as interpretive guidance, or as research tools for agency personnel, such documents constitute a body of working law within that agency. See *Taxation With Representation v. Internal Revenue Service*, 646 F.2d 666, 682 (D.C. Cir. 1981). As such, they cannot be withheld from the committee. See *Afshar*, 702 F.2d at 1139, 1141; *Schlefer*, 702 F.2d 277; *Briston*, 636 F.2d at 605; *Bristol-Myers Co.*, 598 F.2d at 24; *Jordan*, 591 F.2d at 774. The committee ought, then, have access to these legal interpretations to ensure proper execution of the laws by the agencies within their legislative jurisdiction.

Additionally, hornbook law makes it plain that attorney-client privilege cannot work to preclude examination of legal opinions or files within a corporate entity by its overseers. In the context of private corporations, the board of directors is entitled to review all legal notes, files, opinions, and memoranda produced as a result of legal discussions between the chief executive officers and the corporation’s lawyers. In our system of government, by analogy, the legislative branch can be viewed as a board of directors with oversight authority of the executive, which is responsible for its actions to the board. Despite the separation of executive and legislative powers under the Constitution, the two political branches are without doubt integral parts of the same corporate entity: the federal government of the United States of America. See *The Attorney General’s Refusal To Provide Congressional Access to “Privileged” Inslaw Documents: Hearing Before the Subcomm. on Economic and Commercial Law of the House Comm. on the Judiciary (“Inslaw Hearings”)*, 101st Cong. 2d Sess., at 103–04 (1990)(citing written testimony of General Counsel to the Clerk of the House).

The lawyers within the Office of the NSA General Counsel, indeed, the General Counsel himself, are paid their wages and expenses from the public fisc. These funds are collected from the people of the United States and authorized and appropriated by the Congress for the conduct of government business in the public interest. It is elementary, therefore, that legal advice and counsel provided by federal government attorneys to federal government officers are subject to oversight and scrutiny by the Congress. See *Contempt Report, supra*; *Attorney-Client Privilege: Memorandum Opinion, supra*; *Health Care Fraud Hearings, supra*; *Inslaw Hearings, supra*; *Congressional Access Report, supra*.

Underlying this legal foundation is sound public policy, especially in the context of Intelligence Community oversight. Congress clearly has manifested its intent to provide for open government. When concerning itself with matters of national security and the protection of sources and methods, however, Congress has acknowledged a need for secrecy and the protection of sensitive information from public disclosure in order to keep the information from our nation's enemies. Accordingly, the intelligence committees have been given a statutory obligation and a fiduciary duty to conduct oversight of the United States Government elements that must necessarily and understandably carry out their official duties in secret. This acknowledgment compels the committee to exercise its discretion and reject completely the notion that a government attorney-client privilege can allow an Intelligence Community element to withhold information requested by the committee.

Similarly, any effort by Intelligence Community elements to advance a so-called "pre-decisional" or "deliberative process" privilege as a basis for withholding requested information from congressional oversight ought to be rejected. Any assertion that a document will not be provided to the committee because it may be an "internal" agency document, or otherwise "uncoordinated" is unacceptable. When an agency offers these explanations for its refusal to produce documents requested by Congress, it is improperly putting Congress in the category of a "citizen requester" under the Freedom of Information Act (FOIA) and trying to extend Exemption 5 of that Act to Congress. *See* 5 U.S.C. § 552.

Exemption 5 of FOIA permits withholding of information from requesters on the basis that the documents do not indicate a final disposition. Exemption 5 allows withholding from requesters if documents are preliminarily and deliberative in nature. It also permits withholding from requests under the Act if such documents would disclose privileged communications, such as between an attorney and his client. In the FOIA, itself, however, Congress specifically provided that Exemption 5 "is not authority to withhold information from Congress." 5 U.S.C. § 552(d). The case of *Murphy v. Department of the Army*, 612 F.2d 1151 (D.C. Cir. 1979), is illustrative of this point.

In *Murphy*, the court permitted the government department to withhold a memorandum produced by the department's General Counsel's Office from a citizen FOIA requester as pre-decisional and also likely covered by the attorney-client privilege. Despite the fact that the memorandum at issue in the *Murphy* case was exempt under the FOIA, the document was made available to Congressman Carl D. Perkins. The plaintiff cited the disclosure of the document to the Congressman as proof that the exemption should not apply in his case. The court rejected this argument, however, noting that the FOIA exemptions provided no basis for withholding information from Congress because of:

\* \* \* the obvious purpose of the Congress to carve out for itself a special right of access to privileged information not shared by others \* \* \*. Congress, whether as a body, through committees, or otherwise, must have the widest possible access to executive branch information, if it is to perform its manifold responsibilities effectively. If one con-

sequence of the facilitation of such access is that some information will be disclosed to congressional authorities but not to private persons, that is but an incidental consequence of the need for informed and effective lawmakers.—*Id.* at 1155–56, 1158.

Congressional authority to investigate is concomitant with its authority to legislate. It is necessary, then, to have unfettered access to executive branch information in order to be able to make sound legislative judgments. It is exactly the “uncoordinated,” “deliberative,” “internal,” and “pre-decisional” documents of an agency that Congress needs in most cases. These documents can provide unique insights into the full spectrum of thought on any given issue pending before an agency and Congress. Without access to such documents, Congress would be left only with the “spin” the executive branch agency opted to provide to the legislative branch. This result, without question, would only serve to undermine the legitimate authority of Congress to conduct independent oversight. Therefore, I would expect the committee to reject all efforts to extend the FOIA Exemption 5 to congressional requests for information.

PORTER J. GOSS.

