

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR
2011

MAY 3, 2011.—Committed to the Committee of the Whole House on the State of the
Union and ordered to be printed

Mr. ROGERS of Michigan, from the Select Committee on Intelligence
(Permanent Select), submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 754]

[Including cost estimate of the Congressional Budget Office]

The Select Committee on Intelligence (Permanent Select), to whom was referred the bill (H.R. 754) to authorize appropriations for fiscal year 2011 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.

The amendment is as follows:

Strike all after the enacting clause and insert 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 2011”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—BUDGET AND PERSONNEL AUTHORIZATIONS

Sec. 101. Authorization of appropriations.

Sec. 102. Classified Schedule of Authorizations.

Sec. 103. Intelligence Community Management Account.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Sec. 201. Authorization of appropriations.

TITLE III—GENERAL INTELLIGENCE COMMUNITY MATTERS

- Sec. 301. Restriction on conduct of intelligence activities.
 Sec. 302. Increase in employee compensation and benefits authorized by law.
 Sec. 303. Non-reimbursable detail of other personnel.

TITLE IV—MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE COMMUNITY

Subtitle A—Office of the Director of National Intelligence

- Sec. 401. Schedule and requirements for the National Counterintelligence Strategy.
 Sec. 402. Insider threat detection program.

Subtitle B—Other Elements

- Sec. 411. Defense Intelligence Agency counterintelligence and expenditures.
 Sec. 412. Accounts and transfer authority for appropriations and other amounts for the intelligence elements of the Department of Defense.

SEC. 2. DEFINITIONS.

In this Act:

- (1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term “congressional intelligence committees” means—
 (A) the Select Committee on Intelligence of the Senate; and
 (B) the Permanent Select Committee on Intelligence of the House of Representatives.
 (2) INTELLIGENCE COMMUNITY.—The term “intelligence community” has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

TITLE I—BUDGET AND PERSONNEL AUTHORIZATIONS

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2011 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

- (1) The Office of the Director of National Intelligence.
- (2) The Central Intelligence Agency.
- (3) The Department of Defense.
- (4) The Defense Intelligence Agency.
- (5) The National Security Agency.
- (6) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
- (7) The Coast Guard.
- (8) The Department of State.
- (9) The Department of the Treasury.
- (10) The Department of Energy.
- (11) The Department of Justice.
- (12) The Federal Bureau of Investigation.
- (13) The Drug Enforcement Administration.
- (14) The National Reconnaissance Office.
- (15) The National Geospatial-Intelligence Agency.
- (16) The Department of Homeland Security.

SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL LEVELS.—The amounts authorized to be appropriated under section 101 and the authorized personnel levels (expressed as full-time equivalent positions) as of September 30, 2011, for the conduct of the intelligence activities of the elements listed in paragraphs (1) through (16) of section 101, are those specified in the classified Schedule of Authorizations prepared to accompany the bill H.R. 754 of the One Hundred Twelfth Congress.

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.—The classified Schedule of Authorizations referred to in subsection (a) shall be made available to the Committee on Appropriations of the Senate, the Committee on Appropriations of the 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. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Intelligence Community Management Account of the Director of National Intelligence for fiscal year 2011 the sum of \$660,732,000. Within such amount, funds identified in the classified Schedule of Authorizations referred to in section 102(a)

for advanced research and development shall remain available until September 30, 2012.

(b) **AUTHORIZED PERSONNEL LEVELS.**—The elements within the Intelligence Community Management Account of the Director of National Intelligence are authorized 787 full-time equivalent personnel as of September 30, 2011. Personnel serving in such elements may be permanent employees of the Office of the Director of National Intelligence 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 Intelligence Community Management Account by subsection (a), there are authorized to be appropriated for the Community Management Account for fiscal year 2011 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts made available for advanced research and development shall remain available until September 30, 2012.

(2) **AUTHORIZATION OF PERSONNEL.**—In addition to the personnel authorized by subsection (b) for elements of the Intelligence Community Management Account as of September 30, 2011, there are authorized such full-time equivalent personnel for the Community Management Account as of that date as are specified in the classified Schedule of Authorizations referred to in section 102(a).

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 2011 the sum of \$292,000,000.

TITLE III—GENERAL INTELLIGENCE COMMUNITY MATTERS

SEC. 301. 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. 302. 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. 303. NON-REIMBURSABLE DETAIL OF OTHER PERSONNEL.

(a) **IN GENERAL.**—Section 113A of the National Security Act of 1947 (50 U.S.C. 404h–1) is amended to read as follows:

“NON-REIMBURSABLE DETAIL OF OTHER PERSONNEL

“SEC. 113A. An officer or employee of the United States or member of the Armed Forces may be detailed to the staff of an element of the intelligence community funded through the National Intelligence Program from another element of the intelligence community or from another element of the United States Government on a non-reimbursable basis, as jointly agreed to by the heads of the receiving and detailing elements, for a period not to exceed two years. This section does not limit any other source of authority for reimbursable or non-reimbursable details.”

(b) **TABLE OF CONTENTS AMENDMENT.**—The table of contents in the first section of such Act is amended by striking the item relating to section 113A and inserting the following:

“Sec. 113A. Non-reimbursable detail of other personnel.”

TITLE IV—MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE COMMUNITY

Subtitle A—Office of the Director of National Intelligence

SEC. 401. SCHEDULE AND REQUIREMENTS FOR THE NATIONAL COUNTERINTELLIGENCE STRATEGY.

Section 904(d)(2) of the Counterintelligence Enhancement Act of 2002 (50 U.S.C. 402c(d)(2)) is amended—

- (1) by striking “Subject” and inserting the following:

“(A) REQUIREMENT TO PRODUCE.—Subject”;
- (2) by striking “on an annual basis”; and
- (3) by adding at the end the following:

“(B) REVISION AND REQUIREMENT.—The National Counterintelligence Strategy shall be revised or updated at least once every three years and shall be aligned with the strategy and policies of the Director of National Intelligence.”.

SEC. 402. INSIDER THREAT DETECTION PROGRAM.

(a) INITIAL OPERATING CAPABILITY.—Not later than October 1, 2012, the Director of National Intelligence shall establish an initial operating capability for an effective automated insider threat detection program for the information resources in each element of the intelligence community in order to detect unauthorized access to, or use or transmission of, classified intelligence.

(b) FULL OPERATING CAPABILITY.—Not later than October 1, 2013, the Director of National Intelligence shall ensure the program described in subsection (a) has reached full operating capability.

(c) REPORT.—Not later than December 1, 2011, the Director of National Intelligence shall submit to the congressional intelligence committees a report on the resources required to implement the insider threat detection program referred to in subsection (a) and any other issues related to such implementation the Director considers appropriate to include in the report.

(d) INFORMATION RESOURCES DEFINED.—In this section, the term “information resources” means networks, systems, workstations, servers, routers, applications, databases, websites, online collaboration environments, and any other information resources in an element of the intelligence community designated by the Director of National Intelligence.

Subtitle B—Other Elements

SEC. 411. DEFENSE INTELLIGENCE AGENCY COUNTERINTELLIGENCE AND EXPENDITURES.

Section 105 of the National Security Act of 1947 (50 U.S.C. 403–5) is amended—

- (1) in subsection (b)(5), by inserting “and counterintelligence” after “human intelligence”;
- (2) by redesignating subsection (c) as subsection (d); and
- (3) by inserting after subsection (b) the following:

“(c) EXPENDITURE OF FUNDS BY THE DEFENSE INTELLIGENCE AGENCY.—(1) Subject to paragraphs (2) and (3), the Director of the Defense Intelligence Agency may expend amounts made available to the Director for human intelligence and counterintelligence activities for objects of a confidential, extraordinary, or emergency nature, without regard to the provisions of law or regulation relating to the expenditure of Government funds.

“(2) The Director of the Defense Intelligence Agency may not expend more than five percent of the amounts made available to the Director for human intelligence and counterintelligence activities for a fiscal year for objects of a confidential, extraordinary, or emergency nature in accordance with paragraph (1) during such fiscal year unless—

“(A) the Director notifies the congressional intelligence committees of the intent to expend the amounts; and

“(B) 30 days have elapsed from the date on which the Director notifies the congressional intelligence committees in accordance with subparagraph (A).

“(3) For each expenditure referred to in paragraph (1), the Director shall certify that such expenditure was made for an object of a confidential, extraordinary, or emergency nature.

“(4) Not later than December 31 of each year, the Director of the Defense Intelligence Agency shall submit to the congressional intelligence committees a report on any expenditures made during the preceding fiscal year in accordance with paragraph (1).”

SEC. 412. ACCOUNTS AND TRANSFER AUTHORITY FOR APPROPRIATIONS AND OTHER AMOUNTS FOR THE INTELLIGENCE ELEMENTS OF THE DEPARTMENT OF DEFENSE.

(a) IN GENERAL.—Chapter 21 of title 10, United States Code, is amended by inserting after section 428 the following new section:

“§ 429. Appropriations for defense intelligence elements: accounts for transfer; transfer

“(a) ACCOUNTS FOR APPROPRIATIONS FOR DEFENSE INTELLIGENCE ELEMENTS.—The Secretary of the Treasury shall establish one or more accounts for the receipt of appropriations and other amounts transferred pursuant to subsection (b).

“(b) TRANSFERS AUTHORIZED.—(1) There may be transferred to an account established pursuant to subsection (a) the following:

“(A) Appropriations transferred by the Secretary of Defense from appropriations of the Department of Defense available for intelligence, intelligence-related activities, and intelligence-related communications.

“(B) Appropriations and other amounts transferred by the Director of National Intelligence from appropriations and other amounts available for the defense intelligence elements.

“(C) Amounts and reimbursements in connection with transactions authorized by law between the defense intelligence elements and other entities.

“(2) The transfer authority of the Secretary of Defense under paragraph (1)(A) is in addition to any other transfer authority available to the Secretary by law.

“(c) AVAILABILITY OF APPROPRIATIONS AND AMOUNTS TRANSFERRED.—(1) Appropriations transferred pursuant to subsection (b) shall remain available for the same time period, and shall be available for the same purposes, as the appropriations from which transferred.

“(2) Appropriation balances in an account established pursuant to subsection (a) may be transferred back to the account or accounts from which such balances originated as an appropriation refund.

“(d) DEFENSE INTELLIGENCE ELEMENTS DEFINED.—In this section, the term ‘defense intelligence elements’ means the agencies, offices, and elements of the Department of Defense that are included within the elements of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter I of chapter 21 of such title is amended by inserting after the item relating to section 428 the following new item:

“429. Appropriations for defense intelligence elements: accounts for transfer; transfer.”

PURPOSE

The purpose of H.R. 754 is to authorize the intelligence and intelligence-related activities of the United States Government for Fiscal Year 2011 in order to enhance the national security 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. The bill also clarifies certain Intelligence Community authorities.

CLASSIFIED ANNEX AND COMMITTEE INTENT

The classified annex to this report includes the classified Schedule of Authorizations and its associated explanatory language. The Committee views the classified annex as an integral part of this legislation. The classified annex contains a thorough discussion of the issues considered by the Committee underlying the funding authorizations found in the classified Schedule of Authorizations. The Committee intends that all intelligence programs discussed in the classified annex to this report be conducted in accordance with the guidance and limitations set forth as associated language therein.

The classified Schedule of Authorizations 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 XXIII of the Rules of the House of Representatives, and rule 14 of the Rules of Procedure for the House Permanent Select Committee on Intelligence.

SCOPE OF COMMITTEE REVIEW

The bill authorizes U.S. intelligence and intelligence-related activities within the jurisdiction of the Committee, including the National Intelligence Program (NIP), and the Military Intelligence Program (MIP). The NIP consists of all activities of the Office of the Director of National Intelligence, as well as those national foreign intelligence, intelligence-related, and/or counterintelligence activities conducted by: (1) the Central Intelligence Agency; (2) the Department of Defense; (3) the Defense Intelligence Agency; (4) the National Security Agency; (5) the National Reconnaissance Office; (6) the National Geospatial-Intelligence Agency; (7) the Departments of the Army, Navy, and Air Force; (8) the Department of State; (9) the Department of the Treasury; (10) the Department of Energy; (11) the Department of Justice; (12) the Federal Bureau of Investigation; (13) the U.S. Coast Guard; (14) the Department of Homeland Security; and (15) the Drug Enforcement Administration. The Committee has exclusive legislative, authorizing and oversight jurisdiction of these programs.

COMMITTEE STATEMENT AND VIEWS

The U.S. Intelligence Community plays a vital role in the war on terrorism and securing the country from the many threats we face. Later this year, we will mark the 10th anniversary of the attacks of September 11, 2001, and the hard work of our intelligence professionals is one of the primary reasons there has not been a successful major attack on the homeland since 9/11 despite numerous failed and disrupted plots and al Qaeda's unrelenting efforts to attack us. Ten years later, America has made tremendous progress against certain threats and yet we have become increasingly aware of newly evolving threats. While we have made significant progress against al-Qaeda, the threat remains and continues to evolve. Today we also face an increasing threat of smaller scale attacks from self-radicalized jihadists such as Khalid Aldawsari, Farouk Abdulmutallab and Maj. Nidal Hassan. We also are faced with even heavier demands on national security resources heightened by instability in the Middle East.

As the role of technology continues to grow, the cyber threat from state and non-state actors grows at an even faster rate. This threat is complex and real and growing by the day. Incidents like the unauthorized disclosure of classified information by Wikileaks also show us that despite the tremendous progress made since 9/11 in information sharing, we still need to have systems in place that can detect unauthorized activities by those who would do our country harm from the inside.

The foregoing are just a few examples of the increasing and evolving threats we face as a nation and the importance of an effec-

tive, efficient Intelligence Community. It is this Committee's primary function to conduct oversight of and provide the tools needed to the Intelligence Community so that they may do their job in rooting out these threats and providing real time information to decisionmakers. The challenges for the Committee are particularly heightened at a time when careful scrutiny must be given to every element of federal spending.

The Committee's work is given its greatest force in each year's annual Intelligence Authorization bill. However, Congress and the President have not enacted a complete bill—including detailed spending guidance for our intelligence programs in a classified annex—in six years. The Intelligence Authorization Act for Fiscal Year 2010 was not enacted until after that Fiscal Year was over and did not contain a classified annex. Instead, for the past several years language in appropriations bills has “deemed” intelligence funding to be authorized despite several express requirements that intelligence funding be explicitly authorized by legislation. This band-aid language was not the careful oversight that was intended and bypasses the authorization committees.

The intelligence authorization bill authorizes and sets specific funding levels for all U.S. intelligence and intelligence-related activities, spanning 16 separate agencies. It provides authorization for critical national security functions, including clandestine operatives and their activities worldwide, tactical intelligence support to combat units in Afghanistan and Iraq, electronic surveillance and cyber defense activities, global monitoring of foreign militaries, weapons tests, and arms control treaties, real-time analysis and reporting on political and economic events, such as the tsunami in Japan and events in Egypt, and research and technology to maintain the country's technological edge.

It is critically important that the Fiscal Year 2011 bill moves forward, and does so quickly. For too many years we have simply postponed the intelligence authorization bill to the next fiscal year only to have it bogged down in political infighting and turf battles. While passing an FY 2011 bill is critical to restoring this Committee's relevance in the community, it is more critical that the bill is passed to make sure our intelligence agencies have the resources and the capabilities they need for their important mission.

The comprehensive, classified annex to this bill provides detailed guidance on intelligence spending and will provide greater accountability for the increased intelligence spending that has gone on since 9/11. In addition, the bill takes important steps to help the Intelligence Community face the same financial standards as the rest of the government for accounting, as well as to analyze whether responsible savings can be accomplished in some areas without endangering national security.

The expertise of the intelligence authorization committees will be vital to ensuring that we carefully choose the budget efficiencies required to maintain a relatively flat budget profile in the coming years without endangering our key intelligence capabilities. Returning to the regular order of passing an annual intelligence authorization bill is vital to achieving this.

It has been and remains a priority of the Committee to rebuild a strong bipartisan consensus around intelligence matters. In January, the Chairman asked for the help of every member of the

Committee to get this job done. With this cooperative premise, the Committee began a process intended to complete an FY 2011 bill as quickly as possible in a bipartisan manner.

In light of this commitment and the numerous bipartisan sessions held to review and consider this bill, it is particularly disappointing that the Minority Members now claim that the bill was sprung upon them the morning of the markup without a chance to read it. In addition to the countless staff hours logged in budget briefings with the Administration during the 111th Congress, the Committee under the leadership of Chairman Reyes already had held more than ten full committee events on the FY 2011 budget request, organized and conducted by the current minority when they were in the majority.

Recognizing that there are Members who are new to the Committee in the 112th Congress, the Chairman scheduled at least five opportunities for Committee Members to be briefed by staff in detail on the proposed FY 2011 bill and to answer questions about the Administration's request for FY 2011. Minority members participated in these sessions and were fully engaged on the issues, as were minority Committee staff. The process has been open, forthright, and included input from members on both sides of the aisle.

The current minority failed to draft or even consider an intelligence authorization bill for FY 2011 prior to the start of FY 2011, presumably because it could not enact its FY 2010 bill (but not the classified schedule of budget authorizations) until after the end of FY 2010. The minority thus complains about a situation that is the result of their own inaction. The minority also asserts that passing a bill six months into the fiscal year "will have little impact," when they committed countless hours of the Committee's time and resources to the FY 2010 bill up to and after the end of the previous fiscal year. The minority's criticisms thus smack of political gamesmanship and mere rhetoric, especially since their complaints are most appropriately directed at themselves.

Nonetheless, we remain hopeful that the bill can proceed in a bipartisan manner and look forward to immediately forging ahead on the FY 2012 intelligence authorization bill in the same manner.

COMMITTEE CONSIDERATION AND ROLLCALL VOTES

On March 10, 2011, the Committee met in open and closed session and ordered the bill H.R. 754 favorably reported, as amended.

OPEN SESSION

In open session, the Committee considered the text of the bill H.R. 754.

Chairman Rogers offered an amendment in the nature of a substitute to H.R. 754. The contents of the amendment in the nature of a substitute are described in the Section-by-Section analysis and the Explanation of Amendment. No amendments were offered to the amendment in the nature of a substitute, and the amendment in the nature of a substitute was agreed to by voice vote.

CLOSED SESSION

Mr. Ruppertsberger then moved to close the meeting because national security would be endangered if the matters to be considered

were disclosed. The motion was agreed to by a record vote of 13 ayes to 0 noes:

Voting aye: Mr. Rogers (Chairman), Mr. Thornberry, Mrs. Myrick, Mr. Miller, Mr. Conaway, Mr. LoBiondo, Mr. Nunes, Mr. Ruppertsberger, Mr. Thompson, Ms. Schakowsky, Mr. Langevin, Mr. Gutierrez, Mr. Chandler.

Voting no: none.

After debate, no amendments were offered to the classified Schedule of Authorizations. The Committee then adopted the classified Schedule of Authorizations by voice vote.

OPEN SESSION

By unanimous consent, the Committee returned to open session.

The Committee then adopted a motion by the Chairman to favorably report the bill H.R. 754 to the House, as amended. The motion was agreed to by a record vote of 7 ayes to 6 noes, with 1 member voting present:

Voting aye: Mr. Rogers (Chairman), Mr. Thornberry, Mr. Conaway, Mr. LoBiondo, Mr. Nunes, Mr. Westmoreland, Mrs. Bachmann.

Voting no: Mr. Ruppertsberger, Ms. Schakowsky, Mr. Langevin, Mr. Schiff, Mr. Boren, Mr. Chandler.

Voting present: Mr. Thompson.

SECTION-BY-SECTION ANALYSIS AND EXPLANATION OF THE AMENDMENT

Section 1—Short title and table of contents

Section 1 contains the short title for the bill and the Table of Contents.

TITLE I—BUDGET AND PERSONNEL AUTHORIZATIONS

Section 101—Authorization of appropriations

Section 101 of the bill authorizes appropriations for the intelligence and intelligence-related activities of these elements of the United States Government: The Office of the Director of National Intelligence (including the National Counterterrorism Center), the Central Intelligence Agency, the Department of Defense, the Defense Intelligence Agency, the National Security Agency, the Departments of the Army, Navy and Air Force, the Coast Guard, the Department of State, the Department of the Treasury, the Department of Energy, the Department of Justice, the Federal Bureau of Investigation, the Drug Enforcement Administration, the National Reconnaissance Office, the National Geospatial Intelligence Agency, and the Department of Homeland Security.

Section 102—Classified Schedule of Authorizations

Section 102 provides that the amounts and personnel ceilings authorized under Section 101 shall be specified in the accompanying classified Schedule of Authorizations, which shall be made available to the Committee on Appropriations and to the President.

Section 103—Intelligence Community Management Account

Section 103 authorizes appropriations for the Intelligence Community Management Account (ICMA) of the DNI and sets the authorized full-time equivalent personnel levels for the elements within the ICMA for Fiscal Year 2011.

Section 103 also authorizes additional classified appropriations and personnel levels for the Community Management Account as specified in the classified Schedule of Authorizations and permits the funding for advanced research and development to remain available through September 30, 2012.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT
AND DISABILITY SYSTEM

Section 201—Authorization of appropriations

Section 201 authorizes \$292,000,000 for the Central Intelligence Agency Retirement and Disability System (CIARDS).

TITLE III—GENERAL INTELLIGENCE COMMUNITY MATTERS

Section 301—Restriction on conduct of intelligence activities

Section 301 provides that the authorization of funds in this act does not constitute authority for the conduct of any intelligence activity not otherwise authorized by the Constitution or laws of the United States.

Section 302—Increase in employee compensation and benefits authorized by law

Section 302 provides that the authorized amounts may be increased by such additional or supplemental amounts as may be necessary for increases in compensation or benefits authorized by law.

Section 303—Non-reimbursable detail of other personnel

Section 303 revises Section 113A of the National Security Act of 1947 (which was amended by Section 302 of the Intelligence Authorization Act of Fiscal Year 2010, Pub. L. No. 111–259) to clarify that it only applies to non-reimbursable details and that it does not limit any other source of authority for reimbursable or non-reimbursable details. Section 113A was intended to extend the period of time an employee could be detailed on a non-reimbursable detail from one year to two years. This section would clarify the language in 113A, which may have been interpreted to constrain other statutory provisions that authorize reimbursable or non-reimbursable details longer than two years.

TITLE IV—MATTERS RELATING TO ELEMENTS OF THE
INTELLIGENCE COMMUNITY

Section 401—Schedule and requirements for the National Counterintelligence Strategy

Section 401 amends the Counterintelligence Enhancement Act of 2002 to require the National Counterintelligence Strategy be aligned with the policies and strategy of the DNI. It also requires

the Strategy to be revised or updated once every three years instead of annually.

Section 402—Insider threat detection program

Section 402 requires the DNI to establish an initial operating capability for an effective automated insider threat detection program for the IC in order to detect unauthorized access to or use or transmission of classified intelligence by October 1, 2012 and a fully operational program by October 1, 2013. It also requires a report from the DNI by December 1, 2011 on the resources required to implement the program.

Section 411—Defense Intelligence Agency counterintelligence and expenditures

Section 411 amends Section 105 of the National Security Act of 1947, on the responsibilities of Intelligence Community elements in the Department of Defense, to clarify that the responsibilities of the DIA include counterintelligence as well as human intelligence activities.

Section 411 also provides the Director of the Defense Intelligence Agency (DIA) with the authority to expend funds for objects of a confidential, extraordinary, or emergency nature. This authority is limited to no more than five percent of the amounts available to the Director of DIA for human intelligence and counterintelligence activities unless the Director notifies the congressional intelligence committees thirty days in advance. It also requires an annual report on expenditures made under this authority.

Section 412—Accounts and transfer authority for appropriations and other amounts for the intelligence elements of the Department of Defense

Section 412 authorizes the Secretary of Defense to transfer defense appropriations into an account or accounts created for receipt of such funds. These accounts may receive transfers and reimbursement from transactions between the defense intelligence elements and other entities, and the Director of National Intelligence may also transfer funds into these accounts. Appropriations transferred pursuant to this section shall remain available for the same time period, and for the same purposes, as the appropriations from which transferred.

This provision is intended to grant authority to the Secretary of Defense to transfer appropriations available for intelligence and intelligence-related activities (including those related to any communications-related activity conducted by an element of the intelligence community) to designated accounts to help the Intelligence Community reach and maintain an auditable status. This provision would ensure that all funds appropriated to agencies funded through the National Intelligence Program could be more readily accounted for and auditable.

OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing on the classified budgetary issues raised by H.R. 754 on February 17, 2011, in addition to multiple hearings held on the President's budg-

et request in the 111th Congress. The bill, as reported by the Committee, reflects conclusions reached by the Committee in light of this oversight activity.

GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c) of House rule XIII, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement of whether the provisions of the reported bill include unfunded mandates. In compliance with this requirement, the Committee has received a letter from the Congressional Budget Office included herein.

STATEMENT ON CONGRESSIONAL EARMARKS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee states that the bill as reported contains no congressional earmarks, limited tax benefits, or limited tariff benefits.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 754 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 1, 2011.

Hon. MIKE ROGERS,
*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. 754, the Intelligence Authorization Act for Fiscal Year 2011.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 754—Intelligence Authorization Act for Fiscal Year 2011

Summary: H.R. 754 would authorize appropriations for fiscal year 2011 for intelligence activities of the U.S. government, for the Intelligence Community Management Account (ICMA), and for the

Central Intelligence Agency Retirement and Disability System (CIARDS).

Since CBO does not provide estimates for classified programs, this estimate addresses only the unclassified portions of the bill. In addition, CBO cannot provide estimates for certain provisions in the unclassified portion of the bill because they concern classified intelligence programs. On that limited basis, and assuming appropriation of the authorized amounts, CBO estimates that spending under H.R. 754 would total \$654 million from funding authorized for fiscal year 2011. That total would be \$47 million lower than spending from the annualized amounts currently available for 2011.

Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

H.R. 754 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 754 is shown in the following table. The costs of this legislation fall within budget function 050 (national defense).

	By fiscal year, in millions of dollars—						2011–2016
	2011	2012	2013	2014	2015	2016	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ^a							
Intelligence Community Management Account Spending Under Current Law:							
Estimated Budget Authority	708	0	0	0	0	0	708
Estimated Outlays	460	163	57	14	7	0	701
Proposed Changes:							
Authorization Level	–47	0	0	0	0	0	–47
Estimated Outlays	–31	–11	–4	–1	0	0	–47
Spending Under H.R. 754:							
Authorization Level	661	0	0	0	0	0	661
Estimated Outlays	429	152	53	13	7	0	654

^a Under Public Law 112–6, Additional Continuing Appropriations Amendments, 2011, funding is provided through April 8, 2011, for the Intelligence Community Management Account. On an annualized basis, funding would total \$708 million.

Basis of estimate:

Spending subject to appropriation

For this estimate CBO assumes that the legislation will be enacted in the next few months and the authorized amount will be appropriated shortly thereafter.

Section 103 would authorize the appropriation of \$661 million for the ICMA, which provides the principal source of funding for the Office of the Director of National Intelligence and resources for coordinating programs, overseeing budgets, and managing the intelligence agencies. Under Public Law 112–6, Additional Continuing Appropriations Amendments, 2011, funding is provided for the ICMA through April 8, 2011. At the rate provided under that law, funding for the ICMA, on an annualized basis, would total \$708 million in 2011. Since the amount that would be authorized by H.R. 754 is \$47 million lower than that amount, CBO estimates that, assuming appropriation of the authorized amount, implementing this provision would result in spending over the 2011–

2016 period totaling \$654 million (\$47 million less than the annualized amounts currently available).

Section 402 would require that not later than October 1, 2012, the Director of National Intelligence establish in each element of the intelligence community an initial operating capability for an automated program that would detect the unauthorized access, use, or transmission of classified intelligence by members of the intelligence community. The provision would further require that the system be fully operable by October 1, 2013. CBO notes that the costs to achieve those goals in the time allotted by the bill might be significant; however, because of the classified nature of this program, CBO cannot provide an estimate of those costs.

Direct spending

Section 201 would authorize the appropriation of \$292 million to the Central Intelligence Agency Retirement and Disability System. CIARDS is a retirement and disability system for certain employees of the Central Intelligence Agency, and the appropriation covers various unfunded liabilities of the system. The appropriation to CIARDS is considered mandatory and the authorization under this bill would be the same as the amount under the CBO baseline. Thus, this estimate does not ascribe any additional cost to that provision.

Pay-As-You-Go considerations: None.

Intergovernmental and private-sector impact: H.R. 754 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO estimate: On March 31, 2011, CBO transmitted a cost estimate for the Intelligence Authorization Act for 2011, as ordered reported by the Senate Select Committee on Intelligence on March 15, 2011. The difference in the cost estimates reflect the difference in the amount authorized for 2011 funding of the ICMA by the two bills. The Senate version would authorize \$650 million, while H.R. 754 would authorize \$661 million.

Estimate prepared by: Federal Costs: Jason Wheelock; Impact on State, Local, and Tribal Governments: J'nell Blanco; Impact on the Private Sector: Elizabeth Bass.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

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):

NATIONAL SECURITY ACT OF 1947

SHORT TITLE

That this Act may be cited as the “National Security Act of 1947”.

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Sec. 113A. *Non-reimbursable detail of other personnel.*

* * * * *

TITLE I—COORDINATION FOR NATIONAL SECURITY

* * * * *

RESPONSIBILITIES OF THE SECRETARY OF DEFENSE PERTAINING TO THE NATIONAL INTELLIGENCE PROGRAM

SEC. 105. (a) * * *

(b) RESPONSIBILITY FOR THE PERFORMANCE OF SPECIFIC FUNCTIONS.—Consistent with sections 102 and 102A of this Act, the Secretary of Defense shall ensure—

(1) * * *

* * * * *

(5) through the Defense Intelligence Agency (except as otherwise directed by the President or the National Security Council), effective management of Department of Defense human intelligence and counterintelligence activities, including defense attaches; and

* * * * *

(c) EXPENDITURE OF FUNDS BY THE DEFENSE INTELLIGENCE AGENCY.—(1) *Subject to paragraphs (2) and (3), the Director of the Defense Intelligence Agency may expend amounts made available to the Director for human intelligence and counterintelligence activities for objects of a confidential, extraordinary, or emergency nature, without regard to the provisions of law or regulation relating to the expenditure of Government funds.*

(2) *The Director of the Defense Intelligence Agency may not expend more than five percent of the amounts made available to the Director for human intelligence and counterintelligence activities for a fiscal year for objects of a confidential, extraordinary, or emergency nature in accordance with paragraph (1) during such fiscal year unless—*

(A) *the Director notifies the congressional intelligence committees of the intent to expend the amounts; and*

(B) *30 days have elapsed from the date on which the Director notifies the congressional intelligence committees in accordance with subparagraph (A).*

(3) *For each expenditure referred to in paragraph (1), the Director shall certify that such expenditure was made for an object of a confidential, extraordinary, or emergency nature.*

(4) *Not later than December 31 of each year, the Director of the Defense Intelligence Agency shall submit to the congressional intelligence committees a report on any expenditures made during the preceding fiscal year in accordance with paragraph (1).*

【(c)】 (d) USE OF ELEMENTS OF DEPARTMENT OF DEFENSE.—The Secretary of Defense, in carrying out the functions described in this section, may use such elements of the Department of Defense as

may be appropriate for the execution of those functions, in addition to, or in lieu of, the elements identified in this section.

* * * * *

[DETAIL OF OTHER PERSONNEL

[SEC. 113A. Except as provided in section 904(g)(2) of the Counterintelligence Enhancement Act of 2002 (50 U.S.C. 402c(g)(2)) and section 113 of this Act, and notwithstanding any other provision of law, an officer or employee of the United States or member of the Armed Forces may be detailed to the staff of an element of the intelligence community funded through the National Intelligence Program from another element of the intelligence community or from another element of the United States Government on a reimbursable or nonreimbursable basis, as jointly agreed to by the head of the receiving element and the head of the detailing element, for a period not to exceed 2 years.]

NON-REIMBURSABLE DETAIL OF OTHER PERSONNEL

SEC. 113A. An officer or employee of the United States or member of the Armed Forces may be detailed to the staff of an element of the intelligence community funded through the National Intelligence Program from another element of the intelligence community or from another element of the United States Government on a non-reimbursable basis, as jointly agreed to by the heads of the receiving and detailing elements, for a period not to exceed two years. This section does not limit any other source of authority for reimbursable or non-reimbursable details.

* * * * *

COUNTERINTELLIGENCE ENHANCEMENT ACT OF 2002

* * * * *

**TITLE IX—COUNTERINTELLIGENCE
ACTIVITIES**

* * * * *

SEC. 904. OFFICE OF THE NATIONAL COUNTERINTELLIGENCE EXECUTIVE.

(a) * * *

* * * * *

(d) **FUNCTIONS.**—Subject to the direction and control of the National Counterintelligence Executive, the functions of the Office of the National Counterintelligence Executive shall be as follows:

(1) * * *

(2) **NATIONAL COUNTERINTELLIGENCE STRATEGY.**—**[Subject]**

(A) *REQUIREMENT TO PRODUCE.*—*Subject* to subsection

(e), in consultation with appropriate department and agencies of the United States Government, and private sector entities, and based on the most current National Threat Identification and Prioritization Assessment under para-

graph (1), to produce [on an annual basis] a strategy for the counterintelligence programs and activities of the United States Government to be known as the National Counterintelligence Strategy.

(B) *REVISION AND REQUIREMENT.*—*The National Counterintelligence Strategy shall be revised or updated at least once every three years and shall be aligned with the strategy and policies of the Director of National Intelligence.*

* * * * *

TITLE 10, UNITED STATES CODE

SUBTITLE A—GENERAL MILITARY LAW

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PART I—ORGANIZATION AND GENERAL MILITARY POWERS

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CHAPTER 21—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

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SUBCHAPTER I—GENERAL MATTERS

Sec.

421. Funds for foreign cryptologic support.

* * * * *

429. *Appropriations for defense intelligence elements: accounts for transfer; transfer.*

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§429. *Appropriations for defense intelligence elements: accounts for transfer; transfer*

(a) *ACCOUNTS FOR APPROPRIATIONS FOR DEFENSE INTELLIGENCE ELEMENTS.*—*The Secretary of the Treasury shall establish one or more accounts for the receipt of appropriations and other amounts transferred pursuant to subsection (b).*

(b) *TRANSFERS AUTHORIZED.*—(1) *There may be transferred to an account established pursuant to subsection (a) the following:*

(A) *Appropriations transferred by the Secretary of Defense from appropriations of the Department of Defense available for intelligence, intelligence-related activities, and intelligence-related communications.*

(B) *Appropriations and other amounts transferred by the Director of National Intelligence from appropriations and other amounts available for the defense intelligence elements.*

(C) *Amounts and reimbursements in connection with transactions authorized by law between the defense intelligence elements and other entities.*

(2) *The transfer authority of the Secretary of Defense under paragraph (1)(A) is in addition to any other transfer authority available to the Secretary by law.*

(c) AVAILABILITY OF APPROPRIATIONS AND AMOUNTS TRANSFERRED.—(1) Appropriations transferred pursuant to subsection (b) shall remain available for the same time period, and shall be available for the same purposes, as the appropriations from which transferred.

(2) Appropriation balances in an account established pursuant to subsection (a) may be transferred back to the account or accounts from which such balances originated as an appropriation refund.

(d) DEFENSE INTELLIGENCE ELEMENTS DEFINED.—In this section, the term “defense intelligence elements” means the agencies, offices, and elements of the Department of Defense that are included within the elements of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

* * * * *

MINORITY VIEWS

H.R. 754—Intelligence Authorization Act for Fiscal Year 2011

The way the House Permanent Select Committee on Intelligence conducts effective oversight of the Intelligence Community (IC) is by passing an intelligence budget. We believe it is vitally important that Congress pass an Intelligence Authorization Act before the appropriators put together their spending bill to provide meaningful oversight and budgetary direction for the IC.

Despite this shared bipartisan goal of passing an intelligence budget, the majority embarked on a whirlwind process to get the Intelligence Authorization Act for Fiscal Year 2011 passed. The bill will have little impact so late in the year. The fiscal year is half over. Instead, we wish the majority had accepted the minority's invitation to begin this Congress on a clean slate by immediately turning to the President's Fiscal Year 2012 budget request and embarking on a full process.

For FY 2011, the Committee did not follow "regular order" and did not conduct proper oversight to ensure our intelligence professionals have the resources, tools and capabilities they need to keep our country safe. In the 112th Congress, the Committee did not hold a single hearing. It held one briefing where staff were "witnesses" and testified about the elements of the bill. This denied Members of the Committee an opportunity to speak directly with representatives from the IC for which this bill authorizes funding.

Eight of the twenty Members on the Intelligence Committee are new to the Committee this year. They were asked to vote on something they had barely seen. In fact, the final classified annex which contains the figures for the budget was only provided to Members the morning of the markup proceeding. Members were asked to vote on a bill that authorizes tens of billions of dollars without having a chance to even read it.

We believe the Committee needs to reestablish its authorizing authority and have a meaningful impact on the direction of the intelligence budget. We must pass a budget that will provide a detailed blue print for the spending bill before it is created, rather than the other way around. This will ensure proper oversight. FY 2011 follows the spending bill in almost every way.

FY 2012 provides us a fresh start. Committee work is already underway. Eight full committee hearings have been scheduled. Professionals from the IC have been invited to testify so Members can make the necessary and important decisions on programs and policy to produce well thought out, meaningful legislation. We look forward to this more rigorous process that will strengthen our national security.

We know the threats from Al-Qaeda and its affiliates around the world are real. We know we must continue to push America ahead

in the space race and make sure we have the best and most cost effective satellites available. We also know we must make cybersecurity a priority. We can make a real difference and give our intelligence professionals risking their lives around the world what they need to get the job done. We look forward to doing that for FY 2012.

C.A. DUTCH RUPPERSBERGER.
MIKE THOMPSON.
JAN SCHAKOWSKY.
JIM LANGEVIN.
ADAM SCHIFF.
DAN BOREN.
LUIS GUTIERREZ.
BEN CHANDLER.

