



**Legislative Bulletin.....December 12, 2007**

**Contents:**

**Conference report—H.R. 2082 — Intelligence Authorization Act for Fiscal Year 2008**

**Summary of the Bill Under Consideration Today:**

**Total Number of New Government Programs:** at least one

**Total Cost of Discretionary Authorizations:** \$734 million over one year

**Effect on Revenue:** \$0

**Total Change in Mandatory Spending:** \$0

**Total New State & Local Government Mandates:** 0

**Total New Private Sector Mandates:** 0

**Number of Bills Without Committee Reports:** 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 1

**conference report on H.R. 2082—Intelligence Authorization Act for Fiscal Year 2008 (Reyes, D-TX)**

**Order of Business:** The bill is scheduled for consideration on Wednesday, December 12, 2007. The rule for consideration of the conference report to accompany H.R. 2082 ([H.Res. 859](#)) waives all points of order against the conference report and against its consideration.

**Note:** This Legislative Bulletin addresses only the unclassified portion of the conference report. The language of H.R. 2082 provides for the passage of the classified annex, which contains the vast majority of the authorizations in this legislation. The classified annex is available to the Committees on Appropriations of the House and Senate, and to the President. The President has to provide for the “suitable” distribution of appropriate portions of the annex within the executive branch.

**Summary:** The unclassified portion of the conference report for H.R. 2082 would authorize \$734 million in discretionary FY2008 appropriations (\$260 million less than FY 2007 and \$3 million less than the House-passed bill), including \$263 million for Central Intelligence Agency

Retirement and Disability System (CIARDS—previously mandatory spending in FY 2007). The specific schedule of authorizations for intelligence activities of the federal government (including the Office of the Director of National Intelligence, the CIA, the Defense Department, the National Security Agency, the FBI, etc.) is classified.

Authorization of Appropriations. Authorizes appropriations for FY 2008 for intelligence-related activities of the following U.S. government entities:

- 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 Department of State
- 8) The Department of the Treasury
- 9) The Department of Energy
- 10) The Department of Justice
- 11) The Federal Bureau of Investigation.
- 12) The National Reconnaissance Office
- 13) The National Geospatial-Intelligence Agency
- 14) The Coast Guard
- 15) The Department of Homeland Security
- 16) The Drug Enforcement Administration

**Major Changes:** The conference report to H.R. 2082 includes numerous changes from the original bill which passed the House on May 11, 2007, by a vote of [225-197](#). The following is a list of major provisions added to, or removed from, the House-passed bill.

***Provisions Added:***

Limitation on Interrogation Techniques. Section 327 of the conference report prohibits any member of the U.S. Intelligence Community from using any interrogation treatment or technique not authorized by the United States Army Field Manual on Human Intelligence Collector Operations (Army Field Manual) on any individual in the custody or control of an element of the Intelligence Community.

The Army Field Manual prohibits interrogators from using acts of violence or intimidation, including physical or mental torture, or exposure to inhumane treatment as a means of, or aid to, interrogation. Tactics that would be specifically prohibited include, but are not limited to, placing hoods or sacks over the head of a detainee; using duct tape to cover the eyes of a detainee; beatings, or other forms of physical pain; waterboarding; using trained military dogs; inducing injury do to severely hot or cold conditions; mock executions; deprivation of necessary food, water, sleep, or medical care. Members of the Intelligence Community would be barred

from using any of these tactics regardless of the severity of the situation, the value of the detainee, or their geographic location.

Many members of the Intelligence Community, Congress, and the Administration have expressed a deep concern that such limitations would effectively tie the hands of the CIA and other intelligence agencies operating in the field and may stop U.S. intelligence entities from preventing attacks against the U.S. **In light of this provision, none of the Republican conferees from the House signed the final conference report and the President has issued a veto threat against the bill.**

*Report on Compliance with the Detainee Treatment and Military Commissions Act.* Requires the Director of National Intelligence (DNI) to submit a classified report to Congress detailing all the measures taken by the Office of the Director of National Intelligence (ODNI) and the Intelligence Community to comply with the interrogation provisions in the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006. The report must be submitted within 45 days of enactment.

*Limitation of Funds.* Stipulates that no more than 30% of funds may be expended for a specific, classified expenditure in the Executive Branch Congressional Budget Justification until the full membership of the House and Senate intelligence committees are fully briefed on a facility in Syria that was the subject of reported Israeli military action on September 6, 2007. Because the specific expenditure is classified, the conference report may not disclose where the specified funds would be allocated. This provision was added by amendment during conference.

*Inspector General of the Intelligence Community.* Creates the position of Inspector General of the Intelligence Community within the ODNI. The DNI, who was authorized to have an Inspector General in the Intelligence Reform Act, has appointed an administrative Inspector General and given him certain responsibilities. The Inspector General of the Intelligence Community would be appointed by the President and confirmed by the Senate. The Administration contends that intelligence officials need to assume their duty as quickly as possible and opposes the creation of an Inspector General of the Intelligence Community.

*Confirmation of Appointment.* Requires that the heads of the National Reconnaissance Office and the National Security Agency be appointed by the President and approved by the Senate. The original Senate bill included the head of National Geospatial-Intelligence Agency in this section, but the DNI expressed concern with the increased number of Senate-confirmed positions in the Intelligence Community.

*Inspector General Matters.* Includes the National Reconnaissance Office, the Defense Intelligence Agency, the National Security Agency and the National Geospatial-Intelligence Agency as “designated federal entities” for the purpose of appointing inspectors general. This section would give the inspectors general of these agencies statutory authority to access information relevant to their audits or investigations, and to compel people to release information via subpoena.

Pay Authority for Critical Positions. Provides the DNI new authority to grant enhanced pay for critical positions in the Intelligence Community.

Enhanced Flexibility. Expands the amount of time that government personnel may be detailed to the Office of the Director of National Intelligence (ODNI), while being paid by another agency, from one year to two.

***Provisions Removed:***

Intelligence Restrictions. Emphasized that this legislation should not be deemed to constitute authority for the conduct of any intelligence activity that is not otherwise authorized by the Constitution or the laws of the United States.

CIA Deputy Director. Created a new position of Deputy Director of the Central Intelligence Agency (CIA) to be appointed by the President (and confirmed by the Senate), and stipulated that the position has responsibility to assist the CIA Director, and exercise the powers of the Director during the absence or disability of the Director.

Global Climate Change Estimate. Required the DNI, within 270 days after enactment, to submit a report to Congress with a national intelligence estimate on the anticipated geopolitical effects of global climate change and the implications of these effects on the national security of the U.S.

Reports Eliminated. Required the DNI to submit a list of reports to the congressional intelligence committees on recommendations for the elimination of required reports that relate to foreign language proficiency which the DNI considers outdated or no longer necessary.

CIA Audit. Directed the Inspector General of the CIA to conduct an audit of each covert action at least every three years and report the findings to the congressional intelligence committees.

Intelligence Personnel Compensation Report. Prohibited the DNI or the head of any element of the intelligence community to implement a plan to provide compensation to intelligence personnel based on performance until 45 days after the date which the DNI submits a report on performance-based compensation for the intelligence community. The report would have included such components as an implementation time line and certain target dates, an estimated budget, and a description of the performance-based compensation system, among other items.

**Other Provisions in the conference report:**

Personnel Ceilings. Authorizes the DNI, with the approval of the Director of the Office of Management and Budget, to exceed the (classified) FY 2008 civilian personnel ceilings, when necessary to perform “important intelligence functions,” when reported to Congress, and when the increase is no greater than two percent of the authorized level.

Intelligence Community Management Account. Authorizes FY 2008 appropriations of \$734.1 million to the Intelligence Community Management Account (CMA) to fund 1,035 (unclassified) full-time personnel and other administrative requirements. Allows the Account, under certain

circumstances, to reimburse other federal agencies for detailing personnel to the staff of the Account.

*Specific Authorization of Funds for which 2008 Appropriations Exceed Amounts Authorized.* Stipulates that funds appropriated for a specific purpose, in excess of the amount authorized for that purpose, will still be available for use by the Intelligence Community, but can be applied only to other intelligence activities within the National Intelligence Program.

*CIARDS.* Authorizes \$262.5 million to be appropriated for the Central Intelligence Agency Retirement and Disability System (CIARDS), converting previously mandatory spending into discretionary.

*Increase in Employee Compensation.* Authorizes such additional or supplemental amounts as “may be necessary” for employee compensation or benefits.

*Security Clearances.* Requires the DNI to establish a multi-level security clearance system for the intelligence community in order to enable them to make more efficient use of persons proficient in foreign languages or with cultural, linguistic, or other subject matter expertise that is critical to national intelligence (this provision was a Sense of Congress in the FY07 Intelligence Authorization).

*Intelligence Personnel Travel on Common Carriers.* Expands the DNI’s ability to delegate his authority—to allow travel on a common carrier—to any head of any other element of the intelligence community. This provision also allows those agency heads granted authority by the DNI to further grant this authority to other senior officials “as specified in guidelines prescribed by the DNI.”

*Annual Personnel Level Assessments.* Requires the DNI to prepare an annual personnel and contractor assessment for each element of the Intelligence Community. This section is similar to sections 411 and 414 of the House bill, which request reviews of Intelligence Community personnel and contractors.

*Comprehensive Report on Contractors.* Requires the DNI to conduct a one-time report detailing the activities performed by contractors working for the Intelligence Community. The report would have to be submitted by March 31, 2008. This section differs from the House-passed version of the bill which would have required an annual report on Intelligence Community contractors.

*Report on Plan to Increase Diversity.* Requires the DNI to submit a report to Congress on the plans of each element of the Intelligence Community to increase diversity. The plans must be submitted by March 31, 2008. The House version of the bill included this requirement as well as a requirement that 80 percent of the amount appropriated to the Intelligence Community Management Fund be withheld until the plan was submitted. The conference report omits the latter requirement.

Report on Pay-for Performance Management System. Prohibits the implementation of pay-for-performance compensation within certain elements of the Intelligence Community until 45 days after the DNI submits a report to Congress detailing the implementation plan. This differs from the House bill which required that every element of the Intelligence Community wait to implement pay-for-performance plans. This section is meant to allow elements of the Intelligence Community that are prepared to implement such plans to do so.

Vulnerability Assessments. Requires the DNI to conduct a vulnerability assessment of every major system and its significant items of supply to the National Intelligence Program. This section would require the DNI to conduct vulnerability assessments throughout the life of a system. This provision was not contained in the House-passed version of H.R. 2082.

Business enterprise and System Modernization. Requires the DNI to create a “business enterprise architecture” that would define all Intelligence Community business systems. The architecture will be used to guide the implementation of interoperable Intelligence Community business system solutions and must be submitted to Congress by September 1, 2008. The DNI would also be required to report to Congress every five years regarding the implantation of the architecture. This provision was not contained in the House-passed version of H.R. 2082.

Reports on Acquisitions. Requires the DNI to submit annual reports for each major system acquired by the Intelligence Community. The report must including information about the cost of the acquisition and the results of any tests or evaluations of the system. This provision was not contained in the House-passed version of H.R. 2082.

Clarification of Definition of Intelligence Community. Permits an element of departments and agencies to be designated as an element of the Intelligence Community whether or not they are among the agencies listed in the National Security Act of 1947.

Reprogramming Funds. Modifies the requirements for reprogramming funds for intelligence activities to require that “the activity to be funded supports an emergent need, improves program effectiveness, or increases efficiency.”

Extension of Authority to Delete Information. Allows the head of an intelligence agency to delete, when transmitting information regarding receipt and disposition of foreign gifts, certain information if the agency head certifies in writing to the Secretary of State that the publication of this information could adversely affect U.S. intelligence sources or methods.

Incorporation of Reporting Requirements. Incorporates each reporting requirement contained in the classified annex to the conference report. This provision was not contained in the House-passed version of H.R. 2082.

Office Locations. Includes the Director of the National Counterproliferation Center (NCPC) and the Director of the National Counterterrorism Center in the list of officers within the Office of the DNI and provides that the NCPC Director be appointed by the DNI.

Transportation Security Oversight Board Membership. Amends the members of the Transportation Security Oversight Board to remove the CIA Director and add the DNI Director (or his designee).

Science and Technology. Directs the DNI's Science and Technology Committee to *prioritize* (as opposed to just coordinate) research and development related to intelligence, including identification of basic, applied, and advanced research programs to be carried out by the intelligence community. The Director of Science and Technology would also have to assist the DNI in establishing technology goals for the elements of the intelligence community. The DNI would have to report to Congress by June 30, 2008, on a strategy for the development and use of technology in the intelligence community through the year 2018.

Energy Efficiency Implementation. Requires the DNI to develop a plan to implement the recommendations of a report submitted to Congress (P.L. 109-431) entitled "An Act to study and promote the use of energy efficient computer servers in the U.S."

List of Special Access Programs. Requires the DNI to submit a classified and comprehensive list of special access programs to Congress. This section is to enable the congressional intelligence committees to determine whether the Intelligence Community is fully fulfilling their obligation to keep the committees informed.

Iran and North Korea Intelligence Reports. Requires the DNI to submit reports to the congressional intelligence committees (classified) on the current intentions and capabilities of the Islamic Republic of Iran and North Korea regarding their nuclear programs (and requires various information be contained within the report, such as an assessment of nuclear weapons programs, etc.). The original House version of the bill stipulated that the reports must be issued quarterly; however, the conference report only requires that one report is submitted in FY 2008 and two in FY 2009.

Accountability Reviews. Stipulates that the DNI has the authority to conduct accountability reviews of any element of the Intelligence Community. This provision was not contained in the House-passed version of H.R. 2082.

Modification of Limitation on Delegation. Provides that the DNI may delegate the authority to protect intelligence sources and methods from unauthorized disclosure. This provision was not contained in the House-passed version of H.R. 2082.

Authorities for Intelligence Information Sharing. Provides the DNI the authority to use National Intelligence Program funds to address deficiencies in information sharing. This provision was not contained in the House-passed version of H.R. 2082.

Authorities for Interagency Funding. Authorizes the DNI to use "all available" Intelligence Community funds to quickly focus the Intelligence Community on pressing intelligence issues. This provision was not contained in the House-passed version of H.R. 2082.

Foreign Language Proficiency. Requires the DNI to submit an annual report to the congressional intelligence committees on the foreign language proficiency of each intelligence agency, and requires the head of each element of the intelligence community to annually submit a report to the DNI on the foreign language proficiency of the personnel at such element.

Authorities of CIA Protective Personnel. Authorizes protective detail personnel of the CIA to make arrests without a warrant if a felony or misdemeanor is committed in their presence while they are functioning in an official capacity. This provision was not contained in the House-passed version of H.R. 2082.

Enhancement of NSA Training Program. Allows the director of the NSA to protect intelligence and sources by removing a requirement that the NSA identify students who are NSA employees or training program participants to educational institutions. This provision was not contained in the House-passed version of H.R. 2082.

Security Clearances in the National Geospatial-Intelligence Agency. Requires that the Secretary of Defense grants the Director of the National Geospatial-Intelligence Agency the same amount of personnel security authority that is granted to the Director of the National Security Agency through December 31, 2008. This section is intended to clear a security backlog at the National Geospatial-Intelligence Agency. This provision was not contained in the House-passed version of H.R. 2082.

Coast Guard and DEA. Adds the Coast Guard and Drug Enforcement Administration to the list of intelligence community agencies in the National Security Act (50 U.S.C. 401a(4)).

Extension of National Commission for Review of Research and Development. Renews authority for the National Commission for Review of Research and Development Programs of the United States Intelligence Community, which was authorized in 2003 and allowed to lapse on September 1, 2004.

Report on Intelligence Activities. Requires the DNI to report to the congressional intelligence committees any authorization related to the overthrow of a democratically elected government in the ten years prior to enactment.

Aerial Reconnaissance Platforms. Prohibits the Secretary of Defense from terminating the U-2 aircraft program until the Secretary certifies that there would be no loss of national or DoD intelligence, surveillance, and reconnaissance capabilities in transitioning from the U-2 aircraft program to the Global Hawk RQ-4 unmanned aerial vehicle platform.

**Possible Conservative Concerns:** Some conservatives may be concerned that this legislation prohibits the U.S. Intelligence Community from using any interrogation technique not authorized by the Army Field Manual on any individual in the custody or control of an element of the Intelligence Community. Some conservatives may be concerned that such limitations would effectively tie the hands of the CIA and other intelligence agencies operating in the field and may stop U.S. intelligence entities from preventing attacks against the U.S.

Some conservatives may also be concerned that the bill would create the position of Inspector General of the Intelligence Community and give more statutory power to inspectors general in other intelligence agencies despite the fact that the 9/11 Commission concluded that intelligence officials need to assume and carryout their duties and responsibilities as quickly as possible.

In addition, the [conference report for H.R. 2082](#) includes a list of 26 separate congressional earmarks totaling approximately \$96 million. Some members may be concerned with the existence of earmarks in the Intelligence Authorization bill, a bill meant to fund our Nation's Intelligence Community.

**Committee Action:** H.R. 2082 was referred to the Permanent Select Committee on Intelligence on May 1, 2007, and was marked-up the next day. The Committee reported the bill, as amended, to the full House by voice vote on May 7, 2007 (House Report [110-131](#)). On May 11, 2007, the bill passed the House by a vote of [225-197](#). On October 3, 2007, the bill passed the Senate, with an amendment, by unanimous consent. On December 5, 2007, conferees agree to report the bill and the following day [Conference Report 110-478](#) was filed.

**Administration Policy:** The Administration opposes passage of the conference report to H.R. 2082 and released a [Statement of Administration Policy](#) (SAP) on December 11, 2007, citing numerous concerns with the bill. According to the SAP, "the conference report to H.R. 2082 contains provisions that are inconsistent with the effective conduct of intelligence activities, the recommendations of the 9/11 commission, and the desire for legislative-executive cooperation with respect to U.S. intelligence activities."

**Cost to Taxpayers:** A CBO score for the conference report to H.R. 2082 is currently unavailable. However, the conference report would authorize \$734 million in [discretionary FY2008 appropriations](#) (\$260 million less than FY 2007 and \$3 million less than the House-passed bill), including \$263 million for CIARDS (mandatory spending in FY 2007). The specific schedule of authorizations for intelligence activities of the federal government (including the Office of the DNI, the CIA, the Defense Department, the National Security Agency, the FBI, etc.) is classified.

**Earmark Compliance:** [Conference Report 110-478](#) lists 26 separate earmarks totaling \$96 million.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** The conference report to H.R. 2082 fails to cite constitutional authority.

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