

CONFRONTATION OR COLLABORATION?
CONGRESS AND THE INTELLIGENCE COMMUNITY



THE CONGRESSIONAL AUTHORIZATION
AND APPROPRIATION PROCESSES

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The ability to authorize and appropriate funds provides Congress with a powerful tool for oversight and control of intelligence activities. This “power of the purse,” a two-step process of appropriation and authorization over federal spending, provides opportunities for accountability from the Intelligence Community (IC) to Congress. As budgets are drafted and appropriations are made, Congress has the right and responsibility to ensure that the IC spends monies to best meet national security goals.

This memo provides an overview of how the intelligence budget is developed and implemented, as well as how Congress can use the process to influence intelligence and national security policies.

The Intelligence Budget

The intelligence budget funds all intelligence activities conducted by the U.S. government. The budget consists of two parts, the Military Intelligence Program (MIP) and the National Intelligence Program (NIP). Generally speaking, the MIP is devoted to intelligence activities and analysis that support U.S. military operations, most of which are conducted by intelligence agencies in the Defense Department. The NIP includes all other intelligence activities, which predominantly focus on national-level intelligence efforts, but include significant activities conducted by NSA, NGA and NRO.

Following the standard congressional budgetary process, the congressional intelligence committees first authorize funds before they are disbursed by the appropriations committees.

Authorization

Intelligence authorization legislation can establish, continue, or change IC programs and activities. Because of overlapping jurisdiction and shared responsibilities among congressional committees, the process can be long and complex.

From the IC...

The Director of National Intelligence (DNI) begins the process by drafting an initial version of the NIP budget. The DNI works concurrently with the Under Secretary of Defense for Intelligence (USD(I)) to create the initial MIP budget. Those budgets are then submitted to the Office of Management and Budget (OMB) for review and approval. The OMB then forwards the proposals to Congress in the form of Congressional Budget Justification Books (CBJBs).

...to the Hill

The Senate and House simultaneously review the intelligence budget. In the House, the House

Permanent Select Committee on Intelligence (HPSCI) has oversight of the NIP, and shares oversight responsibility for the MIP with the House Armed Services Committee (HASC). In the Senate, the Senate Select Intelligence Committee (SSCI) only has oversight of the NIP, while the Senate Armed Services Committee (SASC) has oversight of the MIP.

- Given the highly technical nature of the authorization and appropriations process, successful authorization bills depend heavily on the work of dedicated budget staffs with extensive knowledge of the IC.

Once the Senate and House Intelligence and Armed Services Committees each have developed and voted on their version of the intelligence authorization bill, which includes budget and programmatic recommendations, the entire Senate and House vote on the bills. Differences between the bills are reconciled in a conference session before the legislation returns to the House and Senate for final passage. Congress then sends the final bill to the President to be signed into law, or vetoed.

Role of Authorization Legislation

The annual intelligence authorization bill does not simply establish the intelligence budget. It also allows Congress to strategically move monies around and to fund new initiatives that Congress believes are necessary. The authorization bill also allows the committees to define intelligence activities, create laws prohibiting certain activities, and press controversial policy issues.

- For example, in response to the Iran-Contra scandal of the 1980s, Congress included a definition of “covert action” in its 1991 intelligence authorization bill that required the congressional intelligence committees be notified of all such activities in writing by the President.
- More recently, the intelligence committees have attempted to use the authorization bills to mandate increased access to information or to press for reform on controversial issues such as interrogation and warrantless surveillance.

Other examples include efforts to declassify the total amount of intelligence budget, as well as an attempt to limit CIA interrogation tactics to those in the Army Field Manual on interrogation. The Bush Administration opposed both efforts and vetoed the 2009 Intelligence Authorization Bill. The President’s veto highlights an important point about authorization legislation: If the intelligence committees chose to include policy guidance on controversial issues in the authorization bill, then a veto may deprive Congress of the ability to provide any other explicit guidance to the IC for that year.

- In 2008, Congress faced a difficult strategic choice: Should the bill be sacrificed to highlight an important issue and focus public attention on the President’s veto, or should Congress simply ensure passage of the bill that provided important funding and direction to the IC?

Appropriations

The budget process is not complete until the appropriations process provides the actual funding for the activities and programs established through the authorization process. The majority of the intelligence budget appears as a secret lump-sum amount in the Defense Appropriations Bill.

- The House and Senate Appropriations Committees both have Defense Subcommittees, which have jurisdiction over the bulk of the intelligence budget.

The development of appropriations legislation follows intelligence authorization. The subcommittees of the House and Senate Appropriations Committees first draft their own versions, which are voted on in the subcommittee and then within the Appropriations Committee.

- Once the full House and Senate vote on the initial draft, eliminate differences in conference, and vote again on the revised version, the legislation is sent to the President for approval or veto.

Role of the Appropriations Committees

The Appropriations Committees sometimes play a controversial role since the Appropriations Committee can send the IC mixed signals regarding congressional priorities. While the appropriations legislation should follow the intelligence authorization bill, this does not always happen.

- In 1992, for example, the intelligence budget was significantly decreased during the appropriations process.

When the intelligence oversight committees are unable to pass authorizing legislation, they lose a critical oversight tool. For the past several years, intelligence authorization bills have not become law and the Appropriations Committees have included a “specific authorization” clause in the bill to provide IC funding. Essentially, the Appropriations Committees can disburse funds for activities that have not been explicitly authorized by the Senate and House Intelligence Committees.

- Since the Appropriations Committees do not have the same expertise and number of staff focused on intelligence issues, some believe that they may be ill-suited to provide rigorous and comprehensive oversight of the IC.

Reforming the Budget Process

The 9/11 Commission made two recommendations regarding the intelligence budget process that remain issues for debate.

Disclosure of the Budget

The 9/11 Commission proposed that the IC declassify their budget. Although the Constitution

requires the government to regularly release expenditures, the intelligence budget has remained secret for decades. Those supporting disclosure argue that releasing budget figures would eliminate inefficiency and increase government transparency. Opponents claim that disclosing the budget would assist states and groups hostile to the U.S. by providing them with insight to sensitive national security priorities.

- While the Clinton Administration voluntarily released the intelligence budget figures in 1997 and 1998, several legislative attempts to make the intelligence budget public subsequently failed.
- In October 2007, however, Section 601 of Implementing Recommendations of the 9/11 Commission Act of 2007 forced former DNI Michael McConnell to disclose the “top line” of the intelligence budget within 30 days of the close of the fiscal year.

Combining the Authorization and Appropriation Process

Given the complexity of the authorization and appropriations processes, and the importance and unique nature of intelligence oversight, the 9/11 Commission recommended giving the full appropriation function to the intelligence oversight committees. The Commission believed this consolidation would improve congressional oversight of the IC, especially since the best expertise and knowledge about the IC likely resides within the authorization committees.

- The current arrangement may allow the IC to avoid some aspects of oversight and secure funding for programs that may not have explicit authorization.
- Opponents argue that moving appropriations power to the intelligence committees would shift focus from the armed forces to national level intelligence priorities and thus reduce support to the warfighter. Some members of Congress also believe this reform could create an overly powerful intelligence committee.

SOURCES

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