



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 16, 2008
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 5959 – Intelligence Authorization Act for FY 2009

(Rep. Reyes (D) TX)

The Administration is committed to the effective conduct of United States intelligence activities under the law to protect the Nation. Regrettably, enactment of H.R. 5959 as reported is inconsistent with that objective. The Administration acknowledges that the bill contains some provisions requested by the Administration that support the mission and function of the Intelligence Community, including sections 302, 304, 313, 319, 401, and 402. However, the bill contains other provisions, many of which the Administration has objected to in the past, that conflict with the effective conduct of intelligence activities, the recommendations of the 9/11 Commission, and arrangements that for decades have balanced congressional oversight responsibility with the need to restrict access to intelligence information to safeguard sources and methods used to acquire that information. Accordingly, the Administration strongly opposes enactment of H.R. 5959. If H.R. 5959 were presented to the President, the President's senior advisors would recommend that he veto the bill, especially if the bill includes any of the following provisions:

- Prohibition on Interrogation of Detainees by Contractor Personnel: The Administration strongly objects to the requirement in section 425 that would prohibit the participation of contractors in lawful interrogations conducted by the Central Intelligence Agency (CIA) even under the direct supervision of a CIA employee. Even with the waiver authority, this provision would impose a significant impediment to the timely and effective collection of critical intelligence. In some cases, a contractor may possess the best combination of skills and experience needed to collect vital information. Such a provision would unduly limit the United States' ability to obtain intelligence needed to protect Americans from attack.
- Inspector General for the Intelligence Community. Section 408 would create a new Inspector General for the Intelligence Community (IG/IC). The Administration has consistently opposed the creation of an IG/IC in prior bills. Every element of the IC already falls within the jurisdiction of an existing statutory inspector general. The existing inspectors general of the departments with elements in the IC, and the CIA, are best suited to perform the necessary investigation, inspection, and audit functions. Where issues cross organizational boundaries, the existing inspectors general, through the Intelligence Community Inspectors General Forum, have demonstrated their willingness and ability to address community-wide issues through a collegial process. There is no demonstrated need to spend additional taxpayer resources to provide for two inspectors general with competing jurisdiction over the same intelligence elements. Further, the requirement that this position be Senate confirmed is contrary to the recommendation of

the 9/11 Commission, which noted that intelligence officials need to assume their duties and responsibilities as quickly as possible, without the long delays recent nominees have experienced in the confirmation process.

- Review of Covert Action Programs. Section 421 would require the CIA Inspector General to conduct an audit of each covert action program at least every three years and to submit the results of the audits within 60 days of completion to the congressional intelligence committees. This provision would interfere with the independent judgment of the CIA Inspector General or Director of the CIA as to what activities should be audited and when the audits should be conducted. Further, this provision conflicts with the President's authority to control the dissemination of classified information, provisions in the CIA Act concerning IG activities affecting vital national security interests, and long-standing arrangements between the Executive and Legislative branches regarding the transmittal of information about sensitive intelligence programs.
- Sensitive Intelligence Activities. Section 105 would withhold 75 percent of requested funding for covert action programs until the Administration provides much greater access to highly sensitive national security information to all members of the congressional intelligence committees. Such a provision is inconsistent with the statute that expressly authorizes limited notice to Congress in exceptional cases and would undermine the fundamental compact between the Congress and the President on reporting highly sensitive intelligence matters -- an arrangement that for decades has balanced congressional oversight responsibility with the need to protect intelligence information. Questions concerning access to such information are best addressed through the customary practices and arrangements, rather than through enactment of contradictory legislation.
- Internal Deliberations. Section 502 would amend the existing congressional intelligence oversight provisions of Title V of the National Security Act of 1947 to require the President to provide extensive information regarding intelligence activities. The broad and undefined nature of this section would include pre-decisional legal opinions, risk assessments, and cost estimates that may be subject to various privileges. The information required goes beyond any legitimate oversight function and would serve no purpose other than micromanagement of IC activities. Further, this section would undermine long-standing arrangements between Congress and the President regarding reporting of sensitive intelligence matters.

Other Concerns:

Detainee Treatment. The Administration strongly opposes section 316, which would require a comprehensive report on all measures taken by elements of the IC to comply with the Detainee Treatment Act and related provisions of the Military Commissions Act. Existing law and understandings provide the appropriate arrangements for ensuring the congressional committees are informed of sensitive intelligence and intelligence-related activities.

Secret Law. Section 317 would incorporate by reference all reporting requirements in the classified annex into the act, thereby making them a requirement in law. The Administration strongly opposes the imposition of reporting requirements in this opaque manner. Further, such

a provision would remove the flexibility that Congress and the Executive branch would otherwise have to modify and adapt provisions in the classified annex to meet changing conditions and requirements without seeking a statutory change.

IC Personnel Levels. The Administration strongly objects to sections 103 and 104 and provisions in the classified schedule of authorizations which set caps on the number of personnel in the Intelligence Community, and provide only limited authority to exceed the personnel caps. The language in this bill is particularly disappointing in that it does not include provisions contained in the House- and Senate-passed Intelligence Authorization Act for FY 2008 concerning the transition to full-time equivalency and conversion of activities performed by contractors. H.R. 5959 is also problematic in that it would add significant new duties and responsibilities to the Office of the DNI without allowing for a corresponding increase in the personnel needed to execute those duties.

IC Personnel and Contractor Reports. The Administration strongly opposes sections 305 and 306, which would require the DNI to prepare an annual assessment of the personnel and contractor levels for each element of the IC. Section 305 would require disclosure of privileged law enforcement information. Section 306 violates long-standing arrangements regarding the release of classified information concerning highly sensitive national security matters such as intelligence collection, analysis, and covert actions. Further, the detailed reporting requirements contained in these sections would require considerable IC resources to complete, may be impossible to complete with existing resources, and would not produce meaningful results.

The Administration also objects to the requirement in section 307 for the DNI to submit a report on performance-based compensation. The DNI responded to a much broader reporting requirement last year. If any additional information is required, the DNI is prepared to provide it without a specific statutory requirement to do so.

Nuclear Programs of Iran, Syria, and North Korea. The Administration strongly opposes section 406, which would require semiannual reports on the nuclear programs of Iran, Syria, and North Korea. This provision violates the well-established process of comity and accommodation that has existed between the two branches of government by requiring the release of highly sensitive national security information such as an evaluation of intelligence sources and a summary of any intelligence related to any such program.

Similarly, the Administration opposes section 411, which would mandate the preparation of a National Intelligence Estimate on weapons of mass destruction programs undertaken by Syria. Such requirements undermine the flexibility and judgment of IC professionals to approach intelligence topics in the most appropriate manner. The production of intelligence products should be left to cooperative relationships and established dialogue.

Intelligence Regarding North Korea and China. The Administration strongly opposes section 504, which specifies that a notification to the congressional intelligence committees regarding intelligence information relating to North Korea or China, after all or part of the information has been communicated to those governments, does not satisfy the duty to keep the committees fully and currently informed. This provision would statutorily constrain the President's conduct of foreign affairs, effectively requiring the President to conduct sensitive aspects of U.S. foreign policy through the intelligence committees.

Federal Bureau of Investigation (FBI) Supervisor Program. The Administration opposes section 106, which would prohibit the use of funds to implement the FBI's program that requires reassignment of supervisors after five years. This program promotes upward mobility among the agents, helps ensure that the members of the FBI management gain broad experiences throughout their careers, and ensures that the FBI is able to continue to benefit from the experience of these experienced managers.

Ombudsman for Security Clearances. The Administration opposes section 413, which would require the DNI to appoint an ombudsman for IC security clearances. This provision would duplicate ongoing security clearance reform efforts.

The Administration would like to work with the House to address the concerns described above and urges inclusion of the Administration's requested authorities, especially enhanced personnel flexibilities throughout the IC, which are integral to the DNI's efforts to improve management of intelligence personnel.

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