



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

December 11, 2007  
(House Rules)

## STATEMENT OF ADMINISTRATION POLICY

### H.R. 2082 – Intelligence Authorization Act for Fiscal Year 2008

(Rep. Reyes (D) TX)

The Administration is committed to effective gathering and coordination of intelligence to protect the Nation's security. 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. If this bill were to pass the House and the Senate and be presented to the President for signature, the President's senior advisors would recommend that he veto the bill.

#### Requirement that Executive Branch Agencies Use Only Interrogation Techniques Authorized by the Army Field Manual

Section 327 would prevent the United States from conducting lawful interrogations of senior al Qaeda terrorists to obtain intelligence needed to protect Americans from attack. Such interrogations have helped the United States disrupt multiple attacks against Americans at home and abroad, thus saving American lives. The Military Commissions Act of 2006, enacted just over one year ago, struck the acceptable balance with respect to collection of intelligence from captured terrorists. Section 327 would prevent the President from taking the lawful actions necessary to protect Americans from attack in wartime.

#### Inspector General for the Intelligence Community

Section 413 creates a duplicative new inspector general for the Intelligence Community (IC), even though 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 Central Intelligence Agency, are best suited to perform the necessary investigative, inspection, and audit functions. There is no need to spend additional taxpayer resources to provide for two inspectors general with competing jurisdiction over the same intelligence elements.

This provision also would create another Senate-confirmed position in the IC. This is contrary to the recommendations 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.

#### Other New Senate-Confirmed Positions

Section 444 of the bill establishes Senate confirmation requirements for the Department of

Defense positions of Director of the National Security Agency and Director of the National Reconnaissance Office. As noted above, these requirements would slow the filling of these vital positions when vacancies occur and increase the propensity for inappropriate injection of politics into the confirmation process for these sensitive professional intelligence positions.

### Reporting on Certain Sensitive Matters

Other provisions of the bill, including sections 326 and 406, purport to require the President to submit information that may be constitutionally protected from disclosure, including information the disclosure of which could impair foreign relations, national security, deliberative processes of the Executive, or performance of the Executive's constitutional duties. Questions concerning access to such information are best addressed through the customary practices and arrangements between the executive and legislative branches on such matters, rather than through the enactment of legislation. The Executive Branch will, of course, continue to keep the Congress appropriately informed of the matters to which the provisions relate.

Section 406 would require the creation of an inventory of Special Access Programs (SAPs). The continued requirement to submit a classified comprehensive listing raises concern. SAPs contain the most sensitive information in the IC. Documents and information concerning these programs are maintained separately from other classified information, and the notion that a single document would describe all SAPs is anathema to sound and accepted security and counterintelligence practices. While the Administration is prepared to brief Congress on the details of the Intelligence SAPs, the Executive Branch must be permitted to determine how to present such information in a way that does not jeopardize the security and viability of the programs themselves.

### Budgetary Matters

The Administration strongly opposes section 105, which would prohibit the IC from proceeding with critical, classified collection and science and technology programs and severely undermine the Nation's intelligence collection. The Administration also opposes the requirement in the bill to transfer funds to a pilot collection program which imposes unbudgeted costs in future years to complete.

The Administration also objects to section 328, which attempts to use Congress' power of the purse to circumvent the authority of the Executive Branch to control access to extraordinarily sensitive information. Section 328 would fence all but 30 percent of funds authorized to be appropriated to a specific expenditure center in the National Intelligence Program until the full membership of the intelligence committees is briefed about a reported Israeli military action against a facility in Syria which occurred on September 6, 2007. The fenced funds are authorized for an expenditure center that is critical to the continued conduct of intelligence activities, including the War Against Terrorism. In their conference report, the conferees stated that reporting to the full committee is required under section 502 of the National Security Act. The Administration respectfully disagrees with this view and urges the Senate and the House to reject this provision.

## Incorporation of Reporting Requirements into Law

The Administration strongly opposes section 329, which gives the force of law to each request to submit a report contained in the classified annex to the bill into law. This provision will lead to the absurd result that a new law will be required to modify, extend, or delete any reporting requirement in the classified annex. The IC remains committed to responding appropriately to congressional requests for information.

## Personnel Ceilings

The Administration opposes provisions that place a cap on the number of staff for the Office of the Director of National Intelligence (ODNI). The bill also places many new reporting and management requirements on the ODNI. It is inconsistent, given the fact that the Director of National Intelligence (DNI) already has requested an increase in the staff, to add these significant new duties and responsibilities to the Office without allowing for a corresponding increase in personnel.

## Report on Authorizations, If Any, to Engage in Activities to Overthrow a Democratically Elected Government

The Administration is also concerned with the requirement in section 502 for the DNI to submit a report describing authorizations, if any, granted in the last ten years to engage in intelligence activities related to the overthrow of a democratically elected government. Reporting on any such activities, if any, is governed by Title V of the National Security Act.

## Reports on Intelligence Community Contractors, Vulnerability Assessments, Acquisitions of Major Systems, and Excessive Cost Growth

Several provisions would significantly increase the reporting requirements on the ODNI, while imposing a cap on the number of staff positions in the Office. As noted below, it may not be possible for the ODNI to provide the required reports by the proposed due dates.

Section 307. Although both the House and the Senate bills contained requirements for an ODNI report on IC Contractors, the report required in the Conference bill would require a significantly greater amount of information and analysis. For instance, the requirement to perform “an assessment of the costs incurred or savings achieved by awarding contracts...instead of using full-time employees of the elements of the intelligence community” would require additional staff and additional time to complete. Consequently, there is insufficient time to prepare and coordinate the report by the bill’s March 31, 2008 due date.

Section 311. The expanded scope of the vulnerability assessments of major systems would require additional staff and additional time to complete.

Section 313. The new requirement to submit an annual report for the acquisition of each major system would require significant additional resources for the ODNI.

Section 314. The new requirement to provide continuing reports on excessive cost

growth of major systems would also impose significant new burdens on the ODNI.

#### Report on Pay for Performance

Section 308 would interfere with the further implementation of pay for performance systems that Congress has previously authorized by statute, notably in the Defense and Homeland Security Departments. It could be disruptive to pay for performance systems just getting underway, such as at the Defense Intelligence Agency, and could even be interpreted to affect existing successful systems such as the National Geospatial-Intelligence Agency's eight-year-old program.

#### Security Clearance Issues

The Administration opposes section 446, which would direct the Secretary of Defense to delegate to the Director of NGA personnel security authority. The conferees, however, have not authorized additional funds or resources to NGA to exercise this authority, and this proposal would conflict with ongoing Administration initiatives to improve the security clearance process.

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