

# CRS Issue Brief

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## Special Access Programs and the Defense Budget: Understanding the "Black Budget"

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## CONTENTS

### SUMMARY

### ISSUE DEFINITION

### BACKGROUND AND ANALYSIS

#### Overview

- National Foreign Intelligence Program
- Tactical Intelligence and Related Activities
- Other DOD Special Access Programs

#### Questions and Answers

- What is generally meant by the expression "black" program?
- Why are some defense programs designated as special access programs, and what is the procedure for doing so?
- Why is the so-called "black budget" of interest to Congress?
- How large is the "black budget?"
- Do Members of Congress have access to special access program funding data and program details?
- What oversight is there for non-intelligence, DOD special access programs?
- How effective has oversight of DOD special access programs been?
- Are there alternative ways of treating "black" program information?

#### Glossary

### LEGISLATION

For references on this topic, see CRS Report 87-802 L, Special Access Programs, Confidential Funding, and the Defense Budget: Bibliography-in-Brief, by Sherry Shapiro.

Special Access Programs and the Defense Budget:  
Understanding the "Black Budget":

**SUMMARY**

It is generally accepted that there is a security advantage to be gained by exploiting a technology militarily and keeping potential adversaries from learning about its application and military usefulness. However, in an open, democratic society where constitutional checks and balances are fundamental to the system of government, a natural tension exists between those who want access to information to facilitate decisionmaking and oversight and those who want enhanced protection to prevent military secrets from falling into adversaries' hands.

Concern in recent years about the adequacy of "black" or special access program oversight and the perceived growth of the "black budget" has prompted congressional consideration of alternative ways of treating highly classified, special access program information. The final version of the FY88-89 National Defense Authorization Act (P.L. 100-180) required the Secretary of Defense to provide Congress with a report on all existing special access programs and annual notice and justification of new special access programs. In addition, the Act required the Secretary of Defense to report to Congress on the criteria used for designating a program as a special access program and notify Congress subsequently of all changes. It provided that it is the sense of Congress that the Department of Defense (DOD) would not harm national security if it disclosed unclassified program data for three programs -- the Stealth B-2 Advanced Technology Bomber (ATB), the Advanced Cruise Missile, and the Advanced Tactical Aircraft -- and required DOD to submit Selected Acquisition Reports (SAR) to Congress for the three programs (in December 1988 the Air Force released a cost estimate for the Stealth B-2 bomber.) In addition, it required the President to submit annual reports to Congress on each program designated as special access. The FY89 Defense Authorization Act (P.L. 100-456) imposed several additional reporting requirements for selected special access programs.

The Senate version of the FY90-91 defense authorization bill (S. 1352) established additional reporting requirements pertaining to the reclassification of special access program data.

The arguments made by those in favor of these changes reflect their concern about Pentagon motives, the practice of restricting information from some Members of Congress, and the need for an informed debate of program issues and costs. The arguments made by those who oppose proposed legislative innovations reflect their fear of inadvertently exposing the programs and budgets of the intelligence agencies and a general concern about making certain sensitive information more accessible to foreign intelligence interests. It is DOD's position that additional legislation was not and continues not to be required.

## ISSUE DEFINITION

Executive and legislative oversight of highly classified defense programs is of increasing interest to Congress. Members of Congress frequently ask (1) How large is the Department of Defense (DOD) "black budget?" (2) Does DOD deny Congress information on "black" programs? (3) How well managed are DOD "black" programs? This interest has grown from concern about

- (a) the adequacy of legislative oversight,
- (b) the quality of executive branch program management,
- (c) the perception that an increasing number of DOD programs, by virtue of their classification, are allowed to circumvent acquisition requirements and avoid proper oversight,
- (d) the relatively large increase in funding for so-called "black" programs between 1981 and 1988
- (e) the perception that the security surrounding "black" programs prevents full and effective congressional debate of pertinent program issues.

This issue brief describes aspects of the budget process for some of the more highly classified elements of the defense budget and addresses questions frequently asked about so-called "black" programs.

The issue for Congress is how to secure sufficient information on "black" programs for sound decisionmaking and effective oversight without unacceptable risk of damaging disclosure or theft of national security secrets.

This issue brief does not reveal the "keys" necessary to disaggregate the defense budget into its intelligence components or to identify highly classified programs purposefully disguised in the defense budget. Further, no attempt has been made to verify independently the size of the "black" budget or review any particular special access program.

## BACKGROUND AND ANALYSIS

### **Overview**

There are different kinds of officially secret Federal Government programs. While access to all classified programs (those programs classified in accordance with classification arrangements prescribed by executive order) requires the "need-to-know" (see glossary for definition) and the proper security clearance, special access controls are often used by various Federal agencies to limit further the distribution of classified information. For example, in the intelligence community, access to information and material denominated as "Sensitive Compartmented Information" or SCI is limited by special access controls.

At the Department of Defense (DOD), in accordance with Executive Order 12356, some classified programs are called "special access programs," i.e., programs for which

access controls have been established "beyond those normally required for access to Confidential, Secret, or Top Secret information." While not all classified Federal Government programs for which additional security controls are used are formally designated as "special access programs," most DOD programs designated specifically under DOD Directive 5205.7 and its implementing regulation 5200.1R for special handling procedures are called "Special Access Programs."

The most highly classified elements of the DOD budget may be organized into three categories: (1) the National Foreign Intelligence Program (NFIP); (2) Tactical Intelligence and Related Activities (TIARA); and (3) other DOD special access programs. The first two categories are comprised of U.S. intelligence program resources and are reviewed briefly in the following sections (see also Intelligence Budgets: Contents and Releasability, CRS Report 89-465 F). The third, which consists exclusively of DOD programs, has been the focus of legislative proposals to enhance congressional information access and is the main subject of this issue brief.

### **National Foreign Intelligence Program (NFIP)**

The Director of Central Intelligence (DCI) is responsible for the National Foreign Intelligence Program (NFIP) budget. It consists of funding for all U.S. intelligence agencies, including (1) the Central Intelligence Agency (CIA), (2) the National Security Agency (NSA), (3) the Defense Intelligence Agency (DIA), all military service intelligence components, and DOD offices that collect specialized national foreign intelligence through reconnaissance, (4) the State Department's Bureau of Intelligence and Research (INR), (5) the intelligence elements of the Federal Bureau of Investigation (FBI), the Department of Treasury, and the Department of Energy, and (6) the staff functions of the Director of Central Intelligence.

The NFIP budget is reviewed annually by the House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence and the Defense Appropriation subcommittees that have jurisdiction over National Foreign Intelligence Programs. Other committees may request sequential referral to review certain portions of the NFIP budget, e.g., the Judiciary committees may review the FBI budget and the Armed Services committees may review the DOD-related elements of the NFIP budget.

Each program funding request is justified annually in documents prepared for Congress by the sponsoring agency. Classified annexes to the annual intelligence authorization bill, available for examination by all Members of Congress, are prepared by both committees and reflect committee recommendations. Personal staff do not have access to these annexes. Amounts authorized are specified in a classified "Schedule of Authorizations" prepared by House and Senate conferees on the Intelligence Authorization Act and made available to the Appropriations committees and the President.

NFIP appropriations are provided annually primarily as part of the defense appropriations bill. A classified annex that all Members of Congress may ask to see accompanies the reports prepared by the Defense subcommittees of the House and Senate Appropriations committees. A few small components of the NFIP budget are provided in other appropriations bills, for example, the FBI budget. The NFIP budget total is classified.

## **Tactical Intelligence and Related Activities (TIARA)**

The TIARA budget is a funding aggregation prepared primarily for congressional oversight purposes. TIARA programs are the responsibility of the Secretary of Defense. According to the House Intelligence Committee, it consists of "a diverse array of reconnaissance, surveillance, and target acquisition programs which are a functional part of the basic force structure and provide direct information support to combat operations." TIARA programs serve an operational and intelligence function. They range in classification from special access to unclassified.

In the House, the Intelligence Committee and the Armed Services Committee share authorization jurisdiction over the TIARA budget. The classified intelligence authorization report reflects House Intelligence Committee TIARA program funding recommendations which have been agreed to by the House Armed Services Committee. Occasionally, Tactical Intelligence and Related Activities will be addressed, as well, in the classified annex prepared by the House Armed Services Committee to accompany the defense authorization bill.

In the Senate, the Armed Services Committee has jurisdiction over TIARA programs, but may receive advice from the Intelligence Committee. The Senate Armed Services Committee prepares a classified annex to accompany the defense authorization bill that provides, among other things, the Committee's TIARA funding authorization recommendations.

TIARA programs are funded annually in the defense appropriations bill and those that are special access programs are treated by the Defense Appropriations subcommittees in a classified annex to the annual defense appropriations report. Most TIARA programs are not designated as special access programs and many are unclassified. While individual program budgets may be unclassified, the aggregate TIARA budget is classified.

### **Other DOD Special Access Programs**

The General Accounting Office (GAO) has identified on the order of 200 DOD special access program approvals, some of which may be subdivided into separate projects. Some of them are funded in the TIARA budget. The non-intelligence, DOD special access programs include research, development, and acquisition programs and military operations. A DOD special access program may be (1) a small part of a less-highly classified acquisition program (for example, a guidance system used in an otherwise unclassified aircraft program may be a special access program) or (2) a major weapons program (for example, the Stealth bomber is a special access program). DOD has explained that some special access programs do not receive separate program funding. For example, in the case of a weapons system with which a special access program is associated, the "special access feature" (perhaps an added capability) might be funded with resources provided by Congress for the weapons program.

DOD makes special access program data available for congressional review at the request of those Members of Congress accorded access by agreement between DOD and the committee involved. Since 1988, such information has been transmitted in the form of an annual report, while not previously the case, the House and Senate

now use essentially the same oversight procedures for DOD special access programs but have adopted entirely different practices from the more formal, statutory arrangement used to review intelligence programs. Review procedures for non-intelligence, DOD special access programs are generally considered by the congressional staff involved to be no less rigorous.

Congressional interest in non-intelligence, DOD special access programs has grown from a basic concern that some of these programs (1) receive insufficient congressional review, (2) experience inadequate executive branch management oversight, (3) benefit inappropriately from exemptions to acquisition regulations and do not compete along with other defense programs for scarce resources, and (4) involve inordinately large sums of money. However, pressure on DOD to change the extraordinary information access controls that govern these programs (at least for some special access programs, e.g., the Stealth bomber) comes from those who strongly support current oversight procedures as well as from those who question the adequacy of the oversight process.

## Questions and Answers

### 1. What is generally meant by the expression "black" program?

According to DOD, the expression "'black program' has no official status in any DOD policy or regulation." In using the term "black budget," most observers are making a generic reference to the programs (including intelligence programs) for which DOD has not provided unclassified funding data and those programs that can be easily identified as classified programs as a result of the names they have been given in unclassified defense budget justification books. (Some programs have undeniably odd names, for example, the Air Force research and development program named BERNIE.) This imprecision prompts many observers to generalize about all classified programs.

The expression "black program" may be used to describe a program, according to DOD, "whose very existence and purpose may in and of itself be classified." Such a program would be categorized as a special access program by DOD; however, "not all special access programs are 'black,' i.e., their existence may not be classified."

Until recently, an example of a "black program" cited by the press was the so-called Stealth fighter aircraft about which there had been considerable media speculation but whose existence DOD did not officially acknowledge. In November 1988, DOD acknowledged for the first time the existence of the Stealth F-117A fighter, which had been unofficially referred to as the F-19 in earlier media reports. By contrast, the Stealth B-2 bomber program is a special access program whose existence DOD does acknowledge.

### 2. Why are some defense programs designated as special access programs, and what is the procedure for doing so?

As some classified programs are more sensitive than others, not all classified defense programs are granted the same information access controls. The General

Services Administration's Information Security Oversight Office (ISOO), pursuant to Executive Order 12356, paragraph 4.2 (see its implementing ISOO Directive 1), has defined a special access program as "any program imposing 'need to know' or access controls beyond those normally provided for access to Confidential, Secret, or Top Secret information."

According to DOD, special access programs are those whose secrecy is deemed to be especially critical given their nature and proposed use and which DOD perceives bear an especially high foreign intelligence threat. While access to all classified information requires a "need-to-know," programs require special access controls, according to ISOO's implementing directive, when "(1) normal management and safeguarding procedures are not sufficient to limit 'need-to-know;' and (2) the number of persons who will need access will be small and commensurate with the objective of providing extra protection for the information involved." No one may have access to program information requiring special access controls solely on the strength of rank, title, or position.

The principal reason for designating a program as a special access program is, according to DOD, the need for "enhanced security over what would normally be afforded the protection of a program's classified information."

Executive Order 12356, dated Apr. 2, 1982, which "prescribes a uniform system for classifying, declassifying, and safeguarding national security information," authorizes the creation of special access programs within DOD, in accordance with ISOO's implementing directive, by the Secretary of Defense and, by direction, the Deputy Under Secretary of Defense for Security Policy (DUSD(SP) military departments. DOD Directive 0-5205.7, dated Jan. 4, 1989, implements Government policy within DOD and establishes guidance on the management, coordination, and control (including congressional access) of DOD special access programs. The procedures for the establishment of a special access program are also specified in DOD Regulation 5200.1-R, dated June 1988, and are further enumerated in directives prepared by the military services.

Briefly stated, DOD regulations provide that a special access program may be created by (1) obtaining the written approval of the DUSD(SP) or the Service Secretary of the military department in question, (2) providing the necessary information to the DUSD(SP), including the rationale for wanting the program to have special access controls and the reason why normal information security management and safeguarding procedures are inadequate, and (3) establishing the required administrative infrastructure needed to facilitate required contract, inspection, and audit procedures.

DOD regulations stipulate that most special access programs will be reviewed annually (including a security inspection and separate audit) by the DOD component responsible for establishing the program (see glossary for definition). Further, DOD regulations provide that special access programs terminate automatically after five years unless specifically reestablished.



### **3. Why is the so-called "black budget" of interest to Congress?**

A relatively large increase in funding for so-called "black" programs and a concern about the adequacy of executive and congressional oversight prompted several Members of Congress to introduce legislation and amendments to the FY88 defense authorization bill in early 1987.

Prompted by reports that funding for so-called "black" programs had increased dramatically, some Members of Congress and congressional staff expressed concern that the security surrounding special access programs does not allow Congress to debate openly important program issues. Further, some feared that a growing number of defense programs were being designated special access.

Concern about the adequacy of executive and legislative oversight has also sparked congressional interest in DOD funding for programs about which a limited number of Members of Congress currently have information access. Some in Congress fear that the problems experienced by the B-1B bomber program will be repeated with the Stealth B-2 bomber program. (See CRS Issue Brief 87157, B-1B Strategic Bomber.) Further, there are those who maintain that programs are (1) improperly classified as special access programs to circumvent acquisition regulations or avoid congressional oversight or (2) remain classified as special access programs to hide mismanagement. A 1987 report to Congress by the Defense Investigative Service (DIS) establishing that DOD's rules and policies on special access programs have not been adequately administered also alarmed some Members of Congress.

In addition, some in Congress have noted the possible misuse of information access controls by defense contractors to prevent stockholders and others from learning about financial losses. The Chairman of the House Commerce Subcommittee on Oversight and Investigations, Representative Dingell, has revealed that some defense contractors working on special access programs have failed to file all the necessary financial reports with the Securities and Exchange Commission.

Some defense analysts have even gone so far as to suggest that some congressional interest in the issue of funding for so-called "black" programs is more properly viewed in parochial terms as a "pork barrel" issue with less emphasis on national security concerns. The argument is that some Members are concerned about losing control of defense dollars that could be spent in their districts.

### **4. How large is the "black budget?"**

There is no authoritative, unclassified, aggregate budget total for the "black" budget (whether one counts all or a portion of the NFIP, TIARA, or non-intelligence, DOD special access program budgets.) According to the House Armed Services Committee, funding for so-called "black" programs increased eightfold in the 1981-1986 time frame. A "major part" of this funding was devoted to two programs -- the Stealth bomber and the Advanced Cruise Missile -- according to Committee Chairman Aspin.

It is logical to speculate that funding for non-intelligence, DOD special access programs would increase as these programs move from development into production.

An increase in funding for "black" programs does not necessarily mean more programs have been designated as special access.

While the budget figures used by the House Armed Services Committee to make its calculation are not publicly available, some independent analyses (prepared by the Defense Budget Project and the Center for Defense Information) appear to support the view that "black" program funding has increased markedly. Using these studies, press accounts have reported a rise in funding for "black" programs from \$5.5 billion in FY81 to perhaps \$24 billion-\$35 billion requested by the Administration for FY90. These figures, however, overstate funding for non-intelligence, DOD special access programs because they include some intelligence programs funded in the NFIP and TIARA budget.

DOD Services indicate that 1987-91 funding for special access programs has decreased.

##### **5. Do Members of Congress have access to special access program funding data and program details?**

DOD's points of contact in Congress for non-intelligence, DOD special access program data are the four key defense committees -- the House and Senate Armed Services Committees and the Appropriations Subcommittees on Defense. The chairmen and ranking minority members of each of the four committees have access to all DOD special access program data. Members of the four key oversight committees attend hearings on special access programs. Requests for additional information access by Members of Congress who are not members of one of the four key defense committees are referred to the appropriate key defense committee chairman who, together with the ranking minority member, makes a recommendation to DOD about whether access should be granted. Each request is handled on an individual basis by the committee chairman.

DOD ultimately makes the decision about DOD special access program information access. In the case of DOD special access programs, those with access do not have the authority to determine who has the "need-to-know." It is generally DOD's practice, however, not to deny a Member of Congress who sits on one of the four oversight committees access to special access program data when one of the four committee chairmen recommends it be granted. Generally speaking, Members of Congress who are not members of one of the four key oversight committees do not receive access to special access program data. DOD has authorized access, on request, to any member to B-2, ACM, ATA, F-117A, and ATF data.

Heretofore, no formal "system of hearings" for providing Members of Congress with special access program data has been observed. DOD has established formal procedures for congressional access to special access program data. DOD prepares annual budget justification material and makes special access program data available in response to a request from the chairman and ranking minority member of one of the four key committees. In the House, the Chairman of the Armed Services Committee, Representative Aspin, has established a procedure for Armed Services Committee review of all DOD special access programs which involves some Research and Development (R&D) Subcommittee members, Procurement Subcommittee members, and House Armed Services Committee members who are also on the House

Intelligence Committee. This procedure is designed to enhance congressional oversight of "black" programs. As a result of growing congressional interest, DOD is currently considering developing a more formal briefing procedure.

In addition to members of the four key congressional committees, a selected few committee staff are cleared to receive special access data on a "need-to-know" basis. As a rule, personal staff are not granted special access program clearances. Some senior committee staff have extensive knowledge of these programs. Our research indicates that no individual committee staff member has access to all DOD special access program information; however, DOD maintains that collectively Congress is aware of all DOD special access programs.

From a congressional perspective, the burden of oversight is placed, as with other defense programs, on selected Members of Congress who serve on the oversight committees. The perception among some in Congress that DOD may overclassify some defense programs to circumvent acquisition regulations and avoid congressional oversight is founded in mistrust of Pentagon motives and a suspicion and growing evidence (for example, a 1987 report by the Defense Investigative Service (DIS) identified a series of problems) that DOD special access program policies are not always implemented as required.

From the perspective of the Department of Defense, greater congressional access to highly classified defense information will only "tempt fate" with respect to a security leak. This perception is based on an acute sensitivity to the foreign intelligence threat. The Pentagon's concern about the extent to which Congress can be trusted with secrets is a natural byproduct of Pentagon sensitivity to security leaks and represents a reaction to the absence of uniform procedures in Congress for handling classified material. (See, for example, Senator Byrd on the establishment of an Office of Senate Security, Congressional Record, S9176-S9177, July 1, 1987.) The Senate's recent creation of an Office of Senate Security is cited by DOD as an important confidence building measure.

## **6. What oversight is there for non-intelligence, DOD special access programs?**

There is always some discrepancy in bureaucracies between formal procedures and actual practice. The procedures outlined here reflect DOD procedures as formally outlined in directives and regulations. They may or may not be wholly consistent with actual practice.

**Executive Oversight.** DOD regulations stipulate that most special access programs will be reviewed annually by the military department responsible for establishing the program, as well as by other DOD components. Each DOD component has one point of contact -- a central office, if more than one program has been established -- for all of their special access programs, responsible for seeing that the required security inspections and audits are conducted. The Deputy Under Secretary of Defense for Security Policy (DUSD(SP)) is responsible for (1) overseeing these central offices, (2) receiving annual reports from them that, among other things, summarize inspection and audit results, and (3) on occasion going into the field to verify central office claims and fundings. The DUSD(SP) reviews all DOD special

access program funding requests during each Program Objective Memorandum (POM)/Budget Decision Cycle.

The security requirements that limit program information access are individually developed by each DOD component and are tailored to each program. As a result, the extra security measures used are not uniform.

Security inspections of some special access program contractors are conducted by the Defense Investigative Service (DIS). Special access program audits (i.e., the financial reviews) are basically conducted by the Defense Contract Audit Agency (DCAA). The Pentagon Inspector General (DOD IG) conducts special access program oversight, and the Defense Logistics Agency (DLA) is responsible for providing technical and logistics services. All have special "cadres" of inspectors or audit personnel specially cleared to conduct necessary reviews.

There is some uncertainty among congressional observers about whether all special access programs are subject to sufficiently rigorous oversight and standard audits. Use of "carve-out" contracts (see glossary), by definition, relieves DIS of its inspection responsibility in whole or in part. Contrary to press reports, the DOD IG has never claimed that there are "black" programs to which his office does not have access. The Office of the Secretary of Defense has said that the transfer of information to the DOD IG's special "cadre," at times, may have been slow, if requested by those not specially cleared, but has never been denied. Defense regulations and the IG law require that Congress be informed whenever the DOD IG's office is denied access to any material or program in DOD.

The decision to deny program access to one of these agencies can be made only by the Secretary of Defense. The DOD component central office responsible for oversight is then required to substitute a review (inspection or audit) of "equal quality." It is conducted by qualified, in-house personnel who already have program access, and the results are ultimately reviewed by the Office of the Under Secretary of Defense for Policy.

**Congressional oversight.** In Congress, the special access program oversight process is fluid; while hearings in a "secured area" may be held, there are few printed transcripts. Testimony given by DOD officials, if printed, will be designated as special access.

Because special access programs receive so much attention from the limited number of congressional staff cleared to receive special access data, some staff argue that such programs are reviewed much more carefully than other defense programs for which the same staff are responsible. The assertion that the committees with oversight responsibility are too easy on special access programs is unverifiable by those not involved in the oversight process. According to Representative Aspin, the "system of oversight has worked reasonably well."

The role of the General Accounting Office (GAO) in auditing special access programs is much the same as its role in auditing other large defense programs. GAO has authority to review special access programs on its own initiation or when asked by Congress. The significant differences for GAO are the limited number of people given information access and the stringent handling requirements associated

with the work. The Comptroller General has testified that, despite its resource limitations, GAO is "allocating sufficient resources to this area."

Ongoing GAO work on special access programs includes examinations of the Advanced Technology Bomber (i.e., the Stealth bomber), Advanced Cruise Missile, Advanced Tactical Fighter, Advanced Tactical Aircraft, Joint Tactical Missile, and Joint Surveillance Target Attack Radar System.

## **7. How effective has oversight of DOD special access programs been?**

The effectiveness of special access program oversight is difficult to measure. The Government's special access program acquisition successes generally receive no more publicity than the failures do. There are alternative claims that "black" programs, on the one hand, are the most efficient programs we have (ahead of schedule and under cost) and, on the other hand, are less well managed than other programs. According to the Packard Commission on Defense Management, which generally praised the management of special access programs, "not all [special access] ... programs are well managed." Claims one way or another, however, are unverifiable on an unclassified basis. It would appear that higher classification neither guarantees improved program management nor promotes wasteful spending and mismanagement.

From a congressional perspective, those not involved in the oversight process fear executive oversight may be deficient because it is perceived as relatively superficial owing to the limited number of people allowed to review increasingly costly programs that require a greater degree of expertise. Those involved in the oversight process, including some Members, argue that effectiveness does not depend upon the number of people who have information access, but rather whether or not they give the programs their full attention. It is generally their contention that DOD does not hide problems experienced by special access programs.

Some in Congress are especially wary of the perceived "ease" with which DOD components may establish special access programs. Some observers have concluded that programs are (1) improperly classified as special access programs to circumvent acquisition regulations and avoid normal oversight (including financial audits) or (2) remain classified as special access programs to hide mismanagement. The Stilwell Commission, in its 1985 review of DOD security policies and practices, noted that such a possibility existed, but it documented no real evidence that such had occurred.

Critics of DOD oversight argue that a greater disclosure of program information would enhance the "cross-fertilization of ideas" by (1) enabling other DOD research efforts to benefit from technologies and methodologies developed as part of special access programs and (2) facilitating the flow of ideas between special access research programs. Further, they contend that a more open process would build public support for DOD special access programs and help erode the perceived credibility gap between Government and society.

However, because special access controls govern information about the programs in question, it is difficult for Members of Congress who do not sit on one of the four key oversight committees and committee staff to know the full extent of the

investigations and audits to which special access programs have been subjected by both executive and legislative offices.

From a DOD perspective, executive oversight of special access programs is considered to be rigorous, albeit effectively streamlined. Spokesmen dispute the notion that programs might be classified as special access programs merely to expedite the acquisition process, circumvent the regular oversight process, or hide wasteful spending. They note that it is incorrect to conclude that programs for which special security arrangements have been made are any more or less subject to abuse than unclassified defense programs.

They agree that the cost of enhanced security may be some sacrifice in the free flow of ideas among those involved in special access programs. Wide disclosure of program details in the interest of this flow of ideas, however, they contend, would defeat the purpose of enhancing security.

DOD does recognize that there is a problem with the implementation of special access program policies. A 1987 DOD report summarizing the findings of DIS investigators noted that "DOD policies now in place which address the establishment and administration of special access programs are sound. However, the DOD components have not yet sufficiently integrated these policies into their overall operations." The House Armed Services Committee reported that DIS reviewed 101 special access programs at 607 contractor facilities and found that "there were a 'significant number' of illegitimate programs or programs unknown to those supposed to police contractors' special access operations." An official at DOD characterized that finding as "completely wrong." The House Armed Services Committee reported, in addition, that DIS found that one-fourth of all contractor special access operations had never been inspected and another quarter had only been inspected once. A Special Access Program Review Panel was convened by the Secretary of Defense to review the findings of the DIS study as well as existing DOD policies and procedures; the panel submitted wide-ranging recommendations, almost all of which (40 out of 42) were approved by the Secretary on Sept. 18, 1987. Subsequently, on July 1, 1988, new policies, to include criteria for special access programs, were inserted in the DOD Information Security Program (DOD) Directive 0-5205.7 Jan. 4, 1989, and 5200. 1-R, June 1988

#### **8. Are there alternative ways of treating "black" program information?**

When Congress and the Administration agree that some piece of information is a matter of national security -- for example, the military application of some exotic technology -- there appears to be little disagreement that DOD use of information access controls is justified. However, it is often not entirely evident to some Members of Congress why some program data, in particular budget data, is unavailable without special access program clearance. House Armed Services Committee leaders Aspin and Dickinson argued in 1986 that 70% of the funds governed by special access controls could be declassified and the programs themselves moved to a lower level of classification without harming national security. A considerable amount of special access program budget data was, in fact, made available in the President's FY90-91 budget submission to Congress.

DOD generally supports the idea of separating highly classified technical data from budgetary information to avoid expending extraordinary security resources for the protection of data that may not require such protection. Depending on the program, however, the budgetary data may nevertheless be sensitive and remain unavailable on an unclassified basis. DOD spokesmen have responded that Congress often fails to understand what constitutes valuable intelligence to our adversaries. They have suggested that while aggregate budget data may appear to be innocuous from a security standpoint, it may reveal to our adversaries in what fields of research -- for example, sonar or lasers -- we have chosen to concentrate our time and resources and whether we have achieved a significant breakthrough. Such information, it is argued, may allow our adversaries to target more effectively their research programs and espionage efforts.

While DOD's point may be valid for programs the existence of which DOD denies, it would seem to have lesser application to programs, like the Stealth bomber or the Advanced Cruise Missile programs, that are understood publicly to be major weapons programs. Of course, the B-2 and ACM programs have not always been as open or visible as they are now.

The FY88-89 Defense Authorization Act (P.L. 100-180) incorporated several alternative approaches to the treatment of "black" program data, intended to increase congressional oversight of special access programs. Section 127 incorporated a provision of the Aspin amendment requiring the Secretary of Defense to submit Selected Acquisition Reports for three special access programs: the Stealth B-2 ATB, the Advanced Cruise Missile, and the Advanced Tactical Aircraft (ATA). Other provisions of the Aspin amendment (incorporated in Sections 1131 and 1133) expressed the sense of Congress that DOD would not harm national security if it disclosed in unclassified form the total program cost data, the annual budget request, and a general program schedule description for the above three programs. The Boxer amendment, incorporated in Section 1132, required the Secretary of Defense to provide leaders of the four key defense committees with a report on all existing special access programs, to be followed by annual notice and justification for new special access programs. The Weicker amendment (also incorporated in Section 1132), required annual reports to Congress from the President containing special access program descriptions, a discussion of major acquisition milestones for each such program, and program cost schedules (annual and total).

The FY89 Defense Authorization Act (P.L. 100-456), signed on Sept. 29, 1988, contains several provisions for further oversight of special access programs. Section 213 links part of the funding authorization for ATA with a certification to Congress that the Navy has budgeted sufficient funds for fiscal years 1990 through 1994 to participate in the demonstration and validation program for the Air Force's Advanced Tactical Fighter. Section 232 establishes a requirement for two special reports to Congress on the Stealth B-2 bomber, both due by Mar. 1, 1989: a cost review by the GAO, and a separate report on total program cost by the Secretary of Defense. In December 1988 the Air Force released a cost estimate for the Stealth bomber of \$516 million per aircraft. This figure was revised to \$532 million (in current then-year dollars) according to a subsequent estimate released June 23, 1989.

With regard to other reviews in progress, during the spring of 1987, GAO started a review of special access program oversight, including growth in funding,

adequacy of oversight, and the justifications for creating such programs. A study of the criteria and procedures for establishing special access programs was completed in April 1988 (unclassified summary released in May 1988: GAO/NSIAD-88-152). A separate study on the extent of oversight was completed in early 1989, and an unclassified summary of this study was released May 4, 1989 (GAO/NSIAD-89-133). Both reports indicated that there have been improvements in the management and oversight of DOD special access programs.

In its consideration of the FY90-91 defense authorization bill, the Senate Armed Services Committee approved report language establishing a reporting requirement for the Secretary of Defense when special access program data is reclassified. The Committee expressed its concern that those involved with a program need adequate time to review and comment on the planned disclosure of data.

The arguments made by those who oppose alternative approaches to non-intelligence, DOD special access program information access focus on their fear of inadvertently exposing the programs and budgets of the intelligence agencies and a general concern about creating a lucrative target for foreign intelligence operations. It is DOD's position that additional legislation is not required. The arguments made by those in favor of reform reflect a concern about Pentagon motives, the practice of restricting information from some Members of Congress, and the need for an informed debate of program issues and costs.

## Glossary

The definitions that follow may be useful to the reader. Many were provided by the Department of Defense.

**"Black" Program** -- A special access program whose very existence and purpose may in and of itself be classified. A term that has no official status in any DOD policy or regulation. An expression used colloquially by some defense analysts to mean all programs for which funding figures are classified at some level. The expression is slowly being abandoned in congressional staff circles because it is regarded as misleading.

**"Carve-Out" Contract** -- A type of classified contract issued in connection with an approved special access program in which the Defense Investigative Service (DIS) has been relieved of inspection responsibility in whole or in part under the Defense Industrial Security Program.

**Defense Investigative Service** -- The DOD agency responsible for personnel security investigations and the Industrial Security Program. Among other things, the purpose of the Industrial Security Program is to ensure the safeguarding of classified information entrusted to industry.

**DOD Components** -- Shorthand expression used to refer to the Office of the Secretary of Defense (OSD), the Military Departments (namely, the Army, the Navy, and the Air Force), the Organization of the Joint Chiefs of Staff (OJCS), the Unified



and Specified Commands, the Inspector General of the Department of Defense (IG DOD), and the Defense Agencies.

**Need-To-Know** -- A determination by an authorized holder of classified information that access to or knowledge of specific classified materials is required by others, in the interest of national security, to perform specific, officially authorized Government functions.

**Sensitive Compartmented Information (SCI)** -- Intelligence information and material that requires special controls for restricted handling within compartmented intelligence systems and for which compartmentation is established.

**Special Access Program** -- Any program imposing "need-to-know" or access controls beyond those normally required for access to Confidential, Secret, and Top Secret information. Such a program may include special clearance, adjudication, or investigative requirements, special designations of officials authorized to determine "need-to-know," or special lists of persons determined to have a "need-to-know."

## LEGISLATION

### **P.L. 100-180**

Department of Defense Authorization Act, 1988-1989. Authorizes appropriations for FY88 and FY89 for military functions of the Department of Defense and to prescribe military personnel levels for such Department for FY88 and FY89, and for other purposes. Includes Aspin amendment on the treatment of certain special access programs; also, Boxer and Weicker amendments on reporting requirements for such programs. Signed into law on Dec. 4, 1987.

### **P.L. 100-456**

Department of Defense Authorization Act, 1989. Includes, among other things additional reporting requirements to Congress for selected special access programs. Signed into law Sept. 29, 1988.

### **S. 1352 (Nunn)**

National Defense Authorization Act for FY90-91. Includes Committee amendment establishing reporting requirements associated with DOD changes in special access program classification. Reported by Senate Armed Services Committee July 19, 1989 (S. Rept. 101-81). Passed by Senate August 2 (95-4). Laid on the table: H.R. 2461 passed in lieu.