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**Statement for the Record
on the Administration's Fiscal Year 2012
Intelligence Authorization Proposal**

Senate Select Committee on Intelligence

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**Robert S. Litt
General Counsel**

**STATEMENT FOR THE RECORD BY
ROBERT S. LITT,
GENERAL COUNSEL OF THE OFFICE OF
THE DIRECTOR OF NATIONAL INTELLIGENCE**

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Chairman Feinstein, Vice Chairman Chambliss, Members of the Committee, thank you for the opportunity to offer my views on the Administration's intelligence authorization proposals for Fiscal Year (FY) 2012.

Before addressing several of the current legislative priorities for the Administration, I wanted to thank the Committee for its recent support of reauthorization of Foreign Intelligence Surveillance Act ("FISA") intelligence collection authorities, and for supporting several legislative provisions that are included within the Intelligence Authorization Act for FY 2011.

First, thank you for supporting the recent extension of the three provisions of the FISA that were set to expire on May 27, 2011. As DNI Clapper expressed in his letter to the Majority and Minority Leaders, these provisions play an important role in protecting our national security. The Intelligence Community is using all of its authorities to exploit the valuable information obtained at the Bin Laden compound. But this treasure trove of intelligence is not a panacea; we must continue to collect critical and time-sensitive intelligence in every way we can. The extension of these three FISA authorities will greatly assist the Intelligence Community in these efforts.

On a related front, as you know, the FISA Amendments Act of 2008 is set to sunset on December 31, 2012. This Act provides additional and critically important authority for the Intelligence Community to acquire foreign intelligence information by targeting persons

reasonably believed to be outside of the United States. It ensures that the Intelligence Community has the flexibility and agility it needs to identify and respond to terrorist and other foreign threats to our security. We look forward to working with Congress to extend these important statutory tools.

Second, thank you for including several of the Administration's provisions in the recently passed Intelligence Authorization Act for FY 2011. We believe that these provisions will support the IC's mission in the years to come. Section 303 provides a necessary, albeit technical, fix to the law to ensure that reimbursable detailees to elements of the Intelligence Community may serve without being subject to the two-year limitation imposed for non-reimbursable detailees. Section 401 directs that an update to the National Counterintelligence Strategy by the National Counterintelligence Executive occur every three years, thus facilitating synchronicity between the National Counterintelligence Strategy and the three-year reporting requirement for the National Intelligence Strategy. Finally, Section 411 authorizes the Director of the Defense Intelligence Agency to expend funds appropriated for human intelligence and counterintelligence activities for objects of a confidential, extraordinary, and emergency nature without regard to certain laws and regulations ordinarily governing the expenditure of government funds.

Also before addressing the Administration's FY 2012 Intelligence Authorization bill, I would like to briefly address certain steps that the Intelligence Community has taken to implement Section 348 of the Intelligence Authorization Act for FY 2010. Section 348 directs the DNI, in consultation with the Comptroller General of the United States, to issue an Intelligence Community Directive ("ICD") "governing the access of the Comptroller General to information in the possession of an element of the intelligence community." On April 29, 2011, the DNI signed ICD 114, "Comptroller General Access to Intelligence Community Information."

This ICD, produced after close consultation with the Government Accountability Office, provides a framework for Intelligence Community elements in reviewing and preparing responses to requests from GAO for information pursuant to its jurisdiction. ICD 114 codifies the Intelligence Community practice of cooperation “to the fullest extent possible” with GAO reviews. Moreover, the ICD notes that finished, disseminated national intelligence information relevant to a GAO review shall generally be provided to GAO. Within this framework of cooperation, however, the ICD notes that information that falls within the purview of the congressional intelligence oversight committees generally shall not be made available to GAO to support a GAO audit or review of core national intelligence capabilities and activities such as intelligence collection operations, audit or reviews of intelligence analysis and analytic techniques, counterintelligence operations, and intelligence funding.

ICD 114 is an important document for both GAO and the IC; it creates a uniform practice for Intelligence Community elements in reviewing and preparing responses to GAO inquiries. It presumes cooperation with GAO requests on the one hand, while recognizing the Intelligence Community’s unique and justifiable national security sensitivities – and the statutory framework for the exclusive oversight by the intelligence committees of such activities – on the other. We appreciate GAO’s helpful approach to the drafting process, and we expect that implementation of this ICD will be on a cooperative case-by-case basis working with GAO.

The Administration’s FY 2012 legislative package includes proposals that will promote a variety of objectives that the Intelligence Community shares with the Congress, including improving fiscal accountability and enhancing information sharing. These include the following:

- 1. Personnel Ceiling Adjustment**

In past years, the DNI supported a provision that would entirely remove end-strength personnel ceilings for the Intelligence Community and allow us to “manage to budget.” We still believe this to be the soundest policy. The personnel ceilings included in Intelligence Authorization Acts are inflexible and lead to increased use of contractors to perform important (but not inherently governmental) Intelligence Community functions in lieu of government employees. Managing to budget promotes the most efficient allocation of resources and allows the DNI and the heads of the Intelligence Community elements the maximum flexibility to execute their missions. Congressional oversight of the Intelligence Community workforce would be assured by a requirement for an annual projection of employment levels based on mission requirements for inclusion in each year’s budget submission.

We recognize, however, that Congress is hesitant to take this step in light of concerns about the size and cost of the Intelligence Community workforce, and that Congress is inclined to maintain personnel ceilings for the near term. The Administration requests that the Congress give the DNI some measure of flexibility with the personnel ceilings to help the Intelligence Community better manage these ceilings, particularly in meeting exigent circumstances.

Section 103 authorizes the DNI to exceed any existing personnel caps imposed by Congress for FY 2012 by as much as 5 percent if he determines that this action is necessary to the performance of important intelligence or intelligence-related activities. This provision requires that the DNI notify the congressional intelligence committees in the event that he plans to exceed the personnel caps. The provision would also provide that personnel in certain categories would be exempt from the caps: those in student or trainee programs; reserve corps members; reemployed annuitants; detailees; joint duty participants; and those involved in long-

term training. Finally, this provision would authorize the DNI to exceed the caps as a result of conversion of core contractor personnel to government civilian personnel.

The DNI shares the Congress's interest in fiscal discipline and reduced budgets, and recognizes the necessity of making difficult budgetary decisions. Nevertheless, the DNI needs the flexibility to exceed personnel caps if he determines that doing so is necessary to Intelligence Community intelligence capabilities in this dynamic threat environment.

2. CIA Gifts Authorities

As the Committee is aware, on 30 December 2009, the lives of seven CIA officers were taken in a carefully planned and targeted terrorist attack near Khost, Afghanistan. Several more CIA officers were seriously wounded in the attack. In the aftermath of the deadly attack at Khost, it became clear to the Administration that the existing statutory authority for the CIA to solicit and accept gifts on behalf of its employees needed to be enhanced.

The legal regime created by Section 12 of the CIA Act, which authorizes the CIA to accept, hold, administer, and use gifts for the benefit of its employees and their dependents, has been in place since 1981. The Administration is finalizing proposed legislation that is designed to expand the authority of the CIA to better address the needs of employees, dependents, and survivors directly affected by incidents like the attack at Khost. This proposed legislation will amend Section 12 of the CIA Act to require the CIA Director to prescribe regulations to provide that an employee and that employee's family members may accept gifts from non-profit organizations, private parties, and other sources outside the Agency, other than foreign governments and their agents.

The Administration has not yet finalized its proposed legislation. Nevertheless, I want to point out that the Office of Government Ethics – the executive branch agency with authority both

to interpret the federal ethics statutes and to implement the federal ethics regulations – has reviewed this proposed legislation and posed no objections.

Sections 402 and 403 of H.R. 1892, the Intelligence Authorization Act for Fiscal Year 2012 (Chairman's Mark), largely address the Administration's objectives in this regard.

3. Reporting Obligations

Section 403 sunsets intelligence-related reporting obligations three years after the date of their enactment. This provision applies both to already existing reporting obligations and to those mandated by statute in the future.

This provision does not sunset reporting obligations required of Inspectors General by the Central Intelligence Agency Act of 1949, the National Security Act of 1947, and the Inspector General Act of 1978; contained in Title V of the National Security Act or the Foreign Intelligence Surveillance Act; or imposed on all departments and agencies of the federal government. This provision also does not sunset reporting obligations that expressly require that the reporting extend beyond three years.

This proposal ensures that Congress continues to receive the information it requires to perform its oversight function while eliminating those reporting obligations that are no longer useful to Congress. Preparation of these recurring reporting products costs the Intelligence Community more than a million dollars annually, and diverts resources from other intelligence missions. The elimination of outdated reporting obligations will assist in keeping staff and resources focused on more mission-oriented work and allow the Intelligence Community to better address those items of current interest to Congress.

DNI Authorities

The Committee has on several occasions asked whether the DNI believes he needs additional authorities to perform his statutory functions. As I mentioned to you at this hearing last year, the DNI's current authorities result from a series of compromises, with the current set of DNI authorities straddling the middle ground between the so-called "Secretary of Intelligence" and something more like a traffic policeman. Moreover, any discussion of additional authorities has to take account of the same political realities that led to the set of compromises we now live with: those who did not favor a strong DNI at the outset are unlikely to have changed their minds. This discussion is made more complex given that any new DNI authorities will likely displace the authorities of other officials or entities.

Aside from a select set of fixes at the margins of the DNI's authorities, some of which are included in the Administration's FY 2012 Intelligence Authorization bill, we have not yet identified any substantial new authorities that we believe the DNI needs to properly carry out his statutory responsibilities. More specifically, the DNI's current statutory authorities are sufficient to achieve the primary goal of intelligence integration.

However, I ask for your support to sustain the DNI's current authorities. The House Appropriations Committee, Defense Subcommittee has drafted an FY 2012 Defense Appropriations Bill that would significantly erode the DNI's ability to reprogram funds. Specifically, it would redefine the reprogramming baseline from the project to the subproject level; require notification on reprogramming actions at the \$1 million dollar level or ten percent level, whichever is less; establish an annual limit on the total amount of funds that can be reprogrammed; and restrict reprogramming actions to military requirements. These restrictions would seriously impede the Intelligence Community's ability to adjust for day-to-day operational

requirements and to surge for unanticipated events, such as the recent unrest in North Africa and the Middle East. Furthermore, these restrictions are particularly burdensome in a constrained fiscal environment where the Intelligence Community does not have the flexibility to internally realign without reprogramming. The Intelligence Community has not abused reprogramming notification requirements so restrictive language is not warranted.

Our examination and review of DNI authorities is an ongoing effort. As we identify necessary corrections that can be made within existing Executive branch authorities, we are working to make those corrections. As you will recall, the 2008 revisions to Executive Order 12333 and the 2009 revisions to Executive Order 13526 did just that. We will keep our oversight committees informed of our work in this regard, and will promptly notify the committees when we identify a need for legislative corrections to the DNI's authorities. If we identify necessary legislative corrections, we will work with you to identify a solution.

Several of the provisions included in the Administration's FY 2012 Intelligence Authorization bill have appeared in prior Intelligence Authorization bills; only a few are new in the FY 2012 submission. We look forward to working with you on the various proposals in the Administration's FY 2012 Intelligence Authorization package, and we hope that we can have a fruitful dialogue on items of interest to the Congress that may or may not lend themselves to resolution through legislation. We are always available to answer questions that you or your staff have regarding the Administration's bill.