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Consolidating Intelligence Appropriation and Authorization in a Single Committee: 9/11 Commission Recommendation and Alternatives

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Consolidating Intelligence Appropriation and Authorization in a Single Committee: 9/11 Commission Recommendation and Alternatives

Summary

On July 22, 2004, the National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission) issued its final report on the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon. Among other findings and recommendations, the commission stated that existing congressional oversight was “dysfunctional” and recommended two alternative proposals to change the existing intelligence committee structure: (1) replace the existing Senate and House Select Intelligence Committees with a joint committee on intelligence; or (2) consolidate intelligence appropriation and authorization functions in existing intelligence authorization committees. This report discusses the second of these two proposals. (For information on the first proposal, see CRS Report RL32525, *A Joint Committee on Intelligence: Proposals and Options From the 9/11 Commission and Others*, by Frederick M. Kaiser; and CRS Report RL32538, *9/11 Commission Recommendations: Joint Committee on Atomic Energy — A Model for Congressional Oversight?*, by Christopher M. Davis.)

Under existing Senate and House rules, intelligence appropriations are under the jurisdiction of the Senate and House Appropriations Committees. Each committee distributes these appropriations among five appropriations subcommittees, predominantly the Defense Appropriations Subcommittees. The 9/11 Commission recommended transferring jurisdiction over intelligence appropriations from the Senate and House Appropriations Committees to the intelligence authorization committees in each chamber.

Proponents of the commission’s proposal have contended that its adoption would (1) improve congressional oversight of intelligence, (2) counter-balance the commission’s proposed consolidation of executive branch intelligence activities, (3) provide a more integrated perspective on national intelligence spending, (4) attract Members to the consolidated intelligence committees, and (5) provide clear congressional accountability on intelligence within Congress. Opponents argue that consolidation would (1) reduce oversight of program quality, (2) weaken intelligence oversight, (3) shortchange intelligence needs of the military, (4) concentrate too much power in intelligence committees, and (5) increase spending.

Opponents may accordingly argue that it would be preferable to adopt the alternative recommendation of the 9/11 Commission to consolidate authorizing responsibility for intelligence in a joint committee. A third approach would be to consolidate responsibility for intelligence appropriations in a new subcommittee of each the Senate and House Committees on Appropriations. On October 9, 2004, the Senate adopted S.Res. 445, instituting this approach in the Senate. This action was based on a proposal by the Senate Majority and Minority Whips, the leaders of a bipartisan working group appointed by the Majority and Minority Leaders.

This report will be updated.

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Most Recent Developments

On October 7, 2004, the Senate rejected, by a vote of 23-74, a proposal by Senator John McCain to transfer jurisdiction over appropriations related to funding intelligence matters from the Senate Appropriations Committee to the Senate Select Committee on Intelligence.¹ On October 9, 2004, the Senate adopted S.Res. 445, which included a provision establishing a new Subcommittee on Intelligence within the Senate Committee on Appropriations (for more information on this approach, see “Current Legislation” below).

Introduction

On July 22, 2004, the National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission) issued its final report on the September 11, 2001, attacks on the World Trade Center and the Pentagon. The report contained the commission’s findings as well as its recommendations for corrective measures that can be taken to improve the protection of the United States against future terrorist attacks. In its report, the commission stated that existing congressional oversight of intelligence was “dysfunctional,” due to the limitations of the existing congressional intelligence authorizing committees.² The commission recommended two alternative proposals to change the current intelligence committee structure: (1) replace the existing Senate and House Select Intelligence Committees with a joint committee on intelligence; or (2) consolidate intelligence appropriation and authorization functions in the existing intelligence authorizing committees, thereby enhancing the power of the authorizing committees. The commission explained:

¹The proposal was in the form of an amendment (S.Amdt. 3999) to an amendment in the nature of a substitute (S.Amdt. 3981) to S.Res. 445.

²U.S. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (Washington: GPO, 2004), pp. 419-420, available at [<http://www.gpoaccess.gov/911/index.html>], visited Oct. 21, 2004 (hereafter referred to as Commission on Terrorist Attacks, *The 9/11 Commission Report*).

Whichever of these two forms are chosen, the goal should be a structure — codified by resolution with powers expressly granted and carefully limited — allowing a relatively small group of [M]embers of Congress, given time and reason to master the subject and the agencies, to conduct oversight of the intelligence establishment and be clearly accountable for their work. The staff of this committee should be nonpartisan and work for the entire committee and not for individual members.³

This report focuses on the commission's second proposal, to consolidate appropriation and authorization functions in the existing Senate and House Select Intelligence Committees. The report (1) describes the proposal; (2) compares it to the existing committee system; (3) describes a 19th century precedent for consolidation; (4) provides selected arguments in favor of consolidation as well as against; (5) discusses two alternatives to consolidating authorization and appropriation functions: a Joint Committee on Intelligence and separate intelligence appropriations subcommittees in the Senate and House Committees on Appropriations; and (6) describes current legislation.

For information on the proposed joint committee on intelligence, see CRS Report RL32525, *A Joint Committee on Intelligence: Proposals and Options From the 9/11 Commission and Others*, by Frederick M. Kaiser; and CRS Report RL32538, *9/11 Commission Recommendations: Joint Committee on Atomic Energy — A Model for Congressional Oversight?*, by Christopher M. Davis, both available at [<http://www.crs.gov/>].

9/11 Commission's Recommendation

Description

The 9/11 Commission proposes combining intelligence authorization and appropriation authorities under a single committee in each chamber, specifically, the existing Senate and House select intelligence authorization committees. The commission would transfer jurisdiction over intelligence appropriations from the Senate and House Appropriations Committees to the intelligence authorization committees.

The commission also recommends (1) reducing the membership of the intelligence committees from the existing 17 Senate panel members and 20 House panel members (plus two ex officio members on each) to seven or nine members in each chamber; and (2) making the terms of the committees' members indefinite, as opposed to the existing term limits.⁴ In addition, the commission calls for both

³Ibid., p. 420.

⁴In the Senate, no Senator may serve for more than eight years of continuous service on the Senate Select Committee on Intelligence (S.Res. 400, 94th Cong., sec. 2(b)). All members of the House Permanent Select Committee on Intelligence, except the chair and ranking member, may not serve during more than four Congresses in a period of six successive (continued...)

intelligence committees to be granted subpoena power. The commission is in favor of continuing the policy of reserving seats on each intelligence committee for one member of each of the following panels: the Committees on Armed Services; Foreign Affairs (or International Relations); and the Judiciary; and the Defense Appropriations Subcommittees.⁵

Existing Committee Jurisdiction Over Intelligence

Currently, authorization and appropriation authorities for discretionary spending are under the jurisdiction of two separate types of committees. Authorizing committees are responsible for reporting legislation that establishes, continues, or modifies agencies, program, projects, or activities (referred to as authorizing measures). The Senate and House Appropriations Committees report measures that providing funding (budget authority⁶) for certain agencies, programs, projects, and activities (appropriations measures).

The Senate and House Committees on Appropriations have jurisdiction over appropriations for the intelligence community. The Senate and House Select Intelligence Committees and Armed Services Committees generally have jurisdiction over intelligence authorizations.

Appropriations Jurisdiction. Under the Senate and House Appropriations Committees, jurisdiction over appropriations for the 15 agencies (or units) of the intelligence community is split among five subcommittees.⁷ All of the intelligence agencies and units are administratively part of various U.S. departments, except two: the Central Intelligence Agency (CIA) and the Office of the Director of Central Intelligence. Appropriations for all other intelligence agencies and units are reported by the subcommittees with jurisdiction over the parent department.

The bulk of intelligence appropriations are under the jurisdiction of the Senate and House Defense Appropriations Subcommittees, which have jurisdiction over all

⁴(...continued)

Congresses (House Rule X, clause 11(a)(4)).

⁵Under existing requirements, the Senate Select Intelligence Committee includes two representatives (a majority and a minority member) from four standing committees with generally overlapping jurisdiction, while the House select committee includes only one representative from each committee. The standing committees are the Senate and House Appropriations Committees, Senate and House Armed Services Committees, Senate Foreign Relations Committee and House International Relations Committee, and Senate and House Judiciary Committees.

For a discussion of these additional recommendations, see Commission on Terrorist Attacks, *The 9/11 Commission Report*, pp. 419-421; and CRS Report RL32525, *A Joint Committee on Intelligence: Proposals and Options from the 9/11 Commission and Others*, by Frederick M. Kaiser.

⁶Congress provides *budget authority* instead of cash to agencies. Budget authority represents the legal authority for federal agencies to make obligations requiring either immediate or future expenditures (or outlays).

⁷The Senate and House Appropriations Subcommittees have parallel jurisdictions.

Department of Defense intelligence spending. The 9/11 Commission reports: “[i]ntelligence agencies under the Department of Defense (DOD) account for approximately 80 percent of all U.S. spending for intelligence...”⁸ The CIA and Office of the Director of Central Intelligence are also under the jurisdiction of the Defense Appropriations Subcommittees. (For Senate and House Appropriations Subcommittees with jurisdiction over the intelligence entities, see **Table 1**.)

Authorizing Jurisdiction. The budget of the intelligence community is divided into three components: National Foreign Intelligence Program; Joint Military Intelligence Program; and Tactical Intelligence and Related Activities. The distinction between these programs is generally functional, as opposed to organizational. The National Foreign Intelligence Program funds all foreign intelligence and counterintelligence activities that support national needs, as opposed to single departmental needs. The Joint Military Intelligence Program supports DOD-wide activities, as opposed to individual military service needs. The Tactical Intelligence and Related Activities component funds DOD tactical military intelligence activities to meet needs of the individual military services.

DOD agencies funded by the National Foreign Intelligence Program and the DOD components include Defense Intelligence Agency; National Geospatial-Intelligence Agency; National Reconnaissance Office; and National Security Agency. The National Foreign Intelligence Program also provides funding for (1) Central Intelligence Agency (CIA); (2) Director of Central Intelligence; (3) Bureau of Intelligence and Research (Department of State); (4) Directorate of Information Analysis and Infrastructure Protection and Directorate of Coast Guard Intelligence (Department of Homeland Security); (5) Office of Intelligence (Department of Energy); (6) Office of Intelligence and the Counterterrorism and Counterintelligence Divisions (Federal Bureau of Investigation (FBI), Department of Justice); and (7) Office of Terrorism and Finance Intelligence (Department of the Treasury).

Authorization of the intelligence community is predominantly exercised by the Senate and House Select Intelligence Committees and Armed Services Committees; however, other committees may also have jurisdiction over some intelligence activities.

⁸Commission on Terrorist Attacks, *The 9/11 Commission Report*, p. 86.

Table 1. Senate and House Appropriations Subcommittee Jurisdiction over Intelligence Community Entities

Subcommittee	Intelligence Community Entity ^a
Commerce, Justice, State, and the Judiciary	Office of Intelligence Division, Federal Bureau of Investigation (FBI) (Department of Justice (DOJ)); Counterterrorism Division, FBI (DOJ); Counterintelligence Division, FBI (DOJ); and Bureau of Intelligence and Research (Department of State (State Department))
Defense	Director of Central Intelligence; Central Intelligence Agency; Defense Intelligence Agency (Department of Defense (DOD)); National Geospatial-Intelligence Agency (DOD); National Reconnaissance Office (DOD), National Security Agency (DOD); Intelligence entities of the Army, Navy, Air Force, and Marine Corps (DOD)
Energy and Water Development	Office of Intelligence (Department of Energy (DOE))
Homeland Security	Directorate of Coast Guard Intelligence (Department of Homeland Security (DHS)); and Directorate of Information Analysis and Infrastructure Protection (DHS)
Transportation/Treasury and General Government	Office of Terrorism and Finance Intelligence (Department of the Treasury)

a. The source of the list of intelligence community entities is U.S. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (Washington: GPO, 2004), pp. 407-408.

Senate. In the Senate, the Select Committee on Intelligence exercises jurisdiction over authorizations of appropriations, both direct and indirect, for the following:⁹

- Central Intelligence Agency;
- Director of Central Intelligence;
- Defense Intelligence Agency;
- National Security Agency;
- National Geospatial-Intelligence Agency;
- Intelligence activities of other agencies and units of DOD;
- Intelligence activities of the Department of State;
- Intelligence activities of the Federal Bureau of Investigation, including all activities of the Office of Intelligence; and
- Any department, agency, or subdivision which is a successor to any agency named above.¹⁰

The Senate Select Committee on Intelligence exercises jurisdiction over authorizations of one of the components, National Foreign Intelligence Program. The Senate Committee on Armed Services exercises jurisdiction over the other two components, DOD's Joint Military Intelligence Program and Tactical Intelligence and Related Agencies, in consultation with the Select Intelligence Committee. "As such, intelligence activities and programs are authorized both in an annual intelligence authorization and an annual defense authorization."¹¹ Smaller portions of intelligence activities are under the jurisdiction of several other authorizing committees (Senate Committees on Energy and Natural Resources, Finance, Foreign Relations, and the Judiciary).

Other authorizing committees may obtain a sequential referral of bills reported from the Select Intelligence Committees that include matters under their jurisdiction, and the intelligence committee has corresponding authority with respect to bills reported from other committees. The Senate Committee on Armed Services routinely exercises this authority, while others have not.

House. In the House, the Permanent Select Committee on Intelligence exercises jurisdiction over legislation for and authorization of the entire intelligence community. It has exclusive jurisdiction over only the National Foreign Intelligence Program, including the CIA and the Intelligence Community staff. The committee shares jurisdiction over the other two components of the intelligence community, DOD's Joint Military Intelligence Program and Tactical Intelligence and Related Activities, with the House Committee on Armed Services, typically through sequential referrals. Other committees might claim jurisdiction to study and review an intelligence or intelligence-related activity to the extent the activity directly affects

⁹The information on authorization committee jurisdiction over intelligence is a summary of information provided in: CRS general distribution memorandum, *Congressional Committee Jurisdiction Over Intelligence*, by Christopher M. Davis (Washington: Sept. 30, 2004), available to Members of Congress and staff from the author.

¹⁰Ibid.

¹¹Ibid.

a matter under their jurisdiction.¹² Sequential referral authority, similar to the Senate's authority, also applies to House committees with jurisdiction over intelligence.

As Congress analyzes the commission's proposals, it may consider changing the jurisdictions over intelligence of the various authorization committees. It could consider, for example, consolidating the authorization authority over the intelligence community in the House and Senate Select Intelligence Committees. Examples of such consolidation would include providing (1) the Senate Select Intelligence Committee with jurisdiction over the entire intelligence community; (2) both select Intelligence Committees with exclusive jurisdiction over intelligence; or (3) Select Intelligence Committees in both houses with exclusive jurisdiction over a portion of the intelligence community. Congress may also be called upon to consider proposals to provide exclusive jurisdiction over a new National Intelligence Program, as proposed by the 9/11 Commission. The suggested reorganization would replace the National Foreign Intelligence Program with a National Intelligence Program that would be headed by a new National Intelligence Director. One of the commission's arguments in support of transferring intelligence appropriations is that it would help ensure implementation of the commission's proposals to consolidate intelligence in the executive branch (see "Arguments in Favor of Consolidation" below).

Precedent for Consolidation

Separation of Authorization and Appropriation

Separate standing committees for spending and authorization have been a congressional fixture for two centuries. In the late 19th century, jurisdiction over several general appropriations bills was transferred from spending committees to authorization committees and then, after World War I, returned.

Since the House recognized the House Committee on Ways and Means as a standing committee in 1802,¹³ and the Senate established the Senate Committee on Finance in 1816, Congress has had separate standing committees for spending and authorization. The House Ways and Means and Senate Finance Committees had jurisdiction over both revenue measures and general appropriation bills¹⁴ until the end of the Civil War. In 1865 and 1867, the House and Senate Appropriations Committees, respectively, were established and jurisdiction over general

¹²Ibid.

¹³The House Committee on Ways and Means was established to function as a permanent committee in 1795, but was not formally recognized as a standing committee until 1802. Louis Fisher, "The Authorization-Appropriation Process in Congress: Formal Rules and Informal Practices," *Catholic University Law Review*, vol. 29, 1979, p. 54.

¹⁴The phrase "general appropriation bill" in this report is not used according to the technical definitions under House and Senate rules and precedents. General appropriations bills here include any appropriations for a variety of activities as opposed to a single activity (or purpose).

appropriation bills was transferred to the new committees. Both appropriations committees have been in existence for almost 140 years.

Consolidation Between 1878 and 1922

Beginning in the last quarter of the 19th century, the House and Senate consolidated the appropriation and authorization functions of certain activities by transferring jurisdiction over several general appropriations bills from the Senate and House Appropriations Committees to various authorization committees. In the House, the process began in 1878¹⁵ and was completed in 1885, when six of the bills were transferred. In total, eight of the 14 general appropriations bills were transferred to various authorization committees.¹⁶ This consolidation also fragmented jurisdiction over appropriations bills among several committees, reducing central committee control over spending. The House fragmentation lasted approximately 35 years, until all general appropriations bills were re-centralized in the House Appropriations Committee in 1920.

In 1899, the Senate transferred jurisdiction over seven of the 14 general appropriations bills to various authorization committees.¹⁷ According to the committee history of the Senate Appropriations Committee, one additional bill, the Rivers and Harbors bill, had not been considered a general appropriations bill and had been under the jurisdiction of the Committee on Commerce since 1826.¹⁸ In 1922, the Senate re-centralized jurisdiction over all the general appropriations bills in the Senate Appropriations Committee.

Scholars have suggested various theories to explain support for the fragmentation of appropriating authority.¹⁹ Prominent among these opinions are that:

¹⁵For several years prior to 1878, the Rivers and Harbors appropriations bill was generally sequentially referred to the Committee on Commerce and then the Committee on Appropriations. In 1878, the Committee on Commerce was able to bypass the Committee on Appropriations by suspension of the rules. The following year, the House changed the rules, providing the Committee on Commerce with the same authority to report the Rivers and Harbors bill as the Committee on Appropriations had regarding general appropriations bills.

¹⁶These bills were Agricultural; Army; Consular and Diplomatic Affairs; Indian; Military Academy; Naval; Post Office; and Rivers and Harbors. The bills remaining under the jurisdiction of the House Appropriations Committee were: Deficiencies; District of Columbia; Fortifications; Legislative, Executive, and Judicial; Pensions; and Sundry Civil.

¹⁷These bills were Agricultural; Army; Indian; Military Academy; Naval; Pension; and Post-Office. The bills remaining under the jurisdiction of the Senate Appropriations Committee were: Deficiencies; Diplomatic and Consular; District of Columbia; Fortifications; Legislative, Executive, and Judicial; and Sundry Civil.

¹⁸U.S. Congress, Senate, *United States Senate Committee on Appropriations: 135th Anniversary, 1867-2002*, S. Doc. 13, 107th Cong., 2nd sess. (Washington: GPO, 2002), p. 6.

¹⁹For more information, see David Brady and Mark A. Morgan, "Reforming the Structure of the House Appropriations Process: the Effects of the 1885 and 1919-1920 Reforms on Money Decisions," in Matthew D. McCubbins and Terry Sullivan, eds., *Congress: Structure*

(continued...)

- House rank-and-file Members revolted because it was felt the House Appropriations Committee was emphasizing economy at the expense of their districts' needs;
- Some Representatives felt the Appropriations Committee's distribution of spending was geographically biased;
- Some House Members felt the House Appropriations Committee had too much power and was using it inappropriately;
- Some Representatives wanted a more equitable distribution of congressional power;
- Some House Members wanted to reduce the influence of the 1885 chair of the House Appropriations Committee, Samuel J. Randall, for policy and/or personal reasons;
- Executive agencies and others opposed various practices Congress had implemented to maintain control over the national purse strings;
- Junior Senators wanted greater access to power; and
- Some Senators opposed the dominance of 20 Senators on the Appropriations and Finance Committees.

Some scholars have found that the devolution of several appropriations bills to authorizing committees, in part, contributed to the increase in spending that occurred after the decentralization. One of the scholars, political scientist Charles H. Stewart III, argues that other factors, such as the economy and wars, also contributed to the spending increase.²⁰

¹⁹(...continued)

and Policy (New York: Cambridge University Press, 1987), pp. 207-234; Louis Fisher, *Presidential Spending Power* (Princeton, New Jersey: Princeton University Press, 1975), pp. 19-35; Stephen Horn, *Unused Power: The Work of the Senate Committee on Appropriations* (Washington: The Brookings Institution, 1970), pp. 53-57; D. Roderick Kiewet and Matthew D. McCubbins, *The Logic of Delegation: Congressional Parties and the Appropriations Process* (Chicago: The University of Chicago Press, 1991), pp. 56-77; Eric Schickler and John Sides, "Intergenerational Warfare: The Senate Decentralizes Appropriations," *Legislative Studies Quarterly*, vol. 15, Nov. 2000, pp. 551-575 ; Charles H. Stewart, III, *Budget Reform Politics: The Design of the Appropriations Process in the House of Representatives, 1865-1921* (New York: Cambridge University Press, 1989); U.S. Congress, Senate, *United States Senate Committee on Appropriations: 135th Anniversary, 1867-2002*, S. Doc. 13, 107th Cong., 2nd sess. (Washington: GPO, 2002), pp. 4-15; and W. Thomas Wander, "Patterns of Change in the Congressional Budget Process, 1865-1974," *Congress and the Presidency*, vol. 9, Autumn 1982, pp. 23-49.

²⁰For more information, see David Brady and Mark A. Morgan, "Reforming the Structure of the House Appropriations Process: the Effects of the 1885 and 1919-1920 Reforms on Money Decisions," in Matthew D. McCubbins and Terry Sullivan, eds., *Congress: Structure and Policy* (New York: Cambridge University Press, 1987), pp. 207-234; CRS Report 93-729, *The House Appropriations Process, 1789-1993*, by Louis Fisher (archived report); and Charles H. Stewart III, *Budget Reform Politics: The Design of the Appropriations Process in the House of Representatives, 1865-1921* (New York: Cambridge University Press, 1989), pp. 133-215. For an opposing view, see D. Roderick Kiewet and Matthew D. McCubbins, *The Logic of Delegation: Congressional Parties and the Appropriations Process* (Chicago: The University of Chicago Press, 1991), pp. 56-77.

Separation of Authorization and Appropriation Resumes 1920-1922

The House in 1920 and the Senate in 1922 resumed the separation of authorization and appropriation functions. In response to the dramatic increase in expenditures and the national debt as a result of World War I,²¹ Congress decided to centralize budgetary decisionmaking in both the executive and legislative branches. In 1920, the House re-centralized all the general appropriations bills in the House Appropriations Committees. A year later, Congress passed the Budget and Accounting Act of 1921, which established the Bureau of the Budget (later reorganized as the Office of Management and Budget) and gave the President the responsibility for preparing and submitting the annual budget to Congress.²² Shortly thereafter, the Bureau of the Budget recommended reorganizing general appropriations bills on administrative rather than topical lines. The House Appropriations Committee soon adopted this recommendation. Procedural difficulties arose almost immediately, however. While the House had reorganized its bills along administrative lines and had re-centralized all the appropriations bills under the House Appropriations Committee, the Senate continued to organize its bills along topical lines and to fragment committee jurisdiction of appropriations bills among several committees. As a result, in 1922, the Senate re-centralized all general appropriations bills in the Senate Appropriations Committee and accepted the organization of appropriations bills along administrative lines.²³

Comparison of Earlier Period to Today

As during the earlier period, fragmentation of committee jurisdiction over spending exists today. Currently, most spending is controlled by the Senate Finance and House Ways and Means Committees (by virtue of their jurisdiction over major entitlement programs) and the Senate and House Appropriations Committees. Comparatively small amounts of spending are under the jurisdiction of several other authorizing committees, generally in the form of entitlements. Examples of entitlement programs include Social Security, Medicare, unemployment compensation, and various veterans benefit programs. Approximately 57% of all FY2003 spending was for entitlements; about 38% was controlled by the appropriations committees.²⁴

There are significant differences between the earlier period and today that limit the applicability of this precedent to the 9/11 Commission proposal. First, the means by which authorization committees perform their basic function has changed.

²¹Louis Fisher found that federal expenditures increased from \$700 million before World War I to \$12.7 billion and \$18.5 billion by 1918 and 1919, respectively. The total national debt increased from \$1 billion in 1916 to over \$25 billion by 1919. CRS Report 93-729 S, *The House Appropriations Process, 1789-1992*, by Louis Fisher (archived report).

²²Ibid.

²³It also transferred the Rivers and Harbors bill, which became a general appropriations bill.

²⁴U.S. Congressional Budget Office, *Historical Budget Data* (Washington: CBO, 2004), available at [<http://www.cbo.gov/>], visited Oct. 29, 2004.

Authorization committees are basically responsible for evaluating the effectiveness of various existing and potential programs and policies, or assessing program quality (the *program-quality analysis*). Appropriations committees are responsible for selecting items to be funded, determining the funding levels of each, and examining whether funds are spent according to congressional intent (the *budget analysis*). During the earlier period, authorization bills were permanent law that established an agency and provided broad missions for the agency. Those enactments did not explicitly provide authorization of subsequent appropriations. Occasionally, the original act was amended by a subsequent authorization act. Annual appropriations acts typically provided more detailed guidance to the agency than the authorization act by setting funding levels for individual activities within the agency. Today, authorizations for discretionary spending²⁵ agencies and programs frequently provide spending guidance to the appropriations committees, through authorization of appropriations. They are typically temporary, on an annual or multi-year cycle.²⁶ In many cases, they establish and change programs or projects and also provide detailed directives to the agencies as well.

Second, the 9/11 Commission proposal would transfer jurisdiction over all intelligence appropriations, for both the program activities and administrative activities, to the select intelligence committees. During the earlier period only program expenses were generally transferred. Earlier, appropriations bills were organized by topic, generally separating program activities of a department from its salaries and contingent expenses.²⁷ As a result, the military activities of the War Department, for example, were under the jurisdiction of the Committees on Military Affairs (authorizing committees), while the salaries and contingent expenses of the civilian administration of the War Department were under the jurisdiction of the Appropriations Committees. Today, appropriations measures are organized along administrative lines; funding for both programs and salaries of a department (or agency) are included in the same regular appropriations bill.

Third, there are different institutional controls for spending today. During the earlier period, there was no institutionalized mechanism to coordinate revenue and spending decisions or establish enforceable spending ceilings. Today, under the congressional budget process, Congress (1) sets annual total spending ceilings and revenue floors; (2) distributes the spending among the various committees with jurisdiction, setting committee spending ceilings; and (3) may enforce these decisions through points of order and a reconciliation process.²⁸

²⁵The intelligence spending that the 9/11 Commission would transfer to the select intelligence committees is discretionary spending.

²⁶Multi-year reauthorizations generally range from two to five years.

²⁷The agricultural appropriations act was an exception; funding for program activities, salaries, and contingent expenses were all included.

²⁸For information on the congressional budget process, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith and Allen Schick; and CRS Report RS20095, *The Congressional Budget Process: A Brief Overview*, by James V. Saturno.

In order to inform Members of Congress and the public of the effect of congressional budgetary decisions and to provide information for budget enforcement purposes, much of the budgetary information is publicly available. The various spending ceilings are available, including the total spending ceilings, committee spending ceilings, and appropriations subcommittee ceilings. Funding levels provided in measures considered by Congress are also available. Spending priorities are publicly debated during consideration of the annual budget resolution. Members enforce spending ceilings publicly through points of order on the Senate and House floors.

The classified character of intelligence spending might present difficulties for transferring intelligence appropriations to the authorization committees. Under the existing budget process, the spending ceilings associated with the intelligence authorization committees could not be publicly enforced. Neither the total ceilings for the intelligence committees nor the total amount of spending provided in the intelligence appropriations bills would be public. Therefore, intelligence appropriations would not be part of the congressional budget process. While the 9/11 Commission recommended declassification of total intelligence spending, many Members are opposed.²⁹ Members may consider a modification of the existing budget process that would allow the inclusion of classified spending.

Under present practices, classified intelligence spending has been made a part of the annual budget process by including the bulk of it in the regular Defense appropriations bills. The intelligence spending has been hidden in lump-sum amounts in the annual Defense regular appropriations bills. These bills are a part of the congressional budget process. Spending ceilings for the appropriations subcommittees with jurisdiction, Defense Appropriations Subcommittees, are enforceable and publicly available. The total amount provided in these bills is publicly available. These bills are also subject to other spending ceilings associated with the annual budget resolution.

Prospective Effects

Arguments in Favor of Consolidation

Improve Congressional Oversight³⁰ of Intelligence. The 9/11 Commission states that adopting its package of congressional intelligence oversight reforms and, in particular, either of its committee restructuring proposals, would substantially improve the current inadequate congressional intelligence oversight capability. “Under the terms of existing rules and resolutions,” the commission reasoned, “the

²⁹For more information, see CRS Report 94-261, *Intelligence Spending: Should Total Amounts be Made Public?*, by Richard A. Best, Jr., and Elizabeth B. Bazan. The 9/11 Commission proposes declassifying the total intelligence spending level, see Commission on Terrorist Attacks, *The 9/11 Commission Report*, p 416.

³⁰“*Congressional oversight* refers to reviewing, monitoring, and supervising federal agencies, programs, activities, and policy implementation. CRS Report 97-636, *Congressional Oversight*, by Frederick M. Kaiser.

House and Senate intelligence committees lack the power, influence, and sustained capability³¹ to meet the nation's daunting intelligence challenges. Supporting the transfer of appropriations authority, the vice chair of the 9/11 Commission, former Representative Lee H. Hamilton, told the House Permanent Select Committee on Intelligence that "unless you have the power of the purse, unless you can control the money, you're not going to get effective oversight."³²

Supporters furthermore contend that stronger intelligence oversight committees are needed due to the secretive nature of intelligence. Former Representative Hamilton also argued:

The only place you get independent oversight of the intelligence community is in Congress. You don't get it in the media; they don't have the information. You don't get it in special interest groups; they don't have the information, either. Only you [Congress] can give robust oversight.... We think a robust oversight by the Congress is hugely important to monitor what goes on and to keep an eye on the activities of this vast intelligence community, which operates as it must in secrecy.³³

Contribute Toward Implementing the 9/11 Commission's Proposed National Intelligence Director and National Counterterrorism Center.

Proponents argue that transferring appropriations authority to the intelligence authorizing committees would help ensure successful implementation of the commission's proposals to establish a National Intelligence Director (NID) and National Counterterrorism Center (NCTC). The 9/11 Commission states: "[u]nity of effort in executive management can be lost if it is fractured by divided congressional oversight."³⁴ Existing committee jurisdiction over intelligence agencies and activities that would constitute the NID is spread over several authorization committees and appropriations subcommittees. Proponents explain a single committee in each chamber would improve efforts to promote a systematic review of executive branch intelligence activities.

Counter-Balance Proposed Centralization of Executive Branch Intelligence.

The 9/11 Commission proposes centralizing executive branch national intelligence authority under a National Intelligence Director. Some argue that a consolidation of appropriation and authorization functions (or establishing a joint committee) is

³¹Commission on Terrorist Attacks, *The 9/11 Commission Report*, pp. 419-420.

³²Testimony of Representative Lee H. Hamilton, *House Select Intelligence Committee Holds Hearing on September 11 Commission Report*, testimony before House Permanent Select Committee on Intelligence, Aug. 11, 2004, available at [<http://www.cq.com/displaytranscripts.do>], visited Oct. 20, 2004.

³³Testimony of Representative Lee Hamilton, in U.S. Congress, House Committee on Armed Services, *House Armed Services Committee Holds Hearings on September 11 Commission Report*, hearings, 108th Cong., 2nd sess., Aug. 10, 2004, available at [<http://www.cq.com/displaytranscripts.do>], visited Oct. 20, 2004 (hereafter referred to as Representative Lee Hamilton, *House Armed Services Committee Holds Hearings on September 11 Commission Report*).

³⁴Commission on Terrorist Attacks, *The 9/11 Commission Report*, p. 420.

needed to provide additional control over the executive branch centralization of intelligence power. The consolidation would provide the intelligence committees with budgetary leverage over the executive branch to ensure strong congressional checks.³⁵

Provide Clear Congressional Accountability. Some proponents reason that consolidating intelligence authorization and appropriation into a single committee in each chamber ensures clear congressional accountability. There would be a single committee in each chamber that would be responsible for intelligence, instead of at least two committees in each chamber: the respective Select Committees on Intelligence and Committees on Appropriations.

Reduce Conflicting Congressional Directives to Intelligence Entities. Under the existing committee structure, the Select Intelligence Committees propose various intelligence policies and programs for the intelligence community. The Appropriations Committees may provide conflicting direction to the intelligence community through, for example, the funding decisions they make regarding each intelligence policy and program. Consolidation would reduce these conflicting directives.

Provide More Integrated Perspective on National Intelligence. Others maintain consolidation is needed to ensure that intelligence spending decisions are made within the context of a more *integrated perspective on national intelligence* needs than exists today. That is, the needs of various programs and entities in the intelligence community are evaluated and coordinated, and the intelligence spending priorities are established. This approach contrasts with current practices in the appropriations subcommittees, which, it is argued, focus on the intelligence needs of individual departments (the *departmental perspective on intelligence*). The Defense Appropriations Subcommittees, for example, may focus on the military intelligence needs of the Department of Defense at the expense of national intelligence needs.

Some also argue that under present arrangements, intelligence needs sometimes may not be adequately funded due to competing non-intelligence needs, since the appropriations subcommittees must balance spending needs of both intelligence and non-intelligence programs and activities.

Attract Members to Intelligence Committees. Transferring jurisdiction over appropriations to the intelligence committees might make membership on those committees more attractive. Intelligence committees may also become more attractive if the 9/11 Commission's proposal to change membership on the intelligence committees from limited terms to indefinite terms is adopted. Increasing the attractiveness of intelligence committee membership would help to ensure continuity of membership and, therefore, more informed and consistent oversight.

³⁵Testimony of Senator J. Robert Kerrey, in U.S. Congress, House Committee on Government Reform, *9-11 Commission's Recommendations*, hearings, 108th Cong., 2nd sess., Oct. 6, 2004, available at [<http://www.cq.com/displaytranscripts.do>], visited Oct. 6, 2004; and Representative Lee Hamilton, *House Armed Services Committee Holds Hearings on September 11 Commission Report*.

Arguments Against Consolidation

Reduce Oversight of Program Quality. Opponents maintain that consolidation would significantly reduce oversight of program quality. Under the existing separation of the two functions, authorization committees are responsible for program quality (the *program-quality analysis*) and the appropriations committees are responsible for items of appropriations and for examining whether funds are spent according to congressional intent (the *budget analysis*). Under contemporary conditions, budgetary control is frequently considered the more important form of power, but budget analysis requires substantial expenditures of time and effort. As a result, it is possible that committees with consolidated jurisdiction would focus chiefly on this aspect of their work, and that program quality might consequently receive inadequate attention.

May Weaken Intelligence Oversight. Some opponents argue that due to the secretive nature of intelligence, providing only one committee in each chamber with jurisdiction over intelligence oversight would weaken oversight. As mentioned previously, Congress is the only institution able to conduct intelligence oversight. In order to reduce the chances of enactment of faulty policies, checks and balances within Congress are needed, such as an authorization committee and an appropriations committee with different responsibilities. Competitive analysis of intelligence in Congress would also be lost if a single committee had jurisdiction over intelligence. There is also congressional concern that if the two intelligence committees eventually develop close, supportive relationships with the intelligence agencies, rigorous congressional intelligence oversight would be weakened, not strengthened. Some argue that it would be less likely that four separate committees would be co-opted.

Shortchange Intelligence Needs of the Military. Some might contend that the proposal would result in a detrimental shift in intelligence spending priorities from the intelligence needs of the military to those of national policymakers. Under the existing committee structure, the Defense Appropriations Subcommittees focus primarily on intelligence needs of the military. Senator Daniel K. Inouye, Ranking Member of the Senate Defense Appropriations Subcommittee, stated:

Linking Defense and Intelligence is critical. DOD cannot operate without good intelligence. The Defense Subcommittee has ensured that intelligence resources support the needs of the warfighter. Today, the Defense Subcommittee reviews the recommendations of both the Armed Services and Intelligence Committees. The Appropriations Committee can minimize redundancies and make sure that the needs of both Defense and Intelligence are met.³⁶

Increase Spending. Some maintain that if intelligence spending remains classified and appropriations are transferred to the Select Intelligence Committees, institutional checks on funding for intelligence will be reduced, and spending will therefore tend to increase. Under present arrangements, as explained above in

³⁶Sen. Daniel K. Inouye, remarks in the Senate, *Congressional Record*, daily edition, vol. 150, Oct. 7, 2004, p. S10635.

Comparison of Earlier Period to Today, much information on intelligence spending is not publicly available. As a result, ceilings set on total intelligence spending could not be enforced through the existing congressional budget process. Some may argue that, without visible spending controls, there would be little ability to restrain intelligence spending.

Set a Precedent for Dispersion of Appropriations. In the opinion of some Members, transferring intelligence appropriations to the select intelligence committees might set a precedent for transferring appropriations for other discretionary spending programs and activities to applicable authorizing committees. Other Members of Congress may support establishing such a precedent. Opponents of the proposal to merge authorization and appropriation functions could maintain that any piecemeal or major overhaul of the current committee structure should be preceded by a thorough analysis of the effect such a change would have. Congress should examine, for example, the possible delay in completing appropriations bills that such a merger might create. One suggested solution is to restructure the jurisdiction of the Senate and House authorization committees.

Concentrate Too Much Power in Intelligence Committees. Intelligence committees with jurisdiction over both authorization and appropriations, in the opinion of some, might be too powerful, particularly if the intelligence committees also have exclusive authorization jurisdiction. Currently, the funding decisions of the appropriations committees about intelligence policies and programs may provide a check, review, and constraint on the policy decisions of the intelligence committees. Under a structure that consolidates authorization and appropriation jurisdiction, this check would be lost.

In addition, reducing the size of the intelligence committee and changing membership to indefinite terms could have the long-term effect of reducing the number of Members with knowledge of the secret intelligence policies and practices. As a result, it is possible that fewer Members will be willing to question the intelligence committees recommendations.

May Require a Bicameral Approach. If only one chamber transfers appropriations jurisdiction to its select intelligence committee, opponents might argue that fewer of the claimed benefits of a unified policy focus would be realized. In addition, difficulties in the conference process would result. The Senate and House Appropriations Subcommittees have traditionally had parallel jurisdictions over individual regular appropriations bills, and each subcommittee pair has conferenced on a single regular appropriations bill. The result would be one chamber approving a unified intelligence appropriation bill, and the other passing a defense appropriations bill containing most intelligence, while with the rest would be in other appropriations bills. The defense appropriations bill in the latter chamber, unlike that in the former, would include both intelligence and non-intelligence spending, as would the other appropriations bills containing intelligence spending.³⁷ Opponents

³⁷For example, the Commerce-Justice-State-the Judiciary regular bill would include FBI intelligence spending and Homeland Security regular bill homeland security intelligence (continued...)

of consolidation might maintain that it is unclear how measures passed by the two chambers would be reconciled in a final version of the legislation.

Alternatives to Consolidating Authorization and Appropriation

Congress is considering various alternatives to the 9/11 Commission proposal to consolidate authorization and appropriation. Two are discussed below. The first is the 9/11 Commission's other recommendation: a Joint Committee on Intelligence. The second is a proposal to establish an Intelligence Appropriations Subcommittee in each of the Senate and House Appropriations Committees.

Joint Committee on Intelligence

As an alternative to combining intelligence authorization and appropriation authorities, the 9/11 Commission recommended replacing the existing Senate and House select intelligence authorization committees with a joint committee on intelligence. This joint committee would be modeled after the former Joint Committee on Atomic Energy (joint committee, 1947-1977). (For more information, see CRS Report RL32538, *9/11 Commission Recommendations: Joint Committee on Atomic Energy—A Model for Congressional Oversight?*, by Christopher M. Davis.)

The Joint Committee on Atomic Energy, which had jurisdiction over the former Atomic Energy Commission and nuclear energy, was established as an 18-member committee with an equal number of Members from each chamber. Virtually unique among joint committees, the Joint Committee on Atomic Energy had authority to report legislation to both the Senate and House.³⁸

Those who have studied the joint committee have concluded that it became one of the most powerful committees of Congress. There are several reasons for the joint committee's power. The joint committee had exclusive legislative and oversight jurisdiction and, therefore, committee policy competition was limited to the Senate and House Appropriations Committees. Also, the joint committee had exclusive access to restricted data not available to other congressional committees, and strong leverage over the nuclear activities of the executive branch.³⁹ (For detailed information on the Joint Committee on Atomic Energy, see CRS Report RL32525, *A Joint Committee on Intelligence: Proposals and Options From the 9/11 Commission and Others*.)

³⁷(...continued)
funding.

³⁸The Atomic Energy Act of 1946 established the joint committee as well as the Atomic Energy Commission, which the committee oversaw. CRS Report RL32525, *A Joint Committee on Intelligence: Proposals and Options From the 9/11 Commission and Others*, by Frederick M. Kaiser.

³⁹CRS Report RL32538, *9/11 Commission Recommendations: Joint Committee on Atomic Energy—A Model for Congressional Oversight?*, by Christopher M. Davis.

Separate Intelligence Appropriations Subcommittee Within Appropriations Committees

Another alternative proposal calls for the establishment of separate intelligence appropriations subcommittees in the Senate and House Appropriations Committees. This option would transfer intelligence appropriations from the existing appropriations subcommittees, predominantly the Defense Appropriations Subcommittees, to the new intelligence subcommittees.

This recommendation, proponents reason, would have several advantages over the 9/11 Commission recommendation. It would retain program-quality and budget analyses in separate appropriations and authorization committees, which would be lost under the 9/11 Commission's proposal. Also, it would not concentrate power predominantly in a single committee in each chamber or set a precedent for transferring appropriations to authorization committees, and it would likely be more easily implemented than the 9/11 Commission recommendation.

Another argument offered in favor of this approach is that it retains certain advantages of the 9/11 Commission's consolidation proposal. Proponents state, for example, that intelligence spending decisions would be based on a more comprehensive national perspective on intelligence. Some argue that concentrating intelligence spending could be used to counter consolidation of intelligence power in the Executive, whether the congressional committees were intelligence appropriations subcommittees or intelligence authorization committees with appropriations power.

The disadvantages to establishing intelligence appropriations subcommittees, opponents argue, are that this approach too would be likely to (1) increase spending, unless the total intelligence amount is declassified or existing budget procedures are modified; and (2) shortchange the intelligence needs of the military. Also, concern has been expressed that congressional accountability would be more diffuse than under the 9/11 Commission proposal. Instead of two committees focusing entirely on intelligence, there would be four committees only focusing on intelligence.

Current Legislation

Legislation Regarding the Senate

Consolidating Responsibility for Intelligence Appropriation and Authorization in Senate Select Committee on Intelligence. On October 7, 2004, the Senate rejected, by a vote of 23-74, a proposal by Senator John McCain, to transfer appropriations, rescissions,⁴⁰ and spending authority⁴¹ related to funding intelligence matters from the Senate Appropriations Committee to the Senate Select Committee on Intelligence. The proposal was in the form of an amendment (S.Amdt.

⁴⁰*Rescission* refers to a statutory provision cancelling previously enacted budget authority.

⁴¹*Spending authority* refers to budget authority that is not enacted in appropriations acts.

3999) to the amendment in the nature of a substitute (S.Amdt. 3981) to S.Res. 445, the intelligence committee reorganization resolution.

Separate Senate Intelligence Appropriations Subcommittee. On October 9, 2004, the Senate adopted, by a vote of 79-6, S.Res. 445, an intelligence committee reorganization resolution, which establishes a separate Subcommittee on Intelligence in the Senate Appropriations Committee (see §402). S.Res. 445 clarifies that the Appropriations Committee will identify the intelligence activities to be transferred to the new subcommittee.

It also provides that as soon as possible after the 109th Congress convenes, the Senate Appropriations Committee is responsible for reorganizing the appropriations subcommittees to ensure that the existing number of subcommittees (13) remains (see §402). The original amendment in the nature of a substitute (S.Amdt. 3981) to the resolution would have preserved the 13 subcommittees by merging the Military Construction and Defense Subcommittees. This language was replaced with the final language by an amendment (S.Amdt. 4015) proposed by the Chair of the Military Construction Subcommittee, Senator Kay Bailey Hutchison. The amendment was adopted by a vote of 44-41 on October 9. Since the Senate and House appropriations subcommittees have customarily retained parallel jurisdictions, the House is expected to respond to the Senate's action.

Legislation Regarding Senate and House

Requiring Congressional Action on 9/11 Commission's Congressional Oversight Proposals in 108th Congress. On October 7, 2004, the House rejected, by a vote of 203-213, a proposal that, among other provisions, would have required the Senate and House to establish in the 108th Congress either of the 9/11 Commission's recommendations to establish (1) a Joint Committee on Intelligence; or (2) a single committee in each chamber with jurisdiction over both intelligence authorizing and appropriating authorities. The proposal was in the form of an amendment in the nature of a substitute to H.R. 10, the 9/11 Recommendations Implementation Act, and was proposed by Representative Robert Menendez