



1. [Substitute Amendment to S. 3017 – Intelligence Authorization Act for Fiscal Year 2017](#)

Substitute Amendment to S. 3017 — Intelligence Authorization Act for Fiscal Year 2017 (Rep. Burr, R-NC)

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FLOOR SCHEDULE:

Scheduled for consideration on December 8, 2016 under suspension of the rules, which requires 2/3 vote for passage.

TOPLINE SUMMARY:

[Substitute Amendment to S. 3017](#) would authorize funding for the U.S. intelligence community for Fiscal Year (FY) 2017, including for the intelligence activities of the Central Intelligence Agency (CIA), the Office of the Director of National Intelligence (ODNI), the National Security Agency (NSA), the National Geospatial Intelligence Agency (NGA), and the National Reconnaissance Office (NRO) along with other intelligence related agencies. The substitute amendment to S. 3017 is a compromise legislation between the House-passed [H.R. 6393](#) and [S. 3017](#). The RSC's Legislative Bulletin for H.R. 6393 can be found [here](#).

COST:

The Congressional Budget Office (CBO) [estimates](#) that implementing the unclassified provisions of the bill would cost \$888 million over the 2017-2021 period, subject to appropriation of the specified and estimated amounts. Enacting the bill also would affect direct spending and revenues; therefore, pay-as-you procedures apply. However, CBO estimates that those effects would not be significant over the 2017-2026 period. CBO estimates that enacting S. 3017 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027. The CBO estimate the House-passed version of the bill, H.R. 6393, is not available.

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

This legislation is mainly contained in a classified annex. This information is available on a Members-only basis in HVC-304 of the Capitol.

The RSC's legislative bulletin for the [House-passed](#) H.R. 6393 can be found [here](#).

Title I of H.R. 6393 would authorize funding for the following intelligence and intelligence-related entities: (1) the Office of the Director of National Intelligence, (2) the Central Intelligence Agency, (3) the Department of Defense, (4) the Defense Intelligence Agency, (5) the National Security Agency, (6) the Department of the Army, the Department of the Navy, and the Department of the Air Force, (7) the Coast Guard, (8) the Department of State, (9) the Department of the Treasury, (10) the Department of Energy, (11) the Department of Justice, (12) the Federal Bureau of Investigation, (13) the Drug Enforcement Administration, (14) the National Reconnaissance Office, (15) the National Geospatial Intelligence Agency, and (16) the Department of Homeland Security.

Title I would also provide that the details of the authorized amounts for intelligence and intelligence-related activities and the applicable personnel levels by program contained in the classified Schedule of Authorizations made available to Congress and to the president. Title I would also authorize the Director of National Intelligence employ of civilian personnel in excess of the number authorized if the director determines that such action is necessary to the performance of important intelligence functions. However, the number of personnel employed in excess of the authorized number may not exceed three percent of the total number of authorized civilian personnel, or 10 percent of the number of civilian personnel authorized under such schedule for such element for the purposes of contractor conversions. The Director of National Intelligence would be directed to establish guidelines that govern, for each element of the intelligence community: the treatment under authorized personnel levels of employment or assignment in a student program, trainee program, or similar program; a reserve corps or as a reemployed annuitant; or details, joint duty, or long-term, fulltime training.

The Director of National Intelligence may authorize employment of civilian personnel in an element of the intelligence community in excess of the number authorized for fiscal year 2017 if: the Director determines that the increase is necessary to convert the performance of any function of the element by contractors to performance by civilian personnel; and if the number of civilian personnel of the element employed in excess of the number authorized does not exceed 10 percent of the number of civilian personnel authorized under such schedule for the element. The Director would be required to submit a certification to Congress if an increase is authorized. Section 104 of Title I would authorize \$ 561,788,000 for the Intelligence Community Management Account of the Director of National Intelligence for FY2017, and would remain available until September 30, 2018. The bill would also authorize 787 full-time equivalent positions within the Intelligence Community Management Account of the Director of National Intelligence as of September 30, 2017.

Title II would authorize \$514,000,000 for the Central Intelligence Agency Retirement and Disability Fund for FY 2017.

Title III would clarify that the authorization of appropriations by the legislation would not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States. Title III would additionally allow for authorized appropriations for salary, pay, retirement, and other benefits for federal employees to be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits. This provision would allow for the specific authorizations in the classified annex to be covered by any general pay increases or changes enacted on a government-wide basis.

The Director of National Intelligence would be authorized to engage in fundraising in an official capacity for the benefit of nonprofit organizations that: (1) provide support to surviving family members of a deceased employee of an element of the intelligence community; or (2) provide support for the welfare, education, or recreation of employees of an element of the intelligence community, former employees of an element of the intelligence community, or family members of employees. The Director would be required in consultation with the Director of the Office of Government Ethics, to issue regulations to carry out the fundraising authority.

Title III would further require the Director of National Intelligence to submit a five-year investment strategy for outreach and recruiting efforts in the fields of science, technology, engineering, and mathematics, to include cybersecurity and computer literacy. For each of the fiscal years 2018 through 2022, the head of each element of the intelligence community would be required to submit an investment plan along with the materials submitted as justification of the element's budget request. Title III would further authorize the head of each element of the intelligence community to establish higher minimum rates of pay for one or more categories of positions in such element that require expertise in science, technology, engineering, or math.

Section 306 would require the Director of National Intelligence Beginning on October 1, 2018, to implement a multi-sector workforce initiative: (1) to improve management of the workforce of the intelligence

community; (2) to achieve an appropriate ratio of employees of the United States Government and core contractors in such workforce; and (3) to establish processes that enables elements of the intelligence community to build and maintain an appropriate ratio of such employees and core contractors. Beginning on October 1, 2018, the personnel of the intelligence community would be managed each fiscal year solely on the basis of, and consistent with the workload required to carry out the functions and activities of the intelligence community; and the funds made available to the intelligence community for such fiscal year. The Director of National Intelligence would be directed to ensure that there are employed during a fiscal year employees in the number and with the combination of skills and qualifications that are necessary to carry out the functions for which funds are provided to the intelligence community for that fiscal year.

Section 308 would require the Director of National Intelligence to issue, and release to the public, guidance regarding engagements by elements of the intelligence community with entertainment industry entities. The guidance would permit an element of the intelligence community to conduct engagements, if the head of the element, or a designee of such head, provides prior approval; and require an unclassified annual report to the Congress regarding engagements.

Title III would require the Director of National Intelligence to develop and implement a uniform policy for each covered office of an inspector general to better ensure the independence of each office to include provisions to prevent any conflict of interest related to a matter any employee of a covered office of an inspector general personally and substantially participated in during previous employment, as well as other conditions. The provision would further prohibit the Director from requiring an employee of an office of an inspector general to rotate to a position in the element for which such office conducts oversight.

Section 312 would require the Under Secretary, National Protection and Programs Directorate to carry out a program to provide assistance to covered critical infrastructure to reduce the risk of regional or national catastrophic harm caused by a cyber attack against covered critical infrastructure. Participation in the program by covered critical infrastructure would be on a voluntary basis. The Under Secretary for Intelligence and Analysis of the Department of Homeland Security shall coordinate and lead the provision of assistance from the appropriate elements of the intelligence community to the Under Secretary, National Protection and Programs Directorate, and voluntary participants through the national cybersecurity and communications integration center, and are authorized to carry out activities to develop a national strategy to effectively leverage intelligence community resources made available to support the program. A voluntary participant in the covered critical infrastructure program would not be required to reimburse the United States government for the use of any facility, personnel, contractor, equipment, service, or information of the United States government utilized in an activity carried out pursuant to the program. Nothing in the provision would be construed to authorize the Director of National Intelligence, the Secretary of Homeland Security, or any other federal regulator to promulgate new regulations.

Pursuant to [Executive Order No. 13526](#), title III would prohibit the head of an intelligence element from charging reproduction fees for a mandatory declassification review in excess of reproduction fees that the head would charge for a request for information under the Freedom of Information Act (FOIA) ([section 552 of title 5, United States Code](#)). The provision would additionally permit agency heads to waive processing fees for declassification reviews.

Title IV would establish a Director of the National Counterintelligence and Security Center, appointed by the president with the advice and consent of the Senate, to serve as the head of national counterintelligence for the United States government, to act as chairperson of the National Counterintelligence Policy Board, to act as head of the National Counterintelligence and Security Center, and to participate as an observer on boards, committees, and entities of the executive branch as the Director of National Intelligence considers appropriate.

Title IV would require the Director of National Intelligence to submit to Congress any analytic materials related to a review or an investigation of any proposed investment into the United States, and determine

whether such investment will have an operational impact on the intelligence community. Each report would describe the operational impact of the investment on the intelligence community; and describe any actions that have been or will be taken to mitigate such impact. Title IV would require the Director of National Intelligence shall publish on a publicly available Internet website a list of all logos, symbols, insignia, and other markings commonly associated with, or adopted by, an organization designated by the Secretary of State as a [foreign terrorist organization](#).

Title IV would additionally authorize the Director of the Central Intelligence Agency (CIA) to pay death benefits substantially similar to those authorized for members of the Foreign Service, and adjust the eligibility for death benefits as necessary to meet the unique requirements of the mission of the CIA. Title IV would authorize the Inspector General of the CIA to consider certain positions as law enforcement officers for purposes of calculating retirement eligibility and entitlements under chapters [83](#) and [84](#) of title 5, United States Code, if such officer or employee is appointed to a position with responsibility for investigating suspected offenses against the criminal laws of the United States.

Section 421 would require the Director of the Federal Bureau of Investigation to submit to Congress a comprehensive strategic workforce report regarding initiatives to effectively integrate information technology expertise in the investigative process, to include an assessment, including measurable benchmarks, of progress on initiatives to recruit, train, and retain personnel with the necessary skills and experiences in vital areas, including encryption, cryptography, and big data analytics. Title IV would further require the Director of the National Reconnaissance Office (NRO) to develop a plan for the National Reconnaissance Office to address how to carry out covered space-based environmental monitoring missions. The Director of NRO would be authorized to conduct pre-acquisition activities, including with respect to requests for information, analyses of alternatives, study contracts, modeling and simulation, and other activities the Director determines necessary.

Title V would require the President to establish an interagency committee to counter active measures by the Russian Federation to exert covert influence. The duties of the committee would be to counter Russian actions, including by exposing falsehoods, agents of influence, corruption, human rights abuses, terrorism, and assassinations carried out by the security services or political elites of the Russian Federation or their proxies. A request for funds required for the functioning of the committee may be included in each budget for a fiscal year submitted by the president.

Section 502 would direct the Secretary of State in coordination with the Director of the Federal Bureau of Investigation and the Director of National Intelligence, to establish a mandatory advance notification regime governing all travel by accredited diplomatic and consular personnel of the Russian Federation in the United States and take necessary action to secure full compliance by Russian personnel and address any noncompliance.

Title V would require the Director of National Intelligence to submit a study to Congress to determine the feasibility of creating an intelligence sharing arrangement and database to provide covered state parties with imagery that is comparable, delivered more frequently, and in equal or higher resolution than imagery available through the database established under the [Open Skies Treaty](#). The Director would additionally be required to submit to Congress: (1) an intelligence assessment on Russian Federation warfighting doctrine and the extent to which Russian Federation flights under the Open Skies Treaty contribute to such doctrine; (2) a counterintelligence analysis as to whether the Russian Federation has, could have, or intends to have the capability to exceed the imagery limits set forth in the Open Skies Treaty; and (3) a list of intelligence exchanges with covered state parties that have been updated.

The substitute amendment to S. 3017 omitted the provision in H.R. 6393 on information on activities of the Privacy and Civil Liberties Oversight Board and its authorization.

Title VI would require the Director of National Intelligence to complete a declassification review of intelligence reports prepared by the [National Counterterrorism Center](#) (NCTC) on past terrorist activities of each Guantanamo detainee held at Guantanamo after September 11, 2001, for the detainee's Periodic Review Board (PRB) sessions, transfer, or release from Guantanamo. The Director would be required to submit to Congress a report setting out the results of the declassification review, including a description of intelligence reports covered by the review that were not declassified.

Title VII would authorize the Secretary of Defense to establish at a publicly accessible location at Fort George G. Meade the 'Cyber Center for Education and Innovation Home of the National Cryptologic Museum. The Secretary would be authorized to enter into an agreement with the National Cryptologic Museum Foundation, a nonprofit organization, for the design, construction, and operation of the center.

Section 603 would require a report on national security systems to include national security systems or components thereof that have been decertified and are still in operational use; and extension requests and the current status of any national security systems still in use or components thereof that have been decertified and are still in use.

Title VI would further require reports: on the role of the intelligence community in the event of a biological attack, including a technical capabilities assessment to address potential unknown pathogens; on the intelligence community's declassification proposals; reviewing the system by which the government classifies and declassifies information; assessing the intelligence community's research and development corps; on the intelligence community employees detailed to National Security Council; on foreign fighter flows to and from terrorist safe havens abroad; on cybersecurity threats to seaports of the United States and maritime shipping; on the counter-narrative activities of the Department of Homeland Security with respect to the Islamic State and other extremist groups; and on known or claimed reprisals made against employees of contractors of elements of the intelligence community during the preceding three year period, to include an evaluation of the usefulness of establishing a prohibition on reprisals against covered contractor employees as a means of encouraging such contractors to make protected disclosures.

COMMITTEE ACTION:

S. 3017 introduced on June 6, 2016 and was referred to the Senate Select Committee on Intelligence.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not available.

CONSTITUTIONAL AUTHORITY:

Bills that originate in the Senate do not require a constitutional authority statement

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