

# WebMemo



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## Unfinished Business: Congress Must Address Intelligence Oversight, CFIUS Reform

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Prior to adjourning for the year, Congress may consider two high-priority bills relating to defense and homeland security. The first would provide essential oversight over classified programs and policy guidance to the intelligence community. The second would reform the government's system for reviewing foreign purchases of domestic companies to ensure national security is not compromised and provide the updated tools the executive branch needs to conduct effective due diligence of security-related acquisitions in a post-9/11 world. For the sake of national security, the 109th Congress should move forward on both fronts.

### **Intelligence Authorization and Oversight**

Annual intelligence authorization bills are similar to the annual defense authorization bills that issue policy, set personnel levels, and offer other guidance not found in a spending bill. The intelligence authorization bill for fiscal year 2007 still needs to be completed. This legislation would approve funding to strengthen human intelligence capabilities, collection, and analysis across the government and provide important guidance to the Intelligence Community, which spans over a dozen agencies and a multi-billion dollar budget. Other essential guidance within the intelligence bill includes information sharing directives; human, signals, and electronic intelligence authorization; intelligence policy guidance; and funding levels for classified programs. This bill supports the efforts of U.S. agents, warfighters, and other collectors in obtaining data and intelli-

gence to help identify insurgents in Iraq and terrorists around the world.

In the authorization, Congress should grant additional arrest powers to the CIA and National Security Agency outside of their headquarters in the Washington, D.C., region. At the same time, Congress should require that *all* members of the congressional intelligence committees receive briefings on all relevant matters within the committees' jurisdiction. This is particularly important in light of disclosures that only the leadership of these committees, and not all members, received briefings on the National Security Agency's terrorist surveillance program.

For the first time since 1978, Congress failed last year to pass an intelligence authorization bill at all, and it may not pass one this year. Without a bill, the intelligence community will continue its work without a strategic road map from Capitol Hill, which ought to be providing stronger policy direction and oversight.

### **CFIUS Reform**

Overhauling the Committee on Foreign Investment in the United States (CFIUS) is overdue.

This paper, in its entirety, can be found at:  
[www.heritage.org/research/homelandsecurity/wm1231.cfm](http://www.heritage.org/research/homelandsecurity/wm1231.cfm)

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CFIUS—a large committee made up of members from 12 departments—reviews foreign purchases of U.S. companies in order to determine whether a particular proposal raises national security issues that may need further investigation. When necessary, the committee offers recommendations on a particular takeover to the President. Earlier this year, both the House and the Senate passed bills to reform the CFIUS process in response to public criticism of the proposed purchase of a company that manages container terminals at several U.S. ports by the United Arab Emirates-based Dubai Ports World. This particular case highlighted the need for changes to the CFIUS model to better tailor the committee to the needs of the war on terrorism.

CFIUS members need clearer responsibilities so that Congress can hold the participating agencies accountable. CFIUS reform should ensure that the executive departments charged with signing off on security reviews of foreign takeovers collaborate more with other parts of their home agencies and with the committee. Currently, each government agency reviews individual cases separately in order to determine whether it has any objections. The entire committee then issues a final government-wide recommendation on behalf of all 12 agencies. Congress has no way to strategically evaluate the whole acquisition process from start to finish, and no one oversees the entire process to guarantee that the offices that review CFIUS cases are talking to offices in the respective departments that monitor post-acquisition activities. After a foreign purchase is completed, many agencies work to prevent, for example, the improper transfer of defense technology to third parties, but these post-takeover concerns are poorly integrated into the CFIUS process.

One entity should oversee the whole foreign acquisition review process and report on it to Congress. Legislation to reform the process should establish a CFIUS monitoring group led by the independent Government Accountability Office (GAO),

which would evaluate and report on the participating CFIUS agencies' determinations before and after purchases. This reformed process would help identify and close loopholes that may allow rogue states or individuals to acquire military technology.

Congress must strike a balance between the need for effective scrutiny of potentially questionable deals and the great benefits of foreign direct investment in U.S. companies and technologies. Foreign buyers of U.S. technologies seem to have found ways to circumvent CFIUS scrutiny, as evidenced by the fact that the number of CFIUS filings has decreased since the late 1980s, when filing began, while global acquisition activity has increased. For now, perhaps contributing to this trend, CFIUS lacks enforcement mechanisms, and filing with the committee in the first place is voluntary. Congress should ask the GAO to offer recommendations on how to get more foreign companies and countries to file.

## Conclusion

In addition to strengthening national security, intelligence authorization and CFIUS reform have one important aspect in common: Both bills would boost congressional oversight over essential programs and thereby improve performance and accountability. Congress should encourage government agencies to be more proactive in gathering and reviewing information that could prevent terrorist attacks and other crises. To that end, Congress should ensure that an intelligence authorization bill is passed this year and that CFIUS reform moves forward before the new Congress begins in January and momentum is slowed or lost.

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