

## Appendix

*The following is a selection of legislative materials related to security clearances in the legislative and executive branches, including proposals that would reform how clearances function within the House and Senate.*

### **Senator Murphy's Amendment**

*Senator Chris Murphy (D-Conn.) offered and then withdrew the following amendment to the FY 2020 Legislative Branch Appropriations bill. It would have provided one personal office staffer with TS/SCI clearance to each member of the Senate who serves on a committee that oversees sensitive classified activities and programs.*

#### Sensitive Compartmentalized Information Access for Senators' Personal Staff

On page 10 of the report, insert the following at the end of the section of the heading "Salaries, Officers, and Employees—Office of the Secretary":

Access to Classified Information—The Committee directs the Office of Senate Security (OSS) to amend the Senate Security Manual to establish a procedure, within 30 days of enactment of this Act, through which Senators whose duties include oversight of sensitive classified activities and programs may submit a maximum of one Top Secret-cleared employee per Senate personal office through the OSS for adjudication of eligibility to access Sensitive Compartmented Information (SCI) by the Department of Defense Central Adjudication Facility. Senators whose duties include the oversight of sensitive classified activities and programs and require additional SCI-cleared staff are defined as members of one of the following Senate Committees: Committee on Appropriations, Subcommittee on Defense; Committee on Appropriations, Subcommittee on State, Foreign Operations, and Related Programs; Committee on Armed Services; Committee on Foreign Relations; and Committee on Homeland Security and Governmental Affairs. This shall not alter the established precedence of a "need-to-know" determination made by the Executive Branch department or agency in possession of the classified information or material sought.

### **Representatives Kilmer and Davis's Amendment**

*Representatives Susan Davis (D-Calif.) and Derek Kilmer (D-Wash.) offered the following amendment to the Intelligence Authorization Act for 2020, but it was not ruled in order.<sup>37</sup> It would have required reporting on clearances in Congress, to parallel the reporting on the executive branch.*

Strike section 2609 and insert the following new section:

## SEC. 2609. REPORTS ON SECURITY CLEARANCES.

(a) Congressional Employees.—Subsection (a)(1) of section 506H of the National Security Act of 1947 (50 U.S.C. 3104) is amended—

- (1) in subparagraph (B)(ii), by striking “; and” and inserting a semicolon;
- (2) in subparagraph (C)(vii)(IV), by striking the period and inserting “; and”; and
- (3) by adding at the end the following new subparagraph:

“(D) the number of employees of Congress, in total and for each of the House of Representatives, the Senate, the Government Accountability Office, the Congressional Budget Office, the Library of Congress, and any other element of Congress, who—

“(i) held a security clearance at such level as of October 1 of the preceding year; and

“(ii) were approved for a security clearance at such level during the preceding fiscal year.”.

(b) Public Availability.—Such section is further amended—

- (1) in subsection (a)(1), in the matter preceding subparagraph (A), by inserting “, and make publicly available,” after “submit to Congress”; and
- (2) in subsection (b), by adding at the end the following new sentence: “Any such classified annex shall be made publicly available in redacted, unclassified form at the same time as the report pursuant to subsection (a)(1).”.

(c) Information Relating to Intelligence Community.—

(1) Employees.—Subsection (a)(1)(A) of such section is amended by inserting “, in total and for each element of the intelligence community,” after “employees of the United States Government”.

(2) Contractors.—Subsection (a)(1)(B) of such section is amended by inserting “, in total and for each element of the intelligence community,” after “contractors to the United States Government”.

## **Security Clearance Language from FY 2020 House Legislative Branch Appropriations Committee Report**

*The following language was included in the FY 2020 House Legislative Branch Appropriations Committee report.<sup>38</sup> The underlying legislation was enacted into law. The provision requires the House Sergeant at Arms to report on March 1, for the following two years, on the average and median length of time it takes for congressional staff to receive clearances.*

Security Clearance Report: The Committee requests an unclassified report from the Sergeant at Arms on March 1 of each of the next two years on the average and median length of time from open to close of all security clearance requests, to help determine whether Legislative Branch security clearances are being finalized and adjudicated consistent with executive branch timelines. This unclassified report may contain a classified annex which includes the average and median length of time from open to

close of all security clearance requests broken down by level of security clearances (confidential, secret, top secret, and TS/SCI) so as to better provide context of timelines to Members and cleared staff.

## **Executive Branch Reporting Requirement from the FY 2010 Authorization**

*The following language was adopted as part of the Intelligence Authorization Act for FY 2010, which was enacted into law.<sup>39</sup> It requires the president to provide an annual report on the number of people who are granted clearances in the executive branch and how long it takes to receive those clearances.*

(b) REPORT ON SECURITY CLEARANCE DETERMINATIONS—(1) Not later than February 1 of each year, the President shall submit to Congress a report on the security clearance process. Such report shall include, for each security clearance level—

- (A) the number of employees of the United States Government who—
  - (i) held a security clearance at such level as of October 1 of the preceding year; and
  - (ii) were approved for a security clearance at such level during the preceding fiscal year;
- (B) the number of contractors to the United States Government who—
  - (i) held a security clearance at such level as of October 1 of the preceding year; and
  - (ii) were approved for a security clearance at such level during the preceding fiscal year; and
- (C) for each element of the intelligence community—
  - (i) the total amount of time it took to process the security clearance determination for such level that—
    - (I) was among the 80 percent of security clearance determinations made during the preceding fiscal year that took the shortest amount of time to complete; and
    - (II) took the longest amount of time to complete;
  - (ii) the total amount of time it took to process the security clearance determination for such level that—
    - (I) was among the 90 percent of security clearance determinations made during the preceding fiscal year that took the shortest amount of time to complete; and
    - (II) took the longest amount of time to complete;
  - (iii) the number of pending security clearance investigations for such level as of October 1 of the preceding year that have remained pending for—
    - (I) 4 months or less;
    - (II) between 4 months and 8 months;
    - (III) between 8 months and one year; and
    - (IV) more than one year;

(iv) the percentage of reviews during the preceding fiscal year that resulted in a denial or revocation of a security clearance;  
(v) the percentage of investigations during the preceding fiscal year that resulted in incomplete information;  
(vi) the percentage of investigations during the preceding fiscal year that did not result in enough information to make a decision on potentially adverse information; and  
(vii) for security clearance determinations completed or pending during the preceding fiscal year that have taken longer than one year to complete—

- (I) the number of security clearance determinations for positions as employees of the United States Government that required more than one year to complete;
- (II) the number of security clearance determinations for contractors that required more than one year to complete;
- (III) the agencies that investigated and adjudicated such determinations; and
- (IV) the cause of significant delays in such determinations.

(2) For purposes of paragraph (1), the President may consider—

- (A) security clearances at the level of confidential and secret as one security clearance level; and
- (B) security clearances at the level of top secret or higher as one security clearance level.

(c) Form—The results required under subsection (a)(2) and the reports required under subsection (b)(1) shall be submitted in unclassified form, but may include a classified annex.

## **S. Res. 445 (108th Congress) Creating SSCI Staff Designees**

*The following language was adopted by the United States Senate as S. Res. 445 in October 2004 by a roll call vote of 79–6.<sup>40</sup> Section 201(g) created staff designees within the Senate Intelligence Committee.<sup>41</sup>*

(g) Staff.—Section 15 of S. Res. 400 is amended to read as follows:

“Sec. 15. (a) In addition to other committee staff selected by the select Committee, the select Committee shall hire or appoint one employee for each member of the select Committee to serve as such Member’s designated representative on the select Committee. The select Committee shall only hire or appoint an employee chosen by the respective Member of the select Committee for whom the employee will serve as the designated representative on the select Committee.

“(b) The select Committee shall be afforded a supplement to its budget, to be determined by the Committee on Rules and Administration, to allow for the hire of each employee who fills the position of designated representative to the select Committee.

The designated representative shall have office space and appropriate office equipment in the select Committee spaces. Designated personal representatives shall have the same access to Committee staff, information, records, and databases as select Committee staff, as determined by the Chairman and Vice Chairman.

“(c) The designated employee shall meet all the requirements of relevant statutes, Senate rules, and committee security clearance requirements for employment by the select Committee.

## Abbreviations

<b>CRS</b>	Congressional Research Service
<b>CUI</b>	Controlled Unclassified Information
<b>DNI</b>	Director of National Intelligence
<b>DOE</b>	Department of Energy
<b>GAO</b>	Government Accountability Office
<b>HPSCI</b>	House Permanent Select Committee on Intelligence
<b>OHS</b>	Office of House Security
<b>OSS</b>	Office of Senate Security
<b>SAA</b>	Sergeant at Arms
<b>SAP</b>	Special Access Programs
<b>SCI</b>	Sensitive Compartmented Information
<b>SSCI</b>	Senate Select Committee on Intelligence
<b>TS/SCI</b>	Top Secret/Sensitive Compartmented Information

## About the Authors

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**Mandy Smithberger** rejoined the Project On Government Oversight as the director of the Straus Military Reform Project at the Center for Defense Information in December 2014. Previously she was a national security policy adviser to U.S. Rep. Jackie Speier (D-Calif.), with whom she worked on passing key provisions of the Military Whistleblower Protection Enhancement Act into law, which expands protections by increasing the level of Inspector General review for complaints, requiring timely action on findings of reprisal, and increasing the time whistleblowers have to report reprisals. Previously an investigator with POGO, she was part of a team that received the Society of Professional Journalists' Sunshine Award for contributions in the area of open government.

Ms. Smithberger received her B.A. in government from Smith College and her Master's in Strategic Studies and International Economics from Johns Hopkins University's School of Advanced International Studies. She also served as an analyst at the Defense Intelligence Agency and U.S. Central Command.

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## Notes

1. "Security Clearance Process: Answers to Frequently Asked Questions," Michelle D. Christensen, Congressional Research Service, R43216 (October 7, 2016), p. 2, available at <https://fas.org/sqp/crs/secrecy/R43216.pdf>.
2. For ease of explanation, we touch only briefly on who grants clearances, the statutory regime set up under the Atomic Energy Act, and Special Access Programs.
3. See, e.g., "Classified Information Nondisclosure Agreement: Briefing Booklet," Information Security Oversight Office (Spring 2001), p. 5, which says the holder of the information determines need-to-know, available at [https://www.wrc.noaa.gov/wrso/forms/standard-form-312\\_booklet.pdf](https://www.wrc.noaa.gov/wrso/forms/standard-form-312_booklet.pdf).
4. We have heard anecdotally that many staffers experience lengthy delays in obtaining their clearances. A Sergeant at Arms report due in March 2020 may shed some light on this issue in the House of Representatives.
5. See "Congress as a User of Intelligence: Sharing Secrets with Lawmakers," L. Britt Snider, CIA Center for the Study of Intelligence (1997), available at <https://www.cia.gov/library/center-for-the-study-of-intelligence/kent-csi/vol41no5/pdf/v41i5a02p.pdf>.
6. We do not address the issue of overclassification in this primer, but it may indeed be worth considering. Overclassification is a feature of the current clearance system, and the long-term efforts underway to resolve that issue should not preclude more immediate efforts to ensure that members of Congress have access to the information they need.
7. See "Reducing Overclassification through Accountability," Elizabeth Goitein and David Shapiro (2011), available at [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Reducing\\_Overclassification.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Reducing_Overclassification.pdf); and "Examining the Costs of Overclassification on Transparency and Security: Hearing before the Committee on Oversight and Government Reform," 114th Cong. (December 7, 2016), Serial No. 114-174, available at [https://fas.org/irp/congress/2016\\_hr/overclass.pdf](https://fas.org/irp/congress/2016_hr/overclass.pdf).
8. "Executive Branch Classified National Security Information and Congress," Information Security Oversight Office (2007), available at <https://www.archives.gov/files/declassification/pidb/meetings/06-22-07-carpenter.pdf>. In summary, according to the report, to release classified records held by Congress: (1) Congress may initiate a special declassification program; (2) Researchers may file a Mandatory Declassification Review request for applicable records held in physical custody by the Center for Legislative Archives; and (3) Congressional records may be systematically reviewed for declassification in a manner similar to the procedure followed by executive branch records.
9. "Strengthening Congressional Oversight of the Intelligence Community," Demand Progress, the R Street Institute, FreedomWorks, and EFF (September 2016), available at [https://s3.amazonaws.com/demandprogress/reports/Strengthening\\_Congressional\\_Oversight\\_of\\_the\\_IC\\_White\\_Paper\\_Sept\\_2016.pdf](https://s3.amazonaws.com/demandprogress/reports/Strengthening_Congressional_Oversight_of_the_IC_White_Paper_Sept_2016.pdf).
10. See "Congress as a User of Intelligence: Sharing Secrets with Lawmakers," L. Britt Snider, CIA Center for the Study of Intelligence (1997), available at <https://www.cia.gov/library/center-for-the-study-of-intelligence/kent-csi/vol41no5/pdf/v41i5a02p.pdf>; "Congress as a Consumer of Intelligence Information," Alfred Cumming, Congressional Research Service Report R40136 (December 13, 2011), available at <https://www.everycrsreport.com/reports/R40136.html>; and "Congressional Oversight of Intelligence: Background and Selected Options for Further Reform," Michael E. DeVine, Congressional Research Service Report R45421 (December 4, 2018), available at <https://www.everycrsreport.com/reports/R45421.html>.
11. "Protection of Classified Information by Congress: Practices and Proposals," Congressional Research Service Report RS20748 (August 2011), footnote 6, available at <https://www.everycrsreport.com/reports/RS20748.html#ifn6>. Efforts to obtain the letters have been unsuccessful. CRS no longer has a copy, and if the House Administration Committee has a copy, they cannot find it. The letters are not in the *Congressional Record* and we could not find them listed in the annual report for the House Administration Committee.
12. "Statement of Disbursements of the House" (October 4, 2019), p. 149, available at [https://www.house.gov/sites/default/files/uploads/documents/SODs/2019q3\\_singlevolume.pdf](https://www.house.gov/sites/default/files/uploads/documents/SODs/2019q3_singlevolume.pdf).



13. Specifically, the *House of Representatives Security Policy Manual* (October 16, 2017); see also “Protection of Classified Information by Congress: Practices and Proposals,” Congressional Research Service Report RS20748 (August 2011), footnote 7, available at <https://www.everycrsreport.com/reports/RS20748.html#fn7>. The House Security Policy Manual outlines the role of the Sergeant at Arms House Security Division, but does not address the source of the office’s authority.
14. See, e.g., “Rules of Procedure for the Permanent Select Committee on Intelligence, United States House of Representatives, 116th Congress” (February 6, 2019), available at <https://docs.house.gov/meetings/IG/IG00/CPRT-116-HPRT-IG00-CommitteeRules.pdf>. The House Security Policy Manual states the Committee on Appropriations has additional rules and regulations for handling classified information, but those rules or regulations are not reflected in committee rules adopted for the 116th Congress. See “Committee Rules Effective for the One Hundred Sixteenth Congress,” Committee on Appropriations (January 30, 2019), p. 2, available at <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/documents/116thRules.pdf>.
15. In addition, each office security manager is responsible for listing all persons who have access to secret or top-secret materials, with records periodically shared with the SAA House Security Division.
16. Source: House Security Policy Manual.
17. See “Legislative Branch Appropriations Bill, 2020” Report 116-64, p. 9, available at <https://congress.gov/116/crpt/hrpt64/CRPT-116hrpt64.pdf>. The provision became effective upon enactment of the Consolidated Appropriations Act, 2020, Pub. L. No. 116-93 (Dec. 12, 2019). Also see this primer’s Appendix.
18. See a series of letters between then-House Speaker Tip O’Neill and then-CIA Director Stansfield Turner (1978), available at [https://s3.amazonaws.com/demandprogress/documents/1978\\_correspondence\\_on\\_clearances.pdf](https://s3.amazonaws.com/demandprogress/documents/1978_correspondence_on_clearances.pdf).
19. *Ibid.*, p. 5.
20. House Security Policy Manual.
21. “DOE Classification and Security,” Federation of American Scientists (1996), available at <https://fas.org/sqp/classdoe.htm>.
22. Per Exec. Order 13556, available at <https://www.govinfo.gov/app/details/CFR-2011-title3-vol1/CFR-2011-title3-vol1-eo13556/context>.
23. See, e.g., Testimony of Mandy Smithberger, Director of the Center for Defense Information, Project on Government Oversight, before the House Appropriations Committee Legislative Branch Subcommittee (April 2, 2019), available at <https://docs.house.gov/meetings/ap/ap24/20190402/109212/hhrg-116-ap24-wstate-smithbergerm-20190402.pdf>; Testimony of Rep. Susan Davis before the House Appropriations Committee Legislative Branch Subcommittee (April 2, 2019), available at <https://docs.house.gov/meetings/ap/ap24/20190402/109211/hhrg-116-ap24-wstate-d000598-20190402.pdf>; “Schiff’s First Order of Business for the House Intelligence Committee,” *Just Security* (January 2019), available at <https://www.justsecurity.org/62409/schiffs-order-business-house-intelligence-committee/>; “Improving Congress’s oversight of the intelligence community,” *The Hill*, available at <https://thehill.com/blogs/congress-blog/politics/315956-improving-congress-oversight-of-the-intelligence-community>; and Letter from 8 Members of the House Permanent Select Committee on Intelligence (March 2016), available at [https://fas.org/irp/congress/2016\\_cr/hpsci-hac.pdf](https://fas.org/irp/congress/2016_cr/hpsci-hac.pdf).
24. <https://www.congress.gov/bill/100th-congress/senate-resolution/243>.
25. Debate on S. Res. 243, *Congressional Record*, vol. 133 (July 1, 1987), pp. 18506–18507, <https://www.gpo.gov/fdsys/pkg/GPO-CRECB-1987-pt14/pdf/GPO-CRECB-1987-pt14-1-1.pdf>.
26. See Statement of Expenditures and Receipts of the Senate, S. Doc. No. 116-10 (November 13, 2019), B-140, available at <https://www.govinfo.gov/content/pkg/GPO-CDOC-116sdoc10/pdf/GPO-CDOC-116sdoc10.pdf>.
27. *United States Senate Security Manual* (January 2018).
28. For a thorough discussion of providing TS/SCI clearances to staff serving members on the House Permanent Select Committee on Intelligence and the House Armed Services Committee, see the testimony from Mandy Smithberger of the Project On Government Oversight before the House

Appropriations Committee's Legislative Branch Subcommittee (April 2019), available at <https://docs.house.gov/meetings/AP/AP24/20190402/109212/HHRG-116-AP24-Wstate-SmithbergerM-20190402.pdf>.

29. For an overview of the executive branch security clearance process, see "Security Clearance Process: Answers to Frequently Asked Questions," Congressional Research Service Report R43216, available at <https://www.everycrsreport.com/reports/R43216.html>.

30. "Fiscal Year 2017 Annual Report on Security Clearance Determinations," pp. 4–5, Office of the Director of National Intelligence (August 2017), available at <https://www.dni.gov/files/NCSC/documents/features/20180827-security-clearance-determinations.pdf>.

31. See "British-U.S. Communications Intelligence Agreement," National Security Agency (March 5, 1946), available at [https://www.nsa.gov/Portals/70/documents/news-features/declassified-documents/ukusa/agreement\\_outline\\_5mar46.pdf](https://www.nsa.gov/Portals/70/documents/news-features/declassified-documents/ukusa/agreement_outline_5mar46.pdf). For more background, see "Not so secret: deal at the heart of UK-US intelligence," *The Guardian* (June 25, 2010), available at <https://www.theguardian.com/world/2010/jun/25/intelligence-deal-uk-us-released>.

32. See Intelligence Authorization Act for Fiscal Year 2010, Pub. L. No. 111-259, § 367, available at [https://www.govtrack.us/congress/bills/111/hr2701/text/enr#link=III\\_E\\_367&nearest=HD09208F59D6A4316B20D6B17A8469975](https://www.govtrack.us/congress/bills/111/hr2701/text/enr#link=III_E_367&nearest=HD09208F59D6A4316B20D6B17A8469975). Codified at 50 U.S.C. § 3104.

33. "Tackling the Security Clearance Backlog," *Secrecy News* (March 2018), available at <https://fas.org/blogs/secrecy/2018/03/clearance-backlog/>. "Release of the new report on security clearances was delayed because of internal disagreements about how much information to make public. In the end, the advocates of reduced disclosure won out and much of the specific information that had been contained in the previous years' reports is excluded from the latest report. Thus, a comparison with the FY 2015 report shows that the breakdown of the number of clearances held by contractors versus government employees was withheld from the new report, as was the timeliness of the clearance process in individual intelligence agencies that were formerly identified by name."

34. "FY 2015 Annual Report on Security Clearance Determinations," Office of the Director of National Intelligence, available at [https://www.dni.gov/files/documents/Newsroom/Reports%20and%20Pubs/2015-Annual\\_Report\\_on\\_Security\\_Clearance\\_Determinations.pdf](https://www.dni.gov/files/documents/Newsroom/Reports%20and%20Pubs/2015-Annual_Report_on_Security_Clearance_Determinations.pdf); "FY 2016 Annual Report on Security Clearance Determinations," Office of the Director of National Intelligence, available at <https://fas.org/sgp/othergov/intel/clear-2016.pdf>; and "FY 2017 Annual Report on Security Clearance Determinations," Office of the Director of National Intelligence, available at <https://www.dni.gov/files/NCSC/documents/features/20180827-security-clearance-determinations.pdf>.

35. National Defense Authorization Act for Fiscal Year 2020, § 6609, Pub. L. No. 116-92, available at <https://www.congress.gov/bill/116th-congress/senate-bill/1790/text> (amends 50 U.S.C. § 3104).

36. See, e.g., "How the White House Plays Hardball on Congressional Oversight of Security Clearances," *Lawfare* (March 27, 2019), available at <https://www.lawfareblog.com/how-white-house-plays-hardball-congressional-oversight-security-clearance>.

37. The full text of the amendment, Amendment to Rules Committee Print 116-22, offered by Davis, is available here:

[https://amendments-rules.house.gov/amendments/DAVICA\\_024\\_xml\[2\]71019180323323.pdf](https://amendments-rules.house.gov/amendments/DAVICA_024_xml[2]71019180323323.pdf). For reasons that were not explained, it was not ruled to be "made in order" by the House Rules Committee. See <https://rules.house.gov/bill/116/hr-3494>.

38. "Legislative Branch Appropriations Bill, 2020" Report 116-64, p. 9, available at <https://congress.gov/116/crpt/hrpt64/CRPT-116hrpt64.pdf>.

39. Intelligence Authorization Act for Fiscal Year 2010, Pub. L. No. 111-259 (Oct. 7, 2010), available at <https://www.congress.gov/111/plaws/publ259/PLAW-111publ259.pdf>.

40. <https://www.congress.gov/bill/108th-congress/senate-resolution/445>.

41. A Congressional Research Service legislative history of S. Res. 400, which created the Senate Select Committee on Intelligence, is available in CRS Report 76-149 F (August 12, 1976), available at <https://fas.org/sgp/crs/intel/76-149.pdf>.