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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

April 28, 2011

The Honorable James R. Clapper, Jr.  
Director of National Intelligence

Subject: *GAO Comments on Intelligence Community Directive Number 114:  
Comptroller General Access to Intelligence Community Information*

Dear Director Clapper:

In accordance with the Intelligence Authorization Act for Fiscal Year 2010, this letter provides GAO's comments on Intelligence Community Directive (ICD) Number 114: Comptroller General Access to Intelligence Community Information.<sup>1</sup> The statutory requirement to develop a directive on this subject was designed to address the historic challenges that GAO has experienced in gaining access to information in the Intelligence Community (IC), and we believe that the directive provides a starting point for addressing those challenges. The directive contains a number of provisions to promote constructive interaction between GAO and elements of the IC, such as by establishing a presumption of cooperation with GAO. We do, however, have concerns with how several terms in the directive could be interpreted, since they are framed as areas where information would generally not be available to GAO for certain audits or reviews. Consequently, it is crucial that these terms and the overall directive be carefully implemented and monitored to ensure that GAO is able to obtain the information it needs to assist Congress in its oversight responsibilities, including responding to requests from the committees on armed services, justice, homeland security, foreign affairs, and appropriations, as well as the congressional intelligence committees.

Fundamentally, GAO has broad statutory authority to evaluate agency programs and to investigate matters related to the receipt, disbursement, and use of public money under 31 U.S.C. §§ 712 and 717, and to access agency records under 31 U.S.C. § 716. These statutes and others provide GAO with the necessary authority to perform audits and evaluations of IC activities.<sup>2</sup> GAO is required by statute to protect the

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<sup>1</sup> Pub. L. No. 111-259, § 348, 124 Stat. 2654, 2700 (2010) (requiring the Director of National Intelligence, in consultation with the Comptroller General of the United States, to issue a written directive governing the access of the Comptroller General to information in the possession of an element of the intelligence community, and to submit the directive to Congress, together with any comments of the Comptroller General, no later than May 1, 2011).

<sup>2</sup>See, e.g., Letter from Gene L. Dodaro, Acting Comptroller General of the United States, to the Honorable Dianne Feinstein, Chairman, and the Honorable Christopher S. Bond, Vice Chairman, Select Committee on Intelligence, U.S. Senate, and to the Honorable Silvestre Reyes, Chairman, and the Honorable Peter Hoekstra, Ranking Republican, Permanent Select Committee on Intelligence,

confidentiality of information, and GAO has processes in place to protect the most highly sensitive and classified information possessed by the government.<sup>3</sup> Within GAO's authority, specific safeguards exist to reflect the particularly sensitive nature of certain intelligence activities and programs.<sup>4</sup>

Recognizing GAO's access needs as well as the sensitive nature of certain information in the possession of IC elements, the directive contains a number of provisions designed to establish a consistent process for interaction between the IC and GAO. For example, the directive establishes a presumption of cooperation with GAO, including a process for exploring alternative means of accommodating GAO requests for particularly sensitive information; requires timely responses to GAO requests; requires resolution of access disputes at the lowest possible organizational level; and requires communication with GAO, including notification of any delays in responding to requests for information. These tenets are also required to be included in each IC element's own procedures for responding to GAO reviews. In addition, IC elements are directed to follow specific policies in interacting with GAO. For example, an important provision in the directive makes clear that information should not be denied to GAO solely because it relates to a program that is funded by the National Intelligence Program (NIP), and it states that IC elements shall not categorically deny GAO access to information.

The key area in the directive that gives us concern is the provision that conditions GAO's access to certain information on whether GAO is conducting an "audit or review" of "core national intelligence capabilities and activities." This provision, while providing a possible framework for case-by-case reviews of GAO requests for sensitive information in the IC, will require careful implementation. The language, as set forth in section D.4.b., states:

"Information that falls within the purview of the congressional intelligence oversight committees generally shall not be made available to GAO to support a GAO audit or review of core national intelligence capabilities and activities, which include intelligence collection operations, intelligence analyses and analytical techniques, counterintelligence operations, and intelligence funding. IC elements may on a case-by-case basis provide information in response to any GAO requests not related to GAO audits or reviews of core national intelligence capabilities and activities."

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U.S. House of Representatives (Mar. 18, 2010)(submitted in support of the proposed Intelligence Authorization Act for Fiscal Year 2010). See also Letter from David M. Walker, Comptroller General of the United States, to the Honorable John D. Rockefeller IV, Chairman, and the Honorable Christopher S. Bond, Vice Chairman, Select Committee on Intelligence, U.S. Senate (Mar. 1, 2007)(submitted in support of the proposed Intelligence Community Audit Act of 2007).

<sup>3</sup> Pursuant to 31 U.S.C. § 716(e), GAO is required to maintain the same level of confidentiality for an agency record as is required of the head of the agency from which it was obtained, and unauthorized disclosures are subject to the same statutory penalties.

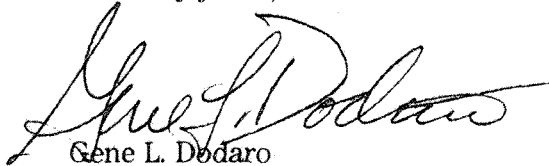
<sup>4</sup> These include narrow statutory limitations on our financial audits of certain "unvouchered" accounts, 31 U.S.C. § 3524(d), and on our authority to file a civil action to compel access to certain foreign intelligence and counterintelligence information, 31 U.S.C. § 716(d)(1)(A).

Given historical experience, we are concerned that agencies might interpret the language regarding “core” national intelligence capabilities and activities to apply to a broader range of audits and reviews than ODNI intends.<sup>5</sup> In fact, agencies have in the past denied GAO access to requested information based on a very expansive view of what “intelligence” entails. Therefore, the construct of “core” national intelligence capabilities and activities is going to require very careful implementation and close monitoring by ODNI, GAO, and the Congress to guard against an inappropriately expansive reading of that language by the IC elements implementing the guidance.<sup>6</sup> In light of these concerns, we urge ODNI to take the lead in developing, with input from GAO, a practical process that will guide and provide oversight to the IC elements as they engage in case-by-case determinations under this provision.

In conclusion, GAO believes ICD 114 is a starting point in improving GAO’s access to information in the possession of elements of the IC. There are positive aspects of the directive, including its focus on establishing a presumption of cooperation with GAO, and promoting accommodation, timeliness, and communication. However, the concept of “core” national intelligence capabilities and activities and other language in the directive, if interpreted broadly, could significantly hinder GAO’s ability to conduct related work that we are routinely requested by the Congress to do. Therefore, careful implementation and close monitoring will be needed by ODNI, GAO, and the Congress. It is imperative that ODNI work with GAO in this process and that the IC elements engage with us as they develop individual agency procedures to implement the directive.

We appreciate the time and effort that you and your staff have put into the development of this directive. We look forward to this continuing dialogue with ODNI and the IC elements, and to working with the Congress to assure that GAO obtains the information it needs to fully support congressional oversight in this important area.

Sincerely yours,



Gene L. Dodaro  
Comptroller General  
of the United States

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<sup>5</sup> The Director of National Intelligence addressed the issue generally in a question-and-answer session at a public forum, expressing the view that GAO should not conduct audits that concern “the core essence of intelligence—that is, evaluating sources and methods, critiquing national intelligence estimates, doing this sort of thing, which I think strikes at the very essence of what the intelligence committees were established to do ....” Bipartisan Policy Center, Domestic Intelligence Conference (Oct. 6, 2010).

<sup>6</sup> Another provision of the directive states that GAO shall not be provided “information on intelligence sources and methods.” We traditionally do not require access to such information to conduct our reviews. In the past agencies have sometimes taken an overly broad view of the concept of sources and methods even where GAO is reviewing basic management functions. Therefore, the interpretation of this provision would also need to be monitored carefully.