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108TH CONGRESS }  
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{ REPORT  
108-359 }

NATIONAL INTELLIGENCE REFORM  
ACT OF 2004

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R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 2840

together with

ADDITIONAL VIEWS

TO REFORM THE INTELLIGENCE COMMUNITY AND THE INTELLIGENCE AND INTELLIGENCE-RELATED ACTIVITIES OF THE UNITED STATES GOVERNMENT, AND FOR OTHER PURPOSES



SEPTEMBER 27, 2004.—Ordered to be printed

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# CONTENTS

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	Page
I. Purpose and Summary .....	1
II. Background .....	4
III. Legislative History .....	46
IV. Committee Hearings .....	50
V. Section-by-Section Analysis .....	52
VI. Estimated Cost of Legislation .....	79
VII. Evaluation of Regulatory Impact .....	84
VIII. Additional Views .....	85
IX. Changes in Existing Law .....	96



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### NATIONAL INTELLIGENCE REFORM ACT OF 2004

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SEPTEMBER 27, 2004.—Ordered to be printed

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Mrs. COLLINS, from the Committee on Governmental Affairs,  
submitted the following

#### R E P O R T

together with

#### ADDITIONAL VIEWS

[To accompany S. 2840]

The Committee on Governmental Affairs, having considered the original bill (S. 2840) to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes, reports favorably thereon and recommends that the bill do pass.

#### I. PURPOSE AND SUMMARY

On September 22, 2004, the Senate Governmental Affairs Committee (the “Committee”) unanimously approved the Collins-Lieberman National Intelligence Reform Act of 2004, S. 2840. The purpose of this legislation is to transform the U.S. intelligence community’s Cold War-era organizational structure into an integrated enterprise capable of marshaling the full range of intelligence capabilities against terrorism and other 21st Century threats to U.S. national security. This legislation represents the most sweeping reform of the intelligence community in more than fifty years.

The immediate genesis for this legislation is the report of the National Commission on Terrorist Attacks Upon the United States (the “9/11 Commission”), an independent, bipartisan body which spent eighteen months investigating the causes of the September 11, 2001 terrorist attacks and assessing recommendations for preventing future attacks. The 9/11 Commission itself built upon the

work of several prior commissions as well as the December 2002 report of the Joint Inquiry of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001 (the “Congressional Joint Inquiry”).

On July 22, 2004, the 9/11 Commission issued a 567-page report containing over forty recommendations for improving the United States’s ability to prevent future terrorist attacks. Its recommendations were divided into two parts: (1) policy-oriented recommendations, and (2) recommendations for structural change to enable the U.S. Government to implement these new policies.

In its report, the 9/11 Commission issued a stinging indictment of the intelligence community’s organizational structure, concluding that “the intelligence community’s confederated structure left open the question of who really was in charge of the U.S. intelligence effort” against al Qaeda.<sup>1</sup> In testimony before this Committee, 9/11 Commission Chairman Thomas Kean and Vice Chairman Lee Hamilton stated that the two most important Commission recommendations dealt squarely with intelligence reform: (1) creation of a National Intelligence Director (NID), separate from the intelligence agencies, with sufficient authorities to manage the intelligence community, and (2) formation of a National Counterterrorism Center (NCTC) to unify intelligence against terrorism and to draft Executive Branch-wide interagency plans for countering terrorism.<sup>2</sup>

Immediately following the release of the 9/11 Commission’s report, Senate Leaders assigned the Committee the task of examining the recommendations of the 9/11 Commission with respect to reorganization of the executive branch and, in particular, the proposals to create a NID and an NCTC.

The Committee responded immediately and in a bipartisan manner, holding hearings and numerous meetings with experts during the August recess. In the two months following the release of the 9/11 Commission report, the Committee conducted an intensive and in-depth review of the intelligence community’s structure and performance and the 9/11 Commission’s findings and recommendations related thereto. The Committee held eight hearings in this time period, taking testimony from, among many others, the Commission’s Chair and Vice Chairman, Secretary of State Colin Powell, Secretary of Homeland Security Tom Ridge, Federal Bureau of Investigation Director Robert Mueller, Acting Director of Central Intelligence John McLaughlin, and family members of victims of the 9/11 terror attacks. The Committee also received input from and conducted consultations with numerous others, including other members of the Senate, the Administration, the 9/11 Commission staff, and current and former intelligence, defense, and law enforcement officials. In addition, the Committee reviewed and benefited from many hearings on this subject conducted by other committees of the Senate and House during this time.

<sup>1</sup> National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (W.W. Norton & Co., 2004) (hereinafter “Commission report”), p. 93.

<sup>2</sup> *Making America Safer: Examining the Recommendations of the 9/11 Commission*, hearing before the Senate Committee on Governmental Affairs, 108th Congress (July 30, 2004) (testimony of Thomas Kean, Chair of the 9/11 Commission, and Lee Hamilton, Vice Chairman of the 9/11 Commission).

The resulting legislation adopts and implements the two most important recommendations of the 9/11 Commission: First, it creates a NID who will manage the intelligence community and serve as the President's chief intelligence adviser. The NID will have the strong budget, personnel, standard-setting, and other authorities needed to manage the intelligence community and to create a flexible and agile network to respond to global terrorism and emerging threats. Second, it forms the NCTC to unify intelligence against terrorism and to draft interagency plans for countering terrorism.

By adopting these key measures, the bill addresses the central organizational problem identified by the 9/11 Commission and many others. The objective of the Collins-Lieberman legislation is to put someone in charge of U.S. intelligence by creating a unified structure in which one person, the NID, is in charge of and accountable for the nation's intelligence operations. The creation of the NCTC, operating under the NID's supervision and authority, will likewise ensure that there is one place where terrorism-related information comes together, and that Executive Branch-wide inter-agency plans are developed to fight terrorism.

Collins-Lieberman contains a number of other important measures which also implement recommendations of the 9/11 Commission. These include provisions (1) to establish an information-sharing network designed to facilitate and promote the sharing of information throughout the federal government, with state and local authorities, and where appropriate, the private sector, and (2) to create a Civil Liberties Board to ensure that privacy and civil liberties are protected as the President and executive agencies propose and implement policies to fight terrorism.

Although the Committee gave considerable weight to the unanimous, bipartisan recommendations of the 9/11 Commission, it did not accept these recommendations without scrutiny or careful consideration. In fact, as discussed herein, there were a number of instances where the Committee chose to modify or enhance particular recommendations made by the 9/11 Commission.

Further refinements and improvements to the legislation were made during the markup of the bill on September 21 and 22, 2004. Several amendments, for example, made enhancements to the legislation's provisions designed to ensure that intelligence is collected, analyzed and reported in an objective, impartial and apolitical manner.

The Committee's unanimous approval of the resulting legislation reflects a strong, bipartisan consensus that transformational intelligence reform is urgently needed. Simply put, the Committee concluded that the United States's current intelligence structure will not produce the level of performance needed to protect national security in the 21st Century. Structural reform is necessary to unlock the potential in the U.S. intelligence apparatus to counter 21st Century threats. This reform will enable the knitting together of intelligence agencies into an agile and flexible network to fight terrorist networks.

As the 9/11 Commission put it:

We know that the quality of the people is more important than the quality of the wiring diagrams. Some of the saddest aspects of the 9/11 story are the outstanding efforts of so many individual officials straining, often with-

out success, against the boundaries of the possible. Good people can overcome bad structures. They should not have to.<sup>3</sup>

Of course, no amount of structural reform can ensure perfect performance by the intelligence community or guarantee the safety of Americans against terrorist attacks. But Congress needs to act quickly to create the structural framework necessary for maximizing the intelligence community's performance.

## II. BACKGROUND

### I. PRIOR REFORM EFFORTS

Recommendations for fundamental intelligence reform—and specifically, to create the equivalent of a strong National Intelligence Director—date back decades. Aside from numerous books and private-sector reports,<sup>4</sup> examples include:

- In 1955, a commission chaired by former President Hoover recommended that management of the CIA be turned over to an “executive officer,” so that the DCI could focus attention on managing the intelligence community.

- In 1971, then Deputy OMB Director James Schlesinger submitted a report to the President on the intelligence community criticizing the failure to coordinate intelligence resources due to lack of a strong central intelligence community leadership.

- In 1995–96, the Aspin-Brown Commission and the House Intelligence Committee undertook separate reviews of the intelligence community in the post-Cold War environment. Both recommended strengthening the DCI's ability to manage and coordinate the activities of the intelligence community as a whole, including by separating the DCI from running the CIA and providing the DCI with new authorities over budgets and personnel. These recommendations led to some limited reforms.<sup>5</sup>

More recently, the Joint Inquiry by the intelligence committees of the House and Senate and the Senate Select Committee on Intelligence conducted thorough investigations and recommended fundamental reform. And finally, the Commission spent eighteen months investigating intelligence lapses related to 9/11, among other topics. The Commission's unanimous approval of its report, and its prioritization of intelligence reform for immediate action, testify to both the wisdom and urgency of transformational intelligence reform.

In short, the Collins-Lieberman National Intelligence Reform Act represents the culmination of years of the most thorough and extensive review of the intelligence community in history. Some of the bill's most important measures draw upon intelligence reform proposals and recommendation that long pre-date 9/11. For exam-

<sup>3</sup> Commission report, p. 399.

<sup>4</sup> Examples of private recommendations include former DCI Admiral Stansfield Turner's 1985 book, *Secrecy and Democracy: The CIA in Transition*, advocating creating a Director of National Intelligence separate from the CIA director.

<sup>5</sup> These recommendations resulted in the Intelligence Authorization Act of 1997, which created four Senate-confirmed positions to enhance intelligence capabilities and coordination. The Act also gave the Director of Central Intelligence the right of concurrence in the Secretary of Defense's recommendations for the directors of the National Security Agency and other intelligence agencies in the Defense Department. But as the Commission noted, “[T]he authority of these positions is limited, and the vision of central management clearly has not been realized.” Commission report, p. 357.



ple, the concept of creating the equivalent of a strong National Intelligence Director dates back decades and reflects a longstanding concern that the intelligence community lacks sufficient cohesion and management.

## II. THE GOLDWATER-NICHOLS ACT OF 1986

The notion of a “Goldwater-Nichols for the Intelligence Community” has been a recurring metaphor for intelligence reform since even before 9/11. Indeed, in 1992, Senator Boren and Representative McCurdy, then the respective chairmen of the Senate and House intelligence committees, proposed bills to restructure the intelligence community modeled on the Goldwater-Nichols reorganization of the Defense Department in 1986. The legislation would have created the equivalent of a NID, separate from the CIA director, with authority to program and reprogram funds throughout the intelligence community and to direct their expenditure, to task intelligence agencies and to transfer personnel temporarily from one agency to another. To understand this parallel, it is helpful to present some background material on Goldwater-Nichols.

The Goldwater-Nichols Department of Defense Reorganization Act of 1986 moved the Department of Defense (DoD) from a 1950s-era industrial, stovepiped model to a “matrix management” model of integrating its vast array of capabilities to accomplish missions. The Act is a model for restructuring intelligence not because intelligence agencies should become a Department of Intelligence, equivalent to DoD. Rather, Goldwater-Nichols is highly relevant to the intelligence reform context because of the principles that underlay Goldwater-Nichols: that good people cannot overcome bad structure on a consistent basis, and that the aim of structural reform is to clarify responsibility, authority, and accountability and to provide personnel with the right incentives to develop the mindsets and organizational culture for integrated operations.

The objective of Goldwater-Nichols was two-fold: (1) to improve the quality of military advice given to the President, and (2) to achieve greater integration among the Military Services. Goldwater-Nichols was intended to transform DoD from a weak structure dominated by the Military Services to an effective corporate entity.

### A. *The Origins of the Military Services*

Warfare in the 19th Century and into the 20th Century was cleanly divided between land and sea. As a result, the Army and the Navy developed as separate Services with their own traditions and processes. Cooperation between them was minimal. But warfare changed in the middle of the 20th Century. The advent of the airplane added a third medium of warfare. And warfare became a global endeavor—with millions of Americans under arms, mobilization of America’s industrial might to field enormous amounts of equipment, and the need for grand strategy against what at that time was considered a fast and agile enemy. President Roosevelt created the Joint Chiefs of Staff, modeled on the British system and composed of the heads of the Army and Navy in order to coordinate among them. But military operations in World War II evinced a lack of interservice coordination or “jointness.” For exam-

ple, the Army and the Navy had separate commanders in the Pacific theater, leading to confusion and inefficiency.

*B. Problems Leading To Passage of Goldwater-Nichols*

After World War II, Congress passed the National Security Act of 1947 to establish the National Security Council (NSC), the Air Force as a separate Military Service, and what eventually became the Central Intelligence Agency and DoD. Congress's objective in passing the Act was to create a national security establishment capable of fighting the Cold War and to avoid another Pearl Harbor-like surprise attack. The original defense department—called the Department of National Defense by the National Security Act of 1947—was headed by a Secretary with very weak authorities over the Military Services. Only two years later, Congress passed legislation to strengthen the Secretary of Defense's authorities over the Military Services and renamed the entity the Department of Defense. Both Congress and the Executive Branch took action over the ensuing forty years to strengthen the Secretary of Defense's authorities over the Military Services.

One early attempt to integrate was the DoD's creation of the Commanders-in Chief (CINCs) to command units from the Military Services in wartime. DoD carved the world into commands, which were both geographic (such as the European Command) and functional (the Transportation Command). These commands were designed to prevent a recurrence of divided command as in the World War II Pacific theater. The CINCs were supposed to command all Military Service units assigned to accomplish a particular mission—such as warfighting in Europe or transportation. Thus a military unit such as the 82nd Airborne Division would have two chains of command: (1) administrative control, under which the 82nd Airborne was manned, equipped, and trained by the Army; and (2) operational control, under which the 82nd Airborne was deployed and conducted operations only at a CINC's direction.

Despite various attempts to achieve integration, by the early 1980s DoD was still dominated by the Military Services in two ways.

First, military advice to the President and the Secretary of Defense was provided by the Joint Chiefs of Staff, a committee composed of the heads of the Military Services (the Chief of Staff of the Army, the Chief of Staff of the Air Force, the Chief of Naval Operations, and the Commandant of the Marine Corps). The Joint Chiefs of Staff had a Chairman, but he was very weak; instead, the Joint Chiefs of Staff as a committee was responsible for rendering military advice.

The Joint Chiefs of Staff had a staff—the Joint Staff—to assist it, but that staff was not manned by the Military Services' best and brightest officers. Indeed, duty outside of one's Military Service was the kiss-of-death for an officer's career. The Military Services often sent lesser-quality officers to the Joint Staff and also interfered to prevent the Joint Staff from producing recommendations that were contrary to the Military Services' interests.

The result of the Joint Chiefs of Staff operating as a committee and being served by a weak staff was that the Joint Chiefs' military advice generally represented a lowest-common-denominator approach among the Military Services. Over time, Secretaries of

Defense became unsatisfied with the quality of military advice from the Joint Chiefs.

In addition to the lack of quality military advice, the Military Services were unable to conduct integrated, “joint” military operations successfully. The CINCs had weak authority, and—like the Joint Chiefs of Staff’s Joint Staff—the CINCs’ staffs did not attract the best-and-brightest from the Military Services. Moreover, officers in each Military Service had little understanding of the other Services and would approach issues not from the perspective of the corporate Department of Defense but rather from the perspective of their individual Service. Each Service’s culture was insular and biased against integration. There were no incentives for officers to think “jointly” and every incentive for officers to prioritize their Service’s needs.

The net result was that the Military Services dominated operations and impeded joint operations. Examples of disjointed combat operations abounded: (1) the uncoordinated, four-part air war in Vietnam, in which the country was divided into four quadrants and each Military Service conducted air operations in its quadrant; (2) the botched Iranian hostage rescue operation, in which each Military Service wanted to have a “piece of the action”—leading to Air Force pilots flying Navy helicopters loaded with Army troops; and (3) the haphazard Grenada invasion, in which Army troops could not communicate with Navy vessels to coordinate fire support from off-shore.

### *C. Passage of the Goldwater-Nichols Act*

Critics of defense reorganization argued that DoD’s problem was not organization and that DoD just needed better people—that good people could overcome bad structure. Yet Congress ultimately decided that organizational structure mattered and that, while good people could overcome a bad structure temporarily, they could not do so consistently—nor should they have to.

The Goldwater-Nichols Act elevated the Chairman of the Joint Chiefs to be the principal military adviser to the President and the Secretary of Defense. While the Joint Chiefs as a committee was preserved, the Act dictated that the Chairman—not the Joint Chiefs as a committee—was responsible for giving military advice to the President and the Secretary.

To strengthen the CINCs, Goldwater-Nichols did not mandate the particular substantive focus of the CINCs—for example, that there be a CINC for Europe or for South America. Goldwater-Nichols left that decision to the Executive Branch, to create and adjust the CINC’s substantive foci as U.S. security dictated. But Goldwater-Nichols specified in great detail that the CINCs had authoritative direction over the Military Services for warfighting purposes and that the Services could not carry out operations on their own. Thus accountability was clarified: the CINCs were responsible for overall strategy and operations to achieve missions.

Critics argued that strengthening of the CINCs would weaken the Military Services. But that criticism assumed that the Military Services were the key operating units of DoD. Instead, warfare in the late 20th Century required integration of land, sea, and air forces, which the Services could not accomplish on their own. As noted above, the Military Services were responsible for administra-

tive control—recruiting, training, and equipping forces—while the CINCs were responsible for using those forces in combat. As several military operational fiascos demonstrated, the balance between the Services and the CINCs was tipped toward the Services. Goldwater-Nichols sought to right that balance by increasing the authority of the CINCs.

In addition to elevating the Chairman and strengthening the CINCs, Goldwater-Nichols sought to change the military's Service-specific culture and mentality over the long term. Of course, legislation could not just order officers to "think joint"—or, as the military would say, to "think purple." Instead, the Act sought to create incentives to motivate the best-and-brightest officers to serve on the Joint Staff and CINCs' staffs and thus develop experience outside of their Service. To create such incentives, the Act ventured into the details of the military's personnel management system. The Act required officers to serve on joint duty—that is, on the Joint Staff or a CINC's staff—in order to be promoted to general or admiral. In addition, the Act created a quota system to ensure that officers who served on joint duty were promoted at the same or better rate as officers who served in assignments simply within their respective Services. Finally, the Act created a "joint specialty" by which officers could choose to focus their career on serving in joint assignments.

#### *D. Goldwater-Nichols's Effect on the Department of Defense*

Parts of the Goldwater-Nichols Act affected DoD almost immediately—namely the elevation in the Chairman's status. The other changes instituted by Goldwater-Nichols took longer to come to fruition. The CINCs—renamed the Combatant Commanders by Secretary of Defense Rumsfeld—have grown significantly in power within DoD. Military operations have become more "joint" in nature. Most important, DoD's culture is widely regarded as having changed from Service-specific to joint. The Goldwater-Nichols personnel changes were the driving force of this change. The effects of the personnel requirements were not felt for over a decade, as a new generation of officers developed and was forced to serve in joint assignments. But the officer corps today is viewed as having a far more joint orientation than previous generations. The Joint Staff and CINCs' staffs are attracting the best and the brightest due to the promotion requirement. In sum, Goldwater-Nichols is widely regarded as having successfully effected a fundamental shift of power within DoD from the Military Services to the CINCs in order to ensure the integration of the Military Services to accomplish missions.

### III. THE STRUCTURE OF U.S. INTELLIGENCE

The need for greater integration among intelligence agencies parallels the problem that Goldwater-Nichols sought to resolve in the DoD context: how to achieve greater integration among capabilities to accomplish missions, and how to change organizational culture toward a "joint" rather than capability-specific perspective. As the Commission recorded:

Recalling the Goldwater-Nichols legislation of 1986, Secretary Rumsfeld reminded us that to achieve better joint

capability, each of the armed services had to “give up some of their turf and authorities and prerogatives.” Today, he said, the executive branch is “stove-piped much like the four services were nearly 20 years ago.” He wondered whether it might be appropriate to ask agencies to “give up some of their existing turf and authority in exchange for a stronger, faster, more efficient government wide joint effort.” Privately, other key officials made the same point to us.<sup>6</sup>

Understanding the nature of the problem, and how the National Intelligence Reform Act proposes to solve it, first requires an overview of the intelligence community. As the Commission noted, “Over the decades, the agencies and rules surrounding the intelligence community have accumulated to a depth that practically defies public comprehension.”<sup>7</sup>

Intelligence is created in a two-part process. First, intelligence is collected from one or more of several sources: human intelligence (spies); signals intelligence (intercepted communications); imagery intelligence (photographs from the heavens); open source intelligence (publicly available literature); and the measurement of scientific data such as telemetry. Some basic analysis is needed to process the collected material into meaningful information. Second, the collected information, from all sources, is analyzed by “all-source analysts” in order to produce a comprehensive picture.

The Executive Branch is generally composed of basic building blocks of departments and agencies. From that perspective, U.S. intelligence is a strange hybrid, neither fish nor fowl. The National Security Act of 1947 as amended creates the concept of the “Intelligence Community,” composed of two actors who are independent and many pieces of other departments. The Intelligence Community thus is akin to a “virtual community,” lacking a physical structure but composed of members from various departments.

The members of the Intelligence Community are:

- (1) The Office of the Director of Central Intelligence includes senior intelligence community officers (as opposed to CIA officers), including the Deputy DCI for Community Management and the Assistant DCIs for Collection, Analysis & Production, and Administration. This office also includes the National Intelligence Council and the Community Management Staff (which assist the DCI in his capacity as head of the intelligence community). The Office of the DCI is statutorily distinct from the CIA. The Terrorist Threat Integration Center (TTIC) is also an independent entity, separate from the CIA. These entities are also independent of any other department;
- (2) The CIA, an independent agency which collects human intelligence and conducts all-source intelligence analysis;
- (3) The National Security Agency (NSA), a DoD agency which collects signals intelligence;
- (4) The National Geospatial-Intelligence Agency (NGA), a DoD agency which collects imagery intelligence;
- (5) The National Reconnaissance Office (NRO), a DoD agency which builds satellites to support NSA and NGA;

<sup>6</sup> Commission report, p. 403, endnotes omitted.

<sup>7</sup> Commission report, p. 410.

(6) The Defense Intelligence Agency (DIA), a DoD agency which serves DoD's departmental needs but also participates actively in serving other customers and in the national estimate process;

(7) The intelligence components of the Federal Bureau of Investigation (FBI);

(8) The Bureau of Intelligence and Research in the State Department, which serves State's needs for analysis but also participates in the national estimate process;

(9) Elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information;

(10) Intelligence components of the Department of Energy;

(11) The Office of Intelligence and Analysis in the Treasury Department; and

(12) The intelligence components of the Military Services.

The National Security Act gives the Director of Central Intelligence (DCI) three jobs. The DCI is the head of the Intelligence Community. The DCI also is the principal intelligence adviser to the President and the head of the CIA.

It is helpful to think of the intelligence apparatus as two concentric circles. The larger circle is the Intelligence Community, which is composed of the offices and organizations enumerated above. The second, smaller circle within the larger circle is the National Foreign Intelligence Program (NFIP), which is the budget program formulated by the DCI for submission to the President and Congress. DoD has its own intelligence budget programs: the Joint Military Intelligence Program (JMIP), which includes intelligence assets that serve DoD-wide customers; and the Tactical Intelligence and Related Activities program (TIARA), which refers to the Military Services' intelligence capabilities that are "in the trenches" and serving warfighters on a tactical basis.

According to the National Security Act, the NFIP is a collection of intelligence programs which are designated by agreement between the DCI and the affected department. Thus the DCI and DoD negotiate about which pieces of NSA, NGA, NRO, and DIA are to be paid for by the NFIP and which by JMIP and/or TIARA. In essence, the NFIP contains the CIA and the Office of the DCI and parts of NSA, NGA, NRO, DIA, FBI, and other departments.

#### IV. THE NEED FOR INTEGRATION TO COUNTER 21ST CENTURY THREATS

The Intelligence Community was founded and structured to fight the Cold War. The enemy in the Cold War was a lumbering and bureaucratic behemoth, fielding a massive military backed by an equally massive industrial complex. The main challenge for intelligence was to penetrate the Iron Curtain to learn what was happening on the other side. Intelligence collection therefore was all about learning the enemy's secrets; open sources were less important because the Communist bloc did not publish much useful information openly. The Intelligence Community responded to the challenge of collecting on the other side of the Iron Curtain by building large collection agencies.

By comparison to 21st Century challenges, each of human, signals, and imagery intelligence collection could be done with relative autonomy. The CIA, NSA, and imagery capabilities shared information only via formal, finished reports. Each collection capability

acquired vast amounts of “raw data,” of which only a percentage survived the process of sifting and smoothing the raw data into finished reports. The counterintelligence threat was real, so agencies adopted rigorous security policies to slow information-sharing by keeping it within rigid regimes. And there was little need for integration with the FBI aside from on counterintelligence, because the main threat to the United States was a military force poised overseas.

But the nature of the threat changed in the 1990s. Al Qaeda is not a lumbering, bureaucratic enemy fielding conventional armies. Instead, it operates globally—in mosques, universities, and back alleys—while being headquartered in failed states like Afghanistan. It uses modern technology to communicate and travel globally in service of centuries-old extremist ideology. It can travel into the American homeland and strike with daring, imagination, and surprise. And much more about it—and about the Islamic extremist movement generally—is available via open sources.

Given that the Intelligence Community was a 20th Century creature chasing a 21st Century enemy, it was not surprising that the Intelligence Community could not keep up before 9/11—as is chronicled in the Commission’s report. Gathering intelligence on terrorist cells in the slums of Karachi and monitoring their connections to Kansas requires far more intimate sharing of information among agencies. Collection on terrorists is like a jigsaw puzzle without the box cover—information must be shared at the raw data level because no agency possesses all the pieces of the puzzle nor knows what the picture on the box top looks like. The world’s transition to “Internet speed” makes sharing via formal reports an impediment to speedy action. And the Intelligence Community downplayed open sources by focusing only on “secrets.”

Indeed, as early as 1986, the Intelligence Community began to recognize that transnational terrorism was a challenge to the Intelligence Community’s very structure. Following the terrorist attacks on the Rome and Athens airports in 1986, the CIA formed the Counterterrorist Center to overcome CIA’s internal divide between its human intelligence collectors and its analysts and the geographic divisions in which its human intelligence collectors operated impeded the CIA’s actions against terrorism. The human intelligence collectors at the Counterterrorist Center recognized that trying to recruit terrorists required significant analytic support—more than recruiting diplomats at the proverbial embassy cocktail parties. Thus the analysts at the center became an integral part of human collection activities—albeit at the expense of doing strategic analysis.<sup>8</sup>

The Counterterrorist Center’s mission was eventually broadened to integrating collection and analysis activities on terrorism across the entire Intelligence Community. But as the Congressional Joint Inquiry records, the Counterterrorist Center never fulfilled this vision. The center did not become the Intelligence Community’s leader on counterterrorism. The center was physically housed at CIA

<sup>8</sup>Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001, Report of the U.S. Select Committee on Intelligence and U.S. House Permanent Select Committee on Intelligence, Together with Additional Views, S. Rep. No. 107–351, H. Rep. No. 107–792, 107th Congress, 2d Session (December 2002) (hereinafter “Joint Inquiry report”), pp. 60–61, 96, 551.

and essentially became a CIA organism. It never emerged as a body independent from any agency with authoritative direction over all intelligence agencies for the counterterrorism mission. Relations among the CIA, NSA, and FBI left much to be desired and were anything but seamless, against a foe for which integration of U.S. intelligence capabilities was critical.<sup>9</sup>

In the most classic example of the system's inability to function against transnational terrorism, the Counterterrorist Center lost track of future 9/11 hijackers Hazmi and Mihdhar as they traveled across Asia and did not inform the FBI that these hijackers had U.S. visas until it was too late for the FBI to catch them domestically. Ultimately there was no accountability—the Counterterrorist Center, NSA, and the FBI could all blame each other, and no one had the responsibility and authority to make all intelligence capabilities work together to accomplish the counterterrorism mission. The only place where the counterterrorism activities of CIA, NSA, and other intelligence agencies came together was at the level of the DCI. There was no one lower—the equivalent of a DoD combatant commander—responsible for fulfilling the counterterrorism mission by developing strategy and unifying the intelligence community's array of capabilities.

But the Counterterrorist Center failure to fulfill the vision for it was a microcosm of the larger structural problems afflicting the intelligence community. As the Commission notes, different personnel, security, and technology standards prevented the Intelligence Community from operating as a network to share information, particularly at the raw data level. Security rules inhibited information-sharing; agencies had rules that inhibited sharing, and there were no sanctions for not sharing. Development of technology to facilitate information-sharing was stunted, as agencies prioritized their own needs over the Intelligence Community's corporate needs.

After 9/11, the Administration created the TTIC to integrate analysis on the terrorist threat. TTIC exists outside of any intelligence agency. TTIC represents a step forward in terms of integrating information for analytic purposes. However, as the Commission found, TTIC falls short of true intelligence community integration because TTIC has no authority to order collection. Thus TTIC has limited ability to task collectors to fill in gaps in understanding regarding terrorism.<sup>10</sup> TTIC does not have its own career cadre and has had difficulty in attracting analysts to come to TTIC from the Counterterrorist Center and other parts of the Intelligence Community. Finally, as the Commission found, there is no effective counterterrorism planning function being done across the Executive Branch.

#### V. THE DCI'S LACK OF ADEQUATE AUTHORITIES TO TRANSFORM THE INTELLIGENCE COMMUNITY

The intelligence community must become an agile and flexible network to fight terrorist networks. But the DCI currently lacks authority to transform the intelligence community into a network and knit together the disparate intelligence agencies. And the DCI

<sup>9</sup>Joint Inquiry report, p. 339; Commission report, pp. 353–358.

<sup>10</sup>Commission report, pp. 401–402.



is too burdened by having to direct the CIA simultaneously, not allowing the DCI to focus on community management.

#### A. Current DCI Authorities

The DCI has plenary authority over the CIA. In fact, the DCI has extraordinary authority in this role as compared to the heads of other departments and agencies. For example, the DCI can authorize CIA to perform procurement without abiding by standard Executive Branch procurement laws and regulations, and the DCI can terminate any CIA employee at-will. In contrast to the DCI's clear authority over the CIA, the question of whether the DCI already has adequate authority over the Intelligence Community has been the subject of dispute.

The basic dilemma regarding the DCI's authorities is the extent of DCI control over Intelligence Community entities contained in other departments, particularly those in DoD, both on paper and in reality. On paper, many of the DCI's authorities under the National Security Act seem quite robust, including:

- *Collection tasking.* The DCI establishes requirements and priorities to govern the Intelligence Community's collection of intelligence for "national" purposes.
- *Analysis and production.* The Assistant DCI for Analysis and Production is given the authority to "oversee" and "establish standards and priorities" for the analysis and production of intelligence.
- *Providing services of common concern.* The DCI performs services of common concern that the DCI determines are more efficiently accomplished centrally, including to consolidate personnel, administrative, and security programs across the Intelligence Community.
- *Coordinating intelligence liaison.* The DCI coordinates the relationships of Intelligence Community entities with foreign intelligence or security services.
- *Access to intelligence across the Executive Branch.* To the extent recommended by the NSC and approved by the President, the DCI has access to all intelligence related to national security which is collected by an Executive Branch component.

But the above-referenced authorities do not give the DCI actual levers to control the actions of Intelligence Community entities aside from the CIA. The DCI's main levers for enforcing his will on intelligence agencies are as follows:

- *Budget authority.* The DCI develops the budget for the National Foreign Intelligence Program and presents it to the President for submission to Congress. In developing the budget, the DCI provides guidance to intelligence agencies in formulating the parts of their budgets that are included in the NFIP. Thus the DCI could theoretically refuse to put an agency's budget into the NFIP unless that agency abided by the DCI's wishes.
- *Transferring funds.* Subject to the approval of the Office of Management and Budget, the DCI may only transfer funds appropriated to one account within the NFIP to another account within the NFIP if the secretary of the affected department does not object. The DCI cannot transfer any funds from the FBI. The DCI could theoretically attempt to attain the affected secretary's approval for such a transfer. However, currently it takes the DCI, on average, three to five months to transfer appropriations; this sim-

ply does not provide the DCI with the agility to respond to rapidly changing circumstances.

- *Transferring personnel.* The DCI may transfer personnel within the Intelligence Community only if the secretary of the affected department does not object. The DCI cannot move personnel from the FBI. As regarding the transfer of funding, the DCI could theoretically attempt to attain the affected secretary's approval for such a transfer, but in practice the process is cumbersome and not compatible with the Intelligence Community becoming an agile network.

- *Hiring senior intelligence managers.* The Secretary of Defense is required to seek the DCI's concurrence before recommending to the President an individual for appointment to head NSA, NGA, and NRO. However, the Secretary of Defense may forward the recommendation to the President without the DCI's concurrence, although the Secretary must inform the President of the DCI's non-concurrence. The DCI is merely consulted by the relevant department head in the selection of the Assistant Secretary of State for Intelligence and Research, the head of DIA, and the head of the Energy Department's intelligence office. The DCI is merely given timely notice by the FBI Director of the selection of an individual to head the FBI's intelligence component.

The question, then, is whether the NID needs additional authorities beyond the DCI's current authorities in order to manage the Intelligence Community effectively.

#### *B. DCI Tenet's 1998 Declaration of War*

The best example of the institutional weakness of the DCI is DCI Tenet's ill-fated declaration of war against al Qaeda. In December 1998, DCI George Tenet issued a memorandum declaring that the Intelligence Community was at war with al Qaeda and that no resources should be spared in the effort. But nothing happened as a result. The NSA director told the Congressional Joint Inquiry that he did not think that the memorandum applied to NSA. In contrast, individuals at CIA thought that the memorandum applied to the rest of the Intelligence Community and not them. There was little focus across the Intelligence Community on developing capabilities over the long term against the terrorist threat.<sup>11</sup>

Some argue that DCI Tenet did not attempt to implement his declaration of war memorandum, such as by developing a Community-wide counterterrorism strategy that focused on breaking down barriers to information-sharing and building long-term capabilities. Indeed, DCI Tenet apparently did not contact the NSA director after issuing the declaration of war memorandum to assess NSA's counterterrorism performance—which would have clarified to the NSA director that the memorandum was indeed intended for NSA.

Ultimately, however, the Commission's decision based upon its analysis is that, regardless of whether DCI Tenet could have taken some steps to implement his declaration of war, the position of DCI is so institutionally weak that DCI Tenet lacked the necessary levers to ensure compliance. The Commission argues that the DCI is an institutionally weak position because the DCI lacks two key authorities that any business person would consider necessary to run

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<sup>11</sup> Commission report, p. 358.

a business: the purse strings, and the ability to hire and fire key subordinates. And by virtue of being an institutionally weak position, DCIs have historically not exploited and in effect have waived their other authorities.

*C. The DCI and the Intelligence Appropriation*

According to the Commission, the DCI's current authority to develop the NFIP budget does not constitute real control over NFIP funding. Instead, the DCI is institutionally weak because the DCI does not receive the intelligence appropriation from Congress. Most of the intelligence appropriation is contained within the Defense Appropriations Bill. By doing so, the top-line intelligence appropriation remains secret. As a result, the Secretary of Defense receives the appropriation for NSA, NGA, NRO, DIA, CIA, and the Community Management Account (which includes the Office of the DCI, and some funding for the National Intelligence Council, the Community Management Staff, and the TTIC). The Secretary of Defense mechanically transfers the appropriations for the Community Management Account and the CIA to the DCI but administers the NSA, NGA, NRO, and DIA appropriations himself. The appropriation for the FBI's intelligence component is given to the Attorney General, not the DCI, in a separate appropriations bill.

The receipt of an appropriation is important for three reasons:

(1) It is emblematic in the Executive Branch of which officials are truly powerful and which are merely advisory. As former President and CEO of Lockheed Martin, Norman Augustine, wrote regarding power in the federal government, "As in business, cash is king." Because the DCI does not receive the intelligence appropriation, the DCI has diminished stature.

(2) Receipt of the appropriation brings with it the power of apportionment. The recipient of the appropriation can use the process of apportioning the appropriation to various sub-entities as a means of control. Currently, DoD has that power over NSA and other Defense intelligence entities.

(3) Receipt of an appropriation brings with it certain fiduciary duties, namely to track the obligation and expenditure of the funding by sub-entities. If the DCI were able to "execute" the budget, then the DCI would not only have a window into how intelligence agencies are spending their money but also would know what funds have been obligated yet not expended—and thus are available for reprogramming to meet emergency needs. Currently, the DCI has little insight into how intelligence agencies aside from CIA are spending their funds. An official could theoretically receive execution authority without receiving the relevant appropriation, but Executive Branch officials have told us that such a situation creates a mess and essentially is not good government.

As the Commission records, before 9/11 the CIA and the Air Force squabbled regarding the deployment of the Predator unmanned aerial vehicle because neither wanted to be stuck with the \$3 million bill should the Predator be lost. The image of the DCI apparently being unable to find \$3 million in the NFIP to fund a Predator to be used against Osama bin Ladin is a sobering indict-

ment of the current state of the DCI's financial management of the intelligence community.<sup>12</sup>

#### *D. Integration Requires Centralized Authority*

The justification for giving the National Intelligence Director strong authorities derives directly from what the NID is supposed to accomplish in practice. The Intelligence Community has failed to transform itself into a network in which information and personnel can move seamlessly across the Community. Instead, security prohibitions, personnel regulations, and information technology disjunctions prevent the Intelligence Community from becoming a decentralized network. And the reason that security, personnel, and information technology policies obstruct intelligence transformation is that the DCI lacks the authority over the component agencies to break stovepipes and enforce common protocols. The objective of giving the NID greater authority is not to centralize operations at the level of the NID but rather to have the NID set and enforce the common personnel, security, and information technology standards and protocols to transform the Intelligence Community into a network to facilitate decentralized operations.

### VI. CREATING A NATIONAL INTELLIGENCE DIRECTOR TO INTEGRATE INTELLIGENCE CAPABILITIES

Intelligence transformation is needed to enable the intelligence community to counter 21st Century national security threats—epitomized by transnational and suicidal terrorists who target the American homeland—that require a quantum leap in U.S. intelligence agencies' ability to integrate their efforts and share information. That transformation can only occur if the new National Intelligence Director receives strengthened authority to bridge agency stovepipes and knit intelligence agencies into a network. With this aim in mind, the legislation provides the National Intelligence Director with a robust and carefully crafted series of authorities.

#### *A. The National Intelligence Program*

Pursuant to the Commission's recommendation, the bill renames the NFIP as the National Intelligence Program (NIP). The new name expresses the need for intelligence collection and analysis to cross the foreign/domestic divide given the nature of the transnational terrorist threat. It also preserves the concept that only "national intelligence"—pertaining to the interests of more than one government agency or department—is included in the NIP. The bill defines national intelligence as intelligence that serves more than one department.

The bill significantly changes the definition of the National Foreign Intelligence Program. The NIP is defined to include all programs, projects, and activities (whether or not pertaining to national intelligence) of the National Intelligence Authority, the Central Intelligence Agency, the National Security Agency, the National Geospatial-Intelligence Agency, the National Reconnaissance Office, the Office of Intelligence of the Federal Bureau of Investigation, and the Office of Information Analysis of the Department of Homeland Security. The NIP also includes all national intelligence

<sup>12</sup>Commission report, p. 211.

programs, projects and activities of the elements of the intelligence community and any other program, project, or activity of a department, agency or element of the United States Government relating to national intelligence unless the NID and the head of the affected entity determine otherwise. These provisions ensure that the NID will have complete budgetary control over the core elements of the intelligence community which produce national intelligence.

The NIP definition specifically excludes programs, projects and activities of the military departments that acquire intelligence principally for the planning and conduct of joint or tactical military operations by the United States Armed Forces. Any assets that are currently in the JMIP but are national and do not acquire intelligence principally for the planning and conduct of joint or tactical military operations by the United States Armed Forces should be moved to the NIP. The inclusion of the word “principally” is meant to reflect that some military assets serve both national and tactical or joint purposes; the mere fact that a DoD asset produces some national intelligence thus does not require that asset to be moved to the NIP.

Any programs, projects, or activities in DIA that are not part of the NFIP as of the date of the legislation’s enactment would not be part of the NIP. This provision is meant to ensure that certain DIA assets are not moved to the NIP. It should be noted that the Commission’s report calls for DIA to be included in the NIP, but the Committee disagreed with this recommendation. Still, it is expected that national collection done by DIA will be moved to the NIP.

The State Department’s Bureau of Intelligence and Research and similar offices in the Departments of Energy and Treasury would likely not be part of the NIP because of their largely departmental rather than national focus. These entities focus on analysis, not collection activities; on the other hand, the NID would ensure that these entities’ analytic expertise is solicited when the Intelligence Community is producing national intelligence estimates or analysis on important national security topics.

#### *B. The NID’s Responsibilities*

The NID is responsible for serving as the head of the intelligence community, as the principal adviser to the President for intelligence related to the national security, as the head of the National Intelligence Authority, and for directing and overseeing the National Intelligence Program.

The NID is also responsible for providing national intelligence to the President, the heads of executive branch departments and agencies, the Chairman of the Joint Chiefs of Staff and other senior military commanders, the Senate, House of Representatives, and their committees, and to other people and entities as directed by the President. The national intelligence provided by the NID is to be timely, objective, independent of political considerations, and based upon all sources available to the intelligence community.

The NID is given a number of specific responsibilities. Many of these responsibilities are new, and are intended to address shortcomings the Committee perceived in the existing responsibilities of the Director of Central Intelligence.

The NID is clearly given the responsibility to determine the annual budget for intelligence and intelligence-related activities of the United States, and for managing and overseeing the National Intelligence Program. The NID is also given greater responsibility to oversee the collection, analysis and dissemination of intelligence. The NID is required to establish the requirements and priorities to govern the collection, analysis, and dissemination of national intelligence, and to establish collection and analysis requirements for the intelligence community, and for determining collection and analysis priorities, issuing and managing collection and analysis tasking, and resolving conflicts in tasking of elements of the National Intelligence Program.

As is the DCI under current law, the NID is also responsible for establishing requirements and priorities for foreign intelligence collected under the Foreign Intelligence Surveillance Act, and for assisting the Attorney General in ensuring that intelligence derived from surveillance and searches under FISA is appropriately disseminated.

Finally, the NID is responsible for providing advisory tasking on the collection of intelligence to elements of the U.S. government having information collection capabilities, but which are not members of the intelligence community. This responsibility is critical because information relevant to terrorism can be found throughout the government—hypothetically, from surveillance data at government buildings, to border and customs officers' observations, to immigration statistics.

The NID is responsible for managing and overseeing the National Counterterrorism Center and other national intelligence centers which may be established in the future. The NCTC is critical to fulfilling the 9/11 Commission's vision of unity of effort in the intelligence community and across the Executive Branch against terrorism, while the national intelligence centers are meant to unify intelligence activities against NSC priorities. The NID is responsible for ensuring that the NCTC and the national intelligence centers fulfill their intended purposes.

The NID is also charged with developing personnel policies and programs to make a number of improvements in the management of the intelligence community. These responsibilities include setting standards for education, training, and career development across the intelligence community, and ensuring that the personnel of the intelligence community are sufficiently diverse for the purposes of collection and analysis of intelligence. The NID is also responsible for facilitating assignments to the NCTC and other national intelligence centers that may be established in the future, and for making service in more than one element of the intelligence community a condition of promotion to certain positions within the intelligence community. Such policies will help promote the concept of "jointness" in intelligence collection, analysis, and operations. Generally speaking, the NID is responsible for creating an intelligence workforce and intelligence capabilities necessary to meet 21st Century threats. As with Goldwater-Nichols, this is a long-term process. It is the NID's responsibility to ensure that it happens.

The NID is given responsibilities for facilitating the dissemination of intelligence, while still protecting classified information. A

key responsibility within this general area is developing an integrated, interoperable communications network between intelligence community elements. This responsibility is critically important in fulfilling the 9/11 Commission's mandate to bring national security institutions into the information age.

The Committee is aware that there is a considerable potential for duplication of effort as a number of agencies make efforts to address common problems without the benefit of a strong NID to coordinate their activities. Likewise, certain problems can remain if no agency addresses them. Therefore, it is possible that the NID might discover duplication of effort or gaps in the intelligence community that the NID should address through budget, personnel, and other authorities.

The legislation strengthens the Intelligence Community's ability to exploit open sources by requiring the NID to establish and maintain within the intelligence community an effective open-source information capability.

Finally, the bill makes clear that the NID must ensure that the elements of the intelligence community are complying with the Constitution and all applicable laws and executive orders, including those relating to privacy and civil liberties of U.S. persons. Effective intelligence activities cannot come at the expense of civil liberties.

### *C. The NID's Authorities*

The legislation sets forth a wide range of authorities for the NID to fulfill his responsibilities. The Committee believes that these authorities are commensurate with the NID's responsibilities. Accordingly, the NID is accountable for the performance of the responsibilities assigned to him. This alignment of responsibility, authority, and accountability is necessary in order to remedy the current arrangement in which the DCI's authorities fall far short of his responsibilities as head of the intelligence community. The enumeration of the NID's authorities is meant to resolve the problem identified by the Commission, that no one is in charge of the intelligence community.

#### *1. Authority To Formulate the Budget*

The NID will be responsible for developing, with advice from the heads of elements of the NIP, the budget for the NIP. The NID will formulate the content, amount, and distribution of the budget for the NIP and present that budget to the President for consideration. Upon submission of the President's budget request to Congress, the NID and the Deputy NID will testify to Congress to defend the budget and will make such officials of their staff available to Congress for briefings and to provide other information as appropriate. The NID is expected to utilize this budget preparation authority in order to effect changes, if needed, in component agencies' programs and activities. The NID should not merely mechanically compile the agencies' budgets but should ensure that the budgets achieve integration, prevent unnecessary duplication among agencies, and maximize the effectiveness of all of our intelligence capabilities.

## *2. Authority To Receive the National Intelligence Program's Appropriation*

The Committee's legislation provides that funds for the NIP will be appropriated to the National Intelligence Authority and will be under the direct jurisdiction and control of the NID. The NID would allocate the appropriated amounts, after apportionment by the Office of Management and Budget, directly to the heads of Intelligence Community components, consistent with his budget request as modified by the classified annexes that would accompany appropriations and authorizations. The authority to allot NIP appropriations will provide the NID with the ability to control and closely monitor the obligation and expenditure of NIP funds. For example, the NID will have insight into what funds have been obligated and not expended, making those funds available in the short-term for application to different priorities.

## *3. Authority To Transfer Intelligence Funds*

The legislation provides the NID with flexibility to reallocate funding after Congress provides annual appropriations for the NIP. After approval by the Office of Management and Budget, and notification of the appropriate congressional committees, the NID may transfer appropriations and personnel among components of the NIP. The NID may also approve reprogramming of appropriations within NIP components. These authorities will help the NID respond to changing events by shifting resources to higher priority activities, while providing for appropriate notification of Congress.

## *4. Authority Regarding the Appointment and Termination of Senior Intelligence Officials*

The Commission stresses the importance of the NID having what the Commission calls "the ability to hire or fire senior managers." The Commission states that the NID should "approve and submit nominations to the President" of the heads of the CIA, DIA, FBI Office of Intelligence, NSA, NGA, NRO, the Department of Homeland Security's Directorate for Information Analysis and Infrastructure Protection ("IA&IP"), and "other national intelligence agencies" unspecified by the Commission.<sup>13</sup>

The Committee recognizes the importance of this authority. Using this authority, the NID will be able to set expectations and performance metrics for senior intelligence managers as a condition for his recommendation of them for appointment or nomination. However, the Committee's legislation takes a slightly different approach than the Commission.

The NID is responsible for recommending to the President nominees to be the Directors of the NSA, NGA, and NRO. The NID is required to seek the concurrence of the Secretary of Defense in these recommendations. If the Secretary of Defense does not concur, that fact must be made known to the President. The NID is responsible for recommending a nominee for CIA Director to the President.

The bill also requires that the relevant department heads seek the concurrence of the NID prior to recommending nominees for the positions of Under Secretary of Defense for Intelligence, Assist-

<sup>13</sup>Commission report, p. 410.



ant Secretary of Homeland Security for Information Analysis, Director of the DIA, and Executive Assistant Director for Intelligence of the FBI. If the NID does not concur in these recommendations, it must be made known to the President.

The NID is also given the right to recommend to the President that the individuals serving in any of the positions described in the preceding two paragraphs be terminated. The NID must seek the concurrence of the relevant agency head prior to making such a recommendation but may make it without the concurrence, provided the President is notified of that fact.

#### *5. Acquisition and Fiscal Authorities*

The legislation establishes for the NID enhanced acquisition authority similar to that of the DCI, as head of the CIA. It also requires the NID to establish a major system acquisition management framework similar to that utilized by DoD for defense acquisition programs, and provides that ultimately the NID will assume milestone decision authority for major systems acquisitions funded by the National Intelligence Program (NIP).

*a. The NID's Inherent Acquisition Authority.*—As a general matter, the U.S. government has inherent contracting authority to enter into agreements necessary to procure goods and services necessary to its functions. Statutes governing the conduct of procurements by executive agencies establish the framework for this authority. More explicitly, the creation of the NIA as an independent establishment within the executive branch places it squarely within applicability of the Federal Property and Administrative Services Act of 1949 (FPASA, 41 U.S.C. §§ 251 et seq.). This Act establishes competition requirements as well as other procurement procedures and requirements. These include the requirements of the Competition in Contracting Act of 1984 and the Truth in Negotiations Act, both of which amended FPASA. 41 U.S.C. § 252 provides that executive agencies shall make purchases and enter into contracts in accordance with the provisions of FPASA. The NIA, as an independent establishment, is included within the definition of executive agency. Further, the Office of Federal Procurement Policy Act (41 U.S.C. §§ 401 et seq.) establishes requirements for the implementation of government wide procurement policy (such as the Federal Acquisition Regulation) over executive agencies, which include the CIA and, by application of law, the new NIA.

Like the CIA, though, it is anticipated that contingencies will arise where provisions of current Federal acquisition law could hinder the NID's ability to accomplish the mission of the National Intelligence Authority (NIA). Therefore, the NID is provided expanded authorities not given to most other agencies as described below.

*b. Special Acquisition Authority Similar to CIA.*—The section provides the NID with special acquisition authority similar to the CIA in two specific ways. First, it provides the NID with authority identical to some of the authority in what is known as the CIA's "Section Eight" authority. Next, it provides him with what is known as "impairment authority."

The NID has the same flexibility already provided the CIA (sec. 8(a) of the CIA Act of 1949, as amended, 50 U.S.C. § 403j(a)) for the purposes for which funds may be expended. Specifically, the

CIA has flexibility to expend funds for purposes that may be prohibited or limited for other agencies, such as personal services. Thus, similar to the CIA, the NID would be authorized to expend sums under contracts the NIA awards for these purposes.

Next, the CIA is among a small number of entities in the Federal government for which the application of FPASA requirements may be made inapplicable under 40 U.S.C. § 113(e) when strict adherence would impair its ability to fulfill its mission. Several fundamental federal procurement laws, such as the Competition in Contracting Act and the Truth in Negotiations Act are amendments to FPASA. With the impairment authority, these requirements may be considered inapplicable if circumstances warrant. In extending this authority to the NIA, the Committee expects the NIA, as with the CIA, to conduct procurement activities to the maximum extent practicable in accordance with general Federal Government procurement statutes and the Federal Acquisition Regulation.

*c. Milestone Acquisition Authority.*—The legislation confers on the NID certain acquisition authorities over NIP-funded acquisitions of major systems. These authorities are modeled on those now exercised by DoD. Specifically, a combination of Federal law and DoD policy gives DoD the power to exercise what is known as “milestone authority” over the acquisition programs of all DoD agencies. This means that for large procurements (e.g., those in excess of \$140 million for R&D purposes or \$660 million for actual procurement) high-level DoD officials independent of the program office developing a system approve the entry into the next phase of the acquisition cycle (such as from system development and demonstration to production), as well as for production and deployment of the system. These officials have access to independent assessments of program progress such as cost estimates, testing results, etc.

The legislation requires the NID to establish a management structure for acquisitions of major systems funded by the NIP. A program management plan will be established with cost, schedule, and performance goals as well as progress reviews and reports to Congress on the development of these programs. The section would also require that the NID serve as the exclusive milestone decision authority for all programs funded by the NIP, including those of other agencies such as DoD, in order to ensure strategic focus, interoperability, and any necessary uniformity in development. DoD would retain milestone authority over NSA, NRO, and NGA until such time that the NID was fully prepared to assume it. The NID could also assign milestone authority to the Secretary of Defense in particular instances, pursuant to a memorandum of understanding.

The section would also require the NID to prescribe guidance on program management plans based on the principles of knowledge-based system development established in Defense Department acquisition system guidance and espoused in the system development “best practices” reports of the U.S. Government Accountability Office.

*d. Acquisition Powers Report.*—The bill requires the NID to report in a year as to whether any acquisition authority enhancements are needed by NSA and NGA.

*e. GAO Review.*—Finally, not later than 2 years after the date of enactment of this Act, the Comptroller General shall report to the Congress on the extent to which the policies and processes adopted for managing major national intelligence acquisitions, as defined by the Director, are likely to result in successful cost, schedule, and performance outcomes.

#### *6. Tasking Authority*

The NID is given tasking authorities comparable to—but stronger than—those that the DCI or Assistant DCIs currently have. The legislation gives the NID tasking authority not just for collection but also for analysis. Intelligence analysis must be directed to focus on national security priorities. Also, as the Commission specifically noted, “The limited pool of critical experts—for example, skilled counterterrorism analysts and linguists—is being depleted. \* \* \* The U.S. government cannot afford so much duplication of effort. There are not enough experienced experts to go around.”<sup>14</sup> Under the bill, the NID will be empowered to rationalize all assets—including analysts. The Committee is concerned about issues of analytic quality and objectivity and addressed these concerns in other sections of the legislation (see section XI below).

#### *7. Reorganization Authorities*

Improving intelligence capabilities may require altering or consolidating organizational units in order to overcome agency stovepipes, remedy unnecessary duplication, and promote economies of scale. To this end, the NID is authorized, with the approval of the President and after consultation with the department, agency, or element concerned, to allocate or reallocate functions among the officers of the NIP, and to establish, consolidate, alter, or discontinue organizational units within the NIP. Prior to such action, the NID shall provide notice to Congress, which shall include an explanation of the rationale for the action. The authority under this section does not extend to any action inconsistent with law, and an action may be taken under this authority only with the approval of each of the congressional intelligence committees, the Senate Committee on Governmental Affairs, and the House Committee on Governmental Reform.

### VII. CHANGING ORGANIZATIONAL STRUCTURES

#### *A. The NID*

The NID is to be Presidentially-appointed and Senate-confirmed. The position of NID is at the Executive Level I pay grade, equivalent to that of a department head. The bill does not make the NID a member of the cabinet. Members of the cabinet generally are heads of executive departments who are executing policy. The NID plays a different role, which is to support policymaking with objective intelligence.

The NID serves at the pleasure of the President. The Committee—like the Commission—rejected giving the NID a fixed term. The NID is the President’s principal intelligence adviser and needs to have the confidence of the President. Testimony before the Committee made clear that instituting a fixed term for the NID

<sup>14</sup> Commission report p. 401.

would interfere with if not preclude that relationship. Moreover, having the President's confidence is a critical element for the NID to be effective in translating his authorities into compliance by the intelligence agencies—particularly when the new structure is in its infancy.

The bill expressly prohibits the office of the NID from being placed in the Executive Office of the President. The Commission had advocated doing so, apparently to facilitate the development of a strong relationship between the NID and the President. However, the location of the NID in the Executive Office of the President is irrelevant to the establishment of such a relationship. The Committee is concerned that locating the NID in the Executive Office of the President might lead to the politicization of intelligence. Testimony before the Committee supported the Committee's views on this issue. Moreover, it appears that the Commission has conceded this point.<sup>15</sup>

### *B. The NID's Deputies*

The Committee solicited testimony and advice from a wide variety of experts both within and without the intelligence community regarding how the NID's deputy structure should be established in statute. These experts provided the Committee with a variety of interesting, though not necessarily consistent, approaches. However, one common thread the Committee identified was that the NID should be given the flexibility to establish a deputy structure consistent with the NID's vision for the National Intelligence Authority. The Committee adopted a legislative approach that provides such flexibility.

The legislation creates a Principal Deputy NID, to serve in the NID's absence. This official will be Senate-confirmed. Having such an official is critical to the effectiveness of the NID. Indeed, one of the Goldwater-Nichols Act's provisions designed to strengthen the chairman of the Joint Chiefs was to create the position of the Vice Chairman, to serve in the Chairman's absence and to ensure continuity.

The legislation permits the NID to create up to four deputies who are not Senate-confirmed and to determine their duties and authorities. Thus the NID will have the flexibility to structure top-level management as the NID sees fit.

The Commission recommended creating three Deputy NIDs with line authority over key agencies/components under the NID's authority: (1) a Deputy NID for Foreign Intelligence, to head the CIA; (2) a Deputy NID for Defense Intelligence, to oversee NSA, NGA, and NRO; and (3) a Deputy NID for Homeland Intelligence, to address the Department of Homeland Security's IA&IP Directorate and the FBI Office of Intelligence. The Commission would have made the Undersecretary of Defense for Intelligence (USDI) the Deputy NID for Defense Intelligence.

Testimony before this Committee was unanimous that dual-hatting the USDI would not work in practice. The USDI would have two masters, inside and outside the Department of Defense. Moreover, the USDI currently is a DoD policy official and lacks line

<sup>15</sup> Intelligence Reform, hearing before the Senate Select Committee on Intelligence, 108th Congress (September 7, 2004) (testimony of 9/11 Commission Vice Chairman Lee Hamilton and Commissioner John Lehman).

authority over NSA, NGA, and NRO in DoD today; thus the Commission's proposal to give the USDI line authority over these agencies actually requires strengthening the USDI's authorities. Indeed, the Commission no longer supports giving the USDI line authority over NSA, NGA, and NRO.

The Committee also has concerns about the Deputy NID for Homeland Intelligence, who would be either the Undersecretary of Homeland Security for IA&IP or the head of the FBI Office of Intelligence. This formulation leads to the awkward structure under which a Department of Homeland Security official has line authority over an FBI official, or vice versa.

### *C. The Office of the NID*

The Commission does not specify what positions should be created in the Office of the NID to assist in managing the National Intelligence Program. However, the authorities of the NID arguably require a basic list of officials common to most Executive Branch entities. These officials should not also be officials within the intelligence agencies themselves; in contrast, today the DCI's general counsel is also the CIA's general counsel, leading to an inherent conflict of interest when the DCI has to resolve an issue between the CIA and another intelligence agency. The officials needed by the NID include:

- (1) A general counsel, to advise the NID regarding his or her authorities and to resolve legal disputes among component agencies on issues such as information-sharing;
- (2) A comptroller, to act in conjunction with the chief financial officer (CFO) to assist the NID in executing the NIP appropriation;
- (3) A chief information officer, to assist the NID in setting standards for information technology and network architecture;
- (4) A civil rights and civil liberties officer;
- (5) A privacy officer; and
- (6) A CFO.

(4) It should be noted that the CFO will be subject to the Chief Financial Officers Act under title 31 of the U.S. Code. As required by the CFO Act, the CFO will oversee all financial management activities relating to the NIA's programs and operations. The NID will be responsible for development and maintenance of an integrated agency accounting and financial management system. In addition, the NID will direct and oversee the NIA's financial management personnel, activities and operations. The Committee believes that including the CFO in the CFO Act is in keeping with a growing trend towards emphasizing the importance of integrating financial management best practices in agency management.

The legislation also creates an inspector general to monitor, inspect, and audit, and, where appropriate, investigate activities within the Office of the NID, the NCTC, the centers, and the interstices among the elements of the intelligence community. Currently, there is no inspector general with plenary authority to investigate interagency cooperation. Thus there is no inspector general with clear authority to investigate the information-sharing problems among agencies that contributed to the failure to prevent the 9/11 attacks. This situation has not been conducive to maximizing performance in the intelligence community. The NIA inspec-

tor general would not have jurisdiction over the internal operations of the intelligence agencies and thus would not duplicate the activities of their inspectors general.

*D. The National Intelligence Authority*

The Office of the NID, the NCTC, and the national intelligence centers shall be housed within the National Intelligence Authority. In addition, the legislation moves the National Intelligence Council into the NIA.

The Council is currently responsible for coordinating and producing national intelligence estimates. The Council will continue to do so. National intelligence estimates will generally be formulated by analysts from the relevant national intelligence center, the Bureau of Intelligence and Research, and DIA, as well as other departmental offices with relevant expertise. In addition, the drafting of the President's Daily Briefing shall be done within the NIA, based in large part on input from the national intelligence centers.

The National Intelligence Director, like the head of any other agency in government, will have responsibility for managing the personnel of the National Intelligence Authority. To assist the NID with these workforce management responsibilities, section 163 of the legislation grants the NID the authorities currently available to the Director of the CIA with respect to CIA personnel.

The legislation makes clear that employees and applicants for employment at the NIA will have the same rights and protections under the Authority currently afforded to employees of the CIA. Thus, for example, the employees of the NIA, like those at the CIA, will have generally the same rights and remedies in cases of alleged discrimination on the basis of race, color, religion, sex, national origin, age, or handicapping condition as employees at other federal agencies, including the right to appeal to the EEOC and to federal courts.

The Committee is cognizant, however, that employees at the CIA, like most employees throughout the intelligence community, do not have external appeal rights to the Merit Systems Protection Board or review in court for the majority of adverse actions. With respect to adverse actions, the Committee believes that it is important that NIA employees receive, at a minimum: advance written notice of such action; a reasonable opportunity to respond; the opportunity to seek the advice of private counsel; an opportunity to obtain specific information on which the action is based, provided the receipt of such information would not violate the national security interests of the United States; and the right to appeal to an independent internal panel. The Committee believes it is important that the NID consider adoption of the system in place within the CIA, to ensure that NIA employees can carry out their duties in the interest of the United States with assurance that a fair process is available should any unlawful or unfair workplace practices occur.

VIII. CREATING NATIONAL INTELLIGENCE CENTERS TO FUSE INTELLIGENCE CAPABILITIES AGAINST MISSIONS

The legislation authorizes the NID to create national intelligence centers to provide for unified direction of intelligence agencies/components in the NIP to fulfill missions. The Commission's rec-

ommendation stems from the pre-9/11 and current situation in which no one below the DCI is responsible for how CIA, NSA, and other intelligence agencies work together on a specific issue. For example, in the area of counterterrorism, as recognized by the Congressional Joint Inquiry and the Commission, the DCI's Counterterrorist Center is an organ of the CIA and concentrates on human intelligence rather than on organizing and integrating the actions of agencies with counterterrorism responsibilities across the government.

Senior intelligence officials, including former DCI Tenet, have endorsed the concept of integrating intelligence assets in a mission-specific orientation.<sup>16</sup> The legislation does not specify the centers' topics; instead, the NID would establish the centers on topics reflecting functional and geographic NSC priorities—such as counterproliferation, Russia, and East Asia & China. If a center is no longer needed, the bill allows the NID to terminate a center, subject to Congressional notification.

Among their responsibilities, the centers will provide all-source analysis of intelligence, identify and propose to the NID intelligence collection and analysis requirements, have primary responsibility for net assessments and warnings, and ensure appropriate officials have access to a variety of intelligence assessments. The NID will supervise the work of the centers. With their ability to harness the resources of entities with differing capabilities and create a unified effort to focus on a particular issue area, the centers will improve the intelligence community's ability to respond with speed and agility.

Some criticize the national intelligence centers as threatening to drain offices such as the CIA Counterterrorist Center of analysts critical for the performance of human intelligence. A strength of the CIA Counterterrorist Center is indeed its close linkage between analysts and human intelligence operators. But there are two basic types of analysts in the intelligence community: analysts who provide tactical assistance to a collection activity, and analysts who conduct strategic analysis. The former, for example, concentrate on whether a communications intercept of a terrorist referencing (hypothetically) a "wedding" refers to a real wedding or an attack—and must have a very detailed knowledge of that terrorist's life and activities. These types of analysts should generally stay within the agencies, such as at the Counterterrorist Center, to assist collectors. But a number of strategic analysts—who, for example, fuse together all sources of information to provide a comprehensive picture of al Qaeda's strategy and objectives over the next decade—should move to the centers in order to be at the focal point at which information is consolidated from all sources.

One option was to have the legislation both mandate that the NID create centers on NSC-generated topics and explicitly imbue the centers with specific authorities. This approach is akin to the Goldwater-Nichols Act, which sought to strengthen the combatant

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<sup>16</sup>Larry Kindsvater, "The Need to Reorganize the Intelligence Community," in *Studies in Intelligence*, Vol. 47, no. 1 (2003). Kindsvater was subsequently confirmed as the Deputy DCI for Community Management. For DCI Tenet's statement, see *Law Enforcement and the Intelligence Community*, hearing before the National Commission on Terrorist Attacks Upon the United States, April 14, 2004, p. 20 ("The organization around missions where those capabilities are fully integrated in whatever structure you want to create I think is the way ahead in the future, and that's the way we're moving").

commanders vis-à-vis the Military Services by explicitly delineating their authorities in a long list. The message that Congress sent to the Military Services was clear: the combatant commanders are in charge of warfighting. Yet ultimately the Committee concluded that mandating that the NID create specific centers—rather than authorizing the NID to create them pursuant to priorities established by the NSC—might be too restrictive. Some topics might not require full-fledged, permanent centers but rather more ad hoc arrangements. Thus the legislation does not require the NID to create specific centers but authorizes the NID to do so. Given the critical role these centers will play in reorganizing how the intelligence community addresses critical issues, it is the Committee's expectation that the NID will create centers as needed expeditiously.

Each center will be led by a director, who will be appointed by the NID and will also serve as the NID's principal adviser in that center's area of responsibility. The center's director reports to the NID. Each center will be provided a professional staff from personnel transferred, assigned, or detailed from elements of the intelligence community as directed by the NID.

The NID will designate an agency to provide administrative support to each center. However, this provision does not imply that such agency will have authority over the center. The situation that afflicts the Counterterrorist Center, in which a center with intelligence community-wide responsibilities became subsumed within the CIA, will be unacceptable for a national intelligence center. The national intelligence center is under the authority of the NID, not of any agency.

The National Counterintelligence Executive will also be moved to the NIA in order to integrate it into the new structure. This entity is similar to a national intelligence center.

#### IX. CREATING THE NATIONAL COUNTERTERRORISM CENTER TO FUSE INTELLIGENCE AND COORDINATING INTERAGENCY STRATEGY AGAINST TERRORISM

The bill creates a National Counterterrorism Center (NCTC) within the National Intelligence Authority, per the Commission's recommendation. The NCTC will develop and unify strategy for civilian and military counterterrorism efforts; effectively integrate counterterrorism intelligence activities of the U.S. Government, both inside and outside of the United States; and develop inter-agency counterterrorism plans, i.e. plans that involve more than one department, or element of the executive branch (unless otherwise directed by the President), and include the mission, objectives to be achieved, courses of action, coordination of agency operational activities, recommendations for operational plans, and assignment of departmental or agency responsibilities.

The Commission's recommendation for an NCTC arises from two main findings. First, intelligence agencies are not integrated in their efforts against terrorism. Thus the NCTC will have a Directorate of Intelligence—in essence, a National Intelligence Center which shall have primary responsibility for the analysis of terrorism and terrorist organizations from all sources of intelligence, whether collected inside or outside the United States. Second, the Commission found that counterterrorism requires an Executive Branch-wide effort to mount joint operations to counter terrorism.



Thus, the NCTC will have a Directorate of Planning to develop plans, assign responsibilities, monitor implementation, and provide reports to the NID and the President.

#### *A. Interagency Counterterrorism Planning*

The NCTC's Directorate of Planning will concentrate on planning activities that are "joint," meaning that they involve more than one agency. Such planning will be at both the strategic level, such as "winning hearts and minds" in the Muslim world, and at a more specific level, such as hunting for Bin Ladin. For example, the NCTC will craft plans for dealing with an al Qaeda cell—whether to destroy it with military force or infiltrate it to acquire leads on Bin Ladin. The NCTC will assign agencies responsibilities as outlined in its plans. NCTC's plans will be developed utilizing input from personnel of other departments and agencies who have expertise in their agencies' priorities, functions, assets, and capabilities with respect to counterterrorism.

An analogy for understanding the NCTC's "interagency counterterrorism planning" is lanes in a highway, with each lane symbolizing an agency's expertise (e.g., diplomacy, special operations, espionage, and law enforcement). The NCTC will not tell each agency how to drive in its lane. But effective counterterrorism requires choosing which lane to use in a particular situation—meaning which type of activity, and thus which agency, should have the lead in a particular situation. The NCTC will select the lane and propose a travel plan but will have no authority to order an agency actually to drive. If an agency head objected to the NCTC's plan and assignment of responsibility, then the issue could be elevated to the President.

The Committee recognizes that the term "operational planning" has a specific meaning in the DoD context. "Operational planning" for DoD refers to an arduous process to delineating the details of operations—for example, the time sequence of deployments of military assets, and where the hinges are on a door for purposes of a special operations raid. The NCTC can make specific recommendations for operational plans. But the legislation makes clear that the NCTC's assignments are not binding on agencies. In other words, the NCTC lacks authority to direct operations by agencies in the Executive Branch and will not be in the military chain of command. Agency heads could object to the NCTC's plans, at which point the NID could either accede or raise the issue to the President. The NCTC will not resolve policy issues but instead will elevate policy disputes to the President for resolution.

#### *B. The NCTC Director*

The NCTC Director will be Senate-confirmed and the equivalent of a Deputy Secretary. The NCTC Director reports to the NID regarding the activities of the Directorate of Intelligence and to the President and the NID regarding the activities of the Directorate of Planning. The Commission's report recommended this arrangement, although subsequent statements indicated that the Commission favored the NCTC director reporting directly to the President regarding counterterrorism operations. The justification for this latter arrangement apparently was that the NID is an intelligence official and therefore should not be involved in advising the Presi-

dent on counterterrorism activities across the Executive Branch (which frequently may not involve any intelligence agencies at all). Ultimately, the Committee determined that giving the NCTC director two separate reporting chains, one to the President and the other to the NID, could lead to confusion and competition between the NID and the NCTC director.

The NCTC Director will play an active role in selecting key counterterrorism officials in the Executive Branch; the head of the relevant department or agency must seek the Director's concurrence in the selection or recommendation to the President for the Director of the CIA Counterterrorist Center, the Assistant FBI Director in charge of the Counterterrorism Division, the State Department's Ambassador-at-Large for Counterterrorism, and any other official designated by the President. If the Director does not concur in that selection, then the head of the relevant department or agency must inform the President of the Director's nonconcurrence.

#### X. CONCERNS ADDRESSED IN CREATING A NATIONAL INTELLIGENCE DIRECTOR

In crafting this legislation, the Committee addressed a number of concerns it heard relating to the creation of a National Intelligence Director.

##### *A. Intelligence Support to the Warfighter*

Some have expressed the fear that creating a NID with more power and control over the national intelligence elements of the Defense Department (i.e., NSA, NGA, and NRO) could harm the provision of intelligence to the military. The Committee carefully considered this concern, with full recognition that intelligence is more vital to, and more closely integrated into, military operations than ever before. Ensuring that the military receives the intelligence that it needs will be one of the core responsibilities of the NID. As stated by Acting DCI John McLaughlin in his testimony before the committee, "everyone in the intelligence community understands that NSA and NGA, in particular, both integral parts of the national intelligence community, have a vital role to play in supporting combat, as does the CIA. And that role would have to be preserved, regardless of who they report to or how this community is ultimately structured."

The committee believes that the NID can and will enhance, not detract from, the quality of intelligence provided to the military. For example, by providing for a common information technology and ensuring that information is rapidly disseminated to those who need it, the NID will provide a tremendous benefit to the warfighter.

Nonetheless, the committee did not go as far as some have proposed and place NSA, NGA and NRO under the exclusive control of the NID. These agencies, as well as DIA, are national intelligence and combat support agencies, and the Committee did not want to take any action that might weaken the bonds that tie them to the military forces they support in that capacity. The Committee was also concerned that removing these agencies entirely from the control of the Secretary of Defense could lead the Defense Department to recreate the intelligence capabilities of these agencies

within programs controlled by the Department, thus leading to unnecessary waste and duplication.

Like the Commission, the Committee concluded that it is not necessary to take such a dramatic step in order to achieve the goal of a more unified national intelligence effort. The Committee believes that a NID empowered to transform intelligence agencies into a network will improve the quality of intelligence for both the policymaker and the warfighter.

### *B. A Strong NID*

In the course of holding eight hearings regarding the restructuring of the intelligence community, the Committee was urged not to create an NID that lacked true power, and that served only as an additional layer of bureaucracy. The Committee has heeded this warning, and has created an NID that has the power to reform the intelligence community, improve the quality of analysis, and help ensure joint action. In short, the NID will be the strong head the intelligence community has lacked.

Consistent with the 9/11 Commission's recommendations, the Committee declined to create a new bureaucratic layer by moving intelligence collection agencies into a massive new Department of Intelligence. The CIA Director will report to the NID, as will the NCTC Director and other NIC Directors. However, the heads of other elements in the intelligence community will stay within their existing chains of command. The desire to preserve clear lines of command also caused the Committee to decline to pursue the 9/11 Commission's recommendation to create three Deputy NID positions, filled by the CIA Director, the Under Secretary of Defense for Intelligence, and the Executive Assistant Director for Intelligence of the FBI. The Committee heard testimony from a number of witnesses that this "dual-hatting" structure would be unworkable, and would create unclear lines of command.

### *C. Reorganizing in Time of War*

Finally, critics of reform argue that reorganization should not take place in time of war because it would be too disruptive. This criticism ignores the history of American warfighting, in which significant changes have been made in order to ensure victory. The Pentagon was constructed in World War II, new technology was developed, and new organizational units and tactics were developed to counter the enemy. Moreover, this criticism either assumes that the intelligence community is already structured appropriately to win the war on terrorism—an assumption soundly rejected by the Commission—or prioritizes the current structure over the requirements of U.S. national security.

## XI. CREATING A FORUM FOR DEPARTMENT-LEVEL DISPUTE RESOLUTION

The bill establishes a Joint Intelligence Community Council to resolve conflicts at the cabinet level. The Joint Intelligence Community Council will consist of the National Intelligence Director (who will chair the Council), the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Energy, the Secretary of Homeland Security, and any other officers as the President may designate. The Joint Intel-

ligence Community Council shall meet upon the request of the National Intelligence Director.

The Joint Intelligence Community Council will provide a critical forum for resolving disputes between entities in the intelligence community if differences cannot be resolved at the staff level. The Joint Intelligence Community Council ensures that there is an established process through which the Principals can discuss and resolve these differences on intelligence issues. Such a forum is important, because disputes that seem irreconcilable on the staff level are often easily resolved in face-to-face meetings between Principals.

The JICC will also serve as an important advisory body to the National Intelligence Director, helping to guide decision-making and issue mid-course corrections. The Joint Intelligence Community Council will assist the National Intelligence Director in developing and implementing a joint, unified national intelligence effort to protect national security by advising the National Intelligence Director on establishing requirements, developing budgets, financial management, and monitoring and evaluating the intelligence community's performance, and in ensuring the timely execution of programs, policies, and directives established or developed by the National Intelligence Director.

#### XII. STRENGTHENING THE OBJECTIVITY AND QUALITY OF INTELLIGENCE

Intelligence is rarely a silver bullet, pointing inexorably to a single, wise course of action. But the quality of intelligence is critical for ensuring that policymakers—both in the Executive Branch and Congress—are in the best position possible to make national security decisions. And the quality of intelligence does not derive solely from the ability to purloin secrets. The enemy's secrets are most useful when they are analyzed—put into context of the known and unknown, used to illuminate the enemy's actions, capabilities, and intentions, and reflected upon from a strategic perspective.

The Committee is troubled by instances in which the quality of intelligence analysis has been substandard, either due to politicization of intelligence analysis or poor analytic tradecraft. Two prominent examples of politicized intelligence are the intelligence given to Congress in support of the Tonkin Gulf Resolution of 1964, and intelligence apparently shaded by DCI Bill Casey during the Iran-Contra Affair.<sup>17</sup> And, as the Senate Select Committee on Intelligence's recent report makes clear, intelligence analysis prior to the current Iraq War was deeply flawed.

Accordingly, the Committee's legislation places strong emphasis on ensuring that intelligence is both objective and unbiased. The legislation also ensures that Congress has access to the intelligence it needs to support its decisionmaking.

##### *A. Ensuring That Intelligence Is Objective, Independent, and Based on Alternative Views*

The legislation requires that the NID provide the President and Congress with national intelligence that is timely, objective, inde-

<sup>17</sup>George Schultz, *Turmoil and Triumph: My Years as Secretary of State* (Charles Scribner's Sons, 1993), p. 691.

pendent of political considerations, and which has not been shaped to serve policy goals. Indeed, the bill makes it clear that the NID is responsible for improving the quality of our intelligence analysis. First, the NID is to promote and evaluate the utility of national intelligence to consumers in the U.S. government. Second, the NID is also to ensure that policymakers have access to a variety of intelligence assessments and analytical views. The Committee has heard repeated testimony about the importance of ensuring a diversity of analytical views and believes that the bill makes this responsibility clear.

The Director of the NCTC and directors of other national intelligence centers are required to provide the President, Congress, and the NID with intelligence that is timely, objective, independent of political considerations, and which has not been shaped to serve policy goals. The CIA director has a similar obligation for any intelligence produced by CIA.

The National Intelligence Council is required to ensure that its intelligence estimates are timely, objective, independent of political considerations, and have not been shaped to serve policy goals. The Council's products must include alternative views held by elements of the intelligence community. Indeed, the NID shall ensure that the Council's products (1) distinguish within the analysis between intelligence, assumptions, and judgments; (2) describe the quality and reliability of the intelligence; (3) present and explain alternative conclusions, if any; and (4) characterize any uncertainties.

#### *B. Ensuring Congressional Access to Intelligence*

The legislation includes several provisions to enhance Congress' access to intelligence.

No officer or agency of the Executive Branch can require the NCTC Director to receive permission to testify before Congress. In addition, no officer or agency of the Executive Branch can require the NCTC Director to submit testimony, recommendations, or comments to Congress for review prior to submission to Congress if the material includes a statement indicating they are the NCTC's views and do not necessarily represent the Administration's views.

The legislation requires that the Congress receive a range of analytic products to inform Congress on national security issues. The NID, the NCTC Director, and the director of any national intelligence center must provide to the Congressional intelligence committees and any other committee with jurisdiction over the subject matter to which the information relates all intelligence assessments, intelligence estimates, sense of the intelligence community memoranda, and daily senior executive intelligence briefs. Excluded from this list are the Presidential Daily Brief and those reports prepared exclusively for the President.

The legislation also provides a mechanism by which Congress can receive other intelligence information, such as collection data that underlies the analytic reports Congress would routinely receive. The NID, NCTC Director, and directors of other national intelligence centers shall respond within 15 days to requests for any intelligence information from the Congressional intelligence committees or other committees of Congress with jurisdiction over the subject matter to which the information relates. The NID, NCTC Director, and directors of other national intelligence centers are

also required to respond to such requests from the Chairman, Vice Chairman, or Ranking Member of the Senate or House intelligence committees. The NID, NCTC Director, and directors of other national intelligence centers are required to provide the requested information unless the President certifies that the information is not being provided due to a Presidential privilege pursuant to the United States Constitution.

Finally, employees or contractors of the NIA, CIA, DIA, NGA, NSA, FBI, and other agencies principally involved in the conduct of foreign intelligence or counterintelligence are permitted to disclose certain information to Congress without reporting it first to the appropriate inspector general. The information they may report is information, including classified information, that they reasonably believe provides direct and specific evidence of a false or inaccurate statement to Congress contained in an intelligence report to Congress or that intelligence information has been withheld from Congress.

### *C. Establishment of the Ombudsman of the National Intelligence Authority*

The bill establishes an Ombudsman of the National Intelligence Authority. The NIA Ombudsman is modeled after the Ombudsman currently established at the Central Intelligence Agency. It is intended that the Ombudsman will serve as an independent and informal counselor for those who have complaints about real or perceived problems of politicization, biased reporting, or lack of objective analysis. The Ombudsman will also have the authority to monitor the effectiveness of measures taken to address these problems. The Ombudsman will also have the authority to undertake review of analytic product to ensure that analysis is timely, objective, independent of political considerations, and based upon all sources available to the intelligence community.

In carrying out these duties, the Ombudsman will be authorized to receive complaints, and review analytic products produced by the National Intelligence Authority, any element of the intelligence community within the National Intelligence Program, and to the extent they are involved in the analysis of national intelligence, other agencies within the intelligence community.

The bill establishes within the Ombudsman's office an Analytic Review Unit. This Unit is intended, subject to the supervision of the Ombudsman, to conduct detailed evaluations of analysis by the National Intelligence Authority, any element of the intelligence community within the National Intelligence Program, and to the extent they are involved in the analysis of national intelligence, other agencies within the intelligence community. The Ombudsman is to provide the Analytic Review Unit with a staff who possess the appropriate expertise to carry out this work.

The bill also provides that the Ombudsman may refer to the Office of the Inspector General for further investigation serious cases of misconduct relating to the politicization of intelligence, biased reporting, or lack of objective analysis.

## XIII. ENSURING INFORMATION-SHARING

The legislation will require that the President establish an information sharing network, to break down the stovepipes that cur-

rently impede the flow of information. The network, modeled on a proposal by a task force of the Markle Foundation that was endorsed by the 9/11 Commission, is to consist of policies and information technology designed to facilitate and promote the sharing of intelligence and homeland security information throughout the federal government, with state and local agencies and, where appropriate, with the private sector, while simultaneously ensuring privacy and civil liberties concerns are adequately addressed.

The bill will give the President responsibility for issuing overall guidelines governing the collection, sharing and use of intelligence and homeland security information as well as guidelines to protect privacy and civil liberties. The Director of OMB will be given primary responsibility for implementing the new information sharing network, and this official is required to appoint a principal officer (who shall have the rank of a Deputy Director) to handle the day-to-day responsibilities. The OMB Director will be required to submit to Congress a detailed enterprise architecture and implementation plan within nine months and will have to regularly report to Congress on the network's progress. Individual agencies involved in the information sharing network will also have to submit plans for implementing the network.

The bill will give the President responsibility for issuing overall guidelines governing the collection, sharing and use of intelligence and homeland security information as well as guidelines to protect privacy and civil liberties. The Director of OMB will be given primary responsibility for implementing the new information sharing network, and the NID is required to appoint a principal officer (who shall have the rank of a Deputy Director) to handle the day-to-day responsibilities. The OMB Director will be required to submit to Congress a detailed enterprise architecture and implementation plan within nine months, and individual agencies involved in the information sharing network will also have to submit plans for implementing the network; both will have to regularly report to Congress on their progress.

In addition, this section of the bill establishes an Executive Council on Information Sharing, made up of key federal officials, as well as state and local and private-sector representatives, to work with the OMB Director to implement the network and coordinate efforts, and an Advisory Board on Information Sharing, made up of outside experts, to provide advice and expertise to the President and Executive Council.

### XIII. PROTECTING CIVIL LIBERTIES AND PRIVACY

The National Commission on Terrorist Attacks Upon the United States concluded in its recommendations that “[w]e must find ways of reconciling security with liberty, since the success of one helps protect the other \* \* \* [t]he choice between security and liberty is a false choice, as nothing is more likely to endanger America’s liberties than the success of a terrorist attack at home.”<sup>18</sup> The Commission also noted that “[t]his shift of power and authority to the government calls for an enhanced system of checks and balances to

<sup>18</sup> Commission report, p. 395.

protect the precious liberties that are vital to our way of life.”<sup>19</sup> In light of this, the Commission recommended that in this time of increased and consolidated government authority, there should be a board within the executive branch to oversee adherence to the guidelines the Commission recommends and the commitment of the government to protect civil liberties.

Testimony received by the Committee during its hearings on the Commission report highlighted the importance and need to implement this recommend. In his testimony before the Committee on July 30, 2004, Lee Hamilton, Vice Chair of the Commission, stated, “[w]e believe that [regarding] the civil liberties, you need an oversight board in the Executive Branch as a kind of an added check on executive authority, and that’s a very important board.”

In light of the Commission recommendations and concerns about ensuring privacy and civil liberties concerns are appropriately considered, Title II, Subtitle B of the proposed legislation creates a Privacy and Civil Liberties Oversight Board (“Board”).

The Board is to have a Chairman and four additional members, who are to be appointed by the President with the advice and consent of the Senate. Members of the Board are to serve fixed, six-year terms, and no more than three of the five Board members may be of one political party.

The bill gives the Board two functions. First, the Board is to advise the President and other federal officials at the front-end, when they are proposing, making or implementing policies related to efforts to protect the Nation against terrorism, to ensure that the protection of privacy and civil liberties are appropriately considered. Although policy makers are required to get the Board’s views on proposed policies and actions, the Board does not have any veto authority over any proposal.

Second, the Board is to investigate and review government actions at the back end—that is, to review the implementation of particular government policies to see whether the government is acting with appropriate respect for privacy and civil liberties and adhering to applicable laws, regulations and policies. In conducting investigations, the bill gives the Board the authority to obtain documents and access to personnel from government agencies and the ability to subpoena documents and testimony from those outside the government.

The bill also requires that the heads of certain federal agencies involved in the efforts to protect the Nation from terrorism designate at least one senior agency official to serve as privacy and civil liberties officers for the agencies. These officers’ functions mirror those of the Board on an agency-specific level: they are to (1) advise the agency in appropriately considering privacy and civil liberties concerns in the development and implementation of policies related to efforts to protect the nation against terrorism; (2) investigate and review agency actions and policy implementation to ensure that the agency is adequately considering privacy and civil liberties in its actions; and (3) ensure that the agency has a process for receiving and responding to complaints from individuals.

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<sup>19</sup> Commission report, p. 394.



XIV. PROMOTING AN INTELLIGENCE WORKFORCE FOR THE 21ST  
CENTURY

A central theme of the 9/11 Commission's report was the need to better combine the resources of government effectively to achieve unity of effort,<sup>20</sup> and the Commission offered several recommendations to better marshal the personnel resources of the government and of the nation for this effort. The creation of a common set of personnel standards within the intelligence community should help create a group of intelligence professionals better able to collaborate on joint projects, and, to accomplish this, the Commission recommended that the NID should—

set personnel policies to establish standards for education and training and facilitate assignments at the national intelligence centers and across agency lines.<sup>21</sup>

Moreover, to help transform the culture of the intelligence community from a service-specific mind-set to joint, and support more integrated operations—including, especially, the unified joint commands constituting the proposed NCTC and other national intelligence centers—the Commission endorsed the kind of approach applied by the Goldwater-Nichols Act. That Act established a joint program of joint personnel management for military officers (such as requiring military officers to serve tours outside of their service in order to win promotion) in order to foster a more integrated structure and to improve the quality of joint operations.<sup>22</sup>

Testimony at Committee hearings supported and expanded upon these points. For example, Max Stier, President and CEO of the Partnership for Public Service, reinforced the importance of fostering an organizational culture supportive of joint action, including through “programs to improve intelligence training and collaboration across agencies and among all levels of government”:

Such provisions recognize that we need not just an organizational change, but a cultural change within the intelligence community if the reforms being considered by the Committee are to succeed. People training together, and training for joint missions with other federal agencies and with other levels of government, will go a long way toward shifting the intelligence workforce toward the ‘need to share’ mindset that is so critical.<sup>23</sup>

*A. The NID's Community-Wide Workforce Responsibilities*

The Committee's bill assigns the NID the primary responsibility for establishing new workforce policies for the intelligence community that would achieve the improvements in integration called for by the Commission. The NID's key responsibilities in this area are set forth in section 112(a)(8) of the bill, which requires the NID to develop and implement, in consultation with the rest of the community and the affected departments, personnel policies and pro-

<sup>20</sup> Commission report, p. 399.

<sup>21</sup> Commission report, p. 414; see also p. 409.

<sup>22</sup> Commission report, pp. 403, 408–409.

<sup>23</sup> The 9/11 Commission Human Capital Recommendations: A Critical Element of Reform, hearing before the Senate Governmental Affairs Committee Subcommittee on the Oversight of Government Management, the Federal Workforce, and the District of Columbia, 108th Congress (September 14, 2004) (testimony of Max Stier, Partnership for Public Service).

grams to accomplish a number of objectives, to enhance the capacity for joint operation, as well as the general quality and effective management of the workforce.

For example, the NID is responsible for establishing policies and programs that encourage and facilitate the rotation of personnel to the NCTC and to other national intelligence centers, as well as between elements of the community, and that set standards for education, training, and career development. The community-wide policies and programs will encourage and facilitate the recruitment and retention of individuals who are highly qualified, and will provide for the recruitment and training to achieve a workforce that is sufficiently diverse for the most effective collection and analysis of intelligence. The NID is to make an individual's service in more than element of the intelligence community a condition of promotion to certain positions, and must include the specific personnel-management enhancements set forth in section 114 to facilitate and support joint and integrated operations. The policies and programs must also generally provide for effective human capital management within the intelligence community, and must be consistent with the public employment principles of merit and fitness.

In the establishment of any personnel policies, programs, and standards for the intelligence community, the Committee believes that the NID should ensure an open and transparent process that includes consultation with affected agencies and personnel at all levels. The NID should provide for comprehensive communications strategies that reach out to affected agencies and personnel both to gain the benefit of their suggestions and experience and to make the process and the resulting policies and standards as fair and transparent as possible. The Committee also notes the need to provide the necessary training for managers to implement new human capital policies and practices and urges the NID to be sure such training is provided before such policies and practices are implemented.

#### *B. Facilitating Joint and Integrated Intelligence Operations*

The Committee agrees with the Commission's finding that the Goldwater-Nichols Act of 1986 provides a useful model for achieving more integrated operations within the intelligence community. Accordingly, section 114 of the bill sets forth several specific steps that the NID will undertake to facilitate staffing of joint and community-management functions. The NID will establish incentives for service at the national intelligence centers, the NCTC, and in other community management positions. Moreover, personnel assigned or detailed to service under the NID must be promoted at rates equal to or greater than other personnel. The NID will also establish personnel-management mechanisms to facilitate and encourage the rotation of personnel through various elements of the intelligence community in the course of their careers.

#### *C. The Chief Human Capital Officer of the National Intelligence Authority*

To assist the NID in fulfilling the highly critical and complex personnel management functions assigned by the legislation, section 129 of the bill requires the NID to appoint a Chief Human Capital Officer (CHCO). This provision builds on legislation agreed

to by this Committee and enacted in 2002 as part of the Homeland Security Act, Public Law 107-296,<sup>24</sup> requiring the appointment of CHCOs at departments and many agencies throughout the government.<sup>25</sup> The CHCO of the National Intelligence Agency established in this legislation would advise and assist the NID in exercising his authorities and responsibilities with respect to the intelligence community workforce as a whole, and would also help in carrying out the entire human capital management program at the NIA itself.

The Chief Human Capital Officer will look strategically at the workforce challenges facing the intelligence community and assist the NID with the development of common personnel policies and standards critical to the fundamental reform of the intelligence community. The CHCO will also assist the NID with the selection, training, and development of a highly-qualified workforce to meet the NIA's strategic needs. The Committee is aware that many agencies within the intelligence community, such as the CIA, now have appointed Chief Human Capital Officers. The Committee strongly encourages the CHCO to meet periodically with these individuals and other human resource professionals within the intelligence community to ensure the alignment of human capital policies with the intelligence community's current and future mission needs.

#### *D. Security Clearances*

In recent years, both the number of individuals requiring clearances and the number of individuals requiring access to higher levels of classified information has increased. The complexity of the current process for providing and maintaining security clearances is a barrier to the efficient movement of both employee and contract personnel who require access to information to perform their assigned tasks. The government must provide high-quality investigations and timely adjudication of security clearances to help meet our intelligence needs.

The Commission recommended that a single agency be made responsible for providing and maintaining security clearances, insuring uniform standards—including uniform security questionnaires and financial report requirements, and maintaining a single database. In addition, the Commission suggested that the agency could also be responsible for administering polygraph tests on behalf of organizations that require them.<sup>26</sup> The Commission made these proposals in the context of helping accelerate the process for national security appointments during a change in administrations; the Committee believes reforms of the process for granting security clearances is also important to improve personnel management throughout the intelligence community.

Section 115 of the legislation includes a number of provisions to address the long-standing problems surrounding the security clearance process. The legislation would require the President to designate a single federal agency within 45 days of the date of enact-

<sup>24</sup> Business Meeting to Consider Substitute Amendment to S. 2452, Senate Committee on Governmental Affairs, 107th Cong., July 24-25, 2002; Congressional Record, pages S8105, S8155, Sept. 3-4, 2002.

<sup>25</sup> 5 U.S.C. Sect. 1401-1402.

<sup>26</sup> Commission report, p. 422.

ment to be responsible for providing and maintaining clearances, and would require the transfer of personnel solely responsible for security clearance investigations to help ensure the agency is fully functional within one year of the date of enactment.<sup>27</sup> The Committee expects the agency selected to make use of all available resources to help eliminate the current backlog. The Committee intends the agency to enter into Memoranda of Understanding with agencies carrying out responsibilities relating to security clearances or security clearance investigations before the date of enactment of this Act. At present, there are eighteen non-defense agencies performing security clearance investigations.<sup>28</sup> Client agencies may continue to perform their own adjudications and may continue to conduct their own polygraph examinations.

The legislation would also require the President, acting through the NID and in consultation with the agency selected to provide and maintain clearances, to establish uniform standards and procedures for the access to classified information. The standards would apply to both employee and contract personnel. The investigative standards should provide meaningful information to individuals making the decision whether or not to grant a clearance. For example, GAO recently reported that less than one-half of one percent of the potential security issues identified during an investigation are derived from neighborhood checks; however, this information source accounts for about 15 percent of the investigative time.<sup>29</sup>

This section would also require reciprocity for clearances at the same level among departments, agencies, and elements of the executive branch. The Committee believes reciprocity will help facilitate assignments at the national intelligence centers and across agency lines within the intelligence community.

The agency selected would also be tasked with establishing and maintaining a database of all clearances to help ensure reciprocity. The establishment and use of a database, which should be available to client agencies, will allow clearance status to be centrally verified, and prevent needless loss of time and resources while security officers verify the clearance of individuals outside of the immediate department, whether the individual is transferred to a joint assignment or simply needs to attend a meeting or have access to a document.

Finally, in keeping with this broader effort on security clearances, the legislation provides that the NID will have responsibility with respect to access to Sensitive Compartmentalized Information, because section 112(b) of the bill specifically provides that the President shall act through the NID in setting standards for the grant of access.

#### *E. National Intelligence Reserve Corps*

For the intelligence system to have the agility that the current times require, it must have the tools to maintain the services of individuals with unique or specialized skills and qualifications. To assist the NID in responding this challenge, section 116 of the legis-

<sup>27</sup>The Committee recognizes recent legislation authorizing the transfer of over 1,800 security clearance investigative employees. P.L. 108-396, Section 906, 117 Stat. 1392, 1561-1563 (2004). As of the date of this report, the transfer had not taken place.

<sup>28</sup>Briefing by Office of Personnel Management, September 2002.

<sup>29</sup>GAO-04-632, p. 34.

lation provides the NID discretionary authority to establish and train a National Intelligence Reserve Corps. The corps would allow for temporary reemployment of former employees of the elements of the intelligence community to meet emergency mission requirements. As a recruitment incentive, former employees who volunteer and are selected for the corps would not be subject to a reduction in annuity from the Civil Service Retirement and Disability Fund. The dual compensation waiver is consistent with the authority recently granted to the Department of Defense to hire individuals for hard-to-fill positions where the annuitant has unique or specialized skills and qualifications.<sup>30</sup> The Committee believes this critical hiring flexibility will help address the challenges facing the intelligence community, while also ensuring retirements do not leave the NID at a critical disadvantage.

#### *F. Intelligence Community Scholarship Program*

The intelligence community needs every tool available to help recruit and train individuals with the skills critical to the community's mission and goals. Shortly after the September 11 attacks, Robert Mueller, Director of the Federal Bureau of Investigation, made a public plea for speakers of Arabic and Farsi to translate documents that were in U.S. possession but which were left untranslated due to a shortage of employees with proficiency in those languages.<sup>31</sup> The Commission Report recommended that the CIA Director should emphasize (1) rebuilding the CIA's analytic capabilities; and (2) developing a stronger language program, with high standards and sufficient financial incentives.<sup>32</sup> These reports demonstrate that action is needed to help intelligence community agencies more effectively recruit highly-skilled individuals for positions within the intelligence community.

To help meet this challenge, section 152 of the legislation would require the NID to establish an Intelligence Community Scholarship Program, to provide college scholarships to students in exchange for service within the intelligence community. The legislation would require the scholarships to be awarded on a competitive process primarily on the basis of academic merit and the needs of intelligence community agencies. In addition to the criteria established in the legislation, the Committee encourages the NID and intelligence community agencies to give special consideration to applicants seeking degrees in foreign language, science, and mathematics, or a combination of those subjects. The legislation would require 10 percent of the scholarships under the Program to set aside for individuals who are employees of intelligence community agencies on the date of enactment of this Act, providing the NID with a tool to enhance the skills of the existing intelligence community workforce.

#### *G. Framework for Cross-Disciplinary Education and Training*

Each agency of the intelligence community has training elements and activities that seek to give employees trade craft and functional skills to better perform their jobs. However, there is no

<sup>30</sup> 5 U.S.C. Sect. 9902.

<sup>31</sup> Richard Colvin and Soraya Nelson, "FBI Issues Call for Translator to Assist Probe," in L.A. Times, September 18, 2001.

<sup>32</sup> Commission report, p. 415.

cross-agency entity whose goal it is to bring together personnel from all the intelligence agencies to promote understanding of each other's mission and cultures and facilitate cooperation and collaboration. Some elements of the federal government have educational institutions to promote joint thinking and collaboration. For example, the defense community has a robust, successful model in its National Defense University, whose mission it is to: "educate military and civilian leaders through teaching, research, and outreach in national security strategy, and national resource strategy; joint multinational operations; information strategies, operations, and resource management; acquisition; and regional defense and security studies."<sup>33</sup>

In testimony before the House Permanent Select Committee on Intelligence, the CIA testified that it was examining the concept of a national intelligence university, similar to the various service war colleges and staff schools, stating it could be as much a virtual university as an actual campus, as a way to better train analysts across the community.<sup>34</sup> The Committee believes the intelligence community would benefit from a framework for cross-disciplinary education and training to help prepare selected individuals for joint rotations and assignments within the intelligence community. To accomplish this, section 151 of the legislation requires the National Intelligence Director to establish an integrated framework that brings together the educational components of the intelligence community to promote joint education and training.

#### XV. INTERNAL REFORM AT THE FBI AND CIA

The 9/11 Commission recognized that structural reform at the top-level of the Intelligence Community was merely a precursor to, and not a guarantee of, improved performance by each intelligence agency. The Commission recommended internal reform of the FBI to ensure that its transformation toward intelligence-collection and analysis is deep and permanent. While obviously limited by the unclassified nature of its report, the Commission also recommended that the CIA transform its human intelligence capabilities in order to counter 21st Century threats. The Committee sought to use its statutory power to ensure as much as possible that such internal reforms occur.

##### *A. Ensuring the Permanence of FBI Reforms*

The 9/11 Commission stated in its final report that, under Director Robert Mueller, the FBI has made significant progress in improving its intelligence capabilities. The Commission also urged the FBI to fully institutionalize its shift to a preventative counterterrorism posture. In accordance with the Commission's recommendations, this section of the bill requires the FBI to improve its intelligence capabilities by developing and maintaining a national intelligence workforce consisting of agents, analysts, linguists and surveillance specialists who are recruited, trained, and rewarded in a manner consistent with the intelligence mission of

<sup>33</sup> <http://www.ndu.edu/info.mission.cfm>.

<sup>34</sup> Counterterrorism Analysis and Collection: The Requirement for Imagination and Creativity, hearing before House Permanent Select Committee on Intelligence, 108th Congress (August 4, 2004) (testimony of Assistant Director of Central Intelligence for Analysis and Production Mark Lowenthal).

the Bureau. The FBI Director shall carry out a program to enhance the capacity of the FBI to recruit and retain individuals with skills relevant to the intelligence mission of the Bureau. Also, the Bureau must afford its analysts career opportunities commensurate with those afforded analysts in other intelligence community entities. These requirements are necessary to ensure that the FBI creates and sustains a workforce with substantial expertise in, and commitment to, the intelligence mission of the FBI.

The FBI's operational intelligence capabilities will be improved because supervisors will be required to become a certified intelligence officer. In order to ascend to higher level intelligence assignments in the FBI, personnel must receive advanced intelligence training, and have held an assignment with another element of the intelligence community. Field Intelligence Group (FIG) supervisors must report directly to a senior manager responsible for intelligence matters, and are responsible for fully integrating analysts, agents, linguists, and surveillance personnel in the field. (The FBI has established FIGs in all 56 of its field offices. The FIG is the centralized intelligence component in each field office, responsible for intelligence functions. FIG personnel analyze and disseminate the intelligence collected in their field office). These provisions are necessary to ensure that the FBI provides effective leadership and infrastructure to support its field intelligence components.

The Bureau is also directed to expand its secure facilities to ensure the successful discharge by the field intelligence components of the national security and criminal intelligence missions of the FBI.

The FBI is directed to modify its budget structure, in consultation with the Director of the Office of Management and Budget, according to the four principle missions of the Bureau: (1) Intelligence; (2) Counterterrorism; (3) Criminal Enterprises/Federal Crimes; (4) Criminal justice services. This modification streamlines the FBI's budget structure, and segregates funds according to priorities, which allows for greater transparency for those charged with oversight.

Reporting requirements to Congressional committees of jurisdiction relative to the improvement of FBI intelligence capabilities are established to provide Congress the information it needs to fulfill its oversight role.

The legislation also allows the FBI to establish an intelligence career service for FBI analysts. In consultation with the Director of the Office of Personnel Management, the FBI Director is given greater flexibility in establishing analyst positions and rates of pay. Also, the FBI is placed on a more level playing field with other elements of the intelligence community with respect to analyst position classification and pay. This increased pay authority allows the FBI to create pay rates to appropriately compensate analysts living in high cost of living areas.

By requiring that any FBI performance management system established for intelligence analysts shall have at least one level of performance above a retention standard, the Bureau must have at least three levels of performance for purposes of performance ratings. Currently, the FBI uses a "pass/fail" rating approach. This provision is consistent with prior GAO recommendations to the House Appropriations Committee.

Reporting requirements to Congressional committees of jurisdiction relative to the FBI's use of its new pay and performance management system are established to provide Congress the information it needs to fulfill its oversight role.

*B. Reforming the CIA To Develop a 21st Century Human Intelligence Capability*

The Central Intelligence Agency will be led by a Director who will report to the National Intelligence Director in the performance of those functions which will reside within the CIA, which are to: collect intelligence through human sources and other appropriate means; correlate, evaluate and disseminate intelligence; provide overall direction and coordination of the collection of intelligence through human sources outside of the United States by other elements of the government; and perform such other functions as the President may direct. The bill preserves the existing protections of civil liberties and prescribes that the CIA shall have no police, subpoena or law enforcement powers or internal security functions.

The bill creates a new structure for ensuring coordination with foreign governments. The CIA Director will be responsible for coordinating relationships between intelligence communities here and abroad but will execute these responsibilities under the direction of the NID.

The bill also contains provisions requiring reporting by the CIA director on efforts to rebuild the CIA. As noted in the Congressional Joint Inquiry and the Commission report, CIA's human intelligence capabilities require substantial improvement to meet the challenges of the 21st Century.

Moreover, the CIA ultimately stands to gain, not lose, under the current legislation. The Commission noted that the DCI currently has three roles: head of the Intelligence Community, principal intelligence adviser to the President, and head of the CIA. The Commission advocated separating the NID from the CIA director, arguing that no person can do these three jobs well and that DCIs tend to leave management of the Intelligence Community to the side. The conduct of human intelligence against the terrorist threat, and the 5-year rebuilding of the CIA called for by DCI Tenet in his testimony before the Commission, requires an official devoted full-time to the task and not at the expense of other duties. And the CIA can only benefit from improved information-sharing and integration among intelligence agencies.

XVI. MONITORING PERFORMANCE

To enhance transparency and Congressional oversight, not later than one year after the date of the enactment of this Act, the NID shall submit to Congress a report on the progress made in the implementation of this Act, including the amendments made by this Act. The report shall include a comprehensive description of the progress made, and may include such recommendations for additional legislative or administrative action as the Director considers appropriate.

To enhance transparency and Congressional oversight, not later than two years after the enactment of the act, the Comptroller General of the GAO shall issue an implementation progress report and issue interim reports as the Comptroller General deems appro-



appropriate. These reports are to provide Congress with (1) an overall assessment of the progress made in the implementation of this Act (and the amendments made by this Act), (2) a description of any delays or other short-falls in the implementation of this Act that have been identified by the GAO, and (3) recommendations for additional legislative or administrative action that the Comptroller General considers appropriate. Each department, agency, and element of the United States Government shall cooperate with the Comptroller General in the assessment of the implementation of this Act, and shall provide the Comptroller General timely and complete access to relevant documents in accordance with section 716 of title 31, United States Code.

#### XVII. BRIDGING THE FOREIGN/DOMESTIC DIVIDE IN HIGH-LEVEL POLICYMAKING

The bill merges the Homeland Security Council into the National Security Council. The combined body, the National Security Council, will now have, in addition to its traditional responsibilities overseeing, coordinating, and creating foreign and national security policies, the responsibility of assessing U.S. objectives, commitments, and risks in the area of homeland security, including overseeing and reviewing the homeland security policies of the federal government.

Because terrorist organizations move easily across borders, it is important that the creation and coordination of policy priorities is not hindered by the foreign/domestic divide. Currently, domestic homeland security and intelligence issues are overseen by the Homeland Security Council, while the National Security Council oversees foreign and national security policies. The merger of these bodies will enable the National Security Council to synthesize and amplify its ability to analyze terrorist threats holistically.

Both the Homeland Security Council and the National Security Council are chaired by the President. The bodies share many of the same members. The Homeland Security Council includes the Vice President, the Secretary of Homeland Security, the Attorney General, the Secretary of Defense, and such other individuals as the President may designate. The National Security Council's statutory members are the Vice President, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, and the Assistant to the President for National Security Affairs. The Chairman of the Joint Chiefs of Staff is the statutory military advisor to the Council, and the Director of Central Intelligence is the intelligence advisor to the Council. The new National Security Council body will remain the same, but will now include the Attorney General and the Secretary of Homeland Security as statutory members.

#### XVIII. OTHER MATTERS

The legislation will take effect 180 days after the date of enactment. However, the Committee believes that in order to ensure the rapid implementation of this legislation, the President should begin acting upon these reforms without delay. Accordingly, the President would be authorized to determine that the legislation or particular provisions thereof could take effect on an earlier date. Upon doing so, the President shall (1) notify Congress of the exercise of such authority; and (2) publish in the Federal Register notice of the

earlier effective date or dates involved, including each provision (and amendment) covered by such earlier effective date.

During the implementation phase of this Act, the NID, the CIA director, and the Secretary of Defense shall jointly take such actions as are appropriate to preserve the intelligence capabilities of the United States during the establishment of the NIA. The Committee wants to emphasize the importance of remaining focused on the country's national security needs while intelligence reforms occur.

The NIP's top-line aggregate appropriation figure will be declassified in order to promote public accountability. The Commission made this recommendation, in addition to recommending that agency-specific levels be declassified. Although declassification of the top line would show a trend or particular spikes and dips over a period of years, there would be no detail as to how funds are being spent or even why a change occurred—such as due to inflation or rising salaries. The apparent rationale for the Commission's latter recommendation is so that the relative allocation of resources between human and technical collection can be publicly debated. The NID will submit a report to Congress as to whether declassifying the top-line appropriations figures for each agency in the Intelligence Community would harm national security.

For fiscal year 2005, the legislation authorizes to be appropriated such sums as may be necessary to carry out its provisions. Speedy appropriation of initial funding will be critical as the NID, the NIA, the NCTC, and the National Intelligence Centers begin to operate and as the intelligence agencies pursue internal reform.

### III. LEGISLATIVE HISTORY

Beginning in late July 2004, immediately after the issuance of the 9/11 Commission's report, the Committee held a series of eight hearings examining the Commission's recommendations and the reorganization of the intelligence community. The content of these hearings is summarized in the next section.

Following these hearings, the Committee held a business meeting on September 21 and 22, 2004 to consider the National Intelligence Reform Act of 2004 as an original bill.

At the business meeting, the Committee considered 26 amendments, and adopted 21, as follows:

Chairman Collins and Ranking Member Lieberman offered a substitute amendment. Senators Collins and Lieberman also offered a 2nd degree amendment to make technical changes to the substitute, which was agreed to by voice vote. The substitute, as amended, was then agreed to by voice vote.

Senator Coleman offered an amendment to require the National Intelligence Director to notify the Senate Committee on Governmental Affairs and the Homeland Security Committee of the House of Representatives when intelligence personnel are transferred to or from the Department of Homeland Security. The Committee agreed to the amendment by voice vote.

Senator Durbin offered two amendments that were considered en bloc. The first of these amendments modified the Privacy and Civil Liberties Oversight Board to provide for fixed, six-year terms for Board members, make the Chairman full-time, required that Board members have expertise in civil liberties and privacy, and provided

that no more than three members of the Board be members of the same political party. The second amendment required that Members of the Board are to appear and testify before Congress and provides that reports of the Board and of agency privacy and civil liberties officers are to be submitted to specific Congressional committees. These amendments were agreed to en bloc by voice vote, and staff was directed to draft language to ensure that Board members terms were staggered.

Senator Durbin offered an additional amendment to modify the standards of review used by the Privacy and Civil Liberties Oversight Board in providing advice on proposals to retain or enhance a governmental power, including a requirement that the Board consider whether the executive branch has met its burden of proving that the power is the least restrictive means of accomplishing the objective. The Committee did not agree to this amendment, by a vote of 6–10.

Senator Fitzgerald offered an amendment to place the National Intelligence Authority under the Chief Financial Officers Act of 1990, so as to subject the National Intelligence Authority to the same financial management requirements as other cabinet-level departments and major federal agencies. The amendment was agreed to by voice vote.

Senator Lautenberg offered an amendment to establish a term of five years for the National Intelligence Director, with the possibility of reappointment, which was modified to provide that the National Intelligence Director could be appointed for “up to” five years. Senator Specter offered a second-degree amendment to provide that the National Intelligence Director be appointed for a single 10-year term and could be terminated only for cause. The second-degree amendment was not agreed to by a vote of 3–14. Senator Lautenberg’s amendment, as modified, was not agreed to by a vote of 7–10.

Senator Levin offered 13 amendments. The first of these added a Subtitle C “Independence of Intelligence Agencies” to Title II of the bill, requiring, among other things, that the National Intelligence Director be located outside the Executive Office of the President; that the National Intelligence Director, the Director of the National Counterterrorism Center, the CIA Director and all national intelligence center directors provide time, objective and independent advice to the President and to Congress; that Congress have access to national intelligence; and that whistleblowers may under certain circumstances report information directly to Congress. A Senators Collins and Lieberman offered a second degree amendment that made a number of changes to the provisions, including exempting certain information prepared exclusively for the President from required disclosure to Congress and providing that the Ombudsman of the National Intelligence Agency may refer serious cases of misconduct relating to the politicization of intelligence to the NIA Inspector General for investigation rather giving the initial investigative responsibility to the Inspector General in the first instance. The second degree amendment was agreed to by voice vote, and the amendment, as amended, was then agreed to by voice vote.

Senator Levin’s second amendment restricted the NCTC to strategic planning. Senators Collins and Lieberman offered a second

degree amendment that provided, among other things, that NCTC was responsible for developing interagency plans. The second degree amendment was agreed to by voice vote, and the amendment, as amended, was then agreed to by voice vote.

The third amendment offered by Senator Levin modified the NCTC's authority to assign responsibilities for counterterrorism operations to eliminate its authority to assign responsibilities to specific elements of the Armed Forces. The Committee agreed to this amendment by voice vote.

Senator Levin's fourth and fifth amendment were considered en bloc. The fourth amendment provided that the NCTC was to report to the President and the National Intelligence Director, rather than through the National Security Council, on certain counterterrorism matters. The fifth amendment required that the President, rather than the National Security Council resolve, any disagreements over plans and assignments by NCTC. The Committee approved these amendments en bloc, by voice vote.

Senator Levin's sixth amendment provided that programs "to acquire intelligence for the planning and conduct of military operations" were not to be part of the National Intelligence Program. Senators Collins and Lieberman offered a second degree amendment that excluded programs "to acquire intelligence principally for the planning and conduct of joint or tactical military operations" by U.S. Armed Forces. The second degree amendment was agreed to by the Committee by a vote of 10-6. The amendment, as amended, was then agreed to by voice vote.

The seventh amendment offered by Senator Levin replaced the National Intelligence Director's authority to establish and approve the requirements and priorities governing the collection of national intelligence with the authority to coordinate the tasking of intelligence collection. The amendment was not agreed to, by a vote of 6-11.

Senator Levin's eighth amendment was divided into two parts for consideration by the Committee. The first part required all transfers of personnel or funds by the National Intelligence Director to be authorized by law and not exceed applicable ceilings in such authorizations. The amendment was modified to instead require that all transfers not exceed applicable ceilings established in law. The Committee agreed to the Part 1 of the amendment, as modified, by voice vote. The second part of the amendment limited the bill's authorization of appropriations to fiscal year 2006 and was modified to limit the authorization of appropriations to fiscal year 2005. Part 2 of the amendment, as modified, was agreed to by voice vote.

The ninth amendment Senator Levin offered excluded military personnel and military personnel funds from the NID's authority to transfer funds and personnel. The committee did not agree to this amendment, by a vote of 7-10.

Senator Levin's tenth amendment required the National Intelligence Director to consult with affected agencies before reprogramming funds. The amendment was agreed to by voice vote.

Senator Levin's eleventh amendment required that appropriated funds were to go the National Intelligence Authority and be under the direct jurisdiction of the National Intelligence Authority. The amendment was modified to provide that the funds be appropriated to the National Intelligence Authority but be under the direct juris-

diction of the National Intelligence Director. The amendment, as modified, was agreed to by the Committee by voice vote.

Senator Levin's twelfth amendment provided that the National Intelligence Authority's certifying official may act only to the extent authorized by law. The Committee agreed to the amendment by voice vote.

The final amendment offered by Senator Levin provided that where the National Intelligence Director is to recommend to the President the termination of individual, the NID is to seek the concurrence of the relevant agency or department head and, if the agency or department head does not concur, notify the President of that fact. The amendment was agreed to by voice vote.

Senator Pryor offered an amendment to require the Comptroller General to submit a comprehensive report to Congress on the implementation of the legislation no later than two years after the date of enactment. The Committee agreed to this amendment by voice vote.

Senator Shelby offered an amendment to establish an Analytic Review Unit with the NIA's Office of Inspector General to conduct reviews of analytic products by the NIA or any element of the National Intelligence Program or any analysis of national intelligence by any element of the intelligence community, to ensure that the analysis is timely, objective, independent of political considerations, and based upon all sources available to the intelligence community. The amendment was modified to establish the Analytic Review Unit under the NIA Ombudsman. The amendment, as modified, was agreed to by voice vote.

Senator Specter offered an amendment to provide the National Intelligence Director with the authority to supervise, direct, and control elements of the intelligence community performing national intelligence missions, including the CIA, NSA, National Geospatial-Intelligence Agency, the National Reconnaissance Office, and elements of the Defense Intelligence Agency, and to provide that the head of each such element report directly to the National Intelligence Director. The Committee did not accept the amendment, by a vote of 5-12.

Senator Voinovich offered three amendments. The first of these amendments permits the National Intelligence Director with approval of the President, notification to Congress, and consultation with the affected department, agency or element, allocate or reallocate functions among officers of the National Intelligence Program to establish, consolidate, alter, or discontinue organizational units within the Program. The amendment was modified to provide that this authority does not extend to any action inconsistent with law. The amendment, as modified, was agreed to by voice vote.

Senator Voinovich also offered an amendment to designate a single federal agency to conduct security clearance investigations and to maintain a database to help ensure reciprocity among executive branch agencies for clearances. The amendment was modified to clarify that agencies that currently adjudicate and grant security may continue to do so after the underlying investigations are transferred to a central agency; that agency personnel whose sole function is to perform clearance investigations will be transferred to the agency designated to be the central agency for such investigations; and to require that these security clearance reforms be fully oper-

ations within one year. The Committee agreed to the amendment, as modified, by voice vote.

Senator Voinovich's final amendment established a Federal Bureau of Investigation Intelligence Career Service. As modified, this amendment permits the FBI Director, in consultation with the Director of the Office of Personnel Management, to establish positions for intelligence analysts, to prescribe standards and procedures for establishing and classifying such positions, and set pay for such analysts above existing pay scales. The Committee agreed to this amendment, as modified, by voice vote.

The Committee ordered that the bill, as amended, be reported by a vote of 14-0.

#### IV. COMMITTEE HEARINGS

On July 30, 2004, the Committee held a hearing entitled, "Making America Safer: Examining the Recommendations of the 9/11 Commission". Witnesses included: Thomas Kean, Chairman, National Commission on Terrorist Attacks Upon the United States; Lee Hamilton, Vice-Chairman, National Commission on Terrorist Attacks Upon the United States.

The Commissioners explained and answered questions regarding the 9/11 Commission's central intelligence reform recommendations, including its proposals to establish a National Intelligence Director, who would have authority over all Intelligence Community elements, including authority over personnel, security, and information technology, and to create a National Counterterrorism Center that would serve as the government's central knowledge bank on international terrorism and, with personnel drawn from various agencies across the government, would conduct joint intelligence and joint operational planning. The Commissioners did not support creating a domestic intelligence agency, but they noted that the FBI needs a specialized and integrated national security workforce.

On August 3, 2004, the Committee held a hearing entitled, "Assessing America's Counterterrorism Capabilities". Witnesses included: John Brennan, Director, Terrorist Threat Integration Center; John Pistole, Executive Assistant Director for Counterterrorism and Counterintelligence, Federal Bureau of Investigation; Lieutenant General Patrick Hughes, Assistant Secretary for Information Analysis, Department of Homeland Security; and Philip Mudd, Deputy Director, Counterterrorist Center, Central Intelligence Agency; Philip Zelikow, Executive Director, and Christopher Kojm, Deputy Executive Director, of the National Commission on Terrorist Attacks Upon the United States.

This hearing focused on the proposal to create a National Counterterrorism Center. The first panel, consisting of key officials involved in counterterrorism and homeland security efforts, testified regarding current interagency efforts and relationships in the war on terror, how those relationships have changed since 9/11, and how the creation of a National Counterterrorism Center would impact their agencies and functions. The second panel, consisting of the top staff members of the 9/11 Commission, further explained the Commission's proposal to create a National Counterterrorism Center.

On August 16, 2004, the Committee held a hearing entitled, “Reorganizing America’s Intelligence Community: A View from the Inside”. Witnesses included: William Webster, James Woolsey; and Stansfield Turner. A written statement was submitted by Robert Gates. Each of the witnesses was a former Director of Central Intelligence. Mr. Webster also formerly served as the Director of the Federal Bureau of Investigation.

These witnesses shared the benefits of their experiences as Directors of Central Intelligence and offered their views on the creation of a National Intelligence Director, particularly with respect to the need for the NID to have enhanced authorities with respect to budget and personnel.

On August 17, 2004, the Committee held a hearing entitled, “Voicing a Need for Reform: The Families of 9/11”. Witnesses included: Mary Fetchet, Founding Director, Voices of September 11th, Member, Family Steering Committee; Steven Push, Co-Founder and Board Member, Families of September 11th; and Kristen Breitweiser, Founder and Co-Chairperson, September 11th Advocates, Member, Family Steering Committee.

All three family members testified to the critical need for major reform of the Intelligence Community, calling on the executive and legislative branches to act promptly. All three witnesses strongly supported the creation of a NID and NCTC, as recommended by the 9/11 Commission.

On August 26, 2004, the Committee held a closed hearing entitled, “Reorganizing the Intelligence Community: to What Extent Should the National Intelligence Director Have Budget Authority and the National Counterterrorism Center Play a Role in Operational Planning?”. Witnesses included: Larry Kindswater, Deputy Director of Central Intelligence for Community Management, Central Intelligence Agency; Stephen Cambone, Under Secretary of Defense for Intelligence, U.S. Department of Defense; Arthur Cummings, Section Chief, International Terrorism Operations Section I, Counterterrorism Division, Federal Bureau of Investigation; Norton Schwartz, Director for Operations, J-3, Joint Staff, U.S. Department of Defense; and CIA Counterterrorism Specialist.

This hearing focused on budget and operational planning issues.

On September 8, 2004, the Committee held a hearing entitled, “Building an Agile Intelligence Community to Fight Terrorism and Emerging Threats”. Witnesses included: Robert Mueller III, Director, Federal Bureau of Investigation; and John McLaughlin, Acting Director of Central Intelligence, Central Intelligence Agency.

This hearing focused on the need to build an agile and flexible intelligence community that can rapidly respond to emerging threats. As heads of two agencies with primary responsibility for collecting intelligence domestically and overseas, these witnesses provided the Committee with their perspectives regarding the current state of the intelligence community, improvements that have been made since 9/11 in areas such as interagency cooperation and information sharing, and how the creation of a National Intelligence Director and National Counterterrorism Center can build upon that progress. Director Mueller testified regarding the numerous improvements made by the FBI since 9/11 in collecting, analyzing and distributing intelligence, and he identified three principles that should guide any attempt to reform the intelligence

community: (1) providing analysts transparency into sourcing, (2) maintaining the operational chain of command, i.e., the NID and the NCTC chief should not have operational authority over the FBI or other agencies, and (3) the importance of protecting civil liberties. Acting DCI McLaughlin emphasized the importance of giving the NID real authority and direct access to analysts and other experts, particularly at the CIA.

On September 13, 2004, the Committee held a hearing entitled, “Ensuring the U.S. Intelligence Community Supports Homeland Defense and Departmental Needs”. Witnesses included: Colin Powell, Secretary of State; and Tom Ridge, Secretary of the Department of Homeland Security

This hearing focused on the needs of departmental consumers of intelligence. Both Secretary Powell and Secretary Ridge supported the creation of a strong National Intelligence Director with strong budget, personnel and other authorities. Both witnesses affirmed that a strong NID would improve the quality of the intelligence they receive. Both witnesses also supported the concept of a cabinet-level joint intelligence community council. Both witnesses opposed the concept of dual-hatting.

On September 14, 2004, the Committee’s Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, chaired by Senator Voinovich, held a hearing entitled, “9/11 Commission Human Capital Recommendations: A Critical Element of Reform”. Witnesses included: Fred Fielding, Commissioner, National Commission on Terrorist Attacks upon the United States, Jamie Gorelick, Commissioner, National Commission on Terrorist Attacks Upon the United States; Mark Bullock, Assistant Director of Administrative Services, Federal Bureau of Investigation, John Turnicky, Special Assistant to the DCI for Security, Central Intelligence Agency; Chris Mihm, Managing Director, Strategic Issues, U.S. Government Accountability Office; Paul Light, Senior Fellow, The Brookings Institution; Morgan Kinghorn, President, National Academy of Public Administration; Doug Waggoner, Chairman, Security Clearance Task Group, Information Technology Association of America; and Max Stier, President, Partnership for Public Service.

This hearing focused on personnel issues related to the reform of the intelligence community recommended by the 9/11 Commission, including the need to streamline the presidential appointments process, to improve the security clearance system, to develop a specialized national security and intelligence workforce at the FBI and to set personnel standards across the intelligence community.

## V. SECTION-BY-SECTION ANALYSIS

### *Section 1. Short Title; Table of Contents*

### *Section 2. Definitions*

- Adds the National Intelligence Authority (NIA) to the membership of the “intelligence community.”
- Defines “national intelligence” as intelligence that pertains to the interests of more than one department or agency, excluding counterintelligence or law enforcement activities conducted by the FBI except as agreed between the National Intelligence Director (NID) and the FBI Director.



- Defines the “National Intelligence Program” to include: (i) all national intelligence programs, projects, and activities of the intelligence community; (ii) all programs, projects and activities of the NIA, CIA, NSA, NGA, NRO, the DHS Office of Information Analysis, and the FBI Office of Intelligence, whether or not they pertain to national intelligence; and (iii) any other program, project, or activity relating to national intelligence unless the NID and head of the department, agency, or element concerned determine otherwise. Except as provided under (ii), the NIP excludes any program, project, or activity of the military (including those of the Defense Intelligence Agency not under the National Foreign Intelligence Program) that acquire intelligence principally to support tactical or joint military operations.

## TITLE I—NATIONAL INTELLIGENCE AUTHORITY

### Subtitle A—National Intelligence Authority

#### *Section 101. National Intelligence Authority*

- Creates the National Intelligence Authority as an independent establishment in the Executive Branch, composed of the Office of the NID, the Inspector General of the NIA, the Ombudsman of the NIA, the National Counterterrorism Center (NCTC), national intelligence centers established by the NID, and other entities established by law, the President, or the NID.
- Provides that the primary missions of the National Intelligence Authority are: (1) to unify and strengthen the efforts of the intelligence community; (2) to ensure that such efforts are jointly organized around intelligence missions rather than collection disciplines; (3) to provide for the operation of the NCTC and national intelligence centers; (4) to eliminate barriers that impede counterterrorism activities between foreign intelligence activities abroad and domestically, while ensuring the protection of civil liberties; and (5) to establish clear responsibility and accountability for counterterrorism and other national security intelligence matters.
- Provides that the National Intelligence Authority shall have a seal.

#### *Section 102. National Intelligence Director*

- The NID is nominated by the President and confirmed by the Senate. The NID is prohibited from simultaneously serving in any capacity in any other element of the intelligence community.
- The NID shall (1) serve as the head of the intelligence community; (2) act as the President’s principal intelligence adviser; (3) serve as the head of the National Intelligence Authority; and (4) direct and oversee the National Intelligence Program.

### Subtitle B—Responsibilities and Authorities of the National Intelligence Director

#### *Section 111. Provision of National Intelligence*

- The NID is responsible for providing timely and objective national intelligence to: (1) the President; (2) the heads of other executive departments and agencies; (3) the Chairman of the Joint Chiefs of Staff and senior military commanders; (4) the U.S. House

and Senate, and the committees thereof; and (5) such other persons or entities as the President shall direct.

*Section 112. Responsibilities of National Intelligence Director*

- The NID shall determine the annual budget for intelligence and intelligence-related activities by: (1) providing to the heads of the departments containing agencies or elements within the intelligence community and that have one or more programs, projects, or activities within the NIP, and to the heads of such agencies and elements, guidance for development of the NIP budget pertaining to such agencies or elements; (2) developing and presenting to the President an annual budget for the NIP after consultation with the heads of those agencies or elements, and the heads of their respective departments, (3) providing budget guidance to each element of the intelligence community that does not have one or more program, project, or activity within the NIP regarding the intelligence activities of such element; and (4) participating in the development by the Secretary of Defense of the annual budgets for the military intelligence programs, projects, and activities not included in the NIP.

- The NID shall manage and oversee the National Intelligence Program, including by executing funds, reprogramming funds, and transferring funds and personnel under the NIP.

- The NID shall establish requirements and priorities for collection, analysis, and dissemination of national intelligence by elements of the intelligence community. The NID shall also establish collection and analysis requirements for the intelligence community, determine collection and analysis priorities, issue and manage collection and analysis tasking, and resolve conflicts in the tasking of elements of the intelligence community within the National Intelligence Program, except as otherwise agreed with the Secretary of Defense pursuant to the direction of the President. Furthermore, the NID shall provide advisory tasking on the collection of intelligence to elements of the government not part of the intelligence community.

- The NID shall oversee and manage the NCTC, and establish, oversee, and manage National Intelligence Centers.

- The NID shall also establish requirements and priorities for collection of intelligence under the Foreign Intelligence Surveillance Act (FISA) and assist the Attorney General in ensuring that intelligence derived from FISA operations is disseminated, but the NID has no authority to direct or undertake FISA operations except as otherwise authorized by statute or Executive order.

- In consultation with the heads of the other elements of the intelligence community, and the heads of their respective departments, the NID shall develop personnel policies and programs for the intelligence community that: (1) encourages and facilitates assignments and details to the NCTC and national intelligence centers, and between other elements of the intelligence community; (2) sets standards for education, training, and career development; (3) encourages the recruitment and retention of high-quality individuals; (4) ensures that intelligence personnel are sufficiently diverse; (5) makes service in more than one element of the intelligence community a condition for promotion; (6) effectively manages intelligence community personnel who are trained in community-wide

matters; (7) provides for effective management of human capital within the intelligence community; (8) is consistent with public employment principles of merit and fitness; and (9) includes the enhancements required under section 114.

- The NID shall promote and evaluate the utility of national intelligence to consumers in the U.S. Government.

- The NID shall ensure that appropriate officials have access to a variety of intelligence assessments and analytical views.

- The NID shall: (1) protect intelligence sources and methods; (2) establish reporting guidelines that maximize the dissemination of information while protecting sources and methods; and (3) establish requirements and procedures for: (a) the classification of information; (b) access to classified information; and (c) dissemination of classified information. The President acting through the NID shall establish and implement uniform standards and procedures for granting access to sensitive compartmented information.

- The NID shall develop, in consultation with the heads of relevant departments and agencies, an integrated communications network that provides interoperable communications capabilities within the intelligence community and with other entities or persons the NID determines appropriate.

- The NID shall establish standards for information technology and communications for the intelligence community.

- The NID shall ensure that the intelligence community makes efficient and effective use of open-source information and analysis.

- The NID shall ensure compliance by the intelligence community with all laws, regulations, and policies, including those applicable to protecting civil rights and civil liberties.

- The NID shall eliminate waste and unnecessary duplication within the intelligence community and perform other functions as directed by the President.

- The NID shall, in consultation with the heads of relevant departments and agencies, direct and coordinate the performance by the elements of intelligence community within the NIP of such services that are of common concern which the NID determines can be more efficiently performed in a consolidated manner, including research and development.

- The NID may prescribe regulations relating to the discharge and enforcement of the responsibilities under this section.

- The NID shall perform such other functions as the President may direct.

### *Section 113. Authorities of National Intelligence Director*

- The NID shall have access to all national intelligence, unless otherwise directed by the President.

- The NID shall determine the annual budget for intelligence and intelligence-related activities by: (1) providing to the heads of the departments containing agencies or elements within the intelligence community and that have one or more programs, projects, or activities within the NIP, and to the heads of such agencies and elements, guidance for development of the NIP budget pertaining to such agencies or elements; (2) developing and presenting to the President an annual budget for the NIP after consultation with the heads of agencies or elements, and the heads of their respective departments, including, in furtherance of such budget, the review,

modification, and approval of budgets of the agencies or elements of the intelligence community with one or more programs, projects, or activities within the NIP utilizing the budget authorities in subsection (c)(1); (3) providing guidance on the development of annual budgets for each element of the intelligence community that does not have any program, project, or activity within the NIP utilizing the budget authorities in subsection (c)(2); (4) participating in the development by the Secretary of Defense of the annual budget for military intelligence programs and activities outside the NIP; (4) receiving the appropriations for the NIP as specified in subsection (d) and allotting and allocating funds to agencies and elements of the intelligence community; and (5) managing and overseeing the execution by the agencies or elements of the intelligence community, and, if necessary, the modification of the annual budget for the NIP, including directing the reprogramming and transfer of funds, and the transfer of personnel, among and between elements of the intelligence community within the NIP utilizing the authorities in subsections (f) and (g).

- In developing the annual National Intelligence Program budget, the NID shall coordinate, prepare, and present to the President an annual budget for elements of the intelligence community that are within the National Intelligence Program, in consultation with the heads of such elements. The NID shall approve budget submissions from such elements, and may require modifications to meet NID priorities, before approving such budgets for submission to the President.

- Regarding elements of the intelligence community not within the National Intelligence Program, the NID shall provide guidance for the development of their budgets. The heads of such components, and the heads of their respective departments, shall coordinate closely with the NID before submitting their budgets to the President.

- Any amounts appropriated or otherwise made available to the National Intelligence Program shall be appropriated to the NIA and under the NID's direct jurisdiction. The NID shall manage and oversee the execution of National Intelligence Program funds by any intelligence community element which receives such funds.

- The Secretary of the Treasury shall, in consultation with the NID, establish accounts for the funds under the jurisdiction of the NID.

- National Intelligence Program funds may not be reprogrammed or transferred by an element of the intelligence community without NID approval. Department heads shall consult with the NID before reprogramming non-National Intelligence Program funds of departmental entities within the intelligence community. The NID shall consult with the affected department head prior to reprogramming funds of an element of the intelligence community within the NIP. The NID shall consult with the appropriate committees of Congress regarding modifications of existing procedures to expedite the reprogramming of funds within the NIP, including procedures for notifying Congress of department or agency objections to a reprogramming by the NID.

- With the approval of the Office of Management and Budget and after consultation with the affected department or agency, the NID may (1) transfer or reprogram funds from one intelligence

community element funded by the National Intelligence Program to another; (2) review, and approve or disapprove, any proposal to transfer or reprogram funds from non-NIP appropriations to NIP appropriations; (3) in accordance with procedures developed by the NID, transfer personnel of an element of the intelligence community funded by the NIP to another element of the intelligence community; and (4) in accordance with procedures developed by the NID and the heads of the departments and agencies concerned, transfer personnel of an element of the intelligence community funded outside the NIP to another element of the intelligence community. The NID may only make such a transfer if the funds or personnel are being transferred to a higher priority, the funds are not being transferred to the NID Reserve for Contingencies, and the transfer does not exceed applicable ceilings established in law. The NID shall notify the Appropriations Committees of the House and the Senate, Senate Select Committee on Intelligence, and the House Permanent Select Committee on Intelligence of all transfers. In addition, the NID shall notify the Armed Services Committees of transfers involving Defense Department personnel; the Judiciary Committees of transfers involving FBI personnel; and the Senate Committee on Governmental Affairs and the House Committee on Homeland Security of transfers involving Department of Homeland Security personnel.

- The NID shall establish information-technology standards for the intelligence community, develop an integrated information technology network, maintain an inventory of critical information technology and eliminate duplication, establish contingency plans regarding information technology, and shall take necessary actions to ensure information-sharing among the elements of the intelligence community.

- The NID shall oversee and direct the Director of the Central Intelligence Agency in coordinating the relationships between elements of the intelligence community and their counterparts in foreign governments on all matters relating to national security intelligence or involving intelligence acquired through clandestine means.

- The NID shall establish and maintain within the intelligence community an effective and efficient open source information capability.

- The head of each element of the intelligence community shall promptly provide the NID such information as the NID may request to facilitate the NID's authorities and responsibilities, except as otherwise directed by the President.

#### *Section 114. Enhanced Personnel Management*

- The NID shall prescribe regulations to provide incentives (e.g., bonuses) for intelligence community personnel to serve on the staffs of the NCTC, national intelligence centers, and other community-management positions.

- The NID shall ensure that intelligence personnel who are assigned or detailed for service under the NID shall be promoted at rates equivalent to or better than personnel who did not serve in such capacities.

- The NID shall prescribe mechanisms to facilitate the personnel rotation across the intelligence community in order to facilitate the

widest possible understanding of the variety of intelligence requirements, methods, and disciplines. Such mechanisms may include: (1) establishing a special occupational category for intelligence personnel who wish to serve in more than one element of the intelligence community; (2) providing awards for such service; and (3) establishing requirements for education, training, service, and evaluation for such service. It is the sense of Congress that such mechanisms should seek to duplicate joint officer management policies established by the Goldwater-Nichols Department of Defense Reorganization Act of 1986.

*Section 115. Security Clearances*

- Requires the President, in consultation with the NID and others, to establish, and ensure the implementation of, uniform standards and procedures for access to classified information for both employees and contract personnel and to ensure reciprocity among executive branch agencies for clearances. Under (b), the section requires the President to designate a single federal agency to be responsible for providing and maintaining clearances. The agency selected would be tasked with establishing and maintaining a database of all clearances.

*Section 116. National Intelligence Reserve Corps*

- The NID may provide for the establishment and training of a National Intelligence Reserve Corps for the temporary reemployment on a voluntary basis of former intelligence community employees during times of emergency.

*Section 117. Appointment and Termination of Certain Officials Responsible for Intelligence-Related Activities*

- The NID shall recommend to the President an individual to fill a vacancy in the position of CIA Director.

- The NID shall obtain the concurrence of the Secretary of Defense before recommending to the President an individual to fill a vacancy in the position of Director of the National Security Agency; Director of the National Reconnaissance Office; or Director of the National Geospatial-Intelligence Agency. If the Defense Secretary does not concur in the recommendation, the NID may still make the recommendation, but must include with the recommendation a statement that the Secretary does not concur.

- The head of the appropriate department or agency shall obtain the concurrence of the NID before appointing or recommending to the President for appointment the Under Secretary of Defense for Intelligence; the Director of the Defense Intelligence Agency; the Assistant Secretary of Homeland Security for Information Analysis; and the Executive Assistant Director for Intelligence of the FBI. If the NID does not concur, the secretary or agency head may appoint or recommend the official for appointment, but must notify the President of the lack of concurrence.

- The NID may recommend any official covered by this section for termination to the President or head of the appropriate department or agency. The NID must seek the concurrence of the head of the affected department or agency. If there is no concurrence, the NID may still make the recommendation, but must notify the President of the lack of concurrence.

*Section 118. Reserve for Contingencies of the National Intelligence Director*

- This section establishes a Reserve for Contingencies of the NID consisting of amounts appropriated to, transferred to, or deposited in the Reserve to be used for purposes as are provided for by law. All unobligated balances of the CIA Reserve for Contingencies shall be transferred to this fund on the date of enactment.

Subtitle C—Office of the National Intelligence Director

*Section 121. Office of the National Intelligence Director*

- There is within the National Intelligence Authority, an Office of the National Intelligence Director with the function of helping the NID in carrying out the duties and responsibilities of the NID. The Office of the NID shall have a professional staff that includes transferred elements of the Community Management Staff.

- The Office of the NID consists of the Principal Deputy NID; any other Deputy NID appointed under §122(b); the National Intelligence Council; the General Counsel of the NIA; the Intelligence Comptroller; the Office for Civil Rights and Civil Liberties of the NIA; the Privacy Officer of the NIA; the Chief Information Officer of the NIA; the Chief Human Capital Officer of the NIA; the Chief Financial Officer of the NIA; the National Counterintelligence Executive; and such other offices and officials as may be established by law or the NID may establish or designate. The National Intelligence Council and the National Counterintelligence Executive currently exist and are being transferred to the Office of the NID.

- As of October 1, 2006 the Office of the NID may not co-locate with any other element of the intelligence community.

*Section 122. Deputy National Intelligence Directors*

- There is a Principal Deputy NID recommended by the NID and appointed by the President with the advice and consent of the Senate, who may not serve in any other capacity in any other element of the intelligence community. This official shall assist the NID in carrying out the duties and responsibilities of the NID, and shall act for the NID during an absence or vacancy.

- There shall be not more than four Deputy NIDs, all of whom shall be appointed by the President. The Deputy NIDs shall be recommended by the NID to the President and shall have such duties, responsibilities, and authorities as assigned by the NID or as specified by law.

*Section 123. National Intelligence Council*

- The National Intelligence Council shall be composed of senior intelligence community analysts and substantive experts from the public and private sector who shall be appointed by, report to, and serve at the pleasure of the NID.

- The Council shall produce national intelligence estimates, including alternative views held by elements of the intelligence community; evaluate community-wide collection and production of intelligence; and otherwise assist the NID in carrying out the NID's responsibilities under §111.

- The NID shall ensure that each national intelligence estimate (1) states separately and distinguishes between the intelligence un-

derlying such estimate and the assumptions and judgments of analysts with respect to such intelligence and estimate; (2) describes the quality and reliability of the intelligence underlying such estimate; (3) presents and explains alternative conclusions, if any, with respect to the intelligence underlying such estimate and such estimate; and (4) characterizes the uncertainties, if any, and the confidence in such estimate.

- The Council has the authority to contract. In addition, its staff shall be provided by the NID and support shall be provided as appropriate by the heads of the elements of the intelligence community.

*Section 124. General Counsel of the National Intelligence Authority*

- The General Counsel of the NIA shall be appointed by the President from civilian life with the advice and consent of the Senate. This official is the chief legal officer of the NIA and shall perform such functions as the NID shall prescribe. An official serving in this position may not also serve as General Counsel of any other department, agency, or element of the United States government.

*Section 125. Intelligence Comptroller*

- The NID shall appoint an Intelligence Comptroller from civilian life who shall report directly to the NID. This official shall assist the NID in preparing and executing the budget of the NIP; assist the NID in participating in the Defense Secretary's annual budget for military intelligence and activities outside of the NIP; provide unfettered access to the NID to financial information under the NIP; and perform other duties as may be prescribed by the NID or specified by law.

*Section 126. Officer for Civil Rights and Civil Liberties of the National Intelligence Authority*

- The President shall appoint an Officer for Civil Rights and Civil Liberties of the National Intelligence Authority who shall report directly to the NID.

- This official shall assist the NID in ensuring that the protection of civil rights and civil liberties is appropriately incorporated in the policies and procedures developed for and implemented by the NIA, those regarding the relationships among the elements of the intelligence community within the NIP, and those regarding the relationships between the elements of the intelligence community within the NIP and the other elements of the intelligence community. This official shall also oversee compliance by the NIA with the Constitution and all laws and rules relating to civil rights and civil liberties regarding the same.

- This official shall also review, investigate, and assess complaints and other information regarding possible abuses of civil rights or civil liberties in the administration of the NIA and in relationships among the elements of the intelligence community within the NIP or between those elements and non-NIP elements, unless the NIA's IG determines that the IG can better review the matter.

- This official shall coordinate with the NIA Privacy Officer and perform such other duties and may be prescribed the NID or specified by law.



*Section 127. Privacy Officer of the National Intelligence Authority*

- The NID shall appoint a Privacy Officer of the NIA. This official shall have primary responsibility for the privacy policy of the NIA and shall coordinate with the NIA Officer for Civil Rights and Civil Liberties.

*Section 128. Chief Information Officer of the National Intelligence Authority*

- The NID shall appoint a Chief Information Officer of the NIA. The NIA CIO shall assist the NID in developing and implementing an integrated communications network that provides interoperable communications capabilities among all elements of the intelligence community.

*Section 129. Chief Human Capital Officer of the National Intelligence Authority*

- The NID shall appoint a Chief Human Capital Officer to assist the NID with the development and implementation of workforce management strategies for the intelligence community.

*Section 130. Chief Financial Officer*

- There is a Chief Financial Office of the National Intelligence Authority, who shall be designated by the President in consultation with the NID.

*Section 131. National Counterintelligence Executive*

- This position is moved to the Office of the National Intelligence Director. The National Counterintelligence Executive serves as the head of national counterintelligence for the United States government; chairs the National Counterintelligence Policy Board; and heads the Office of the National Counterintelligence Executive (also moved to the Office of the NID).

Subtitle D—Additional Elements of National Intelligence Authority

*Section 141. Inspector General of the National Intelligence Authority*

- This section is structured similarly to 50 U.S.C. § 403q, which creates the CIA's Inspector General. This section gives the Inspector General of the NIA authorities over the NIA that largely track the CIA Inspector General's authorities over the CIA. The significant difference between the two is that this section gives the NIA Inspector General the authority to initiate and conduct independent investigations, inspections, and audits relating to the relationships among the elements of the intelligence community within the National Intelligence Program, and between those elements and the other elements of the intelligence community. By contrast, the CIA Inspector General's authorities do not extend to the relationships between elements of the intelligence community; instead, they focus on the CIA.

- Section 141(a) establishes an Office of the Inspector General within the NIA.

- Section 141(b) establishes the purposes of the OIG, which include creating an objective and effective office to conduct independent investigations, inspections, and audits; providing a means

to keep the NID fully informed of problems and deficiencies; and ensuring that the congressional intelligence committees are kept informed.

- Section 141(c) provides that the head of the OIG shall be the Inspector General of the NIA and that the Inspector General shall be appointed by the President with the advice and consent of the Senate. This section also requires that the IG be selected without regard to political affiliation and solely on the basis of integrity, compliance with the security standards, and prior experience in the field of intelligence or national security as well as on a demonstrated ability in accounting, financial analysis, law, management analysis, public administration, or auditing. This section also requires that the IG report directly to the NID. This section states that the IG may only be removed by the President and that the President must submit the reasons for such removal to the congressional intelligence committees.

- Section 141(d) establishes the duties and responsibilities of the IG including providing policy direction for, and to plan, conduct, and coordinate independently, the investigations, inspections, and audits relating to the programs and operations of the NIA; keeping the NID informed of violations of law, regulations, civil liberties, privacy, fraud, and other deficiencies; taking due regard for the protection of intelligence sources and methods in the preparation of reports; and complying with generally accepted government auditing standards.

- Section 141(e) allows the NID to prohibit the IG from initiating or carrying out an investigation, inspection, or audit if the NID determines it is vital to national security, but requires the NID to submit to the intelligence committees the reasons for the prohibition and allows the IG to submit any relevant comments to the intelligence committees.

- Section 141(f) requires that the IG have direct and prompt access to the NID; any employee or contractor; and any other element of the intelligence community within the National Intelligence Program. This section also requires that the IG have access to all relevant records, reports, audits, reviews, and other documents. The IG is also authorized to receive and investigate complaints or information from any person concerning violations of law, rules, regulations, mismanagement, waste, abuse, and substantial danger to public health and safety. Requires the IG not to disclose the identity of such an employee, without consent, and restricts reprisals against an employee for making a complaint to the IG. This section provides the IG with subpoena authority and establishes guidelines for the use of the authority.

- Section 141(g) requires that the IG be provided appropriate office space and supplies; allows the IG to appoint and employ staff; and allows the IG to request information and assistance from any department, agency, or other element of the government, with the concurrence of the NID.

- Section 141(h) establishes a semi-annual reporting requirement by the IG to the NID, who in turn would be required to transmit the reports to the congressional intelligence committees together with any comments of the NID. The section also requires the IG to immediately report to the NID any serious or flagrant problems, abuses, or deficiencies and requires the NID to transmit

those reports to the intelligence committees. The section also establishes additional reporting requirements in certain circumstances, such as when a matter is referred to Justice because of possible criminal conduct, an investigation should focus on a person who is Senate-confirmed, and when the IG is unable to resolve differences with the NID. The section also establishes procedures employees may follow prior to making any reports directly to the Congress.

- Section 141(i) requires the NID to establish a separate budget account for the OIG.

*Section 142. Ombudsman of the National Intelligence Authority*

- This section creates an Ombudsman in the National Intelligence Authority, appointed by the NID, who will have the authority to: (i) counsel, arbitrate, offer recommendations on, and initiate investigations into problems of politicization, biased reporting, or the lack of objective analysis within the NIA or any element of the National Intelligence Program; (ii) monitor the effectiveness of measures taken in response to such problems; and (iii) conduct reviews of the analytic products of the NIA or any element of the intelligence community within the NIP, or of any analysis of national intelligence by any element of the intelligence community. This office is patterned after the CIA Ombudsman.

- There shall be an Analytic Review Unit within the Office of the Ombudsman which shall assist in the performance of the duties of the Ombudsman, including by conducting detailed evaluations of intelligence by the National Intelligence Council, the elements of the intelligence community within the NIP, and, to the extent involving the analysis of national intelligence, other elements of the intelligence community.

- The Ombudsman shall, unless otherwise directed by the President, have access to all analytic products, field reports, and raw intelligence of any element of the intelligence community and to any reports or other material of an Inspector General that might be pertinent.

- This official will provide the NID and the congressional intelligence committees with an annual report that includes an assessment of the current level of politicization, biased reporting, or the lack of objective analysis within the NIA, any element of the intelligence community within the NIP, or any analysis of national intelligence by an element of the intelligence community. The report shall also include suggestions for remedial measures and the effectiveness of remedial measures taken.

- In addition to carrying out activities under this section, the Ombudsman of the NIA may refer serious cases of misconduct related to politicization of intelligence information, biased reporting, or lack of objective analysis within the intelligence community to the Inspector General of the NIA for investigation.

*Section 143. National Counterterrorism Center*

- The NCTC is created within the NIA and shall be headed by a Director appointed with the advice and consent of the Senate, who may not simultaneously serve in any other capacity in the intelligence community. The primary missions of the NCTC shall be to unify strategy for civilian and military counterterrorism efforts, integrate counterterrorism intelligence activities both inside and

outside of the United States, and ensure that the collection of counterterrorism intelligence and the conduct of counterintelligence operations are informed by the analysis of all-source information. Another primary mission of the NCTC shall be to develop inter-agency counterterrorism plans that include the mission, objectives to be achieved, course of action, coordination of agency operational activities, recommendations for operational plans, and assignment of departmental or agency responsibilities.

- The NCTC Director reports to the NID on the budget and programs of the NCTC and the activities of the NCTC Directorate of Intelligence. The Director of the NCTC reports to the President and the NID on the planning and progress of joint counterterrorism operations.

- At the direction of the President, the NSC, and the NID, the Director of the NCTC shall: (1) serve as the principal adviser to the President on joint counterterrorism operations; (2) provide unified strategic direction for civilian and military counterterrorism efforts and for the effective integration and deconfliction of counterterrorism and intelligence and operations across agency boundaries, inside and outside of the United States; (3) advise the President on the extent to which agency and departmental counterterrorism program recommendations and budget proposals conform to priorities established by the President and the NSC; (4) concur in, or advise the President on, the selection of personnel to head operating entities specified in (f) with principal missions relating to counterterrorism; and (5) perform such other duties as the NID may prescribe.

- The NCTC Director has the right to concur in the appointment, or in the recommendation to the President (as the case may be), of the Director of the CIA's Counterterrorism Center; the Assistant Director of the FBI's Counterterrorism Division; the State Department's Coordinator for Counterterrorism; and the heads of other entities so designated that have principle missions relating to counterterrorism. If the Department head making the appointment or recommendation does not accept the NCTC Director's recommendation, the appointment or recommendation may still go forward, but the NCTC Director's objection must be passed along to the President.

- The NCTC shall have a Directorate of Intelligence, which will include the Terrorist Threat Integration Center (transferred to the DI under §323). The Directorate shall have primary responsibility for analysis of terrorism and terrorist organizations for all sources, whether collected inside or outside the United States. The Directorate shall be the primary repository for all-source information on suspected terrorists, their organizations, and their capabilities; propose intelligence collection requirements for action by elements of the intelligence community inside and outside the United States; have primary responsibility for net assessments and warnings about terrorist threats, which assessments and warnings shall be based on a comparison of terrorist intentions and capabilities with assessed national vulnerabilities and countermeasures; and perform such other duties and functions as the NCTC Director may prescribe.

- The NCTC shall have a Directorate of Planning with the primary responsibility for developing interagency counterterrorism

plans. The Directorate shall provide guidance and develop strategy and interagency plans based on policy objectives and priorities established by the NSC; develop interagency plans utilizing input from personnel in other departments and agencies with expertise; assign responsibilities for counterterrorism operations to departments and agencies; monitor the implementation of operations so assigned and update interagency plans as necessary; report to the President and the NID on the compliance with such plans; and perform such other duties and functions as the NCTC Director may prescribe.

- The Directorate of Planning may not direct the execution of operations that it assigns.

- The NID may appoint deputy directors for the NCTC as appropriate. In order to provide a professional staff for the NCTC, the NID may establish positions in the excepted service as appropriate. The NID shall ensure that the analytical staff of the NCTC is comprised of experts from the intelligence community and elsewhere as appropriate. In order to do so, the NID shall specify the transfers, assignments, and details of personnel funded within the NIP; for personnel not funded within the NIP, the NID shall request such transfers, assignments, and details from the relevant department head, who shall, to the extent practicable, approve the request. This staff will be under the authority, direction, and control of the NCTC Director.

- The NID shall ensure that the NCTC staff has access to all relevant databases maintained by elements of the intelligence community.

- Other agencies shall support and assist the NCTC, including by implementation of plans developed by the NCTC. If there is a disagreement on the implementation of such a plan between the NCTC Director and the head of an affected department or agency, then the NCTC may either accede to the head of the department or agency or notify the President of the necessity of resolving the disagreement.

#### *Section 144. National Intelligence Centers*

- The NID may establish within the NIA one or more centers to address intelligence priorities established by the NSC. Each center shall be assigned an area of intelligence responsibility.

- The NID shall assign lead responsibility for administrative support for each center to an element of the intelligence community. The NID shall determine the structure and size of each center and shall notify Congress before the establishment of a center.

- Each center shall be headed by a Director appointed by the NID, who shall serve as the principal advisor to the NID on intelligence matters within the area of intelligence responsibility assigned to that center. The Director shall also manage the operations of the center; coordinate administrative support for the center; submit budget and personnel requests for the center to the NID; seek such assistance as necessary and needed to fulfill the mission of the center; and advise the NID of the center's information technology, personnel, and other requirements.

- Each center shall, in its area of responsibility, have primary responsibility for providing all-source analysis of intelligence; have primary responsibility for identifying and proposing to the NID in-

telligence collection and analysis requirements; have primary responsibility for net assessments and warnings; ensure that appropriate officials have access to a variety of intelligence assessments and analytical views; and perform such other duties as the NID shall specify.

- The NID shall ensure that the centers and other elements of the intelligence community engage in appropriate information sharing to facilitate the activities of the centers. The Directors of the centers shall report to the NID regarding their activities and coordinate with the Principal Deputy NID regarding such activities.

- In order to provide a professional staff for a center, the NID may establish positions in the excepted service as appropriate. The NID shall specify the transfers, assignments, and details of personnel funded within the NIP; for personnel not funded within the NIP, the NID shall request such transfers, assignments, and details from the relevant department head, who shall, to the extent practicable, approve the request. This staff will be under the authority, direction, and control of the Director of the center.

- The NID may terminate a center if the NID determines that the center is no longer required to meet an intelligence priority established by the NSC. The NID must notify Congress before carrying out such termination.

#### Subtitle E—Education and Training of Intelligence Community Personnel

##### *Section 151. Framework for Cross-Disciplinary Education and Training*

- This section requires the NID to establish a framework that brings together the educational components of the intelligence community to promote a more effective and productive intelligence community through joint and cross-disciplinary education and joint training.

##### *Section 152. Intelligence Community Scholarship Program*

- This section requires the NID to develop a scholarship program under which intelligence community agencies would provide college scholarships to students in exchange for future service at the agency. The provision reserves 10 percent of the scholarships for intelligence community employees as an additional means for training.

#### Subtitle F—Additional Authorities of National Intelligence Authority

##### *Section 161. Use of Appropriated Funds*

- If specifically authorized to dispose of real property, the NID shall exercise such authority in compliance with subchapter IV of chapter 5 of title 40, United States Code; the NID shall deposit proceeds from such disposal in the Treasury. Gifts or donations of services or property of or for the NIA shall only be accepted if permitted by an appropriations act.

*Section 162. Acquisitions and Fiscal Authorities*

- This section provides that the NID shall have acquisition authority similar to that of the Director of Central Intelligence, as head of the CIA. It also provides that the NID shall have milestone decision authority for acquisitions of major systems funded by the NIP and requires that the NID establish a major system acquisition management framework similar to that utilized by DOD for defense acquisition programs. This provides the NID with management authority over acquisition programs funded by the NIA even if those programs are conducted by other agencies such as DOD.

*Section 163. Personnel Matters*

- This section grants the NID the same personnel authorities over NIA employees that the DCI has over CIA personnel. The provision makes clear that employees and applicants for employment of the NIA have the same rights and protections as CIA employees.

*Section 164. Ethics Matters.*

- This section makes conforming amendments to the Ethics in Government Act and other for the NIA.

TITLE II—OTHER IMPROVEMENTS OF INTELLIGENCE  
ACTIVITIES

Subtitle A—Improvements of Intelligence Activities

*Section 201. Availability to Public of Certain Intelligence Funding Information*

- This section requires the President and Congress to disclose to the public the top line budget authorization and appropriation figures for the National Intelligence Program. This section also directs the NID to study the feasibility of disclosing such aggregate information for each element of the intelligence community and to submit a report to Congress on the results within 180 days.

*Section 202. Merger of Homeland Security Council Into National Security Council*

- This section merges the Homeland Security Council into the National Security Council.

*Section 203. Joint Intelligence Community Council*

- This section establishes the Joint Intelligence Community Council, which consists of the NID (who shall chair the Council), the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Energy, the Secretary of Homeland Security, and such other officers as the President may designate. The JICC shall meet upon the request of the NID.

- The JICC shall assist the NID in developing and implementing a joint, unified national intelligence effort to protect national security by (i) advising the NID on establishing requirements, developing budgets, financial management, and monitoring and evaluating the intelligence community's performance; and (ii) ensuring the timely execution of programs, policies, and directives established or developed by the NID.

*Section 204. Improvement of Intelligence Capabilities of the Federal Bureau of Investigation*

- Section 204 of the bill acknowledges that the National Commission on Terrorist Attacks Upon the United States stated in its final report that, under Director Robert Mueller, the FBI has made significant progress in improving its intelligence capabilities. The Commission also urged the FBI to fully institutionalize the shift to a preventative counterterrorism posture. In order to continue to improve the intelligence capabilities of the Bureau, the FBI is required to develop and maintain a national intelligence workforce consisting of agents, analysts, linguists, and surveillance specialists who are recruited, trained, and rewarded in a manner consistent with the intelligence mission of the Bureau. This section of the bill also requires agents to be trained in criminal justice and national intelligence matters, and requires that agents be given the opportunity to be assigned intelligence responsibilities early in their career. In addition, the FBI Director shall establish career positions in intelligence matters for agents and analysts, and afford agents and analysts of the Bureau the opportunity to work in the career specialty selected by such agents and analysts over their entire career with the Bureau. The FBI Director shall carry out a program to enhance the capacity of the FBI to recruit and retain individuals with skills relevant to the intelligence mission of the Bureau. The Bureau should also afford its analysts career opportunities commensurate with those afforded analysts in other intelligence community entities.

- This section also directs the FBI to ensure that each operational intelligence supervisor be a certified intelligence officer. The Director shall ensure that the successful discharge of advanced training courses, and of one or more assignments to another element of the intelligence community, is a precondition to advancement to higher level intelligence assignments in the Bureau. Field Intelligence Group (FIG) supervisors must report directly to a senior manager responsible for intelligence matters, and must ensure the integration of analysts, agents, linguists, and surveillance personnel in the field.

- The Bureau is also directed to expand its secure facilities to ensure the successful discharge by the field intelligence components of the national security and criminal intelligence missions of the FBI.

- The bill directs the FBI to modify its budget structure, in consultation with the Director of the Office of Management and Budget, according to the four principal missions of the Bureau: (1) Intelligence; (2) Counterterrorism and counterintelligence; (3) Criminal Enterprises/Federal Crimes; (4) Criminal justice services.

- Not later than 180 days after the enactment of this Act, the FBI is required to submit to Congress a report detailing the Bureau's progress in carrying out the requirements of Section 204. The Bureau is also required to include in each annual program review of the FBI submitted to Congress a report on the progress made by each field office in implementing national program priorities. Not later than 180 days after the enactment of this Act, and annually thereafter, the FBI shall submit a report to Congress assessing the qualifications, status, and roles of FBI analysts. Additionally, not later than 180 days after the enactment of this act,



and annually thereafter, the FBI shall submit a report to Congress detailing the Bureau's progress in implementing information-sharing principles.

*Section 205. Federal Bureau of Investigation Intelligence Career Service*

- Section 205 of the bill establishes an intelligence career service for Federal Bureau of Investigation analysts. The FBI Director, in consultation with the Director of the Office of Personnel Management, may establish positions for intelligence analysts, without regard to chapter 51 of title 5, United States Code. The Director shall prescribe procedures for establishing and classifying such positions, and may fix the rate of pay for such positions, without regard to subchapter III of chapter 53 of title 5, United States Code, as long as the rate of pay is not greater than the rate of pay payable for level IV of the Executive Schedule.

- The bill requires that any performance management system established for intelligence analysts have at least one level of performance above a retention standard.

- Not less than sixty days before the date of implementation of authorities granted under this section, the FBI Director shall submit an operating plan describing the Director's intended use of the authorities to: (1) the Committees on Appropriations of the Senate and the House of Representatives; (2) the Committee on Governmental Affairs of the Senate; (3) the Committee on Government Reform of the House of Representatives; (4) the congressional intelligence committees; and (5) the Committees on the Judiciary of the Senate and the House of Representatives.

- Also, no later than December 31, 2005, and annually thereafter for four years, the FBI Director shall submit an annual report of the use of the permanent authorities provided under this section during the preceding fiscal year to: (1) the Committees on Appropriations of the Senate and the House of Representatives; (2) the Committee on Governmental Affairs of the Senate; (3) the Committee on Government Reform of the House of Representatives; (4) the congressional intelligence committees; and (5) the Committees on the Judiciary of the Senate and the House of Representatives.

*Section 206. Information Sharing*

- Consistent with the 9/11 Commission Report and reports issued by the Markle Foundation's Task Force on National Security in the Information Age, the legislation mandates that the President create an information network that can be accessed, and to which contributions can be made, by various, federal, state, tribal and local, and private sector entities.

- Sections 206(a) and (b) include definitions and findings.

- Section 206(c) requires the President to establish a trusted information network and secure information sharing environment (the "Network") to promote the sharing of intelligence and homeland security information in a manner consistent with national security and the protection of privacy and civil liberties. The section outlines the required attributes of the Network, including that it be decentralized and allow information sharing horizontally across agencies, vertically between levels of government and, as appropriate, with the private sector; build on existing systems capabili-

ties; incorporate protections for privacy and civil liberties; and, to enhance accountability and facilitate oversight, employ authentication, access controls, audit capabilities and other mechanisms.

- Section 206(d) requires that within 90 days, that the Director of OMB, in consultation with the Executive Council established below, (1) submit to the President and Congress a description of the technological, legal, and policy issues presented by creation of the Network and how these will be addressed; (2) establish electronic directory services to assist in locating relevant people and information; and (3) conduct a baseline review of current federal agency information sharing capabilities.

- Section 206(e) requires that, within 180 days, the President (1) issue guidelines for acquiring, accessing, sharing, and using terrorism information; (2) issue guidelines to protect privacy and civil liberties in the development and use of the Network; (3) require federal agencies to promote a culture of information sharing through greater incentives and reduced disincentives for information sharing.

- Section 206(f) requires that, within 270 days, the Director of OMB, in consultation with the Executive Council, prepare and submit to the President and Congress an Enterprise Architecture and Implementation plan. The plan is to include a description of the functions, capabilities and resources of the proposed Network; a delineation of the roles of the federal agencies that are to participate in the development of the Network; a description of the system design that will meet the technological requirements to link and enhance existing networks; an enterprise architecture; a description of how privacy and civil liberties will be protected in the design and implementation of the Network; a plan and time line for the development and implementation of the Network; budgetary requirements; and proposals for any legislation that the Director of OMB believes to be necessary to implement the Network.

- Section 206(g) gives the Director of OMB the responsibility, in consultation with the Executive Council, for implementing and managing the Network; developing policies and guidelines to foster the development and proper operation of the Network; and assisting, monitoring and assessing the implementation of the Network by individual departments and agencies. It also requires that the Director, within 30 days, appoint an official, with the equivalent of Deputy Director rank, whose primary responsibility will be to carry out the day-to-day duties of the OMB Director with respect to information sharing.

- Section 206(h) establishes an Executive Council on Information Sharing. The Executive Council is to be chaired by the Director of OMB and made up of key federal officials (including officials from the NIA, DHS, DoD, DOJ, the State Department) and state, local, and tribal officials, and individuals from private or nonprofit entities that own or operate critical infrastructure, to be appointed by the President. The Council is to assist the Director of OMB in his responsibilities with respect to the Network; ensure that there is coordination among Network participants; review ongoing policy, legal and technology issues; and establish a dispute resolution process to resolve disagreements among agencies about whether particular information is to be shared and in what manner.

- Section 206(i) establishes an Advisory Board on Information Sharing. The Advisory Board is to be made up of no more than 15 members with significant experience or expertise in policy, technical and operational matters, to be appointed by the President from outside the federal government. The Board is to advise the President and the Executive Council on policy, technical, and management issues related to the design and implementation of the Network.

- Section 206(j) requires the President, through the Director of OMB, to report semiannually to Congress on the state of the Network. The report is to include a general progress report on implementation of the Network, as well as information on how the Network is performing with respect to a variety of specific considerations.

- Section 206(k) requires the head of each agency participating in the Network to ensure (1) full agency compliance with Network guidelines and procedures; (2) the provision of activities resources to support operation of and participation in the Network; and (3) full agency cooperation in the development of the Network and in the management and acquisition of information technology consistent with applicable law.

- Section 206(l) requires each agency participates in the Network to submit to OMB within one year, reports that include the agency's strategic plan, objective performance measures, and budgetary requirements for implementing the Network within the agency and increasing information sharing. Requires annual agency reports thereafter assessing the agency's progress in complying with the Network's requirements and outlining the agency's future plans for Network implementation.

- Requires that, within one year after enactment of the Act and periodically thereafter, the Comptroller General review and evaluate the implementation of the Network to determine the extent of compliance with the Network's requirements and to assess the effectiveness of the Network both in improving information sharing and in protecting civil liberties; the Comptroller General is to report to Congress on his findings. Also directs the Inspectors General of relevant federal agencies to, at their discretion, conduct audits or investigations to assess their agencies' effectiveness in improving information sharing and complying with the Network's requirements.

- Section 206 (n) Authorizes \$50 million to the Director of OMB for FY2005; authorizes such sums as are necessary thereafter, to be allocated in accordance with the system design and implementation plan required by the Act.

#### Subtitle B—Privacy and Civil Liberties

##### *Section 211. Privacy and Civil Liberties Oversight Board*

- Section 211(a) establishes the Privacy and Civil Liberties Oversight Board within the Executive Office of the President.

- Section 211(b) sets out congressional findings that in the war on terrorism, the Government may need additional powers, and that this shift in power calls for an enhanced system of checks and balances to protect civil liberties.

- Section 211(c) states that the purposes of the Board are to analyze and review actions the executive branch takes to protect the Nation from terrorism, and ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the Nation against terrorism.

- Section 211(d) establishes the functions of the Board which include advice and counsel, oversight, and interaction with department and agency privacy and civil liberties officers. Under the advice and counsel role, Section 211(d) directs the Board to review proposed legislation, regulations, and policies, including those related to information sharing, review the implementation of legislation, regulations, and policies, and advise the President, departments, and agencies. In providing advice regarding proposals to retain or enhance a governmental power, the Board is directed to consider whether the relevant department or agency has explained that the power actually materially enhances security; that there is adequate supervision of the use by the executive branch of the power to ensure protection of privacy and civil liberties; and that there are adequate guidelines and oversight to properly confine its use. Under its oversight role, the Board is directed to continually review the regulations, policies, and procedures of departments and agencies to ensure privacy and civil liberties are protected and review the information sharing practices of departments and agencies. Section 211(d) also requires the Board to review and assess reports from department and agency privacy and civil liberties officers, make recommendations to them, and, when appropriate, coordinate their activities on relevant interagency matters. It also requires members of the Board to appear and testify before Congress upon request.

- Section 211(e) establishes reporting requirements. It requires the Board to receive reports from the department and agency privacy and civil liberties officers, and periodically submit reports of its activities to the President and the appropriate committees of Congress, including the Senate Committee on Governmental Affairs, the House Committee on Government Reform, the Committees on the Judiciary, and the Committees on Intelligence. This section also requires that the reports shall be unclassified to the greatest extent possible, with a classified annex where necessary.

- Section 211(f) requires the Board to ensure the public is informed by making its reports available to the public to the greatest extent consistent with the protection of classified information, and holding public hearings, as appropriate.

- Section 211(g) authorizes the Board to have access to relevant records of departments and agencies, to interview personnel of departments and agencies, to request information or assistance from any State, tribal, or local government, and to require, by subpoena issued at the direction of a majority of the Board, persons to produce relevant information. This section also establishes enforcement mechanisms for its subpoena authority.

- Section 211(h) establishes the membership of the Board, which shall include a full-time chairman and four additional members, who would be presidentially-appointed and Senate-confirmed for 6-year fixed terms. The members of the Board are required to be selected solely on the basis of their professional qualifications,

achievements, public stature, expertise in civil liberties and privacy, and relevant experience and members may not be an official, officer, or employee of the Federal government in another capacity. This section also requires that no more than three members of the Board be members of the same political party. This section also establishes procedures for meetings and quorums.

- Section 211(i) establishes the compensation and travel expenses of the Board members.

- Section 211(j) establishes procedures for the appointment and compensation of staff, provides for the use of detailees, and authorizes the Board to procure consultant services.

- Section 211(k) directs the appropriate departments and agencies to cooperate with the Board to ensure an expeditious process for appropriate security clearances.

- Section 211(l) provides that, for the purposes of the Federal Advisory Committee Act, the Board shall be treated like an agency, not an advisory committee.

*Section 212. Privacy and Civil Liberties Officers*

- Section 212(a) requires agency and department heads of Justice, Defense, State, Treasury, Health and Human Services, Homeland Security, National Intelligence, and the Central Intelligence Agency and any other department or agency indicated by the Board to designate not less than one senior officer to assist the head of the respective department or agency in appropriately considering privacy and civil liberties concerns, to periodically investigate and review agency actions, policies, and procedures, and to ensure that the department or agency has adequate procedures to receive, investigate, respond to, and redress complaints from individuals who allege violations of their privacy or civil liberties. In providing advice regarding proposals to retain or enhance a governmental power, the privacy and civil liberties officers are directed to consider whether the relevant department or agency has explained that the power actually materially enhances security; that there is adequate supervision of the use by the executive branch of the power to ensure protection of privacy and civil liberties; and that there are adequate guidelines and oversight to properly confine its use.

- Section 212(b) provides an exception to (a) where the privacy or civil liberties officer within a department or agency has already been statutorily created.

- Section 212(c) provides that privacy and civil liberties officers report directly to the head of the department or agency and that they coordinate their activities with the appropriate Inspector General.

- Section 212(d) requires the head of each department or agency to ensure that each privacy and civil liberties officer has the necessary information, material, and resources to fulfill their functions, is advised of proposed policy changes, is consulted, and is provided appropriate access to personnel and material.

- Section 212(e) prohibits reprisals against employees for making a complaint or for disclosing information to a privacy or civil liberties officer, or to the Privacy and Civil Liberties Oversight Board, but provides no new personnel rights or causes of action.

- Section 212(f) establishes quarterly reporting requirements for the privacy and civil liberties officers on their activities.
- Section 212(g) requires that the privacy and civil liberties officers make their reports available to the public to the greatest extent consistent with the protection of classified information and otherwise inform the public of their activities.
- Section 212(h) makes clear that the provisions under this section shall not be construed to limit or supplant other authorities provided by law to privacy and civil liberties officers.

#### Subtitle C—Independence of Intelligence Agencies

##### *Section 221. Independence of the National Intelligence Director*

- This section requires that the NID not be based in the Executive Office of the President. It also provides that the NID shall provide the President and Congress with national intelligence that is timely, objective, independent of political considerations, and which has not been shaped to serve policy goals.

##### *Section 222. Independence of Intelligence*

- The Director of the NCTC and director of other national intelligence centers are required to provide the President, Congress, and the NID with intelligence that is timely, objective, independent of political considerations, and which has not been shaped to serve policy goals. The CIA Director is required to ensure that the intelligence produced by the CIA is objective, independent of political considerations, and has not been shaped to serve policy goals. The National Intelligence Council is required to ensure that its intelligence estimates are timely, objective, independent of political considerations, and have not been shaped to serve policy goals.

##### *Section 223. Independence of National Counterterrorism Center*

- No officer or agency of the executive branch can require the NCTC Director to receive permission to testify before Congress and no officer or agency of the executive branch can require the NCTC Director to submit testimony, recommendations, or comments to Congress for review prior to submission to Congress if the testimony, recommendations, or comments include a statement indicating they are the views of the NCTC, and do not necessarily represent the Administration's views.

##### *Section 224. Access of Congressional Committees to National Intelligence*

- The NID, the NCTC Director and the Director of any national intelligence center must provide to the Congressional intelligence committees and any other committee with jurisdiction over the subject matter to which the information relates all intelligence assessments, intelligence estimates, sense of the intelligence community memoranda, and daily senior executive intelligence briefs, other than the Presidential Daily Brief and those reports prepared exclusively for the President.
- The NID, NCTC Director and director of other national intelligence centers are also required to respond within 15 days to requests for any intelligence assessment, report, estimate, or other intelligence information from the Congressional intelligence com-

mittees or other committees of Congress with jurisdiction over the subject matter to which the information relates. The NID, NCTC Director, and director of other national intelligence centers are also required to respond to such requests from the Chairman, Vice Chairman, or Ranking Member of the Senate or House intelligence committees. The NID, NCTC Director, and director of other national intelligence centers are required to provide the requested information unless the President certifies that the information is not being provided because the President is asserting a privilege pursuant to the United States Constitution.

*Section 225. Communications with Congress*

- Employees or contractors for the National Intelligence Authority, CIA, DIA, NGA, NSA, FBI, and other agencies principally involved in the conduct of foreign intelligence or counterintelligence are permitted to disclose certain information to Congress without reporting it first to the appropriate inspector general. The information they may report is information, including classified information, the employee reasonably believes provides direct and specific evidence of a false or inaccurate statement to Congress contained in, or withheld from Congress any intelligence information material to, any intelligence assessment, report, or estimate. Such a disclosure may be made to a member of a committee of Congress having primary responsibility for oversight of the agency to which the information relates and who is authorized to receive information of the type disclosed, other members of Congress authorized to receive information of the type disclosed, or an employee of Congress with the appropriate clearance and who is authorized to receive information of the type disclosed.

TITLE III—MODIFICATIONS OF LAWS RELATING TO  
INTELLIGENCE COMMUNITY MANAGEMENT

Subtitle A—Conforming and Other Amendments

*Section 301. Restatement and Modification of Basic Authority on the Central Intelligence Agency*

- Makes technical and conforming amendments establishing the Central Intelligence Agency as an independent agency. This section also creates the position of the Director of the Central Intelligence Agency, appointed by the President and confirmed by the Senate. The Director of the CIA reports to the NID regarding his or her activities.

- The Director of the CIA shall (1) serve as the head of the CIA; (2) collect intelligence through human sources and by other appropriate means, except that the Director of the CIA shall have no police, subpoena, or law enforcement powers or internal security functions; (3) correlate and evaluate intelligence related to the national security and provide appropriate dissemination of such intelligence; (4) provide overall direction for and coordination of the collection of national intelligence outside the United States through human sources by elements of the intelligence community authorized to undertake such collection and, in coordination with other departments, agencies, or elements of the United States Government which are authorized to undertake such collection, ensure that the

most effective use is made of resources and that appropriate account is taken of the risks to the United States and those involved in such collection; and (5) perform such other functions and duties pertaining to intelligence relating to the national security as the President or the NID may direct.

- Notwithstanding the provisions of any other law, the Director of the CIA may, in the discretion of the Director, terminate the employment of any officer or employee of the CIA whenever the Director considers the termination of employment of such officer or employee necessary or advisable in the interests of the United States.

- The Director of the CIA shall, in accordance with standards developed by the Director in consultation with the NID: (1) enhance the analytic, human intelligence and other capabilities of the CIA; (2) develop and maintain an effective language program within the CIA; (3) emphasize the hiring of personnel of diverse backgrounds for purposes of improving the capabilities of the CIA; (4) establish and maintain effective relationships between human intelligence and signals intelligence within the CIA at the operational level; and (5) achieve a more effective balance within the CIA with respect to unilateral operations and liaison operations. The CIA Director shall, not later than 180 days after the effective date of this section, and annually thereafter, submit to the NID and the congressional intelligence committees a report setting forth: (A) a strategy for improving the conduct of analysis (including strategic analysis) by the CIA, and the progress in implementing the strategy; (B) a strategy for improving the human intelligence and other capabilities of the CIA, and the progress in implementing the strategy; (C) in conjunction with the Director of the NSA, a strategy for achieving integration between signals and human intelligence capabilities, and the progress in implementing the strategy; (D) metrics and milestones for measuring progress in the implementation of each such strategy.

*Section 302. Conforming Amendments Relating to Roles of National Intelligence Director and Director of the Central Intelligence Agency*

- Makes technical and conforming amendments.

*Section 303. Other Conforming Amendments*

- Makes technical and conforming amendments.

*Section 304. Modifications of Foreign Intelligence and Counterintelligence Under National Security Act of 1947*

- Makes technical and conforming amendments.

*Section 305. Elements of Intelligence Community Under National Security Act of 1947*

- Makes technical and conforming amendments.

*Section 306. Redesignation of National Foreign Intelligence Program as the National Intelligence Program*

- Makes technical and conforming amendments.



*Section 307. Conforming Amendments on Coordination of Budgets of Elements of the Intelligence Community within the Department of Defense*

- Makes technical and conforming amendments.

*Section 308. Repeal of Superseded Authorities*

- Makes technical and conforming amendments.

*Section 309. Clerical Amendments to National Security Act of 1947*

- Makes technical and conforming amendments.

*Section 310. Modification of Authorities Relating to National Counterintelligence Executive*

- The Office of the National Counterintelligence Executive is moved to the Office of the NID. This section also makes other technical amendments.

*Section 311. Conforming Amendment to Inspector General Act of 1978*

- Makes technical and conforming amendments.

*Section 312. Conforming Amendments Relating to Chief Financial Officer of the National Intelligence Authority*

- Makes technical and conforming amendments.

Subtitle B—Transfers and Terminations

*Section 321. Transfer of Office of Deputy Director of Central Intelligence for Community Management*

- This section transfers the DCI's Community Management Staff to the Office of the NID.

*Section 322. Transfer of National Counterterrorism Executive*

- This office is transferred to the Office of the NID.

*Section 323. Transfer of Terrorist Threat Integration Center*

- This office is transferred to the NCTC.

*Section 324. Termination of Certain Positions Within the Central Intelligence Agency*

- This section terminates the positions of (1) Deputy Director of Central Intelligence for Community Management; (2) Assistant Director of Central Intelligence for Collection; (3) Assistant Director of Central Intelligence for Analysis and Production; and (4) Assistant Director of Central Intelligence for Administration.

Subtitle C—Other Transition Matters

*Section 331. Executive Schedule Matters*

- This section sets the pay for the following individuals according to the Executive Schedule:

NID—Level I.

NCTC Director and Deputy NIDs—Level II.

Director of the Central Intelligence Agency—Level III.

*Section 332. Preservation of Intelligence Capabilities*

- This directs the NID, DCI, and the Secretary of Defense to take appropriate actions to preserve the intelligence capabilities during the establishment of this act.

*Section 333. Reorganization*

- This section provides the National Intelligence Director the authority (with the approval of the President and after consultation with the departments or agencies concerned) to allocate or reallocate functions among the officers of the NIP and establish, consolidate, alter, or discontinue organizational units within the NIP. Any use of this authority would have to be consistent with the law. The NID shall also provide notice to Congress, including the rationale for the action, and then have the reorganization plan approved by the intelligence and government operations committees in both the Senate and House of Representatives.

*Section 334. National Intelligence Director Report on Implementation of Intelligence Community Reform*

- This section requires the NID to report to Congress on the implementation of this act one year after the date of its enactment.

*Section 335. Comptroller General Reports on Implementation of Intelligence Community Reform*

- This section requires the Comptroller General of the GAO to issue an implementation progress report two years after the enactment of the act and issue interim reports as he finds appropriate. These reports are to provide Congress with (1) an overall assessment of the progress made in the implementation of this Act (and the amendments made by this Act), (2) a description of any delays or other short-falls in the implementation of this Act that have been identified by the GAO, and (3) recommendations for additional legislative or administrative action that the Comptroller General considers appropriate.

*Section 336. General References*

- Makes technical and conforming amendments.

Subtitle D—Effective Date

*Section 341. Effective Date*

- This Act will take effect 180 days after its enactment, unless the President provides that one or more provisions of this Act shall take effect earlier.

Subtitle E—Other Matters

*Section 351. Severability*

- This section is a standard severability clause.

*Section 352. Authorization of Appropriations*

- This authorizes appropriations for FY 2005 to carry out this act.

## VI. ESTIMATED COST OF LEGISLATION

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington, DC, September 24, 2004.

Hon. SUSAN M. COLLINS,  
 Chairman, Committee on Governmental Affairs,  
 U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2840, the National Intelligence Reform Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Raymond J. Hall.

Sincerely,

ELIZABETH ROBINSON  
 (For Douglas Holtz-Eakin, Director).

Enclosure.

*S. 2840—National Intelligence Reform Act of 2004*

Summary: S. 2840 would establish the National Intelligence Authority (NIA) to unify and strengthen intelligence activities of the U.S. government, including foreign intelligence and counterintelligence activities. The legislation would transfer some existing organizations, specifically the Office of the Deputy Director of Central Intelligence for Community Management and the Terrorist Threat Integration Center, to the NIA. S. 2840 also would establish a National Counterterrorism Center and one or more national intelligence centers within the NIA. Finally, the legislation would direct the President to establish a “trusted information network” to promote sharing of intelligence and homeland security information among all relevant federal departments, state and local authorities, and relevant private-sector entities, and to establish a national intelligence reserve corps.

CBO estimates that implementing S. 2840 would cost about \$700 million over the 2005–2009 period, assuming appropriation of the necessary amounts. That total does not include the costs associated with implementing provisions dealing with the national intelligence reserve corps. CBO cannot predict when a national emergency would occur, but costs for the proposed reserve corps would likely be insignificant in most years. Enacting S. 2840 would not affect direct spending or receipts.

S. 2840 contains intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO expects the cost of complying with those mandates would be small and well below the thresholds established in that act (\$60 million for intergovernmental mandates and \$120 million for private-sector mandates in 2004, adjusted annually for inflation).

Estimated cost to the Federal Government: The following table summarizes the estimated net budgetary impact of establishing the National Intelligence Authority (including the costs of building a new headquarters facility to house the NIA and administering the organization) and implementing certain activities authorized by the bill. The costs of this legislation fall within budget functions 050 (national defense) and 750 (administration of justice).

	By fiscal year, in millions of dollars—				
	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Create the National Intelligence Authority:					
Estimated Authorization Level .....	15	210	50	80	60
Estimated Outlays .....	10	35	80	135	130
Establish Information-Sharing Network:					
Estimated Authorization Level .....	50	51	52	53	54
Estimated Outlays .....	25	50	52	53	54
Other Authorizations <sup>1</sup> :					
Estimated Authorization Level .....	10	15	15	15	15
Estimated Outlays .....	10	15	15	15	15
Total Changes:					
Estimated Authorization Level .....	75	276	117	148	129
Estimated Outlays .....	45	100	147	203	199

<sup>1</sup>The estimate does not include the costs associated with establishing the national intelligence reserve corps. Any such costs would be insignificant in most years and CBO has no basis for predicting when a national emergency would occur.

**Basis of estimate:** CBO estimates that implementing S. 2840 would cost about \$700 million over the 2005–2009 period, assuming appropriation of the necessary funds. These costs are in addition to those that would be incurred by the Office of the Deputy Director of Central Intelligence for Community Management and the Terrorist Threat Integration Center under current law. The estimated costs include expenses to establish, house, and administer the new intelligence authority, carry out new information-sharing activities in 2005 specifically authorized in the bill, and implement other specified programs, such as improving intelligence training programs and establishing a scholarship program. The estimate does not include the costs associated with establishing the national intelligence reserve corps. Any such costs would be insignificant in most years, and CBO has no basis for predicting when a national emergency would occur.

For purposes of this estimate, CBO assumes that the bill will be enacted by the end of the calendar year and that necessary funds will be appropriated for each fiscal year. The estimated costs of implementing the bill are based on limited information obtained about the affected organizations and on the staffing levels and administrative expenses of other federal agencies.

#### *Create the National Intelligence Authority*

CBO estimates that establishing, housing, and administering the new authority would cost about \$390 million over the 2005–2009 period.

**Costs for New NIA Staff and Interim Office Space.** The bill would transfer the Office of the Deputy Director of Central Intelligence for Community Management (identified as the Intelligence Community Management Account within the budget) and the Terrorist Threat Integration Center (TTIC) to the NIA.

The Intelligence Community Management Account (ICMA) was established by Congressional direction to provide resources that directly support the Director of the Central Intelligence Agency (CIA) and the intelligence community as a whole in coordinating cross-program activities. Because part of its budget is classified, CBO does not know the overall size of this organization. Unclassified budgets for the ICMA indicate that the office has a staff of about 300 people who develop the National Foreign Intelligence Program budget, oversee research and development activities, and develop

intelligence plans and requirements, but the Congress also authorizes and appropriates funds for additional staff in the classified portion of the intelligence budget.

Similarly, CBO has no budget information on the TTIC, but public information released by the White House indicates that the center opened in May 2004 with a staff of about 60 people working alongside the counterterrorism offices of the Federal Bureau of Investigation and the CIA. That same information indicates that the Administration expects to eventually staff the TTIC with between 200 and 300 people to serve as the hub for all intelligence regarding terrorist threats.

CBO expects that the NIA will require additional staff to perform its authorized functions above the staff transferred from the ICMA and the planned staff for the TTIC. Because much of the detailed information regarding the organization, staffing levels, and budgets of the intelligence community are classified at a level above clearances held by CBO employees, CBO has used information about staff requirements from similar organizations within the Department of Defense, the Department of Homeland Security, and other federal agencies to attempt to estimate the number of additional staff that might be needed by the NIA. Based on that analysis, CBO estimates that the NIA might need to hire around 300 new staff including appointees such as principal and deputy directors, key managers such as a general counsel and an inspector general, personnel to perform administrative functions such as policy development and budget and finance activities, and personnel for the National Counterterrorism Center and one or more national intelligence centers. CBO expects that many of these new hires would be staff transferred from other organizations within the intelligence community but that those other organizations would eventually fill many of the vacated positions within their organizations over about four years following enactment of this legislation.

Based on information about the staffing levels and costs for the administrative offices of the Department of Defense, the Department of Homeland Security, and other agencies, CBO estimates that the personnel and related expenses to provide centralized leadership, coordination, and support and analytical services for the National Intelligence Authority would eventually cost around \$45 million annually, but that costs would be much lower in the first few years as positions are filled. CBO estimates that such costs would be minimal in the first year and total about \$130 million over the 2005–2009 period.

Section 121 would prohibit the Office of the National Intelligence Director from being co-located with any other element of the intelligence community after October 1, 2006. Until that time, CBO assumes that the director's office and associated staff would occupy the space currently used by the Intelligence Community Management staff. After October 1, 2006, CBO assumes that the office would move to new office space in a building owned by the General Services Administration (GSA) until a new building can be built for its use. CBO estimates that initially GSA would need to renovate and furnish office space for the NIA staff. (After 2009, CBO expects that these positions would be relocated to the new permanent NIA headquarters.) CBO estimates that the GSA rental payments would reach nearly \$20 million a year and total about \$40 million

over the 2007–2009 period. Additional costs to purchase computers, network equipment, and supplies in the first few years following the relocation into the GSA-owned building also would be significant. CBO estimates that those costs would total \$30 million over the 2007–2009 period.

*Design, Construct, and Maintain a New Federal Building.* As mentioned earlier, section 121 would prohibit the Office of the National Intelligence Director from being co-located with any other element of the intelligence community after October 1, 2006. Although the NIA could choose to buy or lease an existing building, CBO assumes that GSA would construct a new building on land already owned by the federal government to serve as the headquarters of the NIA because of the need for a building that meets Level-V security standards and the mission of the new authority.

Based on information provided by GSA about recent federal office building projects, CBO estimates that planning and design of the new headquarters would cost \$15 million over the 2005–2006 period, and that constructing the facility to house NIA employees would cost about \$175 million over the 2006–2009 period. (An additional \$20 million in spending would occur in 2010 to complete construction of the new building.) CBO assumes that the headquarters would be located on property already owned by the federal government in the Washington, D.C., area. If GSA had to buy land for the building site, costs would be higher. CBO assumes that construction of the new facility would not start until sometime in late 2006 and would be completed after 2009. Therefore, CBO estimates that no costs associated with furnishing, equipping, and maintaining the new space would be incurred during the 2005–2009 period nor would there be costs to relocate NIA staff from the interim offices to the new headquarters over that period.

#### *Other Program Authorizations*

S. 2840 would authorize the President and the NIA to initiate or enhance several programs within the intelligence community. Based on information from the Administration and on the costs of other similar efforts, CBO estimates that those efforts would cost about \$35 million in 2005 and total \$305 million over the 2005–2009 period, subject to appropriation of the necessary amounts.

*Information Sharing.* Section 206 would direct the President to establish a “trusted information network” to promote sharing of intelligence and homeland security information among all relevant federal departments, state and local authorities, and relevant private-sector entities. That section also would create an executive council chaired by the Director of the Office of Management and Budget to implement and manage the network and create an advisory board to advise the President and the executive council on policy, technical, and management issues related to the design and operation of the network. Finally, the section would authorize the appropriation of \$50 million in fiscal year 2005 and such sums as may be necessary for each subsequent year for this effort. For this estimate, absent an understanding of the information networks in place today within the intelligence community, the requirements for establishing such an information-sharing network, and the timelines needed to do so, CBO has projected the \$50 million authorized for 2005 over the 2006–2009 period with annual adjust-

ments for anticipated inflation. Thus, CBO estimates implementing this section would cost about \$235 million over the 2005–2009 period. CBO notes that the Department of Defense recently completed the purchase of equipment for upgrading their intelligence network to improve the sharing of national security intelligence, surveillance and reconnaissance, and command and control information sharing at a cost of nearly \$1 billion.

National Intelligence Reserve Corps. Section 116 would allow the NIA to establish a national intelligence reserve corps consisting of former employees of the intelligence community who would be eligible for temporary reemployment during period of national emergency. Under the bill, the total number of personnel in this reserve corps could not exceed 200 individuals. Members of the reserve corps would receive transportation and per diem when participating in any training, and members who are retired federal employees would be allowed to collect both pay and retirement benefits during the period of reemployment. CBO cannot predict when a national emergency might occur. In most years, CBO expects that the cost associated with reserve corps would be insignificant—mostly covering a limited training time and per diem and transportation. Even in an emergency, if all members of the reserve corps were reemployed for six months, the costs would total only about \$10 million.

Improving Intelligence Capabilities of the Federal Bureau of Investigation (FBI). Section 204 would direct the Director of the FBI to continue to improve the intelligence capabilities of the bureau and to develop and maintain a national intelligence workforce within the FBI. Today, the FBI spends about \$30 million on counterterrorism training. Since 2002, more than 1,500 agents have been added to the bureau's staff to meet the counterterrorism mission, an increase of about 20 percent. In addition, since the events of September 11, 2001, the FBI has partnered with other intelligence agencies to provide training in counterterrorism and counterintelligence to its staff, and it plans to increase that training in the future. Assuming that implementation of this section would result in more training than currently planned, CBO estimates that the cost for this additional training would total \$3 million in 2005 and almost \$30 million over the 2005–2009 period, a 20 percent increase over current spending levels.

Privacy and Civil Liberties Oversight Board. Section 211 would establish a Privacy and Civil Liberties Oversight Board within the Executive Office of the President to advise the President and Executive Branch on privacy concerns while implementing new legislation. Based on the budgets of other advisory panels, CBO estimates that the costs to operate this panel would be about \$1 million in 2005 and would total \$10 million over the 2005–2009 period.

Intelligence Community Scholarship Program. Section 152 would authorize the NIA Director to establish a scholarship program for individuals designed to recruit and prepare students for civilian careers in the intelligence community to meet the critical needs of the intelligence community agencies. Assuming that the NIA would provide about 300 scholarships each year, CBO estimates that the costs of these scholarships would average about \$6 million a year and total about \$30 million over the 2005–2009 period.

Security Clearances. Section 115 would establish uniform procedures throughout the federal government for granting security clearances and establish a single agency for conducting all security clearance investigations. Currently, the Office of Personnel Management (OPM) conducts the investigations for 60 percent of the clearances granted by the federal government. By early next year, that figure will grow to 90 percent when it takes over the investigations for the Department of Defense. Assuming that the resources for the 20 agencies for which OPM does not currently conduct investigations are transferred to OPM, CBO estimates that there would be no change in overall government spending if this provision is enacted.

Intergovernmental and private-sector impact: This bill would impose both intergovernmental and private-sector mandates because it would create two new federal entities with the power to subpoena information. State, local, and tribal governments, and entities in the private sector, if subpoenaed by the Inspector General of the National Intelligence authority or the Privacy and Civil Liberties Oversight Board, would be required to provide testimony, documents, or other evidence. CBO expects that the Inspector General and the Oversight Board would use their subpoena power sparingly and that the costs to comply with such subpoenas would not be significant. CBO estimates that the costs to public and private entities would be small and well below the annual thresholds established in UMRA (\$60 million for intergovernmental mandates and \$120 million for private-sector mandates in 2004, adjusted annually for inflation).

The remaining provisions of the bill contain no mandates as defined in UMRA and would impose no costs on state, local, or tribal governments, or entities in the private sector.

Estimate Prepared by: Federal Costs: Raymond J. Hall; Impact on State, Local, and Tribal Governments: Melissa Merrill; and Impact on the Private Sector: David Arthur.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

## VII. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. The enactment of this legislation will result in intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), but the Congressional Budget Office expects the cost of complying with those mandates would be small and well below the thresholds established in that act (\$60 million for intergovernmental mandates and \$120 million for private-sector mandates in 2004, adjusted annually for inflation.)



## VIII. ADDITIONAL VIEWS

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### ADDITIONAL VIEWS OF SENATORS SPECTER AND SHELBY

We believe that the National Intelligence Reform Act of 2004 (S. 2840 favorably reported from the Government Affairs Committee, includes several important provisions, particularly the creation of a National Intelligence Director (NID) with strong budget authority. The budget authority contained in S. 2840, if retained following Senate floor action and conference committee, would place the newly-created NID in a stronger posture vis-à-vis the intelligence community entities than exists under current law and practice.

However, S. 2840 does not give the NID additional authorities that will be required to provide the unity of leadership and accountability necessary for meaningful intelligence reform. In particular, we believe strongly that the NID must have day-to-day operational control of all elements of the Intelligence Community performing national missions (including the Central Intelligence Agency, National Reconnaissance Office, National Security Agency, and National Geospatial-Intelligence Agency).

We believe that clear lines of authority between the NID and our national intelligence agencies, extending beyond budgetary control, are critical to our success in countering 21st century national security threats. To fulfill the historic intent of the National Security Act of 1947, the Congress must provide the NID—as head of the intelligence community—the additional authorities necessary to match the position’s responsibilities and to ensure accountability. This additional authority and responsibility will eliminate any uncertainty that the NID is in charge and is accountable.

As such, even if S. 2840 were to be presented to the President in its current form, its failure to provide for NID day-to-day supervision, direction and control over the major national intelligence entities represents a significant inadequacy and would provide insufficient authority to address the escalating cycle of intelligence failures that our intelligence community has suffered over the past decade. Alternatively, if the budgetary authority currently contained in S. 2840 is weakened prior to presentment, we fear that the NID will be left with meaningless control over the intelligence community and the country will be far less secure as a result.

ARLEN SPECTOR.  
RICHARD SHELBY.

## ADDITIONAL VIEWS OF SENATOR LEVIN

Today, the greatest threats facing our national security come from terrorists. We are less likely to be attacked by nations and armies with tanks and missiles, and more likely to be attacked by terrorists with bombs hidden in trucks or strapped to their bodies. Since terrorists are not deterred by the threat of their own destruction, and because terrorist networks are so diffuse, accurate intelligence is absolutely essential to preventing attacks.

The release of the 9/11 Commission Report has fueled a debate about how our intelligence community should be reformed to better respond to this threat. This is a debate we need to have and the country is indebted to the 9/11 Commission for its work in setting us on the course toward reform. Chairman Collins and Ranking Member Lieberman also deserve tremendous credit for their tireless work in leading this undertaking at the Governmental Affairs Committee. They have approached Intelligence Community reform with the seriousness and sense of urgency the subject demands. The Committee reported bill reflects their commendable efforts. The Senate Select Committee on Intelligence (SSCI) and the Senate Armed Services Committee have also held a number of hearings on intelligence failures and have built a strong record for reform.

The Governmental Affairs Committee bill is based, in significant ways on the recommendations of the 9/11 Commission. We need to consider carefully the recommendations of the 9/11 Commission and take action to correct the deficiencies they identified which impaired our ability to detect and act against those terrorists. At the same time, we should be mindful that these issues are complex. We should take the time necessary to understand all of the issues and develop reforms.

### THE NEED FOR INDEPENDENT AND OBJECTIVE INTELLIGENCE

The Commission's report provided us many useful recommendations for improving the structure of our intelligence agencies. But, in taking on structural reform, we must not lose sight of the fundamental problem that was demonstrated not by the pre-9/11 intelligence failures but by the pre-Iraq War intelligence failures.

The massive intelligence failures before the Iraq War were of a totally different kind from the 9/11 failures. As described in the bipartisan 500-page SSCI report, to a significant degree, the failures were the result of the CIA shaping and manipulating intelligence. The CIA interpreted and communicated intelligence information in manner intended to, in my opinion, and for no other discernible purpose than to, tell the administration what it thought the administration wanted to hear about Iraq possessing weapons of mass destruction and, at one crucial moment, about Iraq having a close relationship with al-Qaeda. The scope and seriousness of this prob-

lem of manipulated intelligence to serve policy goals cannot be overstated. At the same time, there is no evidence that a lack of DCI authority over intelligence budgets or personnel contributed to those failures.

The problem of manipulated and politicized intelligence is not new. Forty years ago, Secretary of Defense McNamara invoked classified communications intercepts to support passage of the Gulf of Tonkin Resolution, which was used by President Johnson as the legislative foundation for expanding the war against Vietnam.

According to John Prados, an analyst at the National Security Archive, Secretary McNamara used the intercepts as a “trump card during the 1964 hearings to silence doubters.” According to Prados, McNamara told Congress that “intelligence reports from a highly classified and unimpeachable source reported that North Vietnam was making preparation to attack our destroyers,” and later that “the attack was underway,” and finally that “the North Vietnamese lost two ships in the engagement.”

The intercepts later proved dubious, but President Johnson had already made the decision to escalate the conflict. Intelligence was misused to support the Gulf of Tonkin Resolution, and in turn, to support the President’s decision.

Director of Central Intelligence William Casey heavily manipulated intelligence during the Iran-Contra period. The bipartisan Iran Contra Report set forth the evidence that Director Casey “misrepresented or selectively used available intelligence to support the policy he was promoting.”

History repeated itself with the pre-war Iraq intelligence. Before the war, top administration officials asserted that Saddam Hussein had weapons of mass destruction and had links to the al Qaeda terrorists who had attacked us on 9/11. For instance, in December 2001 Vice President Cheney said:

\* \* \* it’s been pretty well confirmed that [9/11 al-Qaeda hijacker Mohammad Atta] did go to Prague and he did meet with a senior official of the Iraqi intelligence service in Czechoslovakia last April, several months before the attack.—(Vice President Cheney, Meet the Press, December 9, 2001)

The President himself said in March of 2002: “[Saddam Hussein] possesses the world’s most dangerous weapons.” (President Bush, Press Conference, March 22, 2002)

The Vice President in August of 2002 stated the following:

But we know that Saddam has resumed his efforts to acquire nuclear weapons. Many of us are convinced that Saddam will acquire nuclear weapons fairly soon.—(Vice President Cheney, Speech to the VFW’s 103rd National Convention, August 26, 2002)

National Security Advisor Rice said the following on September 8, 2002:

We do know that there have been shipments going \* \* \* into Iraq, for instance, of aluminum tubes that really are only suited to—high-quality aluminum tools that are only really suited for nuclear weapons programs, centrifuge pro-

grams.—(National Security Advisor Rice, Late Edition, September 8, 2002)

A few weeks later, Secretary of Defense Rumsfeld said that:

Very likely all they need to complete a weapon is fissile materials—and they are, at this moment, seeking that material—both from foreign sources and the capability to produce it indigenously.—(Secretary Rumsfeld, Testimony Before the Senate Armed Services Committee, September 19, 2002)

On September 19th, the President again said that Iraq has WMD (President Bush, Remarks at OHS Complex, September 19, 2002), and before the Senate Armed Services Committee on the same day, Secretary Rumsfeld said that Saddam Hussein “has, at this moment, stockpiles of chemical and biological weapons, and is pursuing nuclear weapons.”

A week later President Bush made the unqualified link between al-Qaeda and Saddam Hussein when he said “you can’t distinguish between al-Qaeda and Saddam when you talk about the war on terror.” (President Bush, Photo Opportunity, September 25, 2002)

These leadership statements leading up to and including September 2002, were unqualified, unconditional and certain. The qualifications and more cautious words in Intelligence Community reports, estimates and findings on these subjects were ignored by the Administration. The Intelligence Community began to manipulate and shape the intelligence to reflect and support the certainty of the administration’s public statements.

In July 2004, the Senate Select Committee on Intelligence issued a 500-page unanimous report setting out dozens of instances where the CIA or its leaders made statements about Iraq’s WMD and, to a lesser extent, links to al-Qaeda which were significantly more certain than the underlying intelligence reporting and than their earlier findings.

The key finding and the first overall conclusion of the SSCI report is that “Most of the major key judgments in the Intelligence Community’s October 2002 National Intelligence Estimate (NIE), Iraq’s Continuing Programs for Weapons of Mass Destruction, either overstated or were not supported by, the underlying intelligence reporting.”

And relative to the alleged relationship between Saddam Hussein and al-Qaeda, the following event is illustrative of the CIA shaping intelligence in that area too. President Bush said on September 28, 2002, that “each passing day could be the one on which the Iraqi regime gives anthrax or VX nerve gas or someday a nuclear weapon to a terrorist group.” On October 7, DCI Tenet sent a letter declassifying CIA intelligence which indicated Iraq was unlikely to provide WMD to terrorists or al Qaeda, and called such a move an “extreme step,” a very different perspective from that of the President. But the very next day, Tenet told the New York Times that there was “no inconsistency” between the views in the letter and the President’s views on the subject. His statement was flatly incorrect, but his effort to minimize the inconsistency was an attempt to support the Administration.

There are many other examples. On February 11, 2003, DCI Tenet publicly stated, as though it were fact, that Iraq “has provided training in poisons and gases to two al-Qaida associates.” However, in his then-classified testimony from September 17, 2002, which was consistent with the underlying intelligence, Director Tenet had said that the information on training was “from sources of varying reliability.” The underlying intelligence also acknowledged that the information was “at times contradictory.” As the Intelligence Committee report makes clear, Tenet’s public testimony could lead people to believe incorrectly “that the CIA believed the training had definitely occurred.”

At a hearing in February of this year, I asked Director Tenet about the alleged meeting between 9/11 hijacker Mohammed Atta and an Iraqi intelligence officer in Prague in April 2001. He told me that the CIA had “not gathered enough evidence to conclude that it happened” and that “I don’t know that it took place. I can’t say that it did.” What he neglected to say was that the CIA did not believe the meeting had happened, a fact he finally acknowledged publicly in July, when he wrote that the CIA was “increasingly skeptical that such a meeting occurred,” and that there was an “absence of any credible information that the April 2001 meeting occurred.” The SSCI report notes that the “CIA judged that other evidence [besides the one Czech report] indicated that these meetings likely never occurred.”

In all of these cases, and many others, where public statements of the CIA varied from the classified intelligence in the lead-up to the war, the Iraqi threat became clearer and more dire and the presence of WMD more certain. In public statements and reports, the CIA had become effectively a political arm of the White House.

According to Bob Woodward’s book, *Plan of Attack*, after the Intelligence Community’s case regarding Iraqi WMD was presented to the President in the Oval Office on December 21st, 2002:

Bush turned to Tenet. “I’ve been told all this intelligence about having WMD and this is the best we’ve got?”

From the end of one of the couches in the Oval Office, Tenet rose up, threw his arms in the air. “It’s a slam-dunk case!” the director of central intelligence said.

Bush pressed. “George, how confident are you?”

Tenet, a basketball fan who attended as many home games of his alma mater Georgetown University as possible, leaned forward and threw his arms up again. “Don’t worry, it’s a slam dunk!”

As we know now—and as Director Tenet should have known then—the case was anything but a slam dunk.

Many experts, including many of the witnesses that have appeared before the Governmental Affairs Committee, the Senate Select Committee on Intelligence and the Senate Armed Services Committee during hearings on Intelligence Community reform, have commented on the importance of promoting the independence of our intelligence agencies and the objectivity of intelligence analysis by insulating it from political pressure.

In his memoir *Turmoil and Triumph*, Former Secretary of State George Shultz said:

The CIA should have nothing to do with policy. You have to keep objectivity in analyses and;

The DCI should not be part of the policy process; heavy involvement can't help but influence you. In the policy business you develop a bias. The CIA should be objective, and if it is not, that means what you say must be discounted.

The Iran Contra Committee concluded that: "The gathering, analysis, and reporting of intelligence should be done in such a way that there can be no question that the conclusions are driven by the actual facts, rather than by what a policy advocate hopes these facts will be."

Judge William Webster, former head of the CIA, said the following before the Senate Governmental Affairs Committee on August 16, 2004:

With respect to relations with the president, while the leader of the intelligence community must be the principal advisor on intelligence to the president, he must work hard—very hard—to avoid either the reality or the perception that intelligence is being framed—read "spun"—to support a foreign policy of the administration. \* \* \* The head of the intelligence community does not need to be located in the White House, and to avoid these problems I believe he should not be.

In an August 18, 2004 Senate Select Committee on Intelligence hearing on Intelligence Community reform, Former chief weapons inspector David Kay put it this way:

Intelligence must serve the nation and speak truth to power even if in some cases elected leaders chose, as is their right, to disagree with the intelligence with which they are presented. This means that intelligence should not be part of the political apparatus or process.

That is, I think, if you move forward on NID legislation, is going to be the hardest thing to communicate, that the NID must serve the nation and the national security objectives of the nation and he serves, whoever is the president, best by giving him the unvarnished truth, which will often not be welcomed.

At that same hearing, Retired General Charles Boyd told the Committee of the enormous pressure that political appointees are under "to give the president what he wants rather than what he doesn't want, but needs." Rather than seeking a special and close relationship to the president, Boyd suggests that the standard for an intelligence director "ought to be his distance from the president, his independence of the president, his professionalism, and be respected as such."

And on September 21, 2004, eleven former government officials convened by the Center for Strategic and International Studies (CSIS), issued nine "Guiding Principles for Intelligence Reform." The CSIS group included six former Senators; two former secretaries of Defense and one Deputy Secretary of Defense; a former Director of Central Intelligence; and two former secretaries of State

(one of whom was also the National Security Advisor). In words of the CSIS 11: “When intelligence and policy are too closely tied, the demands of policymakers can distort intelligence and intelligence analysts can hijack the policy development process. It is crucial to ensuring this separation that the Intelligence Community leader have no policy role. \* \* \* A single individual with the last word on intelligence and a say in policy as well could be a dangerously powerful actor in the national security arena—using intelligence to advocate for particular policy positions, budget requests, or weapons systems that others lacked the knowledge to challenge.”

I share these concerns about the independence of our intelligence professional and the objectivity of intelligence information and I was pleased that, during consideration of intelligence reform legislation, the Governmental Affairs Committee adopted an amendment I offered to help assure that the New National Intelligence Director will be independent and produce objective intelligence.

The amendment creates a new title, the purpose of which is to promote the independence of the National Intelligence Director (NID) and the objectivity of intelligence. The amendment states explicitly that the NID is outside the Executive Office of the President and away from the politics and policy debates of that office. This is a provision that was supported by several witnesses who appeared before the GAC including former DCI’s Judge William Webster and Robert Gates.

The title also requires that the NID, the National Counterterrorism Center (NCTC), the National Intelligence Council, the Central Intelligence Agency, and other any intelligence center created by the NID, provide the President and Congress with intelligence information that is timely, objective, independent of political considerations and not shaped to serve policy goals.

The title promotes the independence of the NCTC by stating that the Director cannot be forced to ask for permission to testify before Congress or to seek prior approval of Congressional testimony or comments. This is based on authority that exists for other executive branch agencies, including the Securities and Exchange Commission, the Office of the Comptroller of the Currency, and the Federal Reserve, among others. This provision will help ensure Congress has access to the unvarnished truth.

There are times when members of Congress, even members of the intelligence Committees, are not provided timely access, or any access at all, to the intelligence information they need. The title seeks to remedy that by requiring that Congress have access to intelligence reports, assessments and estimates. It specifies that some of these documents must come to the Intelligence Committees as a matter of course and that those that do not automatically come to the Committee must be made available upon request of the Chairman or Vice Chairman, with the exception of information for which the President asserts a Constitutionally based privilege.

The first overall conclusion of the SSCI report is that “Most of the major key judgments in the Intelligence Community’s October 2002 National Intelligence Estimate (NIE), Iraq’s Continuing Programs for Weapons of Mass Destruction, either overstated or were not supported by, the underlying intelligence reporting.” The title explicitly permits Intelligence Community employees to come di-

rectly to Congress with information, even if it is classified information, that provides direct and specific evidence of a false statement to Congress or a withholding of information from Congress in any intelligence assessment, report or estimate.

In my additional views to the SSCI report on intelligence failures in Iraq, I noted that the CIA Ombudsmen said that he felt the “hammering” by the Administration on Iraq intelligence was harder than he had previously witnessed in his 32-year career with the agency. My amendment addresses such situations by adding a provision to the bill, permitting the National Intelligence Authority Ombudsman to refer serious cases of misconduct related to politicized intelligence and biased reporting to the National Intelligence Authority Inspector General for investigation.

One important proposal that could not be included in my amendment but that I am pleased Chairman Collins and Ranking Member Lieberman support was a change in the rules that govern the Senate Select Committee on Intelligence. The proposal is based on the experience of the Governmental Affairs Committee’s Permanent Subcommittee on Investigations (PSI) where the Subcommittee Chairman and Ranking Member have unique authorities to initiate inquiries and conduct investigations. The PSI has a long tradition of conducting successful bipartisan investigations and the authorities vested in the Chairman and Ranking Member have a lot to do with this track record. Providing similar authorities to the Chairman and Vice-Chairman of the Senate Select Committee on Intelligence improve oversight of the intelligence community. Enhanced Congressional oversight was a primary recommendation of the 9/11 Commission.

The bottom line is that terrorism is our number one threat and intelligence is our most essential tool to deal with that threat. Before we simply create a stronger National Intelligence Director we must take steps to ensure that the person serving in that position, indeed our entire Intelligence Community, are better equipped to provide objective, independent intelligence analyses. A National Intelligence Director must not be a more powerful “yes man” for the Administration in power. Our security depends on objective, independently arrived at intelligence.

#### MILITARY PERSONNEL TRANSFER AUTHORITY

I have a number of reservations about some provisions of the GAC bill because they could potentially make us less secure by needlessly confounding our military capability to fight the war on terror or any other war.

For example, the bill would grant authority for the NID to move military personnel within the agencies and activities that fall within the NID’s jurisdiction, the National Intelligence Program (NIP).

However, while the bill places all of the activities, including budget execution activities, of the National Security Agency (NSA), the National Reconnaissance Office (NRO), and the National Geospatial-Intelligence Agency (NGA)—combat support agencies of the Department of Defense—within the NIP and under the NID’s jurisdiction, the day-to-day operations of these agencies are left within the Department of Defense. These agencies, as well as the Defense Intelligence Agency and the military departments, employ



thousands of military personnel who provide direct daily support to the military for operations, in places such as the Joint Staff in the Pentagon and the combatant commands that are responsible for directing combat and counterterrorist operations in the field.

Providing personnel transfer authority to the NID in these circumstances could inadvertently result in the transfer of military personnel who are providing critical support to military (including counterterrorist) operations, and thus in the loss of critical support to those operations. Unilateral personnel moves by the NID could potentially hamper our military forces' ability to fight terrorism on the front lines overseas. It is not enough to require consultation, as the bill provides, the National Intelligence Director should be required to obtain the concurrence of the heads of departments and agencies from which personnel might be transferred.

Furthermore, military personnel have their own unique career path procedures and requirements. It is possible that if a member of the military is transferred out of their assigned agency and into a different assignment, it could detract from their career path options. So we must be careful not to establish a personnel transfer authority that would inadvertently either diminish the ability of our armed forces to fight terrorists, or to impede military personnel in their normal career paths.

#### ESTABLISHING INTELLIGENCE COLLECTION REQUIREMENTS AND ANALYSIS PRIORITIES

There is language in this bill that would assign the responsibility to the NID to "establish the requirements and priorities to govern the collection, analysis and dissemination of national intelligence," and to "establish collection and analysis requirements for the intelligence community, determine collection and analysis priorities, manage collection and analysis tasking \* \* \*" This language poses several potential problems in terms of independence and objectivity of intelligence.

First, with respect to tasking collection of intelligence, the 9/11 Commission Report notes that the NID should support the consumers of intelligence (the customers), such as the President and the Secretaries of Defense, State, Homeland Security and the Attorney General. The "customers" should set requirements, not the "provider" (the NID). If the NID "establishes requirements" for collection of intelligence, that suggests that the members of the Intelligence Community would not be able to establish their own collection requirements, based on their assigned tasks and missions, and with the NID serving as the arbiter of which collection priorities will be met where there are inadequate resources. That is how collection tasking is now managed on an interagency basis, with a senior Director of Central Intelligence representative chairing the collection tasking meetings. It is a system that appears to work well.

Second, with respect to establishing the requirements and priorities for analysis, and managing the tasking of analysis, this may have an inadvertent and undesirable outcome. Vesting in the NID the authority to manage analysis tasking would give the NID the power to stifle components of the intelligence community from providing alternative analysis when that analysis doesn't conform to

the accepted view. The NID could assign a multitude of analytic tasks, give them high priority and effectively preclude an intelligence component from conducting competitive analysis that it believes is important and which provides alternative views, such as the Department of Energy intelligence offices analyzing the intended use of aluminum tubes that Iraq was trying to acquire; or the National Air and Space Intelligence Center analyzing the Iraqi Unmanned Aerial Vehicle program; or the State Department's Bureau of Intelligence and Research analyzing claims that Iraq was trying to obtain uranium from Africa. This authority, as stated, could lead to more "group think" and have a chilling effect on competitive analysis which all agree is so critical to objective intelligence.

The group of former government officials convened by CSIS made a number of relevant comments in this regard: "The best analysis emerges from a competitive environment where different perspectives are welcomed and alternative hypotheses are encouraged. Intelligence reform must institutionalize these traits in the analytical process. To preserve their independence, analysts must be insulated from policy and political pressure." They also, most perceptively observed that: "Intelligence Community reform must not rob Cabinet secretaries of their own ability to assess intelligence by centralizing the bulk of assessment resources; the secretaries must be able to turn to their own analysts for independent perspective and be able to task the Intelligence Community leader for input to the policymaking process."

#### DEFINITION OF THE NATIONAL INTELLIGENCE PROGRAM

There is no perfectly clear line between "national" intelligence and intelligence that supports joint military operations or otherwise supports military requirements. Some "national" systems provide essential support to the military, and some military systems provide intelligence for national needs. The military is the largest consumer and producer of intelligence, and it has needs for intelligence on a 24-hour basis to support military operations around the world. The challenge in reforming the Intelligence Community is to ensure that the needs of national customers and military customers are both met adequately. This bill consolidates the bulk of the intelligence assets under the National Intelligence Director in a way that may make it difficult to ensure adequate intelligence support to the military. As the CSIS 11 stated, "Any successful intelligence reform must respect the military's need to maintain a robust organic tactical intelligence capability and to have rapid access to national intelligence assets and information."

The bill reported by the Committee contains a definition of the National Intelligence Program (NIP) that may not meet this test, and thus may have harmful unintended consequences. The underlying draft bill said that any program, project or activity of the military departments (namely, the Army, Navy, Air Force and Marines) to acquire intelligence "solely" for the planning and conduct of "tactical" military operations were not part of the NIP.

That definition was too narrow because it did not include any activities of the Defense Intelligence Agency (since it is not a military department), and because numerous military intelligence activi-

ties—like those of the Joint Military Intelligence Program—are not “solely” for “tactical” military operations. By excluding such activities from the definition, they would have been included in the National Intelligence Program, even though they might support military operations 90 percent of the time.

That language was changed in committee to broaden the definition of what is not included in the NIP, so that more elements of the Joint Military Intelligence Program that are run by either the military departments or the Defense Intelligence Agency, are not included within the National Intelligence Program. By adopting this change, the Committee took an important step in the right direction.

However, I am concerned that, by continuing to include those Defense Intelligence Agency programs which happen to be funded through the National Foreign Intelligence Program, the bill still may go too far in providing the NID control over intelligence programs and activities that support primarily military operations, and placing them outside the effective control of the military and the Defense Department.

I intend to work with the Senate to address these and other concerns when the Senate considers this legislation.

We all share a common objective: to improve our intelligence system so that it enhances our national security. While we want to establish a strong manager of the Intelligence Community, we should not do so at the expense of needed intelligence support to the military forces that are fighting the war against terrorists both overseas and here at home.

CARL LEVIN.

## IX. CHANGES TO EXISTING LAW

Pursuant to the requirements of paragraph 12 of rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statutes, or the part or section thereof, to be amended or replaced (existing law proposed to be omitted is indicated by brackets, new material is printed in italic, and existing law in which no change is proposed is shown in roman):

### **TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES**

#### **PART III—EMPLOYEES**

##### **Subpart D—Pay and Allowances**

##### **CHAPTER 53—PAY RATES AND SYSTEMS**

##### **Subchapter II—Executive Schedule Pay Rates**

##### **§ 5312. Positions at level I**

Level I of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2 [2 USCS §§ 351 et seq.], as adjusted by section 5318 of this title:

Secretary of State.  
Secretary of the Treasury.  
Secretary of Defense.  
Attorney General.  
Secretary of the Interior.  
Secretary of Agriculture.  
Secretary of Commerce.  
Secretary of Labor.  
Secretary of Health and Human Services.  
Secretary of Housing and Urban Development.  
Secretary of Transportation.  
United States Trade Representative.  
Secretary of Energy.  
[(15)] Secretary of Education.  
Secretary of Veterans Affairs.  
Secretary of Homeland Security.  
Director of the Office of Management and Budget.  
Commissioner of Social Security, Social Security Administration.  
Director of National Drug Control Policy.  
Chairman, Board of Governors of the Federal Reserve System.  
*National Intelligence Director.*

**§ 5313. Positions at level II**

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2 [2 USCS §§ 351 et seq.], as adjusted by section 5318 of this title:

- [Director of Central Intelligence.]**
- Deputy National Intelligence Directors (5).*
- Director of the National Counterterrorism Center.*

**§ 5314. Positions at level III**

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2:

- [Deputy Directors of Central Intelligence (2).]**
- Director of the Central Intelligence Agency*

\* \* \* \* \*

**§ 5315. Positions at level IV**

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2 [2 USCS §§ 351 et seq.], as adjusted by section 5318 of this title:

- [Assistant Directors of Central Intelligence (3).]**

\* \* \* \* \*

**Subpart F—Labor-Management and Employee Relations**

**CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT**

**Subchapter III—Political Activities**

**§ 7323. Political activity authorized; prohibitions**

\* \* \* \* \*

(b)(1) An employee of the Federal Election Commission (except one appointed by the President, by and with the advice and consent of the Senate), may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a political contribution.

(2)(A) No employee described under subparagraph (B) (except one appointed by the President, by and with the advice and consent of the Senate), may take an active part in political management or political campaigns.

(B) The provisions of subparagraph (A) shall apply to—

- (i) an employee of—
  - (I) the Federal Election Commission or the Election Assistance Commission;
  - (II) the Federal Bureau of Investigation;
  - (III) the Secret Service;
  - (IV) the Central Intelligence Agency;
  - (V) the National Security Council;
  - (VI) the National Security Agency;

- (VII) the Defense Intelligence Agency;
- (VIII) the Merit Systems Protection Board;
- (IX) the Office of Special Counsel;
- (X) the Office of Criminal Investigation of the Internal Revenue Service;
- (XI) the Office of Investigative Programs of the United States Customs Service;
- (XII) the Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms; **[or]**
- (XIII) the National Imagery and Mapping Agency **[National Geospatial-Intelligence Agency]**; or
- (XIV) *the National Intelligence Authority*; or
- (ii) a person employed in a position described under section 3132(a)(4), 5372, 5372a, or 5372b of title 5, United States Code.

\* \* \* \* \*

#### **Subchapter IV—Foreign Gifts and Decorations**

#### **§ 7342. Receipt and disposition of foreign gifts and decorations**

\* \* \* \* \*

(f)(1) Not later than January 31 of each year, each employing agency or its delegate shall compile a listing of all statements filed during the preceding year by the employees of that agency pursuant to subsection (c)(3) and shall transmit such listing to the Secretary of State who shall publish a comprehensive listing of all such statements in the Federal Register.

(2) Such listings shall include for each tangible gift reported—

- (A) the name and position of the employee;
- (B) a brief description of the gift and the circumstances justifying acceptance;
- (C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift;
- (D) the date of acceptance of the gift;
- (E) the estimated value in the United States of the gift at the time of acceptance; and
- (F) disposition or current location of the gift.

(3) Such listings shall include for each gift of travel or travel expenses—

- (A) the name and position of the employee;
- (B) a brief description of the gift and the circumstances justifying acceptance; and
- (C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift.

(4)(A) In transmitting such listings for the Central Intelligence Agency, the **[Director of Central Intelligence]** *Director of the Central Intelligence Agency* may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.

(B) *In transmitting such listings for the National Intelligence Authority, the National Intelligence Director may delete the informa-*

*tion described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.*

\* \* \* \* \*

## TITLE 5—APPENDIX

### INSPECTOR GENERAL ACT OF 1978

#### **§ 8H. Additional provisions with respect to Inspectors General of the intelligence community**

(a)(1)(A) An employee of the Defense Intelligence Agency, the National Imagery and Mapping Agency [National Geospatial-Intelligence Agency], the National Reconnaissance Office, or the National Security Agency, or of a contractor of any of those Agencies, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the Department of Defense (or designee).

(B) An employee of the Federal Bureau of Investigation, or of a contractor of the Bureau, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the Department of Justice (or designee).

(C) Any other employee of, or contractor to, an executive agency, or element or unit thereof, determined by the President under section 2302(a)(2)(C)(ii) of title 5, United States Code, to have as its principal function the conduct of foreign intelligence or counterintelligence activities, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the appropriate Inspector General (or designee) under this Act [5 USCS Appx. §§ 1 et seq.] or section 17 of the Central Intelligence Agency Act of 1949 [50 USCS § 403q].

*(D) An employee of the National Intelligence Authority, an employee of an entity other than the Authority who is assigned or detailed to the Authority, or of a contractor of the Authority, who intends to report to Congress a complaint or information to the Inspector General of the National Intelligence Authority in accordance with section 141(h)(5) of the National Intelligence Reform Act of 2004.*

\* \* \* \* \*

## ETHICS IN GOVERNMENT ACT OF 1978

## TITLE I—FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL

### § 105. Custody of and public access to reports

(a) Each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the House of Representatives, and the Secretary of the Senate shall make available to the public, in accordance with subsection (b), each report filed under this title [5 USCS Appx. §§ 101 et seq.] with such agency or office or with the Clerk or the Secretary of the Senate, except that—

(1) this section does not require public availability of a report filed by any individual in *the National Intelligence Authority*, the Central Intelligence Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency [National Geospatial-Intelligence Agency], or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States, if the President finds or has found that, due to the nature of the office or position occupied by such individual, public disclosure of such report would, be [by] revealing the identity of the individual or other sensitive information, compromise the national interest of the United States; and such individuals may be authorized, notwithstanding section 104(a) [5 USCS Appx. § 104(a)], to file such additional reports as are necessary to protect their identity from public disclosure if the President first finds or has found that such filing is necessary in the national interest; and

\* \* \* \* \*

## TITLE 6—DOMESTIC SECURITY

### CHAPTER 1—HOMELAND SECURITY ORGANIZATION

#### [NATIONAL HOMELAND SECURITY COUNCIL]

#### [§ 491. National Homeland Security Council]

[There is established within the Executive Office of the President a council to be known as the “Homeland Security Council” (in this title [6 USCS §§ 491 et seq.] referred to as the “Council”).

#### [§ 492. Function]

[The function of the Council shall be to advise the President on homeland security matters.

#### [§ 493. Membership]

[The members of the Council shall be the following:

- [(1) The President.
- [(2) The Vice President.
- [(3) The Secretary of Homeland Security.



[(4) The Attorney General.

[(5) The Secretary of Defense.

[(6) Such other individuals as may be designated by the President.

**[§ 494. Other functions and activities**

[For the purpose of more effectively coordinating the policies and functions of the United States Government relating to homeland security, the Council shall—

[(1) assess the objectives, commitments, and risks of the United States in the interest of homeland security and to make resulting recommendations to the President;

[(2) oversee and review homeland security policies of the Federal Government and to make resulting recommendations to the President; and

[(3) perform such other functions as the President may direct.

**[§ 495. Staff composition**

[The Council shall have a staff, the head of which shall be a civilian Executive Secretary, who shall be appointed by the President. The President is authorized to fix the pay of the Executive Secretary at a rate not to exceed the rate of pay payable to the Executive Secretary of the National Security Council.

**[§ 496. Relation to the National Security Council**

[The President may convene joint meetings of the Homeland Security Council and the National Security Council with participation by members of either Council or as the President may otherwise direct.]

\* \* \* \* \*

**TITLE 18—CRIMES AND CRIMINAL PROCEDURE**

**PART III—PRISONS AND PRISONERS**

**CHAPTER 307—EMPLOYMENT**

**§ 4124. Purchase of prison-made products by Federal departments**

Other provisions: Purchases by Central Intelligence Agency of products of Federal Prison Industries. Act Dec. 13, 2003, P.L. 108–177, Title IV, § 404, 117 Stat. 2632, provides: “Notwithstanding section 4124 of title 18, United States Code, purchases by the Central Intelligence Agency from Federal Prison Industries shall be made only if the [Director of Central Intelligence] *Director of the Central Intelligence Agency* determines that the product or service to be purchased from Federal Prison Industries best meets the needs of the Agency.”.

## TITLE 18—APPENDIX

### CLASSIFIED INFORMATION PROCEDURES ACT

#### § 9. Security procedures

(a) Within one hundred and twenty days of the date of the enactment of this Act [enacted Oct. 15, 1980], the Chief Justice of the United States, in consultation with the Attorney General, the [Director of Central Intelligence] *National Intelligence Director*, and the Secretary of Defense, shall prescribe rules establishing procedures for the protection against unauthorized disclosure of any classified information in the custody of the United States district courts, courts of appeal, or Supreme Court. Such rules, and any changes in such rules, shall be submitted to the appropriate committees of Congress and shall become effective forty-five days after such submission.

\* \* \* \* \*

## TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

### PART II—DEPARTMENT OF JUSTICE

#### CHAPTER 31—THE ATTORNEY GENERAL

#### § 519. Supervision of litigation

Except as otherwise authorized by law, the Attorney General shall supervise all litigation to which the United States, an agency, or officer thereof is a party, and shall direct all United States attorneys, assistant United States attorneys, and special attorneys appointed under section 543 of this title in the discharge of their respective duties.

Other provisions: Intelligence and national security aspects of espionage prosecutions. Act Dec. 13, 2003, P.L. 108–177, Title III, Subtitle C, § 341(b), 117 Stat. 2616, provides: “The Attorney General, acting through the Office of Intelligence Policy and Review of the Department of Justice, and in consultation with the [Director of Central Intelligence] *National Intelligence Director*, acting through the Office of the National Counterintelligence Executive, shall establish policies and procedures to assist the Attorney General in the consideration of intelligence and national security-related equities in the development of charging documents and related pleadings in espionage prosecutions.”.

\* \* \* \* \*

**TITLE 31—MONEY AND FINANCE**

**SUBTITLE I—GENERAL**

**CHAPTER 9—AGENCY CHIEF FINANCIAL OFFICERS**

**§ 901. Establishment of agency Chief Financial Officers**

\* \* \* \* \*

(b) (1) The agencies referred to in subsection (a)(1) are the following:

- (A) The Department of Agriculture.
- (B) The Department of Commerce.
- (C) The Department of Defense.
- (D) The Department of Education.
- (E) The Department of Energy.
- (F) The Department of Health and Human Services.
- (G) The Department of Housing and Urban Development.
- (H) The Department of the Interior.
- (I) The Department of Justice.
- (J) The Department of Labor.
- (K) The Department of State.
- (L) The Department of Transportation.
- (M) The Department of the Treasury.
- (N) The Department of Veterans Affairs.
- (O) The Environmental Protection Agency.
- (P) The National Aeronautics and Space Administration.
- (Q) *The National Intelligence Authority.*

\* \* \* \* \*

**TITLE 40—PUBLIC BUILDINGS,  
PROPERTY, AND WORKS**

**Subtitle I—Federal Property and Administrative Services**

**CHAPTER 1—GENERAL**

**Subchapter II—Scope**

**§ 113. Limitations**

\* \* \* \* \*

(18) the Secretary of the Interior with respect to procurement for program operations under the Bonneville Project Act of 1937 (16 U.S.C. 832 et seq.); **[or]**

(19) the Secretary of State with respect to the furnishing of facilities in foreign countries and reception centers within the United States**[.];** or

(20) *the National Intelligence Director.*

# TITLE 50—WAR AND NATIONAL DEFENSE

## CHAPTER 15—NATIONAL SECURITY

### § 401 note

#### TABLE OF CONTENTS

#### TITLE I—COORDINATION FOR NATIONAL SECURITY

#### Sec. 101. National Security Council

##### *JOINT INTELLIGENCE COMMUNITY COUNCIL*

*SEC. 101A. (a) JOINT INTELLIGENCE COMMUNITY COUNCIL.—*

*(b) MEMBERSHIP.—The Joint Intelligence Community Council shall consist of the following:*

*(1) The National Intelligence Director, who shall chair the Council.*

*(2) The Secretary of State.*

*(3) The Secretary of the Treasury.*

*(4) The Secretary of Defense.*

*(5) The Attorney General.*

*(6) The Secretary of Energy.*

*(7) The Secretary of Homeland Security.*

*(8) Such other officers of the United States Government as the President may designate from time to time.*

*(c) FUNCTIONS.—The Joint Intelligence Community Council shall assist the National Intelligence Director in developing and implementing a joint, unified national intelligence effort to protect national security by—*

*(1) advising the Director on establishing requirements, developing budgets, financial management, and monitoring and evaluating the performance of the intelligence community, and on such other matters as the Director may request; and*

*(2) ensuring the timely execution of programs, policies, and directives established or developed by the Director.*

*(d) MEETINGS.—The Joint Intelligence Community Council shall meet upon the request of the National Intelligence Director.*

**[Sec. 102. Office of the Director of Central Intelligence]**

**[Sec. 102A. Central Intelligence Agency.]**

**[Sec. 103. Responsibilities of the Director of Central Intelligence.]**

**[Sec. 104. Authorities of the Director of Central Intelligence.]**

##### *CENTRAL INTELLIGENCE AGENCY*

*Sec. 102. (a) CENTRAL INTELLIGENCE AGENCY.—*

*(b) FUNCTION.—The function of the Central Intelligence Agency is to assist the Director of the Central Intelligence Agency in carrying out the responsibilities specified in section 103(d).*

##### *DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY*

*SEC. 103. (a) DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.—There is a Director of the Central Intelligence Agency who shall be appointed by the President, by and with the advice and consent of the Senate.*

(b) *SUPERVISION.*—The Director of the Central Intelligence Agency shall report to the National Intelligence Director regarding the activities of the Director of the Central Intelligence Agency.

(c) *DUTIES.*—The Director of the Central Intelligence Agency shall—

- (1) serve as the head of the Central Intelligence Agency; and
- (2) carry out the responsibilities specified in subsection (d).

(d) *RESPONSIBILITIES.*—The Director of the Central Intelligence Agency shall—

(1) collect intelligence through human sources and by other appropriate means, except that the Director of the Central Intelligence Agency shall have no police, subpoena, or law enforcement powers or internal security functions;

(2) correlate and evaluate intelligence related to the national security and provide appropriate dissemination of such intelligence;

(3) provide overall direction for and coordination of the collection of national intelligence outside the United States through human sources by elements of the intelligence community authorized to undertake such collection and, in coordination with other departments, agencies, or elements of the United States Government which are authorized to undertake such collection, ensure that the most effective use is made of resources and that appropriate account is taken of the risks to the United States and those involved in such collection; and

(4) perform such other functions and duties pertaining to intelligence relating to the national security as the President or the National Intelligence Director may direct.

(e) *TERMINATION OF EMPLOYMENT OF CIA EMPLOYEES.*—

(1) Notwithstanding the provisions of any other law, the Director of the Central Intelligence Agency may, in the discretion of the Director, terminate the employment of any officer or employee of the Central Intelligence Agency whenever the Director considers the termination of employment of such officer or employee necessary or advisable in the interests of the United States.

(2) Any termination of employment of an officer or employee under paragraph (1) shall not affect the right of the officer or employee to seek or accept employment in any other department, agency, or element of the United States Government if declared eligible for such employment by the Office of Personnel Management.

(f) *COORDINATION WITH FOREIGN GOVERNMENTS.*—Under the direction of the National Intelligence Director and in a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the Director of the Central Intelligence Agency shall coordinate the relationships between elements of the intelligence community and the intelligence or security services of foreign governments on all matters involving intelligence related to the national security or involving intelligence acquired through clandestine means.

**[Sec. 105. Responsibilities of the Secretary of Defense pertaining to the National Foreign Intelligence Program.]**

*Sec. 105. Responsibilities of the Secretary of Defense pertaining to the National Intelligence Program.*

\* \* \* \* \*

**[Sec. 114. Additional annual reports from the Director of Central Intelligence.]**

*Sec. 114. Additional annual reports from the National Intelligence Director.*

\* \* \* \* \*

TITLE V—ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES

**[Sec. 506. Specificity of National Foreign Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence.]**

*Sec. 506. Specificity of National Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence.*

\* \* \* \* \*

**§ 401a. Definitions**

As used in this Act:

(1) The term “intelligence” includes foreign intelligence and counterintelligence.

(2) The term “foreign intelligence” means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, **[or foreign persons, or international terrorist activities]** *foreign persons, or international terrorists.*

(3) The term “counterintelligence” means information gathered, and activities conducted, to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, **[or foreign persons, or international terrorist activities]** *foreign persons, or international terrorists.*

(4) The term “intelligence community” includes *the following*—

**[**(A) the Office of the Director of Central Intelligence, which shall include the Office of the Deputy Director of Central Intelligence, the National Intelligence Council (as provided for in section 105(b)(3) [50 USCS § 403–5]), and such other offices as the Director may designate;**]**

(A) *the National Intelligence Authority,*

(B) the Central Intelligence Agency;

(C) the National Security Agency;

(D) the Defense Intelligence Agency;

(E) the National Geospatial-Intelligence Agency;

(F) the National Reconnaissance Office;

(G) other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;

(H) the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, *and* the Department of Energy**[, and the Coast Guard];**

(I) the Bureau of Intelligence and Research of the Department of State;

(J) the Office of Intelligence and Analysis of the Department of the Treasury;

(K) the elements of the Department of Homeland Security concerned with the **analysis of intelligence information** *analysis of intelligence information, including the Office of Intelligence of the Coast Guard*; and

(L) such other elements of any **other** department or agency as may be designated by the President, or designated jointly by the **Director of Central Intelligence** *National Intelligence Director* and the head of the department or agency concerned, as an element of the intelligence community.

(5) The terms “national intelligence” and “intelligence related to the national security”—

(A) each refer to intelligence which pertains to the interests of more than one department or agency of the Government; and

(B) do not refer to counterintelligence or law enforcement activities conducted by the Federal Bureau of Investigation except to the extent provided for in procedures agreed to by the **Director of Central Intelligence** *National Intelligence Director* and the Attorney General, or otherwise as expressly provided for in this title.

**(6)** The term “National Foreign Intelligence Program” refers to all programs, projects, and activities of the intelligence community, as well as any other programs of the intelligence community designated jointly by the Director of Central Intelligence and the head of a United States department or agency or by the President. Such term does not include programs, projects, or activities of the military departments to acquire intelligence solely for the planning and conduct of tactical military operations by United States Armed Forces.

**(7)** (6) The term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

#### COORDINATION FOR NATIONAL SECURITY

### § 402. National Security Council

(a) Establishment; Presiding Officer; Functions; Composition.— There is hereby established a council to be known as the National Security Council (hereinafter in this section referred to as the “Council”).

The President of the United States shall preside over meetings of the Council: Provided, That in his absence he may designate a member of the Council to preside in his place.

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

The Council shall be composed of—

- (1) the President;
- (2) the Vice President;
- (3) the Secretary of State;
- (4) the Secretary of Defense;
- [(5) the Director for Mutual Security;
- [(6) the Chairman of the National Security Resources Board;

and]  
 (5) *the Attorney General*;  
 (6) *the Secretary of Homeland Security*; and

(7) The Secretaries and Under Secretaries of other executive departments and of the military departments, the Chairman of the Munitions Board, and the Chairman of the Research and Development Board, when appointed by the President by and with the advice and consent of the Senate, to serve at his pleasure.

(b) ADDITIONAL FUNCTIONS.—In addition to performing such other functions as the President may direct, for the purpose of more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the national security, it shall, subject to the direction of the President, be the duty of the Council—

(1) to assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power, in the interest of national security, for the purpose of making recommendations to the President in connection therewith; [and]

(2) to consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security, and to make recommendations to the President in connection therewith[.];

(3) *assess the objectives, commitments, and risks of the United States in the interests of homeland security and make recommendations to the President based on such assessments;*

(4) *oversee and review the homeland security policies of the Federal Government and make recommendations to the President based on such oversight and review; and*

(5) *perform such other functions as the President may direct.*

\* \* \* \* \*

**§ 402. National Security Council**

\* \* \* \* \*

(h) COMMITTEE ON FOREIGN INTELLIGENCE.—

(1) There is established within the National Security Council a committee to be known as the Committee on Foreign Intelligence (in this subsection referred to as the “Committee”).

(2) The Committee shall be composed of the following:

(A) The [Director of Central Intelligence] *National Intelligence Director*.

\* \* \* \* \*

(5) The Committee shall submit each year to the Council and to the [Director of Central Intelligence] *National Intelligence Director* a comprehensive report on its activities during the



preceding year, including its activities under paragraphs (3) and (4).

\* \* \* \* \*

(i) COMMITTEE ON TRANSNATIONAL THREATS.—

(1) There is established within the National Security Council a committee to be known as the Committee on Transnational Threats (in this subsection referred to as the “Committee”).

(2) The Committee shall include the following members:

(A) The [Director of Central Intelligence] *National Intelligence Director*.

\* \* \* \* \*

(j) PARTICIPATION BY DIRECTOR OF CENTRAL INTELLIGENCE.—The [Director of Central Intelligence] *National Intelligence Director* (or, in the Director’s absence, the Deputy Director of Central Intelligence) may, in the performance of the Director’s duties under this Act and subject to the direction of the President, attend and participate in meetings of the National Security Council.

\* \* \* \* \*

(j) PARTICIPATION BY DIRECTOR OF CENTRAL INTELLIGENCE.—The Director of Central Intelligence (or, in the Director’s absence, the [Deputy Director of Central Intelligence] *Principal Deputy National Intelligence Director*) may, in the performance of the Director’s duties under this Act and subject to the direction of the President, attend and participate in meetings of the National Security Council.

\* \* \* \* \*

**§ 402b. National Counterintelligence Executive**

(a) ESTABLISHMENT.—

(1) There shall be a National Counterintelligence Executive, who shall be appointed by the President.

(2) It is the sense of Congress that the President should seek the views of the Attorney General, Secretary of Defense, and [Director of Central Intelligence] *National Intelligence Director, and Director of the Central Intelligence Agency* in selecting an individual for appointment as the Executive.

(b) COMPONENT OF OFFICE OF NATIONAL INTELLIGENCE DIRECTOR.—*The National Counterintelligence Executive is a component of the Office of the National Intelligence Director under subtitle C of the National Intelligence Reform Act of 2004.*

[(b)] (c) MISSION.—The mission of the National Counterintelligence Executive shall be to serve as the head of national counterintelligence for the United States Government.

[(c)] (d) DUTIES.—Subject to the direction and control of the President, the duties of the National Counterintelligence Executive are as follows:

(1) To carry out the mission referred to in subsection (b).

(2) To act as chairperson of the National Counterintelligence Policy Board under section 811 of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103–359; 50 U.S.C. 402a), as amended by section 903 of this Act.

(3) To act as head of the Office of the National Counterintelligence Executive under section 904 [50 U.S.C. § 402c].

(4) To participate as an observer on such boards, committees, and entities of the executive branch as the President considers appropriate for the discharge of the mission and functions of the Executive and the Office of the National Counterintelligence Executive under section 904 [50 U.S.C. § 402c].

(5) *To perform such other duties as may be provided under section 131(b) of the National Intelligence Reform Act of 2004.*

\* \* \* \* \*

**§§ 402c. Office of the National Counterintelligence Executive**

(a) ESTABLISHMENT.—There shall be an Office of the National Counterintelligence Executive.

(b) HEAD OF OFFICE.—The National Counterintelligence Executive shall be the head of the Office of the National Counterintelligence Executive.

(c) LOCATION OF OFFICE.—The Office of the National Counterintelligence Executive shall be located in the [Office of the Director of Central Intelligence] *Office of the National Intelligence Director*.

\* \* \* \* \*

(e) FUNCTIONS.—Subject to the direction and control of the National Counterintelligence Executive, the functions of the Office of the National Counterintelligence Executive shall be as follows:

(1) NATIONAL THREAT IDENTIFICATION AND PRIORITIZATION ASSESSMENT.—Subject to subsection (f), in consultation with appropriate department and agencies of the United States Government, and private sector entities, to produce on an annual basis a strategic planning assessment of the counterintelligence requirements of the United States to be known as the National Threat Identification and Prioritization Assessment.

(2) NATIONAL COUNTERINTELLIGENCE STRATEGY.—Subject to subsection (f), in consultation with appropriate department and agencies of the United States Government, and private sector entities, and based on the most current National Threat Identification and Prioritization Assessment under paragraph (1), to produce on an annual basis a strategy for the counterintelligence programs and activities of the United States Government to be known as the National Counterintelligence Strategy.

(3) IMPLEMENTATION OF NATIONAL COUNTERINTELLIGENCE STRATEGY.—To evaluate on an ongoing basis the implementation of the National Counterintelligence Strategy and to submit to the President periodic reports on such evaluation, including a discussion of any shortfalls in the implementation of the Strategy and recommendations for remedies for such shortfalls.

(4) NATIONAL COUNTERINTELLIGENCE STRATEGIC ANALYSES.—As directed by the [Director of Central Intelligence] *National Intelligence Director* and in consultation with appropriate elements of the departments and agencies of the United States Government, to oversee and coordinate the production of strategic analyses of counterintelligence matters, including the pro-

duction of counterintelligence damage assessments and assessments of lessons learned from counterintelligence activities.

(5) NATIONAL COUNTERINTELLIGENCE PROGRAM BUDGET.—In consultation with the [Director of Central Intelligence] *National Intelligence Director*—

\* \* \* \* \*

(h) SUPPORT.—

(1) The Attorney General, Secretary of Defense, and [Director of Central Intelligence] *National Intelligence Director* may each provide the Office of the National Counterintelligence Executive such support as may be necessary to permit the Office to carry out its functions under this section.

(2) Subject to any terms and conditions specified by the [Director of Central Intelligence] *National Intelligence Director*, the Director may provide administrative and contract support to the Office as if the Office were an element of the Central Intelligence Agency.

\* \* \* \* \*

(1) OVERSIGHT BY CONGRESS.—The location of the Office of the National Counterintelligence Executive within the [Office of the Director of Central Intelligence] *Office of the National Intelligence Director* shall not be construed as affecting access by Congress, or any committee of Congress, to—

(1) any information, document, record, or paper in the possession of the Office; or

(2) any personnel of the Office.

(m) CONSTRUCTION.—Nothing in this section shall be construed as affecting the authority of the [Director of Central Intelligence] *National Intelligence Director*, the Director of the Central Intelligence Agency, the Secretary of Defense, the Secretary of State, the Attorney General, or the Director of the Federal Bureau of Investigation as provided or specified under the National Security Act of 1947 or under other provisions of law.

\* \* \* \* \*

**§ 403. Office of the Director of Central Intelligence**

\* \* \* \* \*

Other provisions:

“(b) PILOT PROJECT TO PROMOTE EQUALITY OF EMPLOYMENT OPPORTUNITIES FOR WOMEN AND MINORITIES THROUGHOUT THE INTELLIGENCE COMMUNITY USING INNOVATIVE METHODOLOGIES.—The [Director of Central Intelligence] *National Intelligence Director* shall carry out a pilot project under this section to test and evaluate alternative, innovative methods to promote equality of employment opportunities in the intelligence community for women, minorities, and individuals with diverse ethnic and cultural backgrounds, skills, language proficiency, and expertise.

\* \* \* \* \*

“(a) REPORT.—As soon as possible, but not later than one year after the date of the enactment of this Act, the [Director of Central Intelligence] *National Intelligence Director* shall submit to the appropriate committees of Congress a report on the intelligence les-

sons learned as a result of Operation Iraqi Freedom, including lessons relating to the following:

“(1) The tasking, collection, processing, exploitation, analysis, and dissemination of intelligence.

“(2) The accuracy, timeliness, and objectivity of intelligence analysis.

“(3) The intelligence support available to policymakers and members of the Armed Forces in combat.

“(4) The coordination of intelligence activities and operations with military operations.

“(5) The strengths and limitations of intelligence systems and equipment.

“(6) Such other matters as the Director considers appropriate.

\* \* \* \* \*

“(f) DIVERSITY PLAN.—

“(1) Not later than February 15, 2004, the Director of Central Intelligence shall submit to Congress a report which describes the plan of the Director, entitled the ‘DCI Diversity Strategic Plan’, and any subsequent revision to that plan, to increase diversity of officers and employees in the intelligence community, including the short- and long-term goals of the plan. The report shall also provide a detailed description of the progress that has been made by each element of the intelligence community in implementing the plan.

“(2) In implementing the plan, the [Director] *National Intelligence Director* shall incorporate innovative methods for recruitment and hiring that the Director has determined to be effective from the pilot project carried out under this section.

\* \* \* \* \*

**§ 403-3. Responsibilities of the Director of Central Intelligence**

\* \* \* \* \*

Other provisions:

Identification of constituent components of base intelligence budget. Act Oct. 14, 1994, P.L. 103-359, Title VI, §603, 108 Stat. 3433, provides: “The Director of Central Intelligence shall include the same level of budgetary detail for the Base Budget that is provided for Ongoing Initiatives and New Initiatives to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate in the congressional justification materials for the annual submission of the National Foreign Intelligence Program of each fiscal year.”

Periodic reports on expenditures. Act Oct. 11, 1996, P.L. 104-293, Title VIII, § 807(c), 110 Stat. 3480, provides: “Not later than January 1, 1997, the Director of Central Intelligence and the Secretary of Defense shall prescribe guidelines to ensure prompt reporting to the Director and the Secretary on a periodic basis of budget execution data for all national, defense-wide, and tactical intelligence activities.”

Database program tracking. Act Oct. 11, 1996, P.L. 104-293, Title VIII, § 807(d), 110 Stat. 3481, provides: “Not later than Janu-

ary 1, 1999, the Director of Central Intelligence and the Secretary of Defense shall develop and implement a database to provide timely and accurate information on the amounts, purposes, and status of the resources, including periodic budget execution updates, for all national, defense-wide, and tactical intelligence activities.”.

Standards for spelling of foreign names and places and for use of geographic coordinates. Act Nov. 20, 1997, P.L. 105–107, Title III, § 309, 111 Stat. 2253, provides:

“(a) SURVEY OF CURRENT STANDARDS.—

“(1) SURVEY.—The Director of Central Intelligence shall carry out a survey of current standards for the spelling of foreign names and places, and the use of geographic coordinates for such places, among the elements of the intelligence community.

“(2) REPORT.—Not later than 90 days after the date of enactment of this Act, the Director shall submit to the congressional intelligence committees a report on the survey carried out under paragraph (1). The report shall be submitted in unclassified form, but may include a classified annex.

“(b) GUIDELINES.—

“(1) ISSUANCE.—Not later than 180 days after the date of enactment of this Act, the Director shall issue guidelines to ensure the use of uniform spelling of foreign names and places and the uniform use of geographic coordinates for such places. The guidelines shall apply to all intelligence reports, intelligence products, and intelligence databases prepared and utilized by the elements of the intelligence community.

“(2) BASIS.—The guidelines under paragraph (1) shall, to the maximum extent practicable, be based on current United States Government standards for the transliteration of foreign names, standards for foreign place names developed by the Board on Geographic Names, and a standard set of geographic coordinates.

“(3) SUBMITTAL TO CONGRESS.—The Director shall submit a copy of the guidelines to the congressional intelligence committees.

“(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ‘congressional intelligence committees’ means the following:

“(1) The Select Committee on Intelligence of the Senate.

“(2) The Permanent Select Committee on Intelligence of the House of Representatives.”.

Standardized transliteration of names into the Roman alphabet. Act Nov. 27, 2002, P.L. 107–306, Title III, Subtitle F, § 352, 116 Stat. 2401, provides:

“(a) METHOD OF TRANSLITERATION REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Director of Central Intelligence shall provide for a standardized method for transliterating into the Roman alphabet personal and place names originally rendered in any language that uses an alphabet other than the Roman alphabet.

“(b) USE BY INTELLIGENCE COMMUNITY.—The [Director] *National Intelligence Director* shall ensure the use of the method established under subsection (a) in—

“(1) all communications among the elements of the intelligence community; and

“(2) all intelligence products of the intelligence community.”.

Pilot program on analysis of signals and other intelligence by intelligence analysts of various elements of intelligence community. Act Dec. 13, 2003, P.L. 108–177, Title III, Subtitle B, § 317, 117 Stat. 2611, provides:

“(a) IN GENERAL.—The [Director of Central Intelligence] *National Intelligence Director* shall, in coordination with the Secretary of Defense, carry out a pilot program to assess the feasibility and advisability of permitting intelligence analysts of various elements of the intelligence community to access and analyze intelligence from the databases of other elements of the intelligence community in order to achieve the objectives set forth in subsection (c).

\* \* \* \* \*

“(g) ASSESSMENT.—Not later than February 1, 2004, after the commencement under subsection (d) of the pilot program under subsection (a), the Under Secretary of Defense for Intelligence and the [Assistant Director of Central Intelligence for Analysis and Production] *Principal Deputy National Intelligence Director* shall jointly carry out an assessment of the progress of the pilot program in meeting the objectives set forth in subsection (c).

“(h) REPORT.—

“(1) The [Director of Central Intelligence] *National Intelligence Director* shall, in coordination with the Secretary of Defense, submit to the appropriate committees of Congress a report on the assessment carried out under subsection (g).

“(2) The report shall include—

“(A) a description of the pilot program under subsection (a);

“(B) the findings of the Under Secretary and Assistant Director as a result of the assessment;

“(C) any recommendations regarding the pilot program that the Under Secretary and the Assistant Director jointly consider appropriate in light of the assessment; and

“(D) any recommendations that the Director and Secretary consider appropriate for purposes of the report.

“(i) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ‘appropriate committees of Congress’ means—

“(1) the Select Committee on Intelligence, the Committee on Armed Services, and the Committee on Appropriations of the Senate; and

“(2) the Permanent Select Committee on Intelligence, the Committee on Armed Services, and the Committee on Appropriations of the House of Representatives.”.

\* \* \* \* \*

**§ 403-5. Responsibilities of the Secretary of Defense pertaining to the [National Foreign Intelligence Program] *National Intelligence Program***

(a) IN GENERAL.—The Secretary of Defense, in consultation with the [Director of Central Intelligence] *National Intelligence Director*, shall—

(1) **[ensure]** *assist the Director in ensuring* that the budgets of the elements of the intelligence community within the Department of Defense are adequate to satisfy the overall intelligence needs of the Department of Defense, including the needs of the chairman of the Joint Chiefs of Staff and the commanders of the unified and specified commands and, wherever such elements are performing governmentwide functions, the needs of other departments and agencies;

(2) ensure appropriate implementation of the policies and resource decisions of the Director **[of Central Intelligence]** by elements of the Department of Defense within the **[National Foreign Intelligence Program]** *National Intelligence Program*;

(3) ensure that the tactical intelligence activities of the Department of Defense complement and are compatible with intelligence activities under the **[National Foreign Intelligence Program]** *National Intelligence Program*;

\* \* \* \* \*

(b) **RESPONSIBILITY FOR THE PERFORMANCE OF SPECIFIC FUNCTIONS.**—Consistent with sections 103 and 104 of this Act [50 USCS §§ 403–3 and 403–4], the Secretary of Defense shall ensure—

(1) through the National Security Agency (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified organization for the conduct of signals intelligence activities and shall ensure that the product is disseminated in a timely manner to authorized recipients;

(2) through the National Geospatial-Intelligence Agency (except as otherwise directed by the President or the National Security Council), with appropriate representation from the intelligence community, the continued operation of an effective unified organization within the Department of Defense—

(A) for carrying out tasking of imagery collection;

(B) for the coordination of imagery processing and exploitation activities;

(C) for ensuring the dissemination of imagery in a timely manner to authorized recipients; and

(D) notwithstanding any other provision of law, for—

(i) prescribing technical architecture and standards related to imagery intelligence and geospatial information and ensuring compliance with such architecture and standards; and

(ii) developing and fielding systems of common concern related to imagery intelligence and geospatial information;

(3) through the National Reconnaissance Office (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified organization for the research and development, acquisition, and operation of overhead reconnaissance systems necessary to satisfy the requirements of all elements of the intelligence community;

(4) through the Defense Intelligence Agency (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified system within the Department of Defense for the production of timely,

objective military and military-related intelligence, based upon all sources available to the intelligence community, and shall ensure the appropriate dissemination of such intelligence to authorized recipients;

(5) through the Defense Intelligence Agency (except as otherwise directed by the President or the National Security Council), effective management of Department of Defense human intelligence activities, including defense attaches; and

(6) that the military departments maintain sufficient capabilities to collect and produce intelligence to meet—

(A) the requirements of the [Director of Central Intelligence] *National Intelligence Director*;

\* \* \* \* \*

**§ 403-4 note. Separation Pay**

(a) DEFINITIONS.—For purposes of this section—

[(1) the term “Director” means the Director of Central Intelligence; and]

(1) the term “Director” means the Director of the Central Intelligence Agency; and

\* \* \* \* \*

**§ 403-5b. Disclosure of foreign intelligence acquired in criminal investigations; notice of criminal investigations of foreign intelligence sources**

(a) DISCLOSURE OF FOREIGN INTELLIGENCE.—

(1) Except as otherwise provided by law and subject to paragraph (2), the Attorney General, or the head of any other department or agency of the Federal Government with law enforcement responsibilities, shall expeditiously disclose to the [Director of Central Intelligence] *National Intelligence Director*, pursuant to guidelines developed by the Attorney General in consultation with the Director, foreign intelligence acquired by an element of the Department of Justice or an element of such department or agency, as the case may be, in the course of a criminal investigation.

(2) The Attorney General by regulation and in consultation with the Director [of Central Intelligence] may provide for exceptions to the applicability of paragraph (1) for one or more classes of foreign intelligence, or foreign intelligence with respect to one or more targets or matters, if the Attorney General determines that disclosure of such foreign intelligence under that paragraph would jeopardize an ongoing law enforcement investigation or impair other significant law enforcement interests.

(b) PROCEDURES FOR NOTICE OF CRIMINAL INVESTIGATIONS.—Not later than 180 days after the date of enactment of this section [enacted Oct. 26, 2001], the Attorney General, in consultation with the [Director of Central Intelligence] *National Intelligence Director*, shall develop guidelines to ensure that after receipt of a report from an element of the intelligence community of activity of a foreign intelligence source or potential foreign intelligence source that may warrant investigation as criminal activity, the Attorney Gen-



eral provides notice to the Director [of Central Intelligence], within a reasonable period of time, of his intention to commence, or decline to commence, a criminal investigation of such activity.

\* \* \* \* \*

**§ 403-6. Appointment of officials responsible for intelligence-related activities**

**[(a) CONCURRENCE OF DCI IN CERTAIN APPOINTMENTS.—**

**[(1) In the event of a vacancy in a position referred to in paragraph (2), the Secretary of Defense shall obtain the concurrence of the Director of Central Intelligence before recommending to the President an individual for appointment to the position. If the Director does not concur in the recommendation, the Secretary may make the recommendation to the President without the Director’s concurrence, but shall include in the recommendation a statement that the Director does not concur in the recommendation.**

**[(2) Paragraph (1) applies to the following positions:**

- [(A) The Director of the National Security Agency.**
- [(B) The Director of the National Reconnaissance Office.**
- [(C) The Director of the National Geospatial-Intelligence Agency.**

**[(b) CONSULTATION WITH DCI IN CERTAIN APPOINTMENTS.—**

**[(1) In the event of a vacancy in a position referred to in paragraph (2), the head of the department or agency having jurisdiction over the position shall consult with the Director of Central Intelligence before appointing an individual to fill the vacancy or recommending to the President an individual to be nominated to fill the vacancy.**

**[(2) Paragraph (1) applies to the following positions:**

- [(A) The Director of the Defense Intelligence Agency.**
- [(B) The Assistant Secretary of State for Intelligence and Research.**
- [(C) The Director of the Office of Intelligence of the Department of Energy.**
- [(D) The Director of the Office of Counterintelligence of the Department of Energy.**
- [(E) The Assistant Secretary for Intelligence and Analysis of the Department of the Treasury.**

**[(3) In the event of a vacancy in the position of the Assistant Director, National Security Division of the Federal Bureau of Investigation, the Director of the Federal Bureau of Investigation shall provide timely notice to the Director of Central Intelligence of the recommendation of the Director of the Federal Bureau of Investigation of an individual to fill the position in order that the Director of Central Intelligence may consult with the Director of the Federal Bureau of Investigation before the Attorney General appoints an individual to fill the vacancy.]**

\* \* \* \* \*

**§ 403a. Definitions relating to Central Intelligence Agency**

When used in this Act, the term—

- [(a)] (1) “Agency” means the Central Intelligence Agency;
- [(b)] (2) [(“Director” means the Director of Central Intelligence;] “Director” means the Director of the Central Intelligence Agency; and
- [(c)] (3) “Government agency” means any executive department, commission, council, independent establishment, corporation wholly or partly owned by the United States which is an instrumentality of the United States, board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government.

\* \* \* \* \*

**§ 403b. Seal of office of Central Intelligence Agency**

The Director [(of Central Intelligence)] shall cause a seal of office to be made for the Central Intelligence Agency, of such design as the President shall approve, and judicial notice shall be taken thereof.

\* \* \* \* \*

**§ 403p. Health benefits for certain former spouses of Central Intelligence Agency employees**

\* \* \* \* \*

(c) ELIGIBILITY OF FORMER WIVES OR HUSBANDS.—

(1) Notwithstanding subsections (a) and (b) and except as provided in subsections (d), (e), and (f), an individual—

(A) who was divorced on or before December 4, 1991, from a participant or retired participant in the Central Intelligence Agency Retirement and Disability System or the Federal Employees Retirement System Special Category;

(B) who was married to such participant for not less than ten years during the participant’s creditable service, at least five years of which were spent by the participant during the participant’s service as an employee of the Agency outside the United States, or otherwise in a position the duties of which qualified the participant for designation by the Director [(of Central Intelligence)] as a participant under section 203 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2013); and

\* \* \* \* \*

**§ 403g. Protection of nature of Agency’s functions**

In the interests of the security of the foreign intelligence activities of the United States and in order further to implement [section 103(c)(7) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(7))] section 112(a)(11) of the National Intelligence Reform Act of 2004 that the [(Director of Central Intelligence)] *National Intelligence Director* shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of sections 1 and 2, chapter 795 of the Act of August 28, 1935 (49 Stat. 956, 957; 5 U.S.C. 654), and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles,

salaries, or numbers of personnel employed by the Agency: Provided, That in furtherance of this section the Director of the Office of Management and Budget shall make no reports to the Congress in connection with the Agency under section 607, title VI, chapter 212 of the Act of June 30, 1945, as amended (5 U.S.C. 947(b)).

\* \* \* \* \*

**§ 403n. Retirement equity for spouses of certain employees**

(a) MANNER AND EXTENT OF APPLICABILITY.—The provisions of sections 102, 221(b)(1)–(3), 221(f), 221(g), 221(h)(2), 221(i), 221(l), 222, 223, 224, 225, 232(b), 241(b), 241(d), and 264(b) of the Central Intelligence Agency Retirement Act [50 USCS §§ 2002, 2031(b)(1)–(3), (f), (g), (h)(2), (i), (l), 2032–2035, 2052(b), 2071(b), (d), 2094(b)] ([former] 50 U.S.C. 403 note) establishing certain requirements, limitations, rights, entitlements, and benefits relating to retirement annuities, survivor benefits, and lump-sum payments for a spouse or former spouse of an Agency employee who is a participant in the Central Intelligence Agency Retirement and Disability System shall apply in the same manner and to the same extent in the case of an Agency employee who is a participant in the Civil Service Retirement and Disability System.

(b) REGULATIONS.—The Director of the Office of Personnel Management, in consultation with the [Director of Central Intelligence] *Director of the Central Intelligence Agency*, shall prescribe such regulations as may be necessary to implement the provisions of this section.

\* \* \* \* \*

**§ 403p. Health benefits for certain former spouses of Central Intelligence Agency employees**

(a) PERSONS ELIGIBLE.—Except as provided in subsection (e), any individual—

(1) formerly married to an employee or former employee of the Agency, whose marriage was dissolved by divorce or annulment before May 7, 1985;

(2) who, at any time during the eighteen-month period before the divorce or annulment became final, was covered under a health benefits plan as a member of the family of such employee or former employee; and

(3) who was married to such employee for not less than ten years during periods of service by such employee with the Agency, at least five years of which were spent outside the United States by both the employee and the former spouse, is eligible for coverage under a health benefits plan in accordance with the provisions of this section.

(b) ENROLLMENT FOR HEALTH BENEFITS.—

(1) Any individual eligible for coverage under subsection (a) may enroll in a health benefits plan for self alone or for self and family if, before the expiration of the six-month period beginning on the effective date of this section, and in accordance with such procedures as the Director of the Office of Personnel Management shall by regulation prescribe, such individual—

(A) files an election for such enrollment; and

(B) arranges to pay currently into the Employees Health Benefits Fund under section 8909 of title 5, United States Code, an amount equal to the sum of the employee and agency contributions payable in the case of an employee enrolled under chapter 89 of such title in the same health benefits plan and with the same level of benefits.

(2) The [Director of Central Intelligence] *Director of the Central Intelligence Agency* shall, as soon as possible, take all steps practicable—

(A) to determine the identity and current address of each former spouse eligible for coverage under subsection (a); and

(B) to notify each such former spouse of that individual's rights under this section.

(3) The Director of the Office of Personnel Management, upon notification by the [Director of Central Intelligence] *Director of the Central Intelligence Agency*, shall waive the six-month limitation set forth in paragraph (1) in any case in which the [Director of Central Intelligence] *Director of the Central Intelligence Agency* determines that the circumstances so warrant.

\* \* \* \* \*

**§ 403q. Inspector General for the Agency**

\* \* \* \* \*

(d) SEMIANNUAL REPORTS; IMMEDIATE REPORTS OF SERIOUS OR FLAGRANT PROBLEMS; REPORTS OF FUNCTIONAL PROBLEMS; REPORTS TO CONGRESS ON URGENT CONCERNS.—

(1) The Inspector General shall, not later than January 31 and July 31 of each year, prepare and submit to the Director [of Central Intelligence] a classified semiannual report summarizing the activities of the Office during the immediately preceding six-month periods ending December 31 (of the preceding year) and June 30, respectively. Not later than the dates each year provided for the transmittal of such reports in section 507 of the National Security Act of 1947 [50 USCS § 415b], the Director shall transmit such reports to the intelligence committees with any comments he may deem appropriate. Such reports shall, at a minimum, include a list of the title or subject of each inspection, investigation, or audit conducted during the reporting period and—

\* \* \* \* \*

(f) SEPARATE BUDGET ACCOUNT.—Beginning with fiscal year 1991, and in accordance with procedures to be issued by the [Director of Central Intelligence] *National Intelligence Director* in consultation with the intelligence committees, the [Director of Central Intelligence] *National Intelligence Director* shall include in the [National Foreign Intelligence Program] *National Intelligence Program* budget a separate account for the Office of Inspector General established pursuant to this section.

\* \* \* \* \*

**§ 403t. General Counsel of the Central Intelligence Agency**

(a) APPOINTMENT.—There is a General Counsel of the Central Intelligence Agency, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) CHIEF LEGAL OFFICER.—The General Counsel is the chief legal officer of the Central Intelligence Agency.

(c) FUNCTIONS.—The General Counsel of the Central Intelligence Agency shall perform such functions as the Director [of Central Intelligence] may prescribe.

\* \* \* \* \*

**§ 403u. Central services program**

\* \* \* \* \*

(g) TERMINATION.—

(1) Subject to paragraph (2), the [Director of Central Intelligence] *Director of the Central Intelligence Agency* and the Director of the Office of Management and Budget, acting jointly—

(A) may terminate the program under this section and the Fund at any time; and

(B) upon such termination, shall provide for the disposition of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the program or the Fund.

(2) The [Director of Central Intelligence] *Director of the Central Intelligence Agency* and the Director of the Office of Management and Budget may not undertake any action under paragraph (1) until 60 days after the date on which the Directors jointly submit notice of such action to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

\* \* \* \* \*

**§ 404e. National Mission of National Geospatial-Intelligence Agency**

(a) IN GENERAL.—In addition to the Department of Defense missions set forth in section 442 of title 10, United States Code, the National Geospatial-Intelligence Agency shall support the geospatial intelligence requirements of the Department of State and other departments and agencies of the United States outside the Department of Defense.

(b) REQUIREMENTS AND PRIORITIES.—The [Director of Central Intelligence] *National Intelligence Director* shall establish requirements and priorities governing the collection of national intelligence by the National Geospatial-Intelligence Agency under subsection (a).

(c) CORRECTION OF DEFICIENCIES.—The [Director of Central Intelligence] *National Intelligence Director* shall develop and implement such programs and policies as the Director and the Secretary of Defense jointly determine necessary to review and correct defi-

ciencies identified in the capabilities of the National Geospatial-Intelligence Agency to accomplish assigned national missions, including support to the all-source analysis and production process. The Director shall consult with the Secretary of Defense on the development and implementation of such programs and policies. The Secretary shall obtain the advice of the Chairman of the Joint Chiefs of Staff regarding the matters on which the Director and the Secretary are to consult under the preceding sentence.

\* \* \* \* \*

**【§ 404f. Collection tasking authority**

【Unless otherwise directed by the President, the Director of Central Intelligence shall have authority (except as otherwise agreed by the Director and the Secretary of Defense) to—

- 【(1) approve collection requirements levied on national imagery collection assets;
- 【(2) determine priorities for such requirements; and
- 【(3) resolve conflicts in such priorities.】

\* \* \* \* \*

**§ 404g. Restrictions on intelligence sharing with the United Nations**

(a) PROVISION OF INTELLIGENCE INFORMATION TO THE UNITED NATIONS.—

(1) No United States intelligence information may be provided to the United Nations or any organization affiliated with the United Nations, or to any officials or employees thereof, unless the President certifies to the appropriate committees of Congress that the 【Director of Central Intelligence】 *National Intelligence Director*, in consultation with the Secretary of State and the Secretary of Defense, has established and implemented procedures, and has worked with the United Nations to ensure implementation of procedures, for protecting from unauthorized disclosure United States intelligence sources and methods connected to such information.

\* \* \* \* \*

(d) RELATIONSHIP TO EXISTING LAW.—Nothing in this section shall be construed to—

- (1) impair or otherwise affect the authority of the 【Director of Central Intelligence】 *National Intelligence Director* to protect intelligence sources and methods from unauthorized disclosure pursuant to section 103(c)(7) of this Act [50 USCS § 403-3(c)(7)]; or
- (2) supersede or otherwise affect the provisions of title V of this Act [50 USCS §§ 413 et seq.].

\* \* \* \* \*

**§ 404g. Restrictions on intelligence sharing with the United Nations**

\* \* \* \* \*

(d) RELATIONSHIP TO EXISTING LAW.—Nothing in this section shall be construed to—

(1) impair or otherwise affect the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure pursuant to [section 103(c)(7) of this Act] *section 112(a)(11) of the National Intelligence Reform Act of 2004*; or

\* \* \* \* \*

**§ 404h. Detail of intelligence community personnel; intelligence community assignment program**

\* \* \* \* \*

(b) **BENEFITS, ALLOWANCES, TRAVEL, INCENTIVES.—**

(1) An employee detailed under subsection (a) may be authorized any benefit, allowance, travel, or incentive otherwise provided to enhance staffing by the organization from which the employee is detailed.

(2) The head of an agency of an employee detailed under subsection (a) may pay a lodging allowance for the employee subject to the following conditions:

(A) The allowance shall be the lesser of the cost of the lodging or a maximum amount payable for the lodging as established jointly by the [Director of Central Intelligence] *National Intelligence Director* and—

\* \* \* \* \*

**§ 404i. [Additional annual reports from the Director of Central Intelligence] *Additional Annual Reports from the National Intelligence Director***

(a) **ANNUAL REPORT ON THE SAFETY AND SECURITY OF RUSSIAN NUCLEAR FACILITIES AND NUCLEAR MILITARY FORCES.—**

(1) The [Director of Central Intelligence] *National Intelligence Director* shall submit to the congressional leadership on an annual basis, and to the congressional intelligence committees on the date each year provided in section 507 [50 USCS § 415b], an intelligence report assessing the safety and security of the nuclear facilities and nuclear military forces in Russia.

(2) Each such report shall include a discussion of the following:

(A) The ability of the Government of Russia to maintain its nuclear military forces.

(B) The security arrangements at civilian and military nuclear facilities in Russia.

(C) The reliability of controls and safety systems at civilian nuclear facilities in Russia.

(D) The reliability of command and control systems and procedures of the nuclear military forces in Russia.

(3) Each such report shall be submitted in unclassified form, but may contain a classified annex.

(b) **ANNUAL REPORT ON HIRING AND RETENTION OF MINORITY EMPLOYEES.—**

(1) The [Director of Central Intelligence] *National Intelligence Director* shall, on an annual basis, submit to Congress a report on the employment of covered persons within each ele-

ment of the intelligence community for the preceding fiscal year.

(2) Each such report shall include disaggregated data by category of covered person from each element of the intelligence community on the following:

(A) Of all individuals employed in the element during the fiscal year involved, the aggregate percentage of such individuals who are covered persons.

(B) Of all individuals employed in the element during the fiscal year involved at the levels referred to in clauses (i) and (ii), the percentage of covered persons employed at such levels:

(i) Positions at levels 1 through 15 of the General Schedule.

(ii) Positions at levels above GS-15.

(C) Of all individuals hired by the element involved during the fiscal year involved, the percentage of such individuals who are covered persons.

(3) Each such report shall be submitted in unclassified form, but may contain a classified annex.

(4) Nothing in this subsection shall be construed as providing for the substitution of any similar report required under another provision of law.

(5) In this subsection, the term “covered persons” means—

- (A) racial and ethnic minorities;
- (B) women; and
- (C) individuals with disabilities.

(c) ANNUAL REPORT ON THREAT OF ATTACK ON THE UNITED STATES USING WEAPONS OF MASS DESTRUCTION.—

(1) Not later each year than the date provided in section 507 [50 USCS § 415b], the [Director] *National Intelligence Director* shall submit to the congressional committees specified in paragraph (3) a report assessing the following:

\* \* \* \* \*

**§ 404i-1. Annual report on improvement of financial statements for auditing purposes**

Not later each year than the date provided in section 507 [50 USCS § 415b], the [Director of Central Intelligence] *National Intelligence Director*, the *Director of the Central Intelligence Agency*, the Director of the [National Security Agency,] the Director of the Defense Intelligence Agency, and the Director of the National Imagery and Mapping Agency [National Geospatial-Intelligence Agency] shall each submit to the congressional intelligence committees a report describing the activities being undertaken by such official to ensure that the financial statements of such agency can be audited in accordance with applicable law and requirements of the Office of Management and Budget.

\* \* \* \* \*

**§ 404j. Limitation on establishment or operation of diplomatic intelligence support centers**

(a) IN GENERAL.—



(1) A diplomatic intelligence support center may not be established, operated, or maintained without the prior approval of the [Director of Central Intelligence] *National Intelligence Director*.

(2) The Director may only approve the establishment, operation, or maintenance of a diplomatic intelligence support center if the Director determines that the establishment, operation, or maintenance of such center is required to provide necessary intelligence support in furtherance of the national security interests of the United States.

(b) PROHIBITION OF USE OF APPROPRIATIONS.—Amounts appropriated pursuant to authorizations by law for intelligence and intelligence-related activities may not be obligated or expended for the establishment, operation, or maintenance of a diplomatic intelligence support center that is not approved by the [Director of Central Intelligence] *National Intelligence Director*.

(c) DEFINITIONS.—In this section:

(1) The term “diplomatic intelligence support center” means an entity to which employees of the various elements of the intelligence community (as defined in section 3(4) [50 USC § 401a(4)]) are detailed for the purpose of providing analytical intelligence support that—

(A) consists of intelligence analyses on military or political matters and expertise to conduct limited assessments and dynamic taskings for a chief of mission; and

(B) is not intelligence support traditionally provided to a chief of mission by the [Director of Central Intelligence] *National Intelligence Director*.

(2) The term “chief of mission” has the meaning given that term by section 102(3) of the Foreign Service Act of 1980 (22 U.S.C. 3902(3)), and includes ambassadors at large and ministers of diplomatic missions of the United States, or persons appointed to lead United States offices abroad designated by the Secretary of State as diplomatic in nature.

\* \* \* \* \*

**§ 404k. Travel on any common carrier for certain intelligence collection personnel**

(a) IN GENERAL.—Notwithstanding any other provision of law, the [Director of Central Intelligence] *National Intelligence Director* may authorize travel on any common carrier when such travel, in the discretion of the Director—

(1) is consistent with intelligence community mission requirements, or

(2) is required for cover purposes, operational needs, or other exceptional circumstances necessary for the successful performance of an intelligence community mission.

(b) AUTHORIZED DELEGATION OF DUTY.—The [Director] *National Intelligence Director* may only delegate the authority granted by this section [to the Deputy Director of Central Intelligence, or with respect to employees of the Central Intelligence Agency the Director may delegate such authority to the Deputy Director for Operations] *to the Principal Deputy National Intelligence Director, or,*

*with respect to the employees of the Central Intelligence Agency, to the Director of the Central Intelligence Agency.*

\* \* \* \* \*

**§ 404l. POW/MIA analytic capability**

(a) REQUIREMENT.—

(1) The **Director of Central Intelligence** *National Intelligence Director* shall, in consultation with the Secretary of Defense, establish and maintain in the intelligence community an analytic capability with responsibility for intelligence in support of the activities of the United States relating to individuals who, after December 31, 1990, are unaccounted for United States personnel.

\* \* \* \* \*

**§ 404n. National Virtual Translation Center**

(a) ESTABLISHMENT.—**The Director of Central Intelligence, acting as the head of the intelligence community** *National Intelligence Director*, shall establish in the intelligence community an element with the function of connecting the elements of the intelligence community engaged in the acquisition, storage, translation, or analysis of voice or data in digital form.

\* \* \* \* \*

**§404n-1. Foreign Terrorist Asset Tracking Center**

(a) ESTABLISHMENT.—The **Director of Central Intelligence, acting as the head of the intelligence community**, shall establish in the Central Intelligence Agency *National Intelligence Director shall establish within the Central Intelligence Agency* an element responsible for conducting all-source intelligence analysis of information relating to the financial capabilities, practices, and activities of individuals, groups, and nations associated with international terrorism in their activities relating to international terrorism.

\* \* \* \* \*

**§ 404n-2. Terrorist identification classification system**

(a) REQUIREMENT.—

(1) The **Director of Central Intelligence, acting as head of the Intelligence Community** *National Intelligence Director*, shall—

\* \* \* \* \*

(c) INFORMATION SHARING.—Subject to **section 103(c)(7) of the National Security Act of 1947 (50 U.S.C. 403-3(c)(7))** *section 112(a)(11) of the National Intelligence Reform Act of 2004*, relating to the protection of intelligence sources and methods, the Director shall provide for the sharing of the list, and information on the list, with such departments and agencies of the Federal Government, State and local government agencies, and entities of foreign govern-

ments and international organizations as the Director considers appropriate.

\* \* \* \* \*

MISCELLANEOUS AND CONFORMING PROVISIONS

**§ 405. Advisory Committees; appointment; compensation of part-time personnel; applicability of other laws**

(a) The Secretary of Defense, the Director of the Office of Defense Mobilization [Director of the Federal Emergency Management Agency], the [Director of Central Intelligence] *National Intelligence Director*, and the National Security Council, acting through its Executive Secretary, are authorized to appoint such advisory committees and to employ, consistent with other provisions of this Act, such part-time advisory personnel as they may deem necessary in carrying out their respective functions and the functions of agencies under their control. Persons holding other offices or positions under the United States for which they receive compensation, while serving as members of such committees, shall receive no additional compensation for such service. Retired members of the uniformed services employed by the [Director of Central Intelligence] *National Intelligence Director* who hold no other office or position under the United States for which they receive compensation, other members of such committees and other part-time advisory personnel so employed may serve without compensation or may receive compensation at a daily rate not to exceed the daily equivalent of the rate of pay in effect for grade GS-18 of the General Schedule established by section 5332 of title 5, United States Code, as determined by the appointing authority.

\* \* \* \* \*

ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES

**§ 413. General congressional oversight provisions**

\* \* \* \* \*

(d) PROCEDURES TO PROTECT FROM UNAUTHORIZED DISCLOSURE.—The House of Representatives and the Senate shall each establish, by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information, and all information relating to intelligence sources and methods, that is furnished to the congressional intelligence committees or to Members of Congress under this title [50 USCS §§ 413 et seq.]. Such procedures shall be established in consultation with the [Director of Central Intelligence] *National Intelligence Director*. In accordance with such procedures, each of the congressional intelligence committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.

\* \* \* \* \*

**§ 413a. Reporting of intelligence activities other than covert actions**

(a) IN GENERAL.—To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the [Director of Central Intelligence] *National Intelligence Director* and the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities shall—

(1) keep the congressional intelligence committees fully and currently informed of all intelligence activities, other than a covert action (as defined in section 503(e) [50 USCS § 413b(e)]), which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government, including any significant anticipated intelligence activity and any significant intelligence failure; and

(2) furnish the congressional intelligence committees any information or material concerning intelligence activities, other than covert actions, which is within their custody or control, and which is requested by either of the congressional intelligence committees in order to carry out its authorized responsibilities.

(b) FORM AND CONTENTS OF CERTAIN REPORTS.—Any report relating to a significant anticipated intelligence activity or a significant intelligence failure that is submitted to the congressional intelligence committees for purposes of subsection (a)(1) shall be in writing, and shall contain the following:

(1) A concise statement of any facts pertinent to such report.

(2) An explanation of the significance of the intelligence activity or intelligence failure covered by such report.

(c) STANDARDS AND PROCEDURES FOR CERTAIN REPORTS.—The [Director of Central Intelligence] *National Intelligence Director*, in consultation with the heads of the departments, agencies, and entities referred to in subsection (a), shall establish standards and procedures applicable to reports covered by subsection (b).

**§ 413b. Presidential approval and reporting of covert actions**

\* \* \* \* \*

(b) REPORTS TO INTELLIGENCE COMMITTEES; PRODUCTION OF INFORMATION.—To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the [Director of Central Intelligence] *National Intelligence Director* and the heads of all departments, agencies, and entities of the United States Government involved in a covert action—

\* \* \* \* \*

**§ 414. Funding of intelligence activities**

(a) OBLIGATIONS AND EXPENDITURES FOR INTELLIGENCE OR INTELLIGENCE-RELATED ACTIVITY; PREREQUISITES.—Appropriated

funds available to an intelligence agency may be obligated or expended for an intelligence or intelligence-related activity only if—

(1) those funds were specifically authorized by the Congress for use for such activities; or

(2) in the case of funds from the [Reserve for Contingencies of the Central Intelligence Agency] *Reserve for Contingencies of the National Intelligence Director* and consistent with the provision of section 503 of this Act [50 USCS §413b] concerning any significant anticipated intelligence activity, the [Director of Central Intelligence] *National Intelligence Director* has notified the appropriate congressional committees of the intent to make such funds available for such activity; or

(3) in the case of funds specifically authorized by the Congress for a different activity—

(A) the activity to be funded is a higher priority intelligence or intelligence-related activity;

(B) the need for funds for such activity is based on unforeseen [unforeseen] requirements; and

(C) the [Director of Central Intelligence] *National Intelligence Director*, the Secretary of Defense, or the Attorney General, as appropriate, has notified the appropriate congressional committees of the intent to make such funds available for such activity;

(4) nothing in this subsection prohibits obligation or expenditure of funds available to an intelligence agency in accordance with sections 1535 and 1536 of title 31, United States Code.

(b) **ACTIVITIES DENIED FUNDING BY CONGRESS.**—Funds available to an intelligence agency may not be made available for any intelligence or intelligence-related activity for which funds were denied by the Congress.

(c) **PRESIDENTIAL FINDING REQUIRED FOR EXPENDITURE OF FUNDS ON COVERT ACTION.**—No funds appropriated for, or otherwise available to, any department, agency, or entity of the United States Government may be expended, or may be directed to be expended, for any covert action, as defined in section 503(e) [50 USCS §413b(e)], unless and until a Presidential finding required by subsection (a) of section 503 [50 USCS §413b(a)] has been signed or otherwise issued in accordance with that subsection.

(d) **REPORT TO CONGRESSIONAL COMMITTEES REQUIRED FOR EXPENDITURE OF NON-APPROPRIATED FUNDS FOR INTELLIGENCE ACTIVITY.**—

(1) Except as otherwise specifically provided by law, funds available to an intelligence agency that are not appropriated funds may be obligated or expended for an intelligence or intelligence-related activity only if those funds are used for activities reported to the appropriate congressional committees pursuant to procedures which identify—

(A) the types of activities for which nonappropriated funds may be expended; and

(B) the circumstances under which an activity must be reported as a significant anticipated intelligence activity before such funds can be expended.

(2) Procedures for purposes of paragraph (1) shall be jointly agreed upon by the congressional intelligence committees and,

as appropriate, the [Director of Central Intelligence] *National Intelligence Director* or the Secretary of Defense.

\* \* \* \* \*

**§ 415a. [Specificity of National Foreign Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence] *Specificity of National Intelligence Program Budget Amounts for Counterterrorism, Counterproliferation, Counternarcotics, and Counterintelligence***

(a) IN GENERAL.—The budget justification materials submitted to Congress in support of the budget of the President for a fiscal year that is submitted to Congress under section 1105(a) of title 31, United States Code, shall set forth separately the aggregate amount requested for that fiscal year for the [National Foreign Intelligence Program] *National Intelligence Program* for each of the following:

- (1) Counterterrorism.
- (2) Counterproliferation.
- (3) Counternarcotics.
- (4) Counterintelligence.

\* \* \* \* \*

**§ 415a-1. Budget treatment of costs of acquisition of major systems by the intelligence community**

(a) INDEPENDENT COST ESTIMATES.—

(1) The [Director of Central Intelligence] *National Intelligence Director* shall, in consultation with the head of each element of the intelligence community concerned, prepare an independent cost estimate of the full life-cycle cost of development, procurement, and operation of each major system to be acquired by the intelligence community.

\* \* \* \* \*

(b) PREPARATION OF INDEPENDENT COST ESTIMATES.—

(1) The Director shall establish within the [Office of the Deputy Director of Central Intelligence] *Office of the National Intelligence Director* for Community Management an office which shall be responsible for preparing independent cost estimates, and any updates thereof, under subsection (a), unless a designation is made under paragraph (2).

\* \* \* \* \*

PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION

**§ 423. Report**

(a) ANNUAL REPORT BY PRESIDENT TO CONGRESS ON MEASURES TO PROTECT IDENTITIES OF COVERT AGENTS.—The President, after receiving information from the [Director of Central Intelligence] *National Intelligence Director*, shall submit to the congressional intelligence committees an annual report on measures to protect the identities of covert agents, and on any other matter relevant to the

protection of the identities of covert agents. The date for the submittal of the report shall be the date provided in section 507 [50 USCS § 415b].

\* \* \* \* \*

PROTECTION OF OPERATIONAL FILES

**§ 431. Operational files of the Central Intelligence Agency**

(a) EXEMPTION BY DIRECTOR OF CENTRAL INTELLIGENCE.—[Operational files of the Central Intelligence Agency may be exempted by the Director of Central Intelligence] *The Director of the Central Intelligence Agency, with the coordination of the National Intelligence Director, may exempt operational files of the Central Intelligence Agency* from the provisions of section 552 of title 5, United States Code (Freedom of Information Act), which require publication or disclosure, or search or review in connection therewith.

\* \* \* \* \*

(c) SEARCH AND REVIEW FOR INFORMATION.—Notwithstanding subsection (a) of this section, exempted operational files shall continue to be subject to search and review for information concerning—

- (1) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 of title 5, United States Code (Freedom of Information Act), or section 552a of title 5, United States Code (Privacy Act of 1974);
- (2) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code (Freedom of Information Act); or
- (3) the specific subject matter of an investigation by the congressional intelligence committees, the Intelligence Oversight Board, the Department of Justice, the Office of General Counsel of the Central Intelligence Agency, the Office of Inspector General of the Central Intelligence Agency, [or the Office of the Director of Central Intelligence] *the Office of the Director of the Central Intelligence Agency, or the Office of the National Intelligence Director* for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity.

\* \* \* \* \*

(g) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—

- (1) Review by [Director of Central Intelligence] *Director of Central Intelligence Agency and the National Intelligence Director*. Not less than once every ten years, the Director of Central Intelligence shall review the exemptions in force under subsection (a) to determine whether such exemptions may be removed from any category of exempted files or any portion thereof.

\* \* \* \* \*

**§ 432. Operational files of the National Geospatial-Intelligence Agency**

(a) EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—

(1) The Director of the National Geospatial-Intelligence Agency, with the coordination of the [Director of Central Intelligence] *National Intelligence Director*, may exempt operational files of the National Geospatial-Intelligence Agency from the provisions of section 552 of title 5, United States Code, which require publication, disclosure, search, or review in connection therewith.

\* \* \* \* \*

(b) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—

(1) Not less than once every 10 years, the Director of the National Geospatial-Intelligence Agency and the [Director of Central Intelligence] *National Intelligence Director* shall review the exemptions in force under subsection (a)(1) to determine whether such exemptions may be removed from the category of exempted files or any portion thereof. The [Director of Central Intelligence] *National Intelligence Director* must approve any determination to remove such exemptions.

\* \* \* \* \*

**§ 432a. Operational files of the National Reconnaissance Office**

(a) EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—

(1) The Director of the National Reconnaissance Office, with the coordination of the [Director of Central Intelligence] *National Intelligence Director*, may exempt operational files of the National Reconnaissance Office from the provisions of section 552 of title 5, United States Code, which require publication, disclosure, search, or review in connection therewith.

\* \* \* \* \*

(6)(A) Except as provided in subparagraph (B), whenever any person who has requested agency records under section 552 of title 5, United States Code, alleges that NRO has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code.

(B) Judicial review shall not be available in the manner provided for under subparagraph (A) as follows:

\* \* \* \* \*

(viii) Any information filed with, or produced for the court pursuant to clauses (i) and (iv) shall be coordinated with the [Director of Central Intelligence] *National Intelligence Director* prior to submission to the court.

\* \* \* \* \*

(b) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—



(1) Not less than once every 10 years, the Director of the National Reconnaissance Office and the [Director of Central Intelligence] *National Intelligence Director* shall review the exemptions in force under subsection (a)(1) to determine whether such exemptions may be removed from the category of exempted files or any portion thereof. The [Director of Central Intelligence] *National Intelligence Director* must approve any determination to remove such exemptions.

\* \* \* \* \*

**§432b. Operational files of the National Security Agency**

(a) EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—The Director of the National Security Agency, in coordination with the [Director of Central Intelligence] *National Intelligence Director*, may exempt operational files of the National Security Agency from the provisions of section 552 of title 5, United States Code, which require publication, disclosure, search, or review in connection therewith.

\* \* \* \* \*

(f) ALLEGATION; IMPROPER WITHHOLDING OF RECORDS; JUDICIAL REVIEW.—

(1) Except as provided in paragraph (2), whenever any person who has requested agency records under section 552 of title 5, United States Code, alleges that the National Security Agency has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code.

(2) Judicial review shall not be available in the manner provided for under paragraph (1) as follows:

\* \* \* \* \*

(H) Any information filed with, or produced for the court pursuant to subparagraphs (A) and (D) shall be coordinated with the [Director of Central Intelligence] *National Intelligence Director* before submission to the court.

(g) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—

(1) Not less than once every 10 years, the Director of the National Security Agency and the [Director of Central Intelligence] *National Intelligence Director* shall review the exemptions in force under subsection (a) to determine whether such exemptions may be removed from a category of exempted files or any portion thereof. The [Director of Central Intelligence] *National Intelligence Director* must approve any determination to remove such exemptions.

\* \* \* \* \*

EDUCATION IN SUPPORT OF NATIONAL INTELLIGENCE

**§441g. Scholarships and work-study for pursuit of graduate degrees in science and technology**

(a) PROGRAM AUTHORIZED.—The [Director of Central Intelligence] *National Intelligence Director* may carry out a program to

provide scholarships and work-study for individuals who are pursuing graduate degrees in fields of study in science and technology that are identified by the Director as appropriate to meet the future needs of the intelligence community for qualified scientists and engineers.

(b) ADMINISTRATION.—If the **Director** *National Intelligence Director* carries out the program under subsection (a), the Director shall administer the program through the **Assistant Director of Central Intelligence for Administration** *Office of the National Intelligence Director*.

(c) IDENTIFICATION OF FIELDS OF STUDY.—If the **Director** *National Intelligence Director* carries out the program under subsection (a), the Director shall identify fields of study under subsection (a) in consultation with the other heads of the elements of the intelligence community.

(d) ELIGIBILITY FOR PARTICIPATION.—An individual eligible to participate in the program is any individual who—

(1) either—

(A) is an employee of the intelligence community; or

(B) meets criteria for eligibility for employment in the intelligence community that are established by the **Director** *National Intelligence Director*;

(2) is accepted in a graduate degree program in a field of study in science or technology identified under subsection (a); and

(3) is eligible for a security clearance at the level of Secret or above.

(e) REGULATIONS.—If the **Director** *National Intelligence Director* carries out the program under subsection (a), the Director shall prescribe regulations for purposes of the administration of this section.

\* \* \* \* \*

Other provisions: Pilot program on recruitment and training of intelligence analysts. Act Dec. 13, 2003, P.L. 108–177, Title III, Subtitle B, §318, 117 Stat. 2613, provides:

“(a) PILOT PROGRAM.—

(1) The **Director of Central Intelligence** *National Intelligence Director* shall carry out a pilot program to ensure that selected students or former students are provided funds to continue academic training, or are reimbursed for academic training previously obtained, in areas of specialization that the Director, in consultation with the other heads of the elements of the intelligence community, identifies as areas in which the current analytic capabilities of the intelligence community are deficient or in which future analytic capabilities of the intelligence community are likely to be deficient.

\* \* \* \* \*

ADDITIONAL MISCELLANEOUS PROVISIONS

**§442a. Counterintelligence initiatives**

(a) INSPECTION PROCESS.—

(1) In order to protect intelligence sources and methods from unauthorized disclosure, the **[Director of Central Intelligence]** *National Intelligence Director* shall establish and implement an inspection process for all agencies and departments of the United States that handle classified information relating to the national security of the United States intended to assure that those agencies and departments maintain effective operational security practices and programs directed against counterintelligence activities.

(2) The Director shall carry out the process through the Office of the National Counterintelligence Executive.

(b) ANNUAL REVIEW OF DISSEMINATION LISTS.—

(1) The **[Director of Central Intelligence]** *National Intelligence Director* shall establish and implement a process for all elements of the intelligence community to review, on an annual basis, individuals included on distribution lists for access to classified information. Such process shall ensure that only individuals who have a particularized “need to know” (as determined by the Director) are continued on such distribution lists.

(2) Not later than October 15 of each year, the Director shall certify to the congressional intelligence committees that the review required under paragraph (1) has been conducted in all elements of the intelligence community during the preceding fiscal year.

(c) COMPLETION OF FINANCIAL DISCLOSURE STATEMENTS REQUIRED FOR ACCESS TO CERTAIN CLASSIFIED INFORMATION.—

(1) The **[Director of Central Intelligence]** *National Intelligence Director* shall establish and implement a process by which each head of an element of the intelligence community directs that all employees of that element, in order to be granted access to classified information referred to in subsection (a) of section 1.3 of Executive Order No. 12968 (August 2, 1995; 60 Fed. Reg. 40245; 50 U.S.C. 435 note), submit financial disclosure forms as required under subsection (b) of such section.

(2) The Director shall carry out paragraph (1) through the Office of the National Counterintelligence Executive.

(d) ARRANGEMENTS TO HANDLE SENSITIVE INFORMATION.—The **[Director of Central Intelligence]** *National Intelligence Director* shall establish, for all elements of the intelligence community, programs and procedures by which sensitive classified information relating to human intelligence is safeguarded against unauthorized disclosure by employees of those elements.

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## CHAPTER 36—FOREIGN INTELLIGENCE SURVEILLANCE

### ELECTRONIC SURVEILLANCE

Review expert commentary from The National Institute for Trial Advocacy preceding 50 USCS §1801

**§1802. Electronic surveillance authorization without court order; certification by Attorney General; reports to congressional committees; transmittal under seal; duties and compensation of communication common carrier; applications; jurisdiction of court**

\* \* \* \* \*

(4) With respect to electronic surveillance authorized by this subsection, the Attorney General may direct a specified communication common carrier to—

(A) furnish all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier is providing its customers; and

(B) maintain under security procedures approved by the Attorney General and the [Director of Central Intelligence] *National Intelligence Director* any records concerning the surveillance or the aid furnished which such carrier wishes to retain. The Government shall compensate, at the prevailing rate, such carrier for furnishing such aid.

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**§1803. Designation of judges**

\* \* \* \* \*

(c) EXPEDITIOUS CONDUCT OF PROCEEDINGS; SECURITY MEASURES FOR MAINTENANCE OF RECORDS.—Proceedings under this Act shall be conducted as expeditiously as possible. The record of proceedings under this Act, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice in consultation with the Attorney General and the [Director of Central Intelligence] *National Intelligence Director*.

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**§1804. Applications for court orders**

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(e) PERSONAL REVIEW BY ATTORNEY GENERAL.—

(1)(A) Upon written request of the Director of the Federal Bureau of Investigation, the Secretary of Defense, the Secretary of State, or the [Director of Central Intelligence] *National Intelligence Director*, the Attorney General shall personally review under subsection (a) an application under that subsection for a target described in section 101(b)(2) [50 USCS §1801(b)(2)].

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**§ 1805. Issuance of order**

\* \* \* \* \*

(c) SPECIFICATIONS AND DIRECTIONS OF ORDERS.—An order approving an electronic surveillance under this section shall—

(1) specify—

- (A) the identity, if known, or a description of the target of the electronic surveillance;
  - (B) the nature and location of each of the facilities or places at which the electronic surveillance will be directed, if known;
  - (C) the type of information sought to be acquired and the type of communications or activities to be subjected to the surveillance;
  - (D) the means by which the electronic surveillance will be effected and whether physical entry will be used to effect the surveillance;
  - (E) the period of time during which the electronic surveillance is approved; and
  - (F) whenever more than one electronic, mechanical, or other surveillance device is to be used under the order, the authorized coverage of the devices involved and what minimization procedures shall apply to information subject to acquisition by each device; and
- (2) direct—
- (A) that the minimization procedures be followed;
  - (B) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, or other specified person, or in circumstances where the Court finds that the actions of the target of the application may have the effect of thwarting the identification of a specified person, such other persons, furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, or other person is providing that target of electronic surveillance;
  - (C) that such carrier, landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the [Director of Central Intelligence] *National Intelligence Director* any records concerning the surveillance or the aid furnished that such person wishes to retain; and

\* \* \* \* \*

## CHAPTER 38—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY

### DEFINITIONS

#### § 2001. Definitions relating to the system

When used in this Act [50 USCS §§ 2001 et seq.]:

(1) AGENCY.—The term “Agency” means the Central Intelligence Agency.

[(2) DIRECTOR.—The term “Director” means the Director of Central Intelligence.]

(2) DIRECTOR.—The term “Director” means the Director of the Central Intelligence Agency.

\* \* \* \* \*

THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND  
DISABILITY SYSTEM

ESTABLISHMENT OF SYSTEM

**§ 2011. The CIARDS system**

(a) IN GENERAL.—

(1) ESTABLISHMENT OF SYSTEM.—There is a retirement and disability system for certain employees of the Central Intelligence Agency known as the Central Intelligence Agency Retirement and Disability System (hereinafter in this Act [50 USCS §§ 2001 et seq.] referred to as the “system”), originally established pursuant to title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [former 50 USCS § 403 note].

(2) DCI REGULATIONS.—The Director shall prescribe regulations for the system. The Director shall submit any proposed regulations for the system to the congressional intelligence committees not less than 14 days before they take effect.

(b) ADMINISTRATION OF SYSTEM.—The Director shall administer the system in accordance with regulations prescribed under this title [50 USCS §§ 2011 et seq.] and with the principles established by this title [50 USCS §§ 2011 et seq.].

(c) FINALITY OF DECISIONS OF DCI.—In the interests of the security of the foreign intelligence activities of the United States and in order further to implement [paragraph (6) of section 103(c) of the National Security Act of 1947 (50 U.S.C. 403–3(c)) that the Director of Central Intelligence] *section 112(a)(11) of the National Intelligence Reform Act of 2004 that the National Intelligence Director* shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, and notwithstanding the provisions of chapter 7 of title 5, United States Code [5 USCS §§ 701 et seq.], or any other provision of law (except section 305(b) of this Act [50 USCS § 2155(b)]), any determination by the Director authorized by this Act [50 USCS §§ 2001 et seq.] shall be final and conclusive and shall not be subject to review by any court.

\* \* \* \* \*

117 STAT. 2634

**SEC. 504. MEASUREMENT AND SIGNATURES INTELLIGENCE RESEARCH PROGRAM.**

(a) RESEARCH PROGRAM.—(1) The Secretary of Defense and the [Director of Central Intelligence] *National Intelligence Director* shall jointly carry out a program to incorporate the results of basic research on sensors into the measurement and signatures intelligence systems of the United States, to the extent the results of such research are applicable to such systems.

(2) In carrying out paragraph (1), the Secretary of Defense and the **【Director of Central Intelligence】** *National Intelligence Director* shall act through the Director of the Defense Intelligence Agency's Directorate for MASINT and Technical Collection (hereinafter in this section referred to as the "Director".)

