

Summary of Collins-Lieberman Intelligence Reform Legislation “The National Intelligence Reform Act of 2004”

I. National Intelligence Director

The legislation will create a National Intelligence Director (NID) with strong budget, personnel, and other authorities to break down stovepipes and knit intelligence agencies into an agile network. The NID will be the President’s primary intelligence advisor. The NID will be a Senate-confirmed official separate from the CIA Director. The NID will manage the National Intelligence Program, which is composed of the elements of the Intelligence Community concerned with “national” intelligence – i.e. intelligence pertaining to the interests of more than one department. The NID heads the National Intelligence Authority, which will contain entities such as the Office of the NID, the National Counterterrorism Center, and the national intelligence centers that the NID is authorized to create. The NID is necessary 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.

A. Budget Authority

The NID will be responsible for managing the “National Intelligence Program,” a budget category composed of parts of the Intelligence Community that serve “national” customers – meaning more than one department. The National Intelligence Program will include at least the CIA, NSA, NGA, NRO, the FBI’s Office of Intelligence, and the Department of Homeland Security’s Information Analysis function, plus other elements of the Intelligence Community that are “national” unless the NID and the head of a department agree otherwise. The National Intelligence Program will not include tactical military intelligence assets, which will remain under DoD.

The most critical authority for the NID is controlling these agencies’ funding. The NID will develop and present to the President the annual budget request for the National Intelligence Program. In addition, the NID will receive the appropriation for the National Intelligence Program. As a result, the NID will have not only the “power of the purse” to force integration among these agencies but also “execution” authority to monitor how these agencies spend their funds. The NID will have the authority to transfer funds within the National Intelligence Program to an activity that is a higher intelligence priority, subject to the approval of the Director of the Office of Management and Budget and appropriate notification to Congress. The transfer may not exceed applicable ceilings established in law for such transfers.

B. Personnel, Security, and Information Technology Authorities

The NID will play an active role in selecting the heads of the key entities in the National Intelligence Program: (1) the NID, with the concurrence of the Secretary of Defense, will forward recommendations to the President for the NSA, NGA, and NRO

directors; (2) the NID will have the right to concur in the FBI Director's selection to head the FBI Office of Intelligence, the Secretary of Homeland Security's recommendation to the President for the Undersecretary for IA&IP, as well as the Secretary of Defense's recommendation to the President for the Undersecretary of Defense for Intelligence and selection to head the Defense Intelligence Agency; and (3) the NID will forward a recommendation to the President for the CIA Director.

The NID will have authority to set security, personnel, and information technology standards across the Intelligence Community in order both to tie together the intelligence agencies into a network with robust information-sharing and to strengthen the Community's ability to recruit and retain the workforce it needs to address today's and tomorrow's challenges. The NID will also have the authority to transfer personnel within the National Intelligence Program, including in order to staff the National Counterterrorism Center and the national intelligence centers. In general, the NID shall consult with the heads of departments before exercising budget and personnel authorities.

C. National Intelligence Centers

The NID will have authority to create national intelligence centers. These centers will integrate capabilities from across the Intelligence Community in order to accomplish intelligence missions. The topics of the centers – for example, weapons of mass destruction and the Middle East – will reflect National Security Council priorities for intelligence collection and analysis. Each center will have primary responsibility for providing all-source analysis of intelligence on its topic and proposing collection requirements to the NID. The centers will be staffed by personnel from the intelligence agencies as well as by direct hires.

D. Officials to Assist the NID

The NID will have an office composed of key officials necessary for managing the National Intelligence Program: a general counsel, comptroller, CIO, civil liberties officer, and privacy officer. The National Intelligence Council, which oversees the production of national intelligence estimates, will be moved to the Office of the NID. An Office of Inspector General, as well as an Ombudsman to address concerns about politicized intelligence, will also be created outside the Office of the NID. The Office of the NID, the other entities referenced in this paragraph, the national intelligence centers, and the National Counterterrorism Center will be housed in the National Intelligence Authority – not in the Executive Office of the President.

The NID will have up to five Deputies. One will be a Principal Deputy NID, who will be appointed by the President upon the recommendation of the NID, by and with the consent of the Senate. The Principal Deputy NID will assist the NID in carrying out the duties and responsibilities of the NID and will act as the NID in the event of an absence or vacancy in the position. The NID will also be authorized to have up to four additional

deputies, who will be appointed by the President upon the recommendation of the NID. These deputies will not be Senate-confirmed, and will have such duties, responsibilities, and authorities as assigned by the NID. This structure allows the NID maximum flexibility to perform his duties and responsibilities with the assistance that the NID finds necessary.

E. Declassification of the National Intelligence Program's Top-Line Appropriation

The National Intelligence Program's top-line aggregate appropriation figure will be declassified in order to promote public accountability. 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.

F. Open Source Intelligence

The legislation will strengthen the Intelligence Community's ability to exploit open sources by improving the open source capability in the Intelligence Community.

G. Congressional Access to Objective Intelligence

The legislation includes several provisions to enhance Congress' access to intelligence and to require that the information is free from bias. The legislation requires the NID to provide intelligence that is independent of political considerations, and it establishes, within the Ombudsman's Office, an Analytic Review Unit to provide an independent and objective evaluation of the quality of the intelligence analysis of all elements of the intelligence community. It provides that the Director of the NCTC does not need to obtain anyone's clearance before testifying before Congress. The NID would also be required to provide Congress the intelligence assessments and other intelligence materials that Congress needs to perform its legislative and oversight role.

H. Other

The NID will chair a cabinet-level Joint Intelligence Community Council. The purpose of the Council is to advise the NID on setting requirements, financial management, and establishing policies across the Intelligence Community. The Council will help ensure the implementation of a joint, unified national intelligence effort to protect national security. The NID is also required to establish an integrated framework to bring together the educational components of the Intelligence Community in order to promote cross-disciplinary education and joint-training. In addition, the NID will be able to establish a National Intelligence Reserves Corps to provide temporary reemployment on a voluntary basis of former intelligence community employees during periods of emergency. Finally, the NID will be required to submit a report to the President and Congress within one year in order to assist Congress in judging the efficacy of the legislation.

II. National Counterterrorism Center

The 9-11 Commission's recommendation for a National Counterterrorism Center (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 to integrate intelligence capabilities against terrorism. Second, the Commission found that counterterrorism requires an Executive Branch-wide effort to mount joint operations to defeat terrorism. Thus, the NCTC will have a Directorate of Planning to develop interagency counterterrorism plans, assign agencies responsibilities and monitor implementation.

A. Interagency Counterterrorism Plans

The NCTC's Directorate of Planning will concentrate on developing joint counterterrorism plans that 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 tactical level, such as hunting for Bin Laden. 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 Laden. The NCTC could assign departments responsibilities as outlined in its plans. The NCTC will not have authority to direct operations by agencies in the Executive Branch –nor will the NCTC be inserted into the military chain of command.

B. The NCTC Director

The NCTC Director will be Senate-confirmed and the equivalent of a Deputy Secretary.

III. FBI Reforms

The legislation will include provisions to strengthen the FBI's capability to conduct intelligence collection and analysis, including the creation of a national security workforce and ensuring that each FBI field office has a senior official responsible for intelligence matters. The FBI is also required to provide basic training to all new agents in both criminal justice and national security matters, and to establish career positions in national intelligence matters for agents and analysts. The Director of the FBI must also report to Congress on the progress made on the requirements of the legislation.

IV. CIA Reforms

The legislation contains provisions concerning transformation of the CIA's capabilities. The CIA is to enhance its analytic and human intelligence capabilities, to develop and maintain an effective language program, and to achieve a more effective

balance with respect to unilateral and liaison operations, among other improvements. The Director of the CIA is also required to submit detailed reports to Congress about progress in these and other areas. The CIA will continue to coordinate relationships with foreign intelligence and security services as it does now, but will do so with oversight and direction from the NID.

V. Civil Liberties Board

The legislation will establish a Privacy and Civil Liberties Oversight Board, as recommended by the Commission. The bill will give the Board two functions. First, the Board is to advise the President and other federal officials at the front-end, when they are proposing 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 whatever rules apply. In conducting investigations, the Board will be given 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. Members of the Board are to be appointed by the President, with the advice and consent of the Senate, and will fixed, six-year terms. No more than three members of the five-member Board may be of the same party.

The bill also will require that the heads of certain federal agencies involved in the efforts to protect the nation from terrorism designate one or more senior agency officials 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.

VI. Information-Sharing

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

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 he is required to appoint someone at the deputy director level to handle the day-to-day responsibilities. The OMB Director will be required to submit to Congress 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.