

# CRS Report for Congress

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## The National Intelligence Director and Intelligence Analysis

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### Summary

The 9/11 Commission, made a number of recommendations to improve the quality of intelligence analysis. A key recommendation was the establishment of a Director of National Intelligence (DNI) position to manage the national intelligence effort and serve as the principal intelligence adviser to the president. Although the Commission did not address the future role of specific analytical entities, such as the National Intelligence Council (NIC) which prepares National Intelligence Estimates, Congress is currently considering legislation that addresses the issue of the extent of the DNI's analytical responsibilities. Intelligence reform legislation, including S. 2845 and H.R. 10, would place the National Intelligence Council under the DNI, making the DNI responsible for coordinating community-wide intelligence estimates. Some observers believe that this will complicate a position that has essentially managerial responsibilities. This report will be updated as new information becomes available.

### Background

The fundamental responsibility of intelligence services is to provide information to support policymakers and military commanders. In reviewing the performance of the U.S. Intelligence Community prior to the terrorist attacks of September 11, 2001, the 9/11 Commission, the National Commission on Terrorist Attacks Upon the United States, concluded that greater coordination of the nation's intelligence effort is required to enhance the collection and analysis of information. Specifically, the 9/11 Commission recommended that a new position of National Intelligence Director (NID) be established to ensure greater inter-agency coordination. A number of legislative proposals were introduced specifying that one individual would not be able to fill the two positions of NID and Director of the Central Intelligence Agency (CIA).<sup>1</sup>

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<sup>1</sup> For further detail on various legislative proposals, see CRS Report RL32600, *Comparison of 9/11 Commission Recommended Intelligence Reforms, Roberts Draft Bill, H.R. 4104, S. 190, S. 1520, S. 6, H.R. 4584, Current Law*; also, CRS Report RL32601, *Comparison of 9/11 Commission Recommended Intelligence Reforms, Collins/Lieberman Draft Bill, S. 2774, H.R. 5024, Administration Proposal, and Current Law*.

The NID was envisioned by the 9/11 Commission as having a number of budgetary and managerial responsibilities.<sup>2</sup> In addition, the occupant of the position would “retain the present DCI’s role as the principal intelligence adviser to the president.”<sup>3</sup> The Commission also envisioned that the NID who would “be confirmed by the Senate and would testify before Congress, would have a relatively small staff of several hundred people, taking the place of the existing community management offices housed at the CIA.”<sup>4</sup> The Commission adds, however, that “We hope the president will come to look directly to the directors of the national intelligence centers [the National Counterterrorism Center, and other centers focusing on WMD proliferation, international crime and narcotics, and China/East Asia] to provide all-source analysis in their areas of responsibility, balancing the advice of these intelligence chiefs against the contrasting viewpoints that may be offered by department heads at State, Defense, Homeland Security, Justice, and other agencies.”<sup>5</sup>

It is not completely clear that the 9/11 Commission envisioned the NID as having the responsibility for coordinating national intelligence estimates and other community products. At present, the Director of Central Intelligence (DCI) is responsible for providing intelligence to the President, head of departments and agencies of the Executive Branch, the Chairman of the Joint Chiefs of Staff and senior military commanders, and “where appropriate” the Senate and House of Representatives and the committees thereof. The existing statute provides that “such national intelligence should be timely, objective, independent of political considerations, and based upon all sources available to the intelligence community.”<sup>6</sup>

Legislation drafted in response to the 9/11 Commission Report and under consideration in November-December 2004 contains a number of provisions, including the establishment of a separate Director of National Intelligence (DNI), that directly relate to the Intelligence Community’s analytical efforts.<sup>7</sup>

## **National Intelligence Council and National Intelligence Estimates**

In the preparation of National Intelligence Estimates (NIEs), the DCI has been supported by the National Intelligence Council (NIC), a group of senior analysts within

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<sup>2</sup> See CRS Report RL32506, *The Position of Director of National Intelligence: Issues for Congress*.

<sup>3</sup> U.S., National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (Washington: Government Printing Office, 2004), p. 411.

<sup>4</sup> *Ibid.*, p. 414. (Subsequently, there appears to be a growing consensus to locate the NID outside the Executive Office of the President.)

<sup>5</sup> *9/11 Commission Report*, p. 411.

<sup>6</sup> 50 USC 403-3(a)(2).

<sup>7</sup> At this time there is no conference report on intelligence reform legislation, but one media service has published text of the bill as coordinated by conferees and made available on November 20, 2004; see [<http://www.cq.com/display.do?docid=1431350&sourcetype=6>]. This version uses the term “Director of National Intelligence” instead of “National Intelligence Director” and that usage will be following hereafter in this Report.

the intelligence community and substantive experts from the public and private sector.<sup>8</sup> The members of the NIC currently are appointed by and serve at the pleasure of the DCI. The three statutory responsibilities of the NIC are to:

- produce national intelligence estimates for the Government, included, whenever the Council considers appropriate, alternative views held by elements of the intelligence community;
- evaluate community-wide collection and production of intelligence by the intelligence community and the requirements and resources of such collection and production; and
- otherwise assist the [DCI] in carrying out responsibilities established in law.<sup>9</sup>

The DCI historically, and potentially the DNI, has a unique responsibility for the quality of intelligence analysis for consumers at all levels of government. While a number of agencies produce analytical products, the most authoritative intelligence products of the U.S. Intelligence Community are published under the authority of the DCI. NIEs are the primary, but not the sole, form in which the Intelligence Community forwards its judgments to senior officials, and they are the only one prescribed in statute. NIEs are produced at the NIC's initiative or in response to requests from senior policymakers.

NIEs are sometimes highly controversial. They are designed to set forth the best objective judgments of the Intelligence Community, but they occasionally are more closely related to policy rationales than some analysts would prefer. An NIE produced in October 2002 on Iraq's Continuing Programs for Weapons of Mass Destruction has been much criticized; a more recent NIE on prospects for Iraq has been the source of significant media attention.<sup>10</sup>

Although the importance of particular NIEs to specific policy decisions may be debatable,<sup>11</sup> the NIE process provides a formal opportunity for the Intelligence Community's input to policy deliberations. Arguably, it is the responsibility of policymakers to seek the input of the Intelligence Community, but most observers would argue that the DCI should not be reticent in presenting intelligence information and judgments on major policy issues when difficult decisions are under consideration.

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<sup>8</sup> 50 USC 403-3(b).

<sup>9</sup> 50 USC 403-3(b)(2).

<sup>10</sup> On the 2002 NIE see U.S. Senate, Select Committee on Intelligence, *U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*, S.Rept. 108-301, July 9, 2004; on the more recent NIE, see Douglas Jehl, "U.S. Intelligence Shows Pessimism on Iraq's Future," *New York Times*, September 16, 2004, p.1. Neither of these NIEs has yet been made public; earlier NIEs are occasionally released; see, for instance, Donald P. Steury, ed., *Intentions and Capabilities: Estimates on Soviet Strategic Forces, 1950-1983* (Washington: Center for the Study of Intelligence, Central Intelligence Agency, 1996).

<sup>11</sup> See CRS Report RS21696, *U.S. Intelligence and Policymaking: the Iraq Experience*.

## National Intelligence Officers

The current chairman of the NIC is Ambassador Robert L. Hutchings, who had previously served in the State Department and in academic institutions.<sup>12</sup> In addition, there are senior analysts, known as National Intelligence Officers (NIOs), for Africa, East Asia, Economics and Global Issues, Europe, Intelligence Assurance, Latin America, Military Issues, Near East and South Asia, Russia and Eurasia, Transnational Threats, Warning, and Weapons of Mass Destruction and Proliferation. The NIOs, who do not receive Senate confirmation, come from a variety of government agencies, inside and outside the Intelligence Community, and from the private sector.

National Intelligence Officers supervise the production of NIEs and other community-wide products. Typically, an analyst in one agency is designated by the relevant NIO to prepare a draft analytical product; the draft then is reviewed by relevant analysts throughout the Community. Subsequently, if approved by the leadership of the Intelligence Community (the National Foreign Intelligence Board) and the DCI, the draft is circulated to policymakers in the Executive Branch and, on occasion, to Members of Congress. NIEs set forth the best information and judgments of the Intelligence Community and are usually directed at significant issues that may require policy decisions.

The NIOs have worked for the DCI in his capacity as head of the Intelligence Community rather than in his capacity as director of the CIA. Thus, NIE and related analytical products are not CIA products; they represent the consolidated views of the Intelligence Community (with alternative views held by elements of the Intelligence Community noted, in accordance with the statutory mandate<sup>13</sup>).

The conference draft of November 20, 2004 provides the NIC, composed of senior intelligence analysts and substantive experts from the public and private sector, to be part of the Office of the DNI. Its members would be appointed and serve at the pleasure of the DNI. The NIC would produce NIEs and evaluate community-wide collection and production.

It may be assumed that the NIC would continue to depend heavily on the resources of the CIA. The CIA contains the most extensive analytical capability across the board on all subjects that might concern national policymakers, as well as considerable capability to support military commanders and mid-level desk officers. The CIA was originally designed to be “central,” not in a position of supporting departmental objectives as has been considered to be the case with the intelligence arms of the military services and the State Department. In some areas, however, other agencies have more extensive capabilities and can make an equal or greater contribution to NIEs and other products designed to express the judgments of the entire Intelligence Community. Some critics, moreover, charge that CIA on occasion develops an agency “position” that tends to discourage alternate perspectives.<sup>14</sup>

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<sup>12</sup> For a listing of the NIOs and a description of the NIC’s functions, see [<http://odci.gov/nic/>].

<sup>13</sup> 50 USC 403-3(b)(2)(A).

<sup>14</sup> See S.Rept. 108-301, pp. 27-29.

## Alternative Views and Concerns About Politicization

On many topics, there are inevitably different perspectives, and according to many observers, policymakers are best served by rigorous presentations of alternative positions.<sup>15</sup> At the same time, however, some NIEs reflect an effort to craft language that all agencies can agree on and thus to avoid airing differences that might draw agencies into policy arguments between and among government departments. Agency managers understand that too close involvement in a policy argument by intelligence analysts can make their analyses unwelcome across the board. In addition, they well understand that analysis is an uncertain science and art and that even the best analysts can miss developments that loom large in retrospect and leave their agencies open to harsh criticism or retribution.

Concern is often expressed about the extent to which intelligence products can become “politicized,” i.e., be drafted to support or undermine certain policy options. A charge of politicization is difficult to prove and is often dependent upon a reader’s subjective viewpoint. Most observers believe that analysts make a conscientious effort to avoid policy advocacy, but note that they are fully aware of policy disputes and may have their own views that may, subconsciously or otherwise, influence their products. There is, according to some observers, a tendency to avoid making intelligence judgments that directly conflict with policy options that have been chosen. Observers caution that placing intelligence analysis at the center of policy disputes can undermine the effectiveness of the analytical contribution; they suggest that intelligence can best serve by informing policy debates, but analysts cannot be expected to provide definitive judgments that will resolve disputes that may involve a myriad of different factors, some far removed from intelligence questions. In addition, observers note that it should be recognized that policymaking sometimes involves making judgments based on incomplete intelligence or on a willingness to accept risks and uncertainties beyond the ken of analysts. Analysis can have a subjective quality to some degree and can be undermined by unreasonable expectations.

The conference legislation made public on November 20, 2004, provides several provisions designed to ensure that analysis is well-prepared and not politicized. In addition to having authority to establish an Office of Inspector General, the DNI is to assign an individual to ensure that agencies conduct alternative analyses of information and conclusions in intelligence products (section 1017). The DNI is also to assign an individual to ensure that intelligence products are “timely, objective, independent of political considerations, based on all sources of available intelligence, and employ the standards of proper analytic tradecraft” (section 1019). Another section requires that the DNI assign an individual to address analysts’ concerns about “real or perceived problems of analytic tradecraft or politicization, biased reporting, or lack of objectivity in intelligence analysis” (section 1020).

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<sup>15</sup> The views of different agencies as reflected in the October 2002 NIE, *Iraq’s Continuing Programs for Weapons of Mass Destruction*, are discussed in U.S., Senate, Select Committee on Intelligence, *U.S. Intelligence Community’s Prewar Intelligence Assessments on Iraq*, S.Rept. 108-301, July 9, 2004. The report also contains a description of the NIE drafting process; see pp. 9-11.

## **Other Analytical Products: the President's Daily Brief (PDB)**

Left uncertain in the recommendations of the 9/11 Commission are responsibilities for preparing the written brief on current intelligence that is prepared daily for the President and a very few other senior officials. The President's Daily Brief (PDB), along with the Senior Executive Intelligence Brief (SEIB) that has a somewhat wider distribution, have been prepared by CIA's Directorate of Intelligence (DI) and are considered that directorate's "flagship products." Nonetheless, should the DNI be responsible for daily substantive briefings at the White House rather than the CIA Director, it might be considered appropriate that the DNI staff draft the PDB and the SEIB, based on input from the CIA and other agencies. The number of analysts who actually prepare the PDB/SEIB is not large, but their work reflects ongoing analysis in the CIA and other parts of the Intelligence Community. Some might argue, moreover, that close and important links between CIA desk-level analysts and the PDB would be jeopardized should the briefs be prepared outside of the CIA.

In addition, there are myriads of other analytical products: reports, memoranda, briefings, etc. that are prepared on a routine basis. The draft statute would not transfer extensive analytical efforts to the NID; leaving such duties to existing agencies, the NIC would be responsible for assessments that set forth the judgments of the Intelligence Community as a whole.

## **Issues for Congress**

Current law provides that national estimates are prepared by the National Intelligence Council whose members have served at the pleasure of the DCI. Intelligence reform legislation would transfer the NIC and its staff (probably numbering less than 100 positions) to the DNI. This would give the DNI a capability to oversee the preparation of NIEs and to ensure that the views of all agencies have been taken into consideration in inter-agency assessments. A major change would be the fact that the NIOs and their staff would work for one person (the DNI) while CIA analysts would report to a separate Director of the CIA.

The responsibility for the production and presentation of the PDB/SEIBs is more problematical. They are currently prepared by CIA's Directorate of Intelligence, and that responsibility could be continued. On the other hand, if the DNI, rather than the CIA Director, is to conduct the daily briefing for the President and senior White House officials, it could be argued that the DNI and the DNI's immediate staff should have responsibility for the document that provides the basis for the daily briefings.