

CRS Report for Congress

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Director of National Intelligence: Statutory Authorities

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Summary

In passing the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) in late 2004, Congress approved the most comprehensive reform of the U.S. Intelligence Community since its establishment over 50 years ago. Principal among enacted changes was the establishment of a new position of the Director of National Intelligence (DNI) to manage the Intelligence Community. Some observers have questioned whether the new statute provides the DNI the necessary authorities to effectively manage the Community. In examining the DNI's authorities, it is clear that they are substantially stronger than those held by the former Director of Central Intelligence (DCI), but whether the DNI has sufficient management authority to implement mandated reforms will depend on several factors. They include the DNI's determination to assert his new powers, the extent to which the DNI receives presidential and congressional support, and the DNI's ability to successfully establish a transparent intelligence budget process that will permit him to make and effectively enforce informed budget decisions. This suggests close and continuous congressional oversight of the reform process. This Report will be updated as new information becomes available.

Background

On March 17, 2005, President Bush forwarded to the Senate the nomination of Ambassador John Negroponte to fill the position of Director of National Intelligence (DNI) established by the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458; hereafter, the Intelligence Reform Act). There has been considerable media speculation as to whether the new DNI will have the authority necessary to effectively manage the Intelligence Community, which has long been viewed by many observers as more of a loose confederation of 15 separate intelligence entities than an integrated community. However, even if the degree of the DNI's enhanced authority remains uncertain, the Director's responsibilities are clearer than have been those of Directors of Central Intelligence (DCIs).

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE 11 APR 2005		2. REPORT TYPE N/A		3. DATES COVERED -	
4. TITLE AND SUBTITLE Director of National Intelligence: Statutory Authorities				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) David D. Acker Library and Knowledge Respository, Defense Acquisition University, Fort Belvoir, VA				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release, distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT SAR	18. NUMBER OF PAGES 6	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

Historically, the DCI has had three primary responsibilities that are codified in the National Security Act, as amended. First, the DCI has been responsible for providing national intelligence (as opposed to tactical intelligence for military commanders) to the President and other senior officials, and “where appropriate,” to Congress. Secondly, the DCI has served as head of the Intelligence Community with authorities to establish priorities for collection and analysis, to develop and present to the President the annual budget for national intelligence programs, and, within tightly prescribed limits, to transfer funds and personnel from one part of the National Foreign Intelligence Program (NFIP), recently renamed the National Intelligence Program (NIP), to another. And, thirdly, the DCI has served as head of the CIA, directing the collection of information by human sources, supervising the wide-ranging analytical efforts of the CIA, and, when directed by the President, undertaking covert actions.

Many outside observers, Members of Congress, and various commissions over the years have argued that the DCI position is unworkable. They contend that DCIs, frustrated by the challenges involved in managing the entire Intelligence Community, have focused narrowly on the CIA, and that the result has been an ill-coordinated intelligence effort that has poorly served the Nation. Some also have contended that DCIs have lacked adequate legal authorities to establish priorities and to ensure compliance by intelligence agencies beyond the CIA. In particular, it has been suggested that major intelligence agencies in the Department of Defense (DOD) — the National Security Agency (NSA), the National Reconnaissance Office (NRO), and the National-Geospatial Agency (NGA) — have been more responsive to the needs of the military services than to the requirements of national policymakers. And, finally, some observers, while conceding that DCI authorities under the National Security Act are limited, nevertheless contend that DCIs have failed to fully assert their authorities, particularly when they conflicted with the priorities of the Secretary of Defense, viewed by many as the dominant voice in the Intelligence Community because of the Secretary’s control over an estimated eighty-five percent of the intelligence budget.

In July 2004 the 9/11 Commission (the National Commission on Terrorist Attacks Upon the United States) recommended that the DCI position be replaced by a National Intelligence Director to manage the national intelligence program and oversee the agencies that contribute to it. In response, a number of bills were introduced and, after extended deliberations, Congress and the President ultimately agreed to establish, through a statute, a Director of National Intelligence along with a separate head of the CIA. Having accepted this principle, however, there were significant differences of opinion about the particular authorities that should be given to the DNI, especially with regard to the preparation and execution of the budgets of the large intelligence agencies in DOD. These differences were reconciled by a provision in the Act (section 1018) requiring that the President issue guidelines to ensure that the DNI’s authorities are exercised in a way that “respects and does not abrogate the statutory responsibilities” of other departments.

The Act assigns to the DNI two of the three principal responsibilities formerly performed by the DCI. The DNI will provide intelligence to the President, other senior officials, and Congress; and the DNI will head the Intelligence Community. But, unlike DCIs, the DNI will not oversee the CIA. Rather, the Act establishes a new position of Director of the Central Intelligence Agency (DCIA), who will report to the DNI. The Act also restates the major responsibilities of the Director of the CIA, which include: 1) collecting intelligence through human sources and by other appropriate means (but with

no police, subpoena, or law enforcement powers or internal security functions); 2) providing overall direction for and coordination of collection by human sources outside the U.S. in coordination with other government departments; 3) performing other functions and duties related to intelligence affecting the national security as the President or DNI may direct [a formulation that observers believe is intended to encompass planning and carrying out covert actions]; and 4), under the DNI's direction, coordinating relationships between U.S. intelligence services and those of other countries.

DNI Authorities

In addition to outlining the DNI's responsibilities, the Act strengthens the DNI's authorities to carry out those responsibilities by providing the DNI additional powers in certain areas, including in those of personnel, tasking, and acquisition. Arguably most important, the Act increases the DNI's control over the budgets of the Intelligence Community's 15 agencies. According to one observer, the DCI has "been pressing his nose against the glass looking in," and, never possessed the budget clout the DNI will have.¹ Other observers, while conceding that the DNI has more authorities under the Act, question whether they are sufficient and are skeptical that the DNI will aggressively assert them in any case.

Budget Authority. The Act strengthens DNI budget authorities in several ways. First, it provides that the Director of the Office of Management and Budget, at the exclusive direction of the DNI, will apportion — or direct how congressionally appropriated funds will flow from the Treasury Department to each of the cabinet level agencies containing intelligence community elements.² As a result, the DNI will be able to better control the pace of spending and could, for example, decide to withhold funds until recipients comply with DNI spending priorities, a possibility never available to DCIs.

Second, at the sub-cabinet agency and department level, the DNI will be able to allot appropriations directly, providing the DNI an additional opportunity to control spending.³ The law further requires that the DNI notify Congress if a departmental comptroller refuses to act in accordance with a DNI spending directive. Again, these are new authorities that have been unavailable to DCIs.

Third, the new statute more strongly asserts the DNI's budget authority by stipulating that the DNI will "develop and determine" the National Intelligence Program budget.⁴ According to observers, the DCI's authorities in regard to the budget, while significant on paper, have never been used effectively.

¹ Interview with a senior Intelligence Community official.

² P.L. 108-458, Sec. 102A (c) (5) (B).

³ Ibid, Sec. 102A (c) (5) (A).

⁴ Ibid, Sec. 102A (c) (B). National intelligence refers "to all intelligence, regardless of the source from which derived and included information gathered within or outside the United States. . . ." Sec. 1012.

Fourth, the Act calls on the DNI to “ensure the effective execution of the budget,” and to monitor the implementation and execution of the NIP.⁵ DCIs under previous statute had no explicit statutory execution authority beyond the CIA.

Fifth, the Act stipulates that the DNI shall provide budget guidance to those elements of the Intelligence Community not falling within the National Intelligence Program.⁶ The DCIs had no statutorily determined role in this regard.

Although equipped with enhanced authorities regarding the budget for the National Intelligence Program, the DNI’s authority to shape intelligence support to military operations — DoD’s Joint Military Intelligence Program (JMIP) and Tactical Intelligence and Related Activities (TIARA) Program — remains limited and almost identical to that of the DCIs. The DNI will “participate in the development by the Secretary of Defense of the Joint Military Intelligence Program and the Tactical Intelligence and Related Activities Program.”⁷

Reprogramming Authority. Whereas DCIs, with approval of the Director of the Office of Management and Budget (OMB) could reprogram or transfer funds only if they obtained the concurrence of the affected agency secretary or department head, the new act permits the DNI, with OMB approval, to transfer or reprogram funds unilaterally, but within certain limits.⁸ The DNI can annually reprogram or transfer up to \$150 million, provided that sum is less than 5 percent of the affected agency or department’s budget.⁹

Personnel Transfer Authority. The DNI, with the OMB approval, is able to transfer Intelligence Community personnel for up to two years. The DNI, jointly with agency heads, develop procedures to govern such transfers. DCIs could transfer personnel, but only with concurrence of the affected department head, and only for up to a year. Should the DNI decide to establish a new national intelligence center, the Director also has the authority to transfer up to 100 personnel to man the new center.¹⁰

Appointment Authority. The new statute strengthens the DNI’s appointment authorities, to a degree, and increases the number of positions over which the DNI can exercise some appointment authority.¹¹ Specifically, the statute states that the department

⁵ Ibid, Sec. 102A (c) (4).

⁶ Ibid, Sec. 102A (c) (3) (B).

⁷ Ibid, Sec. 102A (c) (3) (A).

⁸ Ibid, Sec. 102A (d).

⁹ Ibid, Sec. 102A (d) (5) (A).

¹⁰ Ibid, Sec. 102A (e).

¹¹ Ibid, Sec. 1014. These positions include: the Director of the National Security Agency, the Director of the National Reconnaissance Office, the Director of the National Geospatial-Intelligence Agency, the Assistant Secretary of State for Intelligence and Research, the Director of the Office of Intelligence of the Department of Energy, the Director of the Office of Counterintelligence of the Department of Energy, the Assistant Secretary for Intelligence Analysis of the Department of the Treasury, the Executive Assistant Director for Intelligence of

or agency head having jurisdiction over the appointment must seek the concurrence of the DNI. If the DNI does not concur, the position cannot be filled. The department head may advise the President directly of the intention to withhold concurrence or to make a recommendation, as the case may be.

Acquisition Authority. Whereas the DCI had no statutorily based acquisition authority, the new Act provides that the DNI serve as the exclusive milestone decision authority on major acquisitions.¹² The DNI's authority is limited only insofar as when the acquisitions concern Department of Defense programs, he must share the authority with the Secretary of Defense. If the two are unable to reach agreement, the Act stipulates that the President will resolve it.

Tasking Authority. The Act sharpens the DNI's tasking authority over that enjoyed by DCIs by explicitly stipulating that the DNI shall "manage and direct the tasking of, collection, analysis, production, and dissemination of national intelligence...by approving requirements and resolving conflicts."¹³ Previous law spoke only to the DCI's collection authorities, and did not explicitly address analysis, production and dissemination authorities.

Authority Over the National Counterterrorism Center. The Act codifies a new national center — the National Counterterrorism Center (NCTC). The NCTC has a bifurcated reporting structure that is based on a differentiation the Act stipulates between *intelligence* joint counterterrorism operations, and joint counterterrorism operations (*other than intelligence*).¹⁴ As a result, the DNI has authority over the Center's budget and programs, NCTC's intelligence activities and intelligence joint counterterrorism operations. But, because strategic planning for *joint* counterterrorism operations other than intelligence was viewed as an Executive Branch-wide function, the Act stipulates that the Director of the NCTC reports directly to the President with respect to "...planning and progress of joint counterterrorism operations (other than intelligence operations)."¹⁵

¹¹ (...continued)

the Federal Bureau of Investigation or any successor to that position, and the Assistant Secretary of Homeland Security for Information Analysis.

¹² Ibid, Sec.1014.

¹³ Ibid, Sec. 102A(f).

¹⁴ Ibid, Sec. 1021. Section 1021 of P.L. 108-458 codifies the existence of the NCTC, which initially was established by Executive Order (EO) 13358. With regard to the establishment of the NCTC, there is a potential conflict between the law and EO 13358. For additional detail, see CRS Report RL32816, *National Counterterrorism Center: Implementation Challenges and Issues for Congress*.

¹⁵ See *Congressional Record*, December 8, 2004, Senate consideration of the conference report to accompany S. 2845. Senator Joseph I. Lieberman was quoted as stating that the then-proposed NCTC Directorate of Strategic Operational Planning would conduct planning for "...the entire Executive branch — ranging from the combatant commands, to the State Department, to the FBI's Counterterrorism Division to the Department of Health and Human Services to the CIA." The March 2005 Report of the Commission on the Intelligence Capabilities for the United States (continued...)

Some observers suggest that the new and enhanced authorities described above could be interpreted differently by different agencies. They note that section 1017 of the Intelligence Reform Act requires that the President issue guidelines to ensure that the DNI's authorities are implemented in "in a manner that respects and does not abrogate the statutory authorities" of other departments. Such guidelines, some believe, could serve to weaken the DNI's newly established authorities.

Potential Congressional Concerns

During confirmation hearings for Ambassador Negroponte, Members may choose to seek the nominee's views on the nature and extent of his statutory authorities. Some observers have suggested ambiguities in the Intelligence Reform Act that cover complex relationships among disparate agencies with their own statutory authorities. In such a situation, much will undoubtedly depend on how the first DNI understands his position, and upon the patterns of cooperation and deference that are set in the initial period of his tenure. Congress may be especially interested in the relationships between the DNI and the Defense Department and the law enforcement community.

Whether the DNI's authorities under the new statute are sufficient to meet the demands of effective management remains to be seen. What is clearer, however, is that the statute provides the DNI substantially more authority — not only in regard to the budget, but also in the areas of personnel, tasking and acquisition — than DCIs have had under the National Security Act of 1947, as amended. Just how much *more* overall authority the DNI will actually wield will depend on several factors. Among them: (1) will the DNI aggressively assert the new authorities? (2) will the President and Congress back the DNI if he does? (3) and, will the DNI successfully establish a transparent end-to-end budget process that will permit him to make and effectively enforce informed budget decisions?

¹⁵ (...continued)

Regarding Weapons of Mass Destruction (p. 328) expressed concerns about this bifurcated reporting responsibility.