

Executive Memorandum

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The Senate and House 9/11 Reform Bills Both Miss the Mark

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Both the Senate and the House of Representatives have passed bills (S. 2845 and H.R. 10) implementing the recommendations of the 9/11 Commission. Neither bill is satisfactory, because both: (1) create new and unnecessary bureaucracy, (2) interfere with the capacity of the National Intelligence Director (NID) to provide independent assessments to the President and to oversee the intelligence community, (3) undercut the missions of the National Security Council and the Department of Homeland Security, and (4) lack adequate safeguards to protect civil liberties while providing more aggressive antiterrorism tools. Conferees will have to make significant compromises and changes to produce an acceptable bill.

Both bills contain many positive measures that appropriately address the over three dozen significant recommendations in the 9/11 Commission's report. Yet a handful of the most critical issues rise above the others and must be resolved. Specifically, conferees need to:

Avoid Budget Woes. The Senate bill saddles the NID with too much budget-making responsibility and hampers the ability of department secretaries and agency directors to manage their own organizations. Language in the House bill (Section 102A) strikes a better balance between the need for integrated action and allowing leaders to do their jobs.

Rethink the Counterterrorism Center. Both bills err in placing the National Counterterrorism Center directly under the NID and giving the center responsibility for planning all counterterrorism operations as well as collating intelligence. Making the NID directly responsible for the anti-terrorism war will compete and interfere with other primary missions, such as providing independent assessments to the President and overseeing the entire intelligence community on all national intelligence priorities.

Assigning the mission to the NID will also conflict with missions assigned to the National Security Council (NSC) and the Department of Homeland Security. Instead, the National Counterterrorism Center should operate under the direction of the Secretary of Homeland Security and be responsible for analyzing and sharing intelligence, while the NSC should provide strategic planning guidance for counterterrorism operations.

Allow the President to Retain the Homeland Security Council. The Senate bill (Section 202)

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 - None of the bills' proposals fully meet national priorities for enhancing homeland security, improving anti-terrorism tools, protecting civil liberties, and winning the war against terrorism.
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wrongly calls for abolishing the Homeland Security Council and assigning its missions to the NSC. Congress is wrong to interfere with the President's constitutional authority to determine how best to organize his staff. Until programs and policies regarding homeland security become as mature as other aspects of national security, it makes sense for the President to retain a separate dedicated council.

Eliminate the Ombudsman. Section 142 of the Senate bill calls for creating an Ombudsman of the National Intelligence Authority—in effect establishing a permanent “independent counsel” with unprecedented potential to disrupt intelligence activities with politically motivated investigations. Although new instruments are needed to ensure intelligence powers are not abused, an ombudsman is not appropriate for overseeing vital matters of national security. The final bill should instead include measures to establish Privacy and Civil Liberties Offices and an Inspector General for the NID.

Do Not Mandate Information-Sharing Solutions. Both bills rightly call for creating a Chief Information Officer under the NID and both provide appropriate authorities for establishing a national intelligence architecture and improved means of information sharing. However, the Senate bill (Section 206) wrongly hamstringing the NID by mandating an unproven information-sharing architecture. The NID should have the freedom to determine the most efficient and effective means for improving the nation's capacity to share intelligence.

End Visa Management Chaos. The House bill aims at strengthening the visa issuance and management process, but its initiatives further fragment an already fractured process. Section 2192 transfers responsibility for the development of a congressionally mandated interagency visa information management system (called “Chimera”) to the NID, further overburdening the director with unnecessary additional duties. Further complicating the picture, Section 3092 establishes an Office of Visa and Passport Security within the Department of State. A far better solution would be to consolidate all visa management into a single responsible agency—the Department of Homeland Security.

Establish Clear Counterintelligence Responsibilities. Efforts to increase information sharing will increase the potential for adversaries to steal, exploit, or manipulate intelligence. The NID must play a critical role in establishing and overseeing national counterintelligence programs and polices. The House bill does not adequately account for this critical need. On the other hand, the Senate bill (Section 131) better addresses this issue.

Meet the Needs of Emergency Responders. The 9/11 Commission report asserts that the current system of allocating grants to state and local governments is in danger of becoming “pork barrel” legislation. This is true. While the Senate bill does not address this challenge, Title V of the House bill does. The conferees should include Title V in the final bill, providing the President with a strong congressional mandate to turn federal giveaway programs into an effective national security instrument.

Conclusion. The 9/11 Commission and the Senate and House bills have rightly addressed a range of important issues, but none of their proposals fully meet national priorities for enhancing homeland security, improving anti-terrorism tools, protecting civil liberties, and creating efficient and effective federal instruments for winning the long war against terrorism. That is not surprising. These are complex issues. It will take years to implement appropriate solutions and reap the benefits of these reforms. All of this suggests that Congress should take a more cautious and deliberate approach.

If conferees cannot fashion a bill that meets all the national priorities, they should not be afraid to walk away and start over. It is more important to get the reforms right than to get them fast. Once a bill is signed by the President, odds are that it will be decades before the issue of substantive legislative reform will be addressed again in a serious way. Congress has one chance to get this right.

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