

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

PURPOSE

Pub. L. 107-306, title IX, §901(b), Nov. 27, 2002, 116 Stat. 2432, provided that: “The purpose of this title [enacting this section and section 402c of this title, amending section 402a of this title, and enacting provisions set out as a note under section 401 of this title] is to facilitate the enhancement of the counterintelligence activities of the United States Government by—

“(1) enabling the counterintelligence community of the United States Government to fulfill better its mission of identifying, assessing, prioritizing, and countering the intelligence threats to the United States;

“(2) ensuring that the counterintelligence community of the United States Government acts in an efficient and effective manner; and

“(3) providing for the integration of all the counterintelligence activities of the United States Government.”

§ 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 National Intelligence.

(d) 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 (e), in consultation with appropriate department and agencies of the United States Government, and private sector entities, to produce 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

(A) Requirement to produce

Subject to subsection (e), 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 a strategy for the counterintelligence programs and activities of the United States Government to be known as the National Counterintelligence Strategy.

(B) Revision and requirement

The National Counterintelligence Strategy shall be revised or updated at least once

every three years and shall be aligned with the strategy and policies of the Director of National Intelligence.

(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 National Intelligence 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 production of counterintelligence damage assessments and assessments of lessons learned from counterintelligence activities.

(5) National counterintelligence program budget

In consultation with the Director of National Intelligence—

(A) to coordinate the development of budgets and resource allocation plans for the counterintelligence programs and activities of the Department of Defense, the Federal Bureau of Investigation, the Central Intelligence Agency, and other appropriate elements of the United States Government;

(B) to ensure that the budgets and resource allocation plans developed under subparagraph (A) address the objectives and priorities for counterintelligence under the National Counterintelligence Strategy; and

(C) to submit to the National Security Council periodic reports on the activities undertaken by the Office under subparagraphs (A) and (B).

(6) National counterintelligence collection and targeting coordination

To develop priorities for counterintelligence investigations and operations, and for collection of counterintelligence, for purposes of the National Counterintelligence Strategy, except that the Office may not—

(A) carry out any counterintelligence investigations or operations; or

(B) establish its own contacts, or carry out its own activities, with foreign intelligence services.

(7) National counterintelligence outreach, watch, and warning

(A) Counterintelligence vulnerability surveys

To carry out and coordinate surveys of the vulnerability of the United States Government, and the private sector, to intelligence threats in order to identify the areas, programs, and activities that require protection from such threats.

(B) Outreach

To carry out and coordinate outreach programs and activities on counterintelligence

to other elements of the United States Government, and the private sector, and to coordinate the dissemination to the public of warnings on intelligence threats to the United States.

(C) Research and development

To ensure that research and development programs and activities of the United States Government, and the private sector, direct attention to the needs of the counterintelligence community for technologies, products, and services.

(D) Training and professional development

To develop policies and standards for training and professional development of individuals engaged in counterintelligence activities and to manage the conduct of joint training exercises for such personnel.

(e) Additional requirements regarding National Threat Identification and Prioritization Assessment and National Counterintelligence Strategy

(1) A National Threat Identification and Prioritization Assessment under subsection (d)(1), and any modification of such assessment, shall not go into effect until approved by the President.

(2) A National Counterintelligence Strategy under subsection (d)(2), and any modification of such strategy, shall not go into effect until approved by the President.

(3) The National Counterintelligence Executive shall submit to the congressional intelligence committees each National Threat Identification and Prioritization Assessment, or modification thereof, and each National Counterintelligence Strategy, or modification thereof, approved under this section.

(4) In this subsection, 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.

(f) Personnel

(1) Personnel of the Office of the National Counterintelligence Executive may consist of personnel employed by the Office or personnel on detail from any other department, agency, or element of the Federal Government. Any such detail may be on a reimbursable or nonreimbursable basis, at the election of the head of the agency detailing such personnel.

(2) Notwithstanding section 104(d)¹ or any other provision of law limiting the period of the detail of personnel on a nonreimbursable basis, the detail of an officer or employee of United States or a member of the Armed Forces under paragraph (1) on a nonreimbursable basis may be for any period in excess of one year that the National Counterintelligence Executive and the head of the department, agency, or element concerned consider appropriate.

(g) Treatment of activities under certain administrative laws

The files of the Office shall be treated as operational files of the Central Intelligence Agency

for purposes of section 701 of the National Security Act of 1947 (50 U.S.C. 431) to the extent such files meet criteria under subsection (b) of that section for treatment of files as operational files of an element of the Agency.

(h) Oversight by Congress

The location of the Office of the National Counterintelligence Executive within the Office of the Director of National Intelligence 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.

(i) Construction

Nothing in this section shall be construed as affecting the authority of the Director of National Intelligence, 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.

(Pub. L. 107–306, title IX, §904, Nov. 27, 2002, 116 Stat. 2434; Pub. L. 108–458, title I, §§1071(g)(2)(B), 1072(d)(1)(C), Dec. 17, 2004, 118 Stat. 3691, 3693; Pub. L. 111–259, title IV, §412, Oct. 7, 2010, 124 Stat. 2725; Pub. L. 112–18, title IV, §401, June 8, 2011, 125 Stat. 227; Pub. L. 112–87, title III, §311(b), Jan. 3, 2012, 125 Stat. 1886.)

REFERENCES IN TEXT

Section 104(d), referred to in subsec. (f)(2), is section 104(d) of Pub. L. 107–306, title I, Nov. 27, 2002, 116 Stat. 2387, which is not classified to the Code.

The National Security Act of 1947, referred to in subsec. (i), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

CODIFICATION

Section was enacted as part of the Counterintelligence Enhancement Act of 2002, and also as part of the Intelligence Authorization Act for Fiscal Year 2003, and not as part of the National Security Act of 1947 which comprises this chapter.

AMENDMENTS

2012—Subsec. (d)(1). Pub. L. 112–87 struck out “on an annual basis” after “to produce”.

2011—Subsec. (d)(2). Pub. L. 112–18 inserted subpar. (A) designation and heading, struck out “on an annual basis” after “to produce”, and added subpar. (B).

2010—Subsec. (d). Pub. L. 111–259, §412(a)(1), (2), redesignated subsec. (e) as (d) and struck out former subsec. (d). Text read as follows:

“(1) There shall be in the Office of the National Counterintelligence Executive a general counsel who shall serve as principal legal advisor to the National Counterintelligence Executive.

“(2) The general counsel shall—

“(A) provide legal advice and counsel to the Executive on matters relating to functions of the Office;

“(B) ensure that the Office complies with all applicable laws, regulations, Executive orders, and guidelines; and

“(C) carry out such other duties as the Executive may specify.”

Subsec. (d)(1), (2). Pub. L. 111–259, §412(b)(1), substituted “subsection (e)” for “subsection (f)”.

Subsec. (e). Pub. L. 111–259, §412(a)(2), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

¹ See References in Text note below.

Subsec. (e)(1). Pub. L. 111-259, §412(b)(2)(A), substituted “subsection (d)(1)” for “subsection (e)(1)”.

Subsec. (e)(2). Pub. L. 111-259, §412(b)(2)(B), substituted “subsection (d)(2)” for “subsection (e)(2)”.

Subsec. (f). Pub. L. 111-259, §412(a)(2), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (f)(3), (4). Pub. L. 111-259, §412(a)(3), struck out pars. (3) and (4) which read as follows:

“(3) The employment of personnel by the Office, including the appointment, compensation and benefits, management, and separation of such personnel, shall be governed by the provisions of law on such matters with respect to the personnel of the Central Intelligence Agency, except that, for purposes of the applicability of such provisions of law to personnel of the Office, the National Counterintelligence Executive shall be treated as the head of the Office.

“(4) Positions in the Office shall be excepted service positions for purposes of title 5.”

Subsecs. (g) to (m). Pub. L. 111-259, §412(a)(1), (2), redesignated subsecs. (k) to (m) as (g) to (i), respectively, and struck out former subsecs. (h) to (j) which related to support, availability of funds for reimbursement, and contracts, respectively. Former subsec. (g) redesignated (f).

2004—Subsec. (c). Pub. L. 108-458, §1072(d)(1)(C)(i), substituted “Office of the Director of National Intelligence” for “Office of the Director of Central Intelligence”.

Subsec. (e)(4). Pub. L. 108-458, §1071(g)(2)(B)(i), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

Subsec. (e)(5). Pub. L. 108-458, §1071(g)(2)(B)(ii), substituted “Director of National Intelligence” for “Director of Central Intelligence” in introductory provisions.

Subsec. (h)(1), (2). Pub. L. 108-458, §1071(g)(2)(B)(iii), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

Subsec. (l). Pub. L. 108-458, §1072(d)(1)(C)(ii), substituted “Office of the Director of National Intelligence” for “Office of the Director of Central Intelligence” in introductory provisions.

Subsec. (m). Pub. L. 108-458, §1071(g)(2)(B)(iv), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

§ 403. Director of National Intelligence

(a) Director of National Intelligence

(1) There is a Director of National Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate. Any individual nominated for appointment as Director of National Intelligence shall have extensive national security expertise.

(2) The Director of National Intelligence shall not be located within the Executive Office of the President.

(b) Principal responsibility

Subject to the authority, direction, and control of the President, the Director of National Intelligence shall—

(1) serve as head of the intelligence community;

(2) act as the principal adviser to the President, to the National Security Council, and the Homeland Security Council for intelligence matters related to the national security; and

(3) consistent with section 1018 of the National Security Intelligence Reform Act of 2004, oversee and direct the implementation of the National Intelligence Program.

(c) Prohibition on dual service

The individual serving in the position of Director of National Intelligence shall not, while so serving, also serve as the Director of the Central Intelligence Agency or as the head of any other element of the intelligence community.

(July 26, 1947, ch. 343, title I, §102, as added Pub. L. 108-458, title I, §1011(a), Dec. 17, 2004, 118 Stat. 3644.)

REFERENCES IN TEXT

Section 1018 of the National Security Intelligence Reform Act of 2004, referred to in subsec. (b)(3), is section 1018 of Pub. L. 108-458, which is set out as a note below.

PRIOR PROVISIONS

A prior section 403, act July 26, 1947, ch. 343, title I, §102, as added and amended Pub. L. 104-293, title VIII, §§805(a), 809(a), 810, 811, Oct. 11, 1996, 110 Stat. 3477, 3481, 3482; Pub. L. 105-107, title IV, §405, Nov. 20, 1997, 111 Stat. 2261; Pub. L. 105-272, title III, §306, Oct. 20, 1998, 112 Stat. 2401, related to Office of the Director of Central Intelligence prior to repeal by Pub. L. 108-458, title I, §§1011(a), 1097(a), Dec. 17, 2004, 118 Stat. 3643, 3698, effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided. See section 403-4a of this title.

Another prior section 403, acts July 26, 1947, ch. 343, title I, §102, 61 Stat. 497; Apr. 4, 1953, ch. 16, 67 Stat. 19; Oct. 24, 1992, Pub. L. 102-496, title VII, §704, 106 Stat. 3189; Jan. 6, 1996, Pub. L. 104-93, title VII, §701, 109 Stat. 977; Feb. 10, 1996, Pub. L. 104-106, div. A, title V, §570, 110 Stat. 353, related to establishment of Central Intelligence Agency and appointment and functions of its Director and Deputy Director prior to repeal by Pub. L. 104-293, title VIII, §805(a), Oct. 11, 1996, 110 Stat. 3477.

EFFECTIVE DATE

For Determination by President that section take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

PRESIDENTIAL GUIDELINES ON IMPLEMENTATION AND PRESERVATION OF AUTHORITIES

Pub. L. 108-458, title I, §1018, Dec. 17, 2004, 118 Stat. 3670, provided that: “The President shall issue guidelines to ensure the effective implementation and execution within the executive branch of the authorities granted to the Director of National Intelligence by this title [see Short Title of 2004 Amendment note set out under section 401 of this title] and the amendments made by this title, in a manner that respects and does not abrogate the statutory responsibilities of the heads of the departments of the United States Government concerning such departments, including, but not limited to:

“(1) the authority of the Director of the Office of Management and Budget; and

“(2) the authority of the principal officers of the executive departments as heads of their respective departments, including, but not limited to, under—