

President under paragraph (1) of a privilege pursuant to the Constitution.

(c) Definitions

In this section:

(1) Intelligence community

The term “intelligence community” has the meaning given the term in section 401a(4) of this title.

(2) Intelligence assessment

The term “intelligence assessment” means an intelligence-related analytical study of a subject of policy significance and does not include building-block papers, research projects, and reference aids.

(3) Intelligence estimate

The term “intelligence estimate” means an appraisal of available intelligence relating to a specific situation or condition with a view to determining the courses of action open to an enemy or potential enemy and the probable order of adoption of such courses of action.

(Pub. L. 110-181, div. A, title X, §1079, Jan. 28, 2008, 122 Stat. 334.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2008, and not as part of the National Security Act of 1947 which comprises this chapter.

§ 414. Funding of intelligence activities

(a) Obligations and expenditures for intelligence or intelligence-related activity; prerequisites

Appropriated funds available to an intelligence agency may be obligated or expended for an intelligence or intelligence-related activity only if—

(1) those funds were specifically authorized by the Congress for use for such activities; or

(2) in the case of funds from the Reserve for Contingencies of the Central Intelligence Agency and consistent with the provisions of section 413b of this title concerning any significant anticipated intelligence activity, the Director of the Central Intelligence Agency has notified the appropriate congressional committees of the intent to make such funds available for such activity; or

(3) in the case of funds specifically authorized by the Congress for a different activity—

(A) the activity to be funded is a higher priority intelligence or intelligence-related activity;

(B) the use of such funds for such activity supports an emergent need, improves program effectiveness, or increases efficiency; and

(C) the Director of National Intelligence, the Secretary of Defense, or the Attorney General, as appropriate, has notified the appropriate congressional committees of the intent to make such funds available for such activity;

(4) nothing in this subsection prohibits obligation or expenditure of funds available to an intelligence agency in accordance with sections 1535 and 1536 of title 31.

(b) Activities denied funding by Congress

Funds available to an intelligence agency may not be made available for any intelligence or intelligence-related activity for which funds were denied by the Congress.

(c) Presidential finding required for expenditure of funds on covert action

No funds appropriated for, or otherwise available to, any department, agency, or entity of the United States Government may be expended, or may be directed to be expended, for any covert action, as defined in section 413b(e) of this title, unless and until a Presidential finding required by subsection (a) of section 413b of this title has been signed or otherwise issued in accordance with that subsection.

(d) Report to Congressional committees required for expenditure of nonappropriated funds for intelligence activity

(1) Except as otherwise specifically provided by law, funds available to an intelligence agency that are not appropriated funds may be obligated or expended for an intelligence or intelligence-related activity only if those funds are used for activities reported to the appropriate congressional committees pursuant to procedures which identify—

(A) the types of activities for which nonappropriated funds may be expended; and

(B) the circumstances under which an activity must be reported as a significant anticipated intelligence activity before such funds can be expended.

(2) Procedures for purposes of paragraph (1) shall be jointly agreed upon by the congressional intelligence committees and, as appropriate, the Director of National Intelligence or the Secretary of Defense.

(e) Definitions

As used in this section—

(1) the term “intelligence agency” means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

(2) the term “appropriate congressional committees” means the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives and the Select Committee on Intelligence and the Committee on Appropriations of the Senate; and

(3) the term “specifically authorized by the Congress” means that—

(A) the activity and the amount of funds proposed to be used for that activity were identified in a formal budget request to the Congress, but funds shall be deemed to be specifically authorized for that activity only to the extent that the Congress both authorized the funds to be appropriated for that activity and appropriated the funds for that activity; or

(B) although the funds were not formally requested, the Congress both specifically authorized the appropriation of the funds for the activity and appropriated the funds for the activity.

(July 26, 1947, ch. 343, title V, §504, formerly §502, as added Pub. L. 99-169, title IV, §401(a),

Dec. 4, 1985, 99 Stat. 1004; renumbered § 504 and amended Pub. L. 102-88, title VI, §§ 602(a)(1), (c)(1), 603, Aug. 14, 1991, 105 Stat. 441, 444; Pub. L. 107-306, title III, § 353(b)(3)(D), Nov. 27, 2002, 116 Stat. 2402; Pub. L. 108-458, title I, § 1071(a)(1)(Z), (AA), (5), Dec. 17, 2004, 118 Stat. 3689, 3690; Pub. L. 111-259, title III, § 362, Oct. 7, 2010, 124 Stat. 2701.)

AMENDMENTS

2010—Subsec. (a)(3)(B). Pub. L. 111-259 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “the need for funds for such activity is based on unforeseen requirements; and”.

2004—Subsec. (a)(2). Pub. L. 108-458, § 1071(a)(5), substituted “Director of the Central Intelligence Agency” for “Director of Central Intelligence”.

Subsec. (a)(3)(C). Pub. L. 108-458, § 1071(a)(1)(Z), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

Subsec. (d)(2). Pub. L. 108-458, § 1071(a)(1)(AA), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2002—Subsec. (d)(2). Pub. L. 107-306 substituted “congressional intelligence committees” for “intelligence committees”.

1991—Subsec. (a)(2). Pub. L. 102-88, § 602(c)(1), substituted “section 413b” for “section 413”.

Subsecs. (c) to (e). Pub. L. 102-88, § 603, added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

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.

LIMITATION ON TRANSFER OF FUNDS BETWEEN CIA AND DEPARTMENT OF DEFENSE; CONGRESSIONAL NOTIFICATION REQUIRED

Pub. L. 103-139, title VIII, § 8107, Nov. 11, 1993, 107 Stat. 1464, provided that: “During the current fiscal year and thereafter, no funds may be made available through transfer, reprogramming, or other means between the Central Intelligence Agency and the Department of Defense for any intelligence or special activity different from that previously justified to the Congress unless the Director of Central Intelligence or the Secretary of Defense has notified the House and Senate Appropriations Committees of the intent to make such funds available for such activity.”

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 401 of this title.]

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102-396, title IX, § 9014, Oct. 6, 1992, 106 Stat. 1903.

Pub. L. 102-172, title VIII, § 8014, Nov. 26, 1991, 105 Stat. 1174.

Pub. L. 101-511, title VIII, § 8015, Nov. 5, 1990, 104 Stat. 1878.

Pub. L. 101-165, title IX, § 9022, Nov. 21, 1989, 103 Stat. 1134.

Pub. L. 100-463, title VIII, § 8035, Oct. 1, 1988, 102 Stat. 2270-23.

Pub. L. 100-202, § 101(b) [title VIII, § 8037], Dec. 22, 1987, 101 Stat. 1329-43, 1329-68.

SENSE OF CONGRESS REGARDING DISCLOSURE OF ANNUAL INTELLIGENCE BUDGET

Pub. L. 102-496, title III, § 303, Oct. 24, 1992, 106 Stat. 3183, provided that: “It is the sense of Congress that, beginning in 1993, and in each year thereafter, the aggregate amount requested and authorized for, and spent on, intelligence and intelligence-related activities should be disclosed to the public in an appropriate manner.” Similar provisions were contained in the following prior appropriation act: Pub. L. 102-183, title VII, § 701, Dec. 4, 1991, 105 Stat. 1270.

LIMITATION OF EXPENDITURE OF FUNDS APPROPRIATED FOR DEPARTMENT OF DEFENSE INTELLIGENCE PROGRAMS

Pub. L. 102-172, title VIII, § 8089, Nov. 26, 1991, 105 Stat. 1193, provided that: “During the current fiscal year and hereafter, none of the funds appropriated for intelligence programs to the Department of Defense which are transferred to another Federal agency for execution shall be expended by the Department of Defense in any fiscal year in excess of amounts required for expenditure during such fiscal year by the Federal agency to which such funds are transferred.”

ENHANCED SECURITY COUNTERMEASURES CAPABILITIES; APPLICATION OF SECTION

Pub. L. 99-169, title IV, § 401(c), Dec. 4, 1985, 99 Stat. 1006, provided that the amendment made by section 401(a) of Pub. L. 99-169, enacting this section, would not apply with respect to funds appropriated to the Director of Central Intelligence under the heading “ENHANCED SECURITY COUNTERMEASURES CAPABILITIES” in the Supplemental Appropriations Act, 1985, Pub. L. 99-88, Aug. 15, 1985, 99 Stat. 311.

§ 415. Notice to Congress of certain transfers of defense articles and defense services

(a)(1) The transfer of a defense article or defense service, or the anticipated transfer in any fiscal year of any aggregation of defense articles or defense services, exceeding \$1,000,000 in value by an intelligence agency to a recipient outside that agency shall be considered a significant anticipated intelligence activity for the purpose of this subchapter.

(2) Paragraph (1) does not apply if—

(A) the transfer is being made to a department, agency, or other entity of the United States (so long as there will not be a subsequent retransfer of the defense articles or defense services outside the United States Government in conjunction with an intelligence or intelligence-related activity); or

(B) the transfer—

(i) is being made pursuant to authorities contained in part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2301 et seq.], the Arms Export Control Act [22 U.S.C. 2751 et seq.], title 10 (including a law enacted pursuant to section 7307(a) of that title), or chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, and

(ii) is not being made in conjunction with an intelligence or intelligence-related activity.

(3) An intelligence agency may not transfer any defense articles or defense services outside the agency in conjunction with any intelligence