

or intelligence-related activity for which funds were denied by the Congress.

(b) 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 terms “defense articles” and “defense services” mean the items on the United States Munitions List pursuant to section 38 of the Arms Export Control Act [22 U.S.C. 2778] (22 CFR part 121);

(3) the term “transfer” means—

(A) in the case of defense articles, the transfer of possession of those articles; and

(B) in the case of defense services, the provision of those services; and

(4) the term “value” means—

(A) in the case of defense articles, the greater of—

(i) the original acquisition cost to the United States Government, plus the cost of improvements or other modifications made by or on behalf of the Government; or

(ii) the replacement cost; and

(B) in the case of defense services, the full cost to the Government of providing the services.

(July 26, 1947, ch. 343, title V, § 505, formerly § 503, as added Pub. L. 99-569, title VI, § 602(a), Oct. 27, 1986, 100 Stat. 3203; renumbered § 505 and amended Pub. L. 102-88, title VI, §§ 602(a)(1), (c)(2), 604, Aug. 14, 1991, 105 Stat. 441, 444, 445; Pub. L. 103-160, div. A, title VIII, § 828(d)(1), Nov. 30, 1993, 107 Stat. 1715.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a)(2)(B)(i), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424. Part II of the Act is classified generally to subchapter II (§ 2301 et seq.) of chapter 32 of Title 22, Foreign Relations and Intercourse. For provisions deeming references to subchapter II to exclude parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II, see section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of Title 22, and sections 2348c and 2349aa-5 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

The Arms Export Control Act, referred to in subsec. (a)(2)(B)(i), is Pub. L. 90-269, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

CODIFICATION

In subsec. (a)(2)(B)(i), “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” substituted for “the Federal Property and Administrative Services Act of 1949” on authority of Pub. L. 107-217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111-350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1993—Subsec. (a)(2)(B)(i). Pub. L. 103-160 substituted “section 7307(a)” for “section 7307(b)(1)”.

1991—Subsec. (a)(1). Pub. L. 102-88 inserted “, or the anticipated transfer in any fiscal year of any aggrega-

tion of defense articles or defense services,” after “service” and substituted “this subchapter” for “section 413 of this title”.

§ 415a. Specificity of National Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence

(a) In general

The budget justification materials submitted to Congress in support of the budget of the President for a fiscal year that is submitted to Congress under section 1105(a) of title 31 shall set forth separately the aggregate amount requested for that fiscal year for the National Intelligence Program for each of the following:

- (1) Counterterrorism.
- (2) Counterproliferation.
- (3) Counternarcotics.
- (4) Counterintelligence.

(b) Election of classified or unclassified form

Amounts set forth under subsection (a) of this section may be set forth in unclassified form or classified form, at the election of the Director of National Intelligence.

(July 26, 1947, ch. 343, title V, § 506, as added Pub. L. 107-306, title III, § 311(a), Nov. 27, 2002, 116 Stat. 2390; amended Pub. L. 108-458, title I, § 1074(b)(1)(A), Dec. 17, 2004, 118 Stat. 3694; Pub. L. 112-87, title V, § 505(2), Jan. 3, 2012, 125 Stat. 1897.)

AMENDMENTS

2012—Subsec. (b). Pub. L. 112-87 substituted “Director of National Intelligence.” for “Director of Central Intelligence.”

2004—Pub. L. 108-458, § 1074(b)(1)(A)(ii), struck out “Foreign” before “Intelligence” in section catchline.

Subsec. (a). Pub. L. 108-458, § 1074(b)(1)(A)(i), substituted “National Intelligence Program” for “National Foreign Intelligence Program”.

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.

§ 415a-1. Budget treatment of costs of acquisition of major systems by the intelligence community

(a) Independent cost estimates

(1) The Director of National Intelligence shall, in consultation with the head of each element of the intelligence community concerned, prepare an independent cost estimate of the full life-cycle cost of development, procurement, and operation of each major system to be acquired by the intelligence community.

(2)(A) Each independent cost estimate for a major system shall, to the maximum extent practicable, specify the amount required to be appropriated and obligated to develop, procure, and operate the major system in each fiscal year

of the proposed period of development, procurement, and operation of the major system.

(B) For major system acquisitions requiring a service or capability from another acquisition or program to deliver the end-to-end functionality for the intelligence community end users, independent cost estimates shall include, to the maximum extent practicable, all estimated costs across all pertinent elements of the intelligence community. For collection programs, such cost estimates shall include the cost of new analyst training, new hardware and software for data exploitation and analysis, and any unique or additional costs for data processing, storing, and power, space, and cooling across the life cycle of the program. If such costs for processing, exploitation, dissemination, and storage are scheduled to be executed in other elements of the intelligence community, the independent cost estimate shall identify and annotate such costs for such other elements accordingly.

(3)(A) In the case of a program of the intelligence community that qualifies as a major system, an independent cost estimate shall be prepared before the submission to Congress of the budget of the President for the first fiscal year in which appropriated funds are anticipated to be obligated for the development or procurement of such major system.

(B) In the case of a program of the intelligence community for which an independent cost estimate was not previously required to be prepared under this section, including a program for which development or procurement commenced before December 13, 2003, if the aggregate future costs of development or procurement (or any combination of such activities) of the program will exceed \$500,000,000 (in current fiscal year dollars), the program shall qualify as a major system for purposes of this section, and an independent cost estimate for such major system shall be prepared before the submission to Congress of the budget of the President for the first fiscal year thereafter in which appropriated funds are anticipated to be obligated for such major system.

(4) The independent cost estimate for a major system shall be updated upon—

(A) the completion of any preliminary design review associated with the major system;

(B) any significant modification to the anticipated design of the major system; or

(C) any change in circumstances that renders the current independent cost estimate for the major system inaccurate.

(5) Any update of an independent cost estimate for a major system under paragraph (4) shall meet all requirements for independent cost estimates under this section, and shall be treated as the most current independent cost estimate for the major system until further updated under that paragraph.

(b) Preparation of independent cost estimates

(1) The Director shall establish within the Office of the Director of National Intelligence for Community Management an office which shall be responsible for preparing independent cost estimates, and any updates thereof, under subsection (a) of this section, unless a designation is made under paragraph (2).

(2) In the case of the acquisition of a major system for an element of the intelligence community within the Department of Defense, the Director and the Secretary of Defense shall provide that the independent cost estimate, and any updates thereof, under subsection (a) of this section be prepared by an entity jointly designated by the Director and the Secretary in accordance with section 2434(b)(1)(A) of title 10.

(c) Utilization in budgets of President

(1) If the budget of the President requests appropriations for any fiscal year for the development or procurement of a major system by the intelligence community, the President shall, subject to paragraph (2), request in such budget an amount of appropriations for the development or procurement, as the case may be, of the major system that is equivalent to the amount of appropriations identified in the most current independent cost estimate for the major system for obligation for each fiscal year for which appropriations are requested for the major system in such budget.

(2) If the amount of appropriations requested in the budget of the President for the development or procurement of a major system is less than the amount of appropriations identified in the most current independent cost estimate for the major system for obligation for each fiscal year for which appropriations are requested for the major system in such budget, the President shall include in the budget justification materials submitted to Congress in support of such budget—

(A) an explanation for the difference between the amount of appropriations requested and the amount of appropriations identified in the most current independent cost estimate;

(B) a description of the importance of the major system to the national security;

(C) an assessment of the consequences for the funding of all programs of the National Intelligence Program in future fiscal years if the most current independent cost estimate for the major system is accurate and additional appropriations are required in future fiscal years to ensure the continued development or procurement of the major system, including the consequences of such funding shortfalls on the major system and all other programs of the National Intelligence Program; and

(D) such other information on the funding of the major system as the President considers appropriate.

(d) Inclusion of estimates in budget justification materials

The budget justification materials submitted to Congress in support of the budget of the President shall include the most current independent cost estimate under this section for each major system for which appropriations are requested in such budget for any fiscal year.

(e) Definitions

In this section:

(1) The term “budget of the President” means the budget of the President for a fiscal year as submitted to Congress under section 1105(a) of title 31.

(2)(A) The term “independent cost estimate” means a pragmatic and neutral analysis, as-

assessment, and quantification of all costs and risks associated with the development, acquisition, procurement, operation, and sustainment of a major system across its proposed life cycle, which shall be based on programmatic and technical specifications provided by the office within the element of the intelligence community with primary responsibility for the development, procurement, or operation of the major system.

(B) In accordance with subsection (a)(2)(B), each independent cost estimate shall include all costs required across elements of the intelligence community to develop, acquire, procure, operate, and sustain the system to provide the end-to-end intelligence functionality of the system, including—

(i) for collection programs, the cost of new analyst training, new hardware and software for data exploitation and analysis, and any unique or additional costs for data processing, storing, and power, space, and cooling across the life cycle of the program; and

(ii) costs for processing, exploitation, dissemination, and storage scheduled to be executed in other elements of the intelligence community.

(3) The term “major system” means any significant program of an element of the intelligence community with projected total development and procurement costs exceeding \$500,000,000 (based on fiscal year 2010 constant dollars), which costs shall include all end-to-end program costs, including costs associated with the development and procurement of the program and any other costs associated with the development and procurement of systems required to support or utilize the program.

(July 26, 1947, ch. 343, title V, §506A, as added Pub. L. 108-177, title III, §312(b)(1), Dec. 13, 2003, 117 Stat. 2607; amended Pub. L. 108-458, title I, §§1071(a)(1)(BB), 1072(a)(6), Dec. 17, 2004, 118 Stat. 3689, 3692; Pub. L. 111-259, title III, §321(b), Oct. 7, 2010, 124 Stat. 2669; Pub. L. 112-87, title III, §306(a), title V, §505(3), Jan. 3, 2012, 125 Stat. 1881, 1897.)

AMENDMENTS

2012—Subsec. (a)(2). Pub. L. 112-87, §306(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(2)(C). Pub. L. 112-87, §505(3), substituted “National Intelligence Program” for “National Foreign Intelligence Program” in two places.

Subsec. (e)(2). Pub. L. 112-87, §306(a)(2), designated existing provisions as subpar. (A), substituted “associated with the development, acquisition, procurement, operation, and sustainment of a major system across its proposed life cycle,” for “associated with the acquisition of a major system,” and added subpar. (B).

2010—Subsec. (e)(3). Pub. L. 111-259 substituted “(based on fiscal year 2010 constant dollars)” for “(in current fiscal year dollars)”.

2004—Subsec. (a)(1). Pub. L. 108-458, §1071(a)(1)(BB), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

Subsec. (b)(1). Pub. L. 108-458, §1072(a)(6), substituted “Office of the Director of National Intelligence” for “Office of the Deputy Director of Central Intelligence”.

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-87, title III, §306(b), Jan. 3, 2012, 125 Stat. 1882, provided that: “The amendments made by this

section [amending this section] shall take effect on the date that is 180 days after the date of the enactment of this Act [Jan. 3, 2012].”

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.

EFFECTIVE DATE

Pub. L. 108-177, title III, §312(c), Dec. 13, 2003, 117 Stat. 2609, provided that: “The amendments made by subsection (b) [enacting this section] shall take effect on the date of the enactment of this Act [Dec. 13, 2003].”

CONGRESSIONAL FINDINGS

Pub. L. 108-177, title III, §312(a), Dec. 13, 2003, 117 Stat. 2606, provided that: “Congress makes the following findings:

“(1) Funds within the National Foreign Intelligence Program often must be shifted from program to program and from fiscal year to fiscal year to address funding shortfalls caused by significant increases in the costs of acquisition of major systems by the intelligence community.

“(2) While some increases in the costs of acquisition of major systems by the intelligence community are unavoidable, the magnitude of growth in the costs of acquisition of many major systems indicates a systemic bias within the intelligence community to underestimate the costs of such acquisition, particularly in the preliminary stages of development and production.

“(3) Decisions by Congress to fund the acquisition of major systems by the intelligence community rely significantly upon initial estimates of the affordability of acquiring such major systems and occur within a context in which funds can be allocated for a variety of alternative programs. Thus, substantial increases in costs of acquisition of major systems place significant burdens on the availability of funds for other programs and new proposals within the National Foreign Intelligence Program.

“(4) Independent cost estimates, prepared by independent offices, have historically represented a more accurate projection of the costs of acquisition of major systems.

“(5) Recognizing the benefits associated with independent cost estimates for the acquisition of major systems, the Secretary of Defense has built upon the statutory requirement in section 2434 of title 10, United States Code, to develop and consider independent cost estimates for the acquisition of such systems by mandating the use of such estimates in budget requests of the Department of Defense.

“(6) The mandatory use throughout the intelligence community of independent cost estimates for the acquisition of major systems will assist the President and Congress in the development and funding of budgets which more accurately reflect the requirements and priorities of the United States Government for intelligence and intelligence-related activities.”

LIMITATIONS ON MAJOR SYSTEM PROCUREMENT, ACQUISITION, AND DEVELOPMENT

Pub. L. 108-177, title III, §312(d), Dec. 13, 2003, 117 Stat. 2609, provided that:

“(1)(A) For each major system for which funds have been authorized for a fiscal year before fiscal year 2005, or for which funds are sought in the budget of the

President for fiscal year 2005, as submitted to Congress pursuant to section 1105(a) of title 31, United States Code, and for which no independent cost estimate has been provided to Congress, no contract, or option to contract, for the procurement or acquisition of such major system may be entered into, or option to contract be exercised, before the date of the enactment of an Act to authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government.

“(B) Subparagraph (A) shall not affect any contract for procurement or acquisition that was entered into before the date of the enactment of this Act [Dec. 13, 2003].

“(2) Commencing as of the date of the submittal to Congress of the budget of the President for fiscal year 2006 pursuant to section 1105(a) of title 31, United States Code, no funds may be obligated or expended for the development or procurement of a major system until the President has complied with the requirements of section 506A of the National Security Act of 1947 (as added by subsection (b)) [50 U.S.C. 415a-1] with respect to such major system.

“(3) In this subsection, the terms ‘independent cost estimate’ and ‘major system’ have the meaning given such terms in subsection (e) of section 506A of the National Security Act of 1947 (as so added) [50 U.S.C. 415a-1(e)].”

§ 415a-2. Exhibits for inclusion with budget justification books

Beginning with the fiscal year 2010 budget request, the Director of National Intelligence shall include the budget exhibits identified in paragraphs (1) and (2) as described in the Department of Defense Financial Management Regulation with the congressional budget justification books.

(1) For procurement programs requesting more than \$20,000,000 in any fiscal year, the P-1, Procurement Program; P-5, Cost Analysis; P-5a, Procurement History and Planning; P-21, Production Schedule; and P-40¹ Budget Item Justification.

(2) For research, development, test and evaluation projects requesting more than \$10,000,000 in any fiscal year, the R-1, RDT&E Program; R-2, RDT&E Budget Item Justification; R-3, RDT&E Project Cost Analysis; and R-4, RDT&E Program Schedule Profile.

(Pub. L. 110-329, div. C, title VIII, § 8107, Sept. 30, 2008, 122 Stat. 3644.)

CODIFICATION

Section was enacted as part of the Department of Defense Appropriations Act, 2009, and also as part of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, and not as part of the National Security Act of 1947 which comprises this chapter.

SIMILAR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Pub. L. 112-74, div. A, title VIII, § 8090, Dec. 23, 2011, 125 Stat. 827.

Pub. L. 112-10, div. A, title VIII, § 8091, Apr. 15, 2011, 125 Stat. 77.

Pub. L. 111-118, div. A, title VIII, § 8100, Dec. 19, 2009, 123 Stat. 3450.

§ 415a-3. Repealed. Pub. L. 111-259, title III, § 325(c)(2), Oct. 7, 2010, 124 Stat. 2683

Section, Pub. L. 111-118, div. A, title VIII, § 8104, Dec. 19, 2009, 123 Stat. 3451, required the Director of National

Intelligence annually to submit a future-years intelligence program (including associated annexes) reflecting estimated expenditures and proposed appropriations. See notes under section 415a-9 of this title.

§ 415a-4. Annual personnel level assessments for the intelligence community

(a) Requirement to provide

The Director of National Intelligence shall, in consultation with the head of each element of the intelligence community, prepare an annual personnel level assessment for such element that assesses the personnel levels for such element for the fiscal year following the fiscal year in which the assessment is submitted.

(b) Schedule

Each assessment required by subsection (a) shall be submitted to the congressional intelligence committees each year at the time that the President submits to Congress the budget for a fiscal year pursuant to section 1105 of title 31.

(c) Contents

Each assessment required by subsection (a) submitted during a fiscal year shall contain the following information for the element of the intelligence community concerned:

(1) The budget submission for personnel costs for the upcoming fiscal year.

(2) The dollar and percentage increase or decrease of such costs as compared to the personnel costs of the current fiscal year.

(3) The dollar and percentage increase or decrease of such costs as compared to the personnel costs during the prior 5 fiscal years.

(4) The number of full-time equivalent positions that is the basis for which personnel funds are requested for the upcoming fiscal year.

(5) The numerical and percentage increase or decrease of the number referred to in paragraph (4) as compared to the number of full-time equivalent positions of the current fiscal year.

(6) The numerical and percentage increase or decrease of the number referred to in paragraph (4) as compared to the number of full-time equivalent positions during the prior 5 fiscal years.

(7) The best estimate of the number and costs of core contract personnel to be funded by the element for the upcoming fiscal year.

(8) The numerical and percentage increase or decrease of such costs of core contract personnel as compared to the best estimate of the costs of core contract personnel of the current fiscal year.

(9) The numerical and percentage increase or decrease of such number and such costs of core contract personnel as compared to the number and cost of core contract personnel during the prior 5 fiscal years.

(10) A justification for the requested personnel and core contract personnel levels.

(11) The best estimate of the number of intelligence collectors and analysts employed or contracted by each element of the intelligence community.

(12) A statement by the Director of National Intelligence that, based on current and pro-

¹ So in original. Probably should be followed by a comma.