

analytical processes that requires such information to be handled within formal access control systems established by the Director of Central Intelligence.

(Pub. L. 106-567, title III, §309, Dec. 27, 2000, 114 Stat. 2840.)

CODIFICATION

Section was enacted as part of the Intelligence Authorization Act for Fiscal Year 2001, and not as part of the National Security Act of 1947 which comprises this chapter.

CHANGE OF NAME

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.

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

§ 435b. Security clearances

(a) Definitions

In this section:

(1) The term “agency” means—

(A) an executive agency (as that term is defined in section 105 of title 5);

(B) a military department (as that term is defined in section 102 of title 5); and

(C) an element of the intelligence community.

(2) The term “authorized investigative agency” means an agency designated by the head of the agency selected pursuant to subsection (b) of this section to conduct a counter-intelligence investigation or investigation of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information.

(3) The term “authorized adjudicative agency” means an agency authorized by law, regulation, or direction of the Director of National Intelligence to determine eligibility for access to classified information in accordance with Executive Order 12968.

(4) The term “highly sensitive program” means—

(A) a government program designated as a Special Access Program (as that term is defined in section 4.1(h) of Executive Order 12958 or any successor Executive order); or

(B) a government program that applies restrictions required for—

(i) restricted data (as that term is defined in section 2014(y) of title 42;¹ or

(ii) other information commonly referred to as “sensitive compartmented information”.

(5) The term “current investigation file” means, with respect to a security clearance, a

file on an investigation or adjudication that has been conducted during—

(A) the 5-year period beginning on the date the security clearance was granted, in the case of a Top Secret Clearance, or the date access was granted to a highly sensitive program;

(B) the 10-year period beginning on the date the security clearance was granted in the case of a Secret Clearance; and

(C) the 15-year period beginning on the date the security clearance was granted in the case of a Confidential Clearance.

(6) The term “personnel security investigation” means any investigation required for the purpose of determining the eligibility of any military, civilian, or government contractor personnel to access classified information.

(7) The term “periodic reinvestigations” means investigations conducted for the purpose of updating a previously completed background investigation—

(A) every 5 years in the case of a top secret clearance or access to a highly sensitive program;

(B) every 10 years in the case of a secret clearance; or

(C) every 15 years in the case of a Confidential Clearance.

(8) The term “appropriate committees of Congress” means—

(A) the Permanent Select Committee on Intelligence and the Committees on Armed Services, Homeland Security, Government Reform, and the Judiciary of the House of Representatives; and

(B) the Select Committee on Intelligence and the Committees on Armed Services, Homeland Security and Governmental Affairs, and the Judiciary of the Senate.

(b) Selection of entity

Not later than 90 days after December 17, 2004, the President shall select a single department, agency, or element of the executive branch to be responsible for—

(1) directing day-to-day oversight of investigations and adjudications for personnel security clearances, including for highly sensitive programs, throughout the United States Government;

(2) developing and implementing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of security clearances and determinations for access to highly sensitive programs, including the standardization of security questionnaires, financial disclosure requirements for security clearance applicants, and polygraph policies and procedures;

(3) serving as the final authority to designate an authorized investigative agency or authorized adjudicative agency;

(4) ensuring reciprocal recognition of access to classified information among the agencies of the United States Government, including acting as the final authority to arbitrate and resolve disputes involving the reciprocity of security clearances and access to highly sensitive programs pursuant to subsection (d) of this section;

¹ So in original. There probably should be a closing parenthesis before the semicolon.

(5) ensuring, to the maximum extent practicable, that sufficient resources are available in each agency to achieve clearance and investigative program goals; and

(6) reviewing and coordinating the development of tools and techniques for enhancing the conduct of investigations and granting of clearances.

(c) Performance of security clearance investigations

(1) Notwithstanding any other provision of law, not later than 180 days after December 17, 2004, the President shall, in consultation with the head of the entity selected pursuant to subsection (b) of this section, select a single agency of the executive branch to conduct, to the maximum extent practicable, security clearance investigations of employees and contractor personnel of the United States Government who require access to classified information and to provide and maintain all security clearances of such employees and contractor personnel. The head of the entity selected pursuant to subsection (b) of this section may designate other agencies to conduct such investigations if the head of the entity selected pursuant to subsection (b) of this section considers it appropriate for national security and efficiency purposes.

(2) The agency selected under paragraph (1) shall—

(A) take all necessary actions to carry out the requirements of this section, including entering into a memorandum of understanding with any agency carrying out responsibilities relating to security clearances or security clearance investigations before December 17, 2004;

(B) as soon as practicable, integrate reporting of security clearance applications, security clearance investigations, and determinations of eligibility for security clearances, with the database required by subsection (e) of this section; and

(C) ensure that security clearance investigations are conducted in accordance with uniform standards and requirements established under subsection (b) of this section, including uniform security questionnaires and financial disclosure requirements.

(d) Reciprocity of security clearance and access determinations

(1) All security clearance background investigations and determinations completed by an authorized investigative agency or authorized adjudicative agency shall be accepted by all agencies.

(2) All security clearance background investigations initiated by an authorized investigative agency shall be transferable to any other authorized investigative agency.

(3)(A) An authorized investigative agency or authorized adjudicative agency may not establish additional investigative or adjudicative requirements (other than requirements for the conduct of a polygraph examination) that exceed requirements specified in Executive Orders establishing security requirements for access to classified information without the approval of the head of the entity selected pursuant to subsection (b) of this section.

(B) Notwithstanding subparagraph (A), the head of the entity selected pursuant to subsection (b) of this section may establish such additional requirements as the head of such entity considers necessary for national security purposes.

(4) An authorized investigative agency or authorized adjudicative agency may not conduct an investigation for purposes of determining whether to grant a security clearance to an individual where a current investigation or clearance of equal level already exists or has been granted by another authorized adjudicative agency.

(5) The head of the entity selected pursuant to subsection (b) of this section may disallow the reciprocal recognition of an individual security clearance by an agency under this section on a case-by-case basis if the head of the entity selected pursuant to subsection (b) of this section determines that such action is necessary for national security purposes.

(6) The head of the entity selected pursuant to subsection (b) of this section shall establish a review procedure by which agencies can seek review of actions required under this section.

(e) Database on security clearances

(1) Not later than 12 months after December 17, 2004, the Director of the Office of Personnel Management shall, in cooperation with the heads of the entities selected pursuant to subsections (b) and (c) of this section, establish and commence operating and maintaining an integrated, secure, database into which appropriate data relevant to the granting, denial, or revocation of a security clearance or access pertaining to military, civilian, or government contractor personnel shall be entered from all authorized investigative and adjudicative agencies.

(2) The database under this subsection shall function to integrate information from existing Federal clearance tracking systems from other authorized investigative and adjudicative agencies into a single consolidated database.

(3) Each authorized investigative or adjudicative agency shall check the database under this subsection to determine whether an individual the agency has identified as requiring a security clearance has already been granted or denied a security clearance, or has had a security clearance revoked, by any other authorized investigative or adjudicative agency.

(4) The head of the entity selected pursuant to subsection (b) of this section shall evaluate the extent to which an agency is submitting information to, and requesting information from, the database under this subsection as part of a determination of whether to certify the agency as an authorized investigative agency or authorized adjudicative agency.

(5) The head of the entity selected pursuant to subsection (b) of this section may authorize an agency to withhold information about certain individuals from the database under this subsection if the head of the entity considers it necessary for national security purposes.

(f) Evaluation of use of available technology in clearance investigations and adjudications

(1) The head of the entity selected pursuant to subsection (b) of this section shall evaluate the

use of available information technology and databases to expedite investigative and adjudicative processes for all and to verify standard information submitted as part of an application for a security clearance.

(2) The evaluation shall assess the application of the technologies described in paragraph (1) for—

(A) granting interim clearances to applicants at the secret, top secret, and special access program levels before the completion of the appropriate full investigation;

(B) expediting investigations and adjudications of security clearances, including verification of information submitted by the applicant;

(C) ongoing verification of suitability of personnel with security clearances in effect for continued access to classified information;

(D) use of such technologies to augment periodic reinvestigations;

(E) assessing the impact of the use of such technologies on the rights of applicants to verify, correct, or challenge information obtained through such technologies; and

(F) such other purposes as the head of the entity selected pursuant to subsection (b) of this section considers appropriate.

(3) An individual subject to verification utilizing the technology described in paragraph (1) shall be notified of such verification, shall provide consent to such use, and shall have access to data being verified in order to correct errors or challenge information the individual believes is incorrect.

(4) Not later than one year after December 17, 2004, the head of the entity selected pursuant to subsection (b) of this section shall submit to the President and the appropriate committees of Congress a report on the results of the evaluation, including recommendations on the use of technologies described in paragraph (1).

(g) Reduction in length of personnel security clearance process

(1) The head of the entity selected pursuant to subsection (b) of this section shall, within 90 days of selection under that subsection, develop, in consultation with the appropriate committees of Congress and each authorized adjudicative agency, a plan to reduce the length of the personnel security clearance process.

(2)(A) To the extent practical the plan under paragraph (1) shall require that each authorized adjudicative agency make a determination on at least 90 percent of all applications for a personnel security clearance within an average of 60 days after the date of receipt of the completed application for a security clearance by an authorized investigative agency. Such 60-day average period shall include—

(i) a period of not longer than 40 days to complete the investigative phase of the clearance review; and

(ii) a period of not longer than 20 days to complete the adjudicative phase of the clearance review.

(B) Determinations on clearances not made within 60 days shall be made without delay.

(3)(A) The plan under paragraph (1) shall take effect 5 years after December 17, 2004.

(B) During the period beginning on a date not later than 2 years after December 17, 2004, and ending on the date on which the plan under paragraph (1) takes effect, each authorized adjudicative agency shall make a determination on at least 80 percent of all applications for a personnel security clearance pursuant to this section within an average of 120 days after the date of receipt of the application for a security clearance by an authorized investigative agency. Such 120-day average period shall include—

(i) a period of not longer than 90 days to complete the investigative phase of the clearance review; and

(ii) a period of not longer than 30 days to complete the adjudicative phase of the clearance review.

(h) Reports

(1) Not later than February 15, 2006, and annually thereafter through 2011, the head of the entity selected pursuant to subsection (b) of this section shall submit to the appropriate committees of Congress a report on the progress made during the preceding year toward meeting the requirements of this section.

(2) Each report shall include, for the period covered by such report—

(A) the periods of time required by the authorized investigative agencies and authorized adjudicative agencies for conducting investigations, adjudicating cases, and granting clearances, from date of submission to ultimate disposition and notification to the subject and the subject's employer;

(B) a discussion of any impediments to the smooth and timely functioning of the requirements of this section; and

(C) such other information or recommendations as the head of the entity selected pursuant to subsection (b) of this section considers appropriate.

(i) Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary for fiscal year 2005 and each fiscal year thereafter for the implementation, maintenance, and operation of the database required by subsection (e) of this section.

(Pub. L. 108-458, title III, §3001, Dec. 17, 2004, 118 Stat. 3705.)

REFERENCES IN TEXT

Executive Order 12968, referred to in subsec. (a)(3), is set out as a note under section 435 of this title.

Executive Order 12958, referred to in subsec. (a)(4)(A), which was formerly set out as a note under section 435 of this title, was revoked by Ex. Ord. No. 13526, §6.2(g), Dec. 29, 2009, 75 F.R. 731.

CODIFICATION

Section was enacted as part of the Intelligence Reform and Terrorism Prevention Act of 2004, and not as part of the National Security Act of 1947 which comprises this chapter.

CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

STRATEGY FOR SECURITY CLEARANCE RECIPROCITY

Pub. L. 112-277, title III, §306, Jan. 14, 2013, 126 Stat. 2472, provided that:

“(a) STRATEGY.—The President shall develop a strategy and a schedule for carrying out the requirements of section 3001(d) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 435b(d)). Such strategy and schedule shall include—

“(1) a process for accomplishing the reciprocity required under such section for a security clearance issued by a department or agency of the Federal Government, including reciprocity for security clearances that are issued to both persons who are and who are not employees of the Federal Government; and

“(2) a description of the specific circumstances under which a department or agency of the Federal Government may not recognize a security clearance issued by another department or agency of the Federal Government.

“(b) CONGRESSIONAL NOTIFICATION.—Not later than 180 days after the date of the enactment of this Act [Jan. 14, 2013], the President shall inform Congress of the strategy and schedule developed under subsection (a).”

SECURITY CLEARANCES FOR TRANSITION TEAM MEMBERS

Pub. L. 108-458, title VII, §7601(c), Dec. 17, 2004, 118 Stat. 3857, as amended by Pub. L. 111-283, §2(c)(1), Oct. 15, 2010, 124 Stat. 3048, provided that:

“(1) DEFINITION.—In this section, the term ‘eligible candidate’ has the meaning given such term by section 3(h)(4) of the Presidential Transition Act of 1963 [Pub. L. 88-277] (3 U.S.C. 102 note).

“(2) IN GENERAL.—Each eligible candidate for President may submit, before the date of the general election, requests for security clearances for prospective transition team members who will have a need for access to classified information to carry out their responsibilities as members of the President-elect’s transition team.

“(3) COMPLETION DATE.—Necessary background investigations and eligibility determinations to permit appropriate prospective transition team members to have access to classified information shall be completed, to the fullest extent practicable, by the day after the date of the general election.”

§ 435c. Security clearances; limitations**(a) Definitions**

In this section:

(1) Controlled substance

The term “controlled substance” has the meaning given that term in section 802 of title 21.

(2) Covered person

The term “covered person” means—

(A) an officer or employee of a Federal agency;

(B) a member of the Army, Navy, Air Force, or Marine Corps who is on active duty or is in an active status; and

(C) an officer or employee of a contractor of a Federal agency.

(3) Restricted Data

The term “Restricted Data” has the meaning given that term in section 2014 of title 42.

(4) Special access program

The term “special access program” has the meaning given that term in section 4.1 of Executive Order No. 12958 (60 Fed. Reg. 19825).

(b) Prohibition

After January 1, 2008, the head of a Federal agency may not grant or renew a security clear-

ance for a covered person who is an unlawful user of a controlled substance or an addict (as defined in section 802(1) of title 21).

(c) Disqualification**(1) In general**

After January 1, 2008, absent an express written waiver granted in accordance with paragraph (2), the head of a Federal agency may not grant or renew a security clearance described in paragraph (3) for a covered person who—

(A) has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than 1 year;

(B) has been discharged or dismissed from the Armed Forces under dishonorable conditions; or

(C) is mentally incompetent, as determined by an adjudicating authority, based on an evaluation by a duly qualified mental health professional employed by, or acceptable to and approved by, the United States Government and in accordance with the adjudicative guidelines required by subsection (d).

(2) Waiver authority

In a meritorious case, an exception to the disqualification in this subsection may be authorized if there are mitigating factors. Any such waiver may be authorized only in accordance with—

(A) standards and procedures prescribed by, or under the authority of, an Executive order or other guidance issued by the President; or

(B) the adjudicative guidelines required by subsection (d).

(3) Covered security clearances

This subsection applies to security clearances that provide for access to—

(A) special access programs;

(B) Restricted Data; or

(C) any other information commonly referred to as “sensitive compartmented information”.

(4) Annual report**(A) Requirement for report**

Not later than February 1 of each year, the head of a Federal agency shall submit a report to the appropriate committees of Congress if such agency employs or employed a person for whom a waiver was granted in accordance with paragraph (2) during the preceding year. Such annual report shall not reveal the identity of such person, but shall include for each waiver issued the disqualifying factor under paragraph (1) and the reasons for the waiver of the disqualifying factor.

(B) Definitions

In this paragraph:

(i) Appropriate committees of Congress

The term “appropriate committees of Congress” means, with respect to a report