

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

submitted under subparagraph (A) by the head of a Federal agency—

- (I) the congressional defense committees;
- (II) the congressional intelligence committees;
- (III) the Committee on Homeland Security and Governmental Affairs of the Senate;
- (IV) the Committee on Oversight and Government Reform of the House of Representatives; and
- (V) each Committee of the Senate or the House of Representatives with oversight authority over such Federal agency.

(ii) Congressional defense committees

The term “congressional defense committees” has the meaning given that term in section 101(a)(16) of title 10.

(iii) Congressional intelligence committees

The term “congressional intelligence committees” has the meaning given that term in section 401a of this title.

(d) Adjudicative guidelines

(1) Requirement to establish

The President shall establish adjudicative guidelines for determining eligibility for access to classified information.

(2) Requirements related to mental health

The guidelines required by paragraph (1) shall—

- (A) include procedures and standards under which a covered person is determined to be mentally incompetent and provide a means to appeal such a determination; and
- (B) require that no negative inference concerning the standards in the guidelines may be raised solely on the basis of seeking mental health counseling.

(Pub. L. 108–458, title III, §3002, as added Pub. L. 110–181, div. A, title X, §1072(a), Jan. 28, 2008, 122 Stat. 328.)

REFERENCES IN TEXT

Executive Order 12958, referred to in subsec. (a)(4), is set out as a note under section 435 of this title.

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.

§ 435d. Classification training program

(a) In general

The head of each Executive agency, in accordance with Executive Order 13526, shall require annual training for each employee who has original classification authority. For employees who perform derivative classification, or are responsible for analysis, dissemination, preparation, production, receipt, publication, or otherwise communication of classified information, training shall be provided at least every two years. Such training shall—

- (1) educate the employee, as appropriate, regarding—

- (A) the guidance established under subparagraph (G) of section 403–1(g)(1) of this title, as added by section 5(a)(3),¹ regarding the formatting of finished intelligence products;

- (B) the proper use of classification markings, including portion markings that indicate the classification of portions of information; and

- (C) any incentives and penalties related to the proper classification of intelligence information; and

(2) ensure such training is a prerequisite, once completed successfully, as evidenced by an appropriate certificate or other record, for—

- (A) obtaining original classification authority or derivatively classifying information; and

- (B) maintaining such authority.

(b) Relationship to other programs

The head of each Executive agency shall ensure that the training required by subsection (a) is conducted efficiently and in conjunction with any other required security, intelligence, or other training programs to reduce the costs and administrative burdens associated with carrying out the training required by subsection (a).

(Pub. L. 111–258, §7, Oct. 7, 2010, 124 Stat. 2652.)

REFERENCES IN TEXT

Executive Order 13526, referred to in subsec. (a), is set out as a note under section 435 of this title.

Section 5(a)(3), referred to in subsec. (a)(1)(A), probably means section 5(a)(3) of Pub. L. 111–258.

CODIFICATION

Section was enacted as part of the Reducing Over-Classification Act, and not as part of the National Security Act of 1947 which comprises this chapter.

DEFINITIONS

Pub. L. 111–258, §3, Oct. 7, 2010, 124 Stat. 2648, provided that: “In this Act [see Short Title of 2010 Amendment note set out under section 101 of Title 6, Domestic Security]:

“(1) DERIVATIVE CLASSIFICATION AND ORIGINAL CLASSIFICATION.—The terms ‘derivative classification’ and ‘original classification’ have the meanings given those terms in Executive Order No. 13526 [50 U.S.C. 435 note].

“(2) EXECUTIVE AGENCY.—The term ‘Executive agency’ has the meaning given that term in section 105 of title 5, United States Code.

“(3) EXECUTIVE ORDER NO. 13526.—The term ‘Executive Order No. 13526’ means Executive Order No. 13526 (75 Fed. Reg. 707; relating to classified national security information) or any subsequent corresponding executive order.”

§ 436. Requests by authorized investigative agencies

(a) Generally

(1) Any authorized investigative agency may request from any financial agency, financial institution, or holding company, or from any consumer reporting agency, such financial records, other financial information, and consumer reports as may be necessary in order to conduct

¹ See References in Text note below.