

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.

any authorized law enforcement investigation, counterintelligence inquiry, or security determination. Any authorized investigative agency may also request records maintained by any commercial entity within the United States pertaining to travel by an employee in the executive branch of Government outside the United States.

(2) Requests may be made under this section where—

(A) the records sought pertain to a person who is or was an employee in the executive branch of Government required by the President in an Executive order or regulation, as a condition of access to classified information, to provide consent, during a background investigation and for such time as access to the information is maintained, and for a period of not more than three years thereafter, permitting access to financial records, other financial information, consumer reports, and travel records; and

(B)(i) there are reasonable grounds to believe, based on credible information, that the person is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power;

(ii) information the employing agency deems credible indicates the person has incurred excessive indebtedness or has acquired a level of affluence which cannot be explained by other information known to the agency; or

(iii) circumstances indicate the person had the capability and opportunity to disclose classified information which is known to have been lost or compromised to a foreign power or an agent of a foreign power.

(3) Each such request—

(A) shall be accompanied by a written certification signed by the department or agency head or deputy department or agency head concerned, or by a senior official designated for this purpose by the department or agency head concerned (whose rank shall be no lower than Assistant Secretary or Assistant Director), and shall certify that—

(i) the person concerned is or was an employee within the meaning of paragraph (2)(A);

(ii) the request is being made pursuant to an authorized inquiry or investigation and is authorized under this section; and

(iii) the records or information to be reviewed are records or information which the employee has previously agreed to make available to the authorized investigative agency for review;

(B) shall contain a copy of the agreement referred to in subparagraph (A)(iii);

(C) shall identify specifically or by category the records or information to be reviewed; and

(D) shall inform the recipient of the request of the prohibition described in subsection (b) of this section.

(b) Prohibition of certain disclosure

(1) If an authorized investigative agency described in subsection (a) certifies that otherwise there may result a danger to the national security of the United States, interference with a

criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no governmental or private entity, or officer, employee, or agent of such entity, may disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request) that such entity has received or satisfied a request made by an authorized investigative agency under this section.

(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

(3) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice or legal assistance with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).

(4) At the request of the authorized investigative agency, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized investigative agency the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the requesting official of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request under subsection (a).

(c) Records or information; inspection or copying

(1) Notwithstanding any other provision of law (other than section 6103 of title 26), an entity receiving a request for records or information under subsection (a) of this section shall, if the request satisfies the requirements of this section, make available such records or information within 30 days for inspection or copying, as may be appropriate, by the agency requesting such records or information.

(2) Any entity (including any officer, employee, or agent thereof) that discloses records or information for inspection or copying pursuant to this section in good faith reliance upon the certifications made by an agency pursuant to this section shall not be liable for any such disclosure to any person under this subchapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

(d) Reimbursement of costs

Any agency requesting records or information under this section may, subject to the availability of appropriations, reimburse a private entity for any cost reasonably incurred by such entity in responding to such request, including the cost of identifying, reproducing, or transporting records or other data.

(e) Dissemination of records or information received

An agency receiving records or information pursuant to a request under this section may

disseminate the records or information obtained pursuant to such request outside the agency only—

- (1) to the agency employing the employee who is the subject of the records or information;
- (2) to the Department of Justice for law enforcement or counterintelligence purposes; or
- (3) with respect to dissemination to an agency of the United States, if such information is clearly relevant to the authorized responsibilities of such agency.

(f) Construction of section

Nothing in this section may be construed to affect the authority of an investigative agency to obtain information pursuant to the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(July 26, 1947, ch. 343, title VIII, §802, as added Pub. L. 103-359, title VIII, §802(a), Oct. 14, 1994, 108 Stat. 3436; amended Pub. L. 109-177, title I, §116(f), Mar. 9, 2006, 120 Stat. 216; Pub. L. 109-178, §4(e), Mar. 9, 2006, 120 Stat. 281.)

REFERENCES IN TEXT

The Right to Financial Privacy Act, referred to in subsec. (f), probably means the Right to Financial Privacy Act of 1978, which is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, as amended, and is classified generally to chapter 35 (§3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

The Fair Credit Reporting Act, referred to in subsec. (f), is title VI of Pub. L. 90-321, as added by Pub. L. 91-508, title VI, §601, Oct. 26, 1970, 84 Stat. 1127, as amended, which is classified generally to subchapter III (§1681 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note set out under section 1601 of Title 15 and Tables.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109-177 amended subsec. (b) generally. Prior to amendment, text read as follows: “Notwithstanding any other provision of law, no governmental or private entity, or officer, employee, or agent of such entity, may disclose to any person, other than those officers, employees, or agents of such entity necessary to satisfy a request made under this section, that such entity has received or satisfied a request made by an authorized investigative agency under this section.”

Subsec. (b)(4). Pub. L. 109-178 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “At the request of the authorized investigative agency, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized investigative agency the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform such official that the person intends to consult an attorney to obtain legal advice or legal assistance.”

§ 437. Exceptions

Except as otherwise specifically provided, the provisions of this subchapter shall not apply to the President and Vice President, Members of the Congress, Justices of the Supreme Court, and Federal judges appointed by the President.

(July 26, 1947, ch. 343, title VIII, §803, as added Pub. L. 103-359, title VIII, §802(a), Oct. 14, 1994, 108 Stat. 3437.)

§ 438. Definitions

For purposes of this subchapter—

(1) the term “authorized investigative agency” means an agency authorized by law or regulation to conduct a counterintelligence investigation or investigations 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;

(2) the term “classified information” means any information that has been determined pursuant to Executive Order No. 12356 of April 2, 1982, or successor orders, or the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], to require protection against unauthorized disclosure and that is so designated;

(3) the term “consumer reporting agency” has the meaning given such term in section 1681a of title 15;

(4) the term “employee” includes any person who receives a salary or compensation of any kind from the United States Government, is a contractor of the United States Government or an employee thereof, is an unpaid consultant of the United States Government, or otherwise acts for or on behalf of the United States Government, except as otherwise determined by the President;

(5) the terms “financial agency” and “financial institution” have the meanings given to such terms in section 5312(a) of title 31 and the term “holding company” has the meaning given to such term in section 3401(6) of title 12;

(6) the terms “foreign power” and “agent of a foreign power” have the same meanings as set forth in sections¹ 1801(a) and (b), respectively, of this title;

(7) the term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, and any other possession of the United States; and

(8) the term “computer” means any electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device and any data or other information stored or contained in such device.

(July 26, 1947, ch. 343, title VIII, §804, as added Pub. L. 103-359, title VIII, §802(a), Oct. 14, 1994, 108 Stat. 3438; amended Pub. L. 106-120, title III, §305(b), Dec. 3, 1999, 113 Stat. 1611.)

REFERENCES IN TEXT

Executive Order No. 12356, referred to in par. (2), is set out as a note under section 435 of this title.

The Atomic Energy Act of 1954, referred to in par. (2), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of Title 42, The Public Health and Welfare. For complete classi-

¹ So in original. Probably should be “section”.