

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.)

#### CODIFICATION

Section was formerly classified to section 414 of this title prior to editorial reclassification and renumbering as this section. Some section numbers of this title referenced in amendment notes below reflect the classification of such sections prior to their editorial reclassification.

#### 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 unforseen 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 3001 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 3001 of this title.

#### 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.

#### 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.

#### § 3095. 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 chap-

ters 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 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, 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

Section was formerly classified to section 415 of this title prior to editorial reclassification and renumbering as this section. Some section numbers of this title referenced in amendment notes below reflect the classification of such sections prior to their editorial reclassification.

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

### § 3096. 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.)

#### CODIFICATION

Section was formerly classified to section 415a of this title prior to editorial reclassification and renumbering as this section.

#### 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 3001 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 3001 of this title.