

“(1) the individual is a victim of a sexual assault; and

“(2) the consultation occurred with respect to an emotional or mental health condition strictly in relation to the sexual assault.”

DEADLINE FOR PRESCRIBING PROCESS FOR PRIORITIZING BACKGROUND INVESTIGATIONS FOR SECURITY CLEARANCES

Pub. L. 106-398, §1 [[div. A], title X, §1072(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-277, provided that the process required by subsec. (a) of this section for expediting the completion of security clearance background investigations was to be prescribed by Jan. 1, 2001.

EX. ORD. NO. 13869. TRANSFERRING RESPONSIBILITY FOR BACKGROUND INVESTIGATIONS TO THE DEPARTMENT OF DEFENSE

Ex. Ord. No. 13869, Apr. 24, 2019, 84 F.R. 18125, provided:

By the power vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. Findings and Purpose. Section 925 of the National Defense Authorization Act for Fiscal Year 2018 (10 U.S.C. 1564 note) provides that the Secretary of Defense has the authority to conduct security, suitability, and credentialing background investigations for Department of Defense personnel and requires the Secretary, in consultation with the Director of the Office of Personnel Management, to provide for a phased transition to the Department of Defense of the conduct of such investigations conducted by the National Background Investigations Bureau (NBIB). Implementing that legislative mandate while retaining the benefit of economies of scale in addressing the Federal Government's background investigations workload, avoiding unnecessary risk, promoting the ongoing alignment of efforts with respect to vetting Federal employees and contractors, and facilitating needed reforms in this critical area requires that the primary responsibility for conducting background investigations Government-wide be transferred from the Office of Personnel Management to the Department of Defense.

SEC. 2. Transfer or Delegation of Background Investigation Functions; Further Amendments to Executive Order 13467 of June 30, 2008, as amended. [Amended Ex. Ord. No. 13467, set out as a note under section 3161 of Title 50, War and National Defense.]

SEC. 3. Amendment to Executive Order 12171 of November 18, 1979, as amended.

(a) *Determinations.* Pursuant to section 7103(b)(1) of title 5, United States Code, the DCSA, previously known as the DSS, is hereby determined to have as a primary function intelligence, counterintelligence, investigative, or national security work. It is further determined that chapter 71 of title 5, United States Code, cannot be applied to the DCSA in a manner consistent with national security requirements and considerations.

(b) *Exclusion.* [Amended Ex. Ord. No. 12171, set out as a note under section 7103 of Title 5, Government Organization and Employees.]

SEC. 4. Conforming References to the Defense Security Service and the Defense Counterintelligence and Security Agency. Any reference to the Defense Security Service or NBIB in any Executive Order or other Presidential document that is in effect on the day before the date of this order shall be deemed or construed to be a reference to the Defense Counterintelligence and Security Agency or any other entity that the Secretary of Defense names, consistent with section 2(b)(i) of Executive Order 13467, and agencies whose regulations, rules, or other documents reference the Defense Security Service or NBIB shall revise any such respective regulations, rules, or other documents as soon as practicable to update them for consistency with this order.

SEC. 5. Review of Vetting Policies. No later than July 24, 2019, the Council Principals identified in section

2.4(b) of Executive Order 13467 shall review the laws, regulations, Executive Orders, and guidance relating to the Federal Government's vetting of Federal employees and contractors and shall submit to the President, through the Chair of the Council, a report recommending any appropriate legislative, regulatory, or policy changes, including any such changes to civil service regulations or policies, Executive Order 13467 or Executive Order 13488 [5 U.S.C. 7301 note].

SEC. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§ 1564a. Counterintelligence polygraph program

(a) **AUTHORITY FOR PROGRAM.**—The Secretary of Defense may carry out a program for the administration of counterintelligence polygraph examinations to persons described in subsection (b). The program shall be conducted in accordance with the standards specified in subsection (e).

(b) **PERSONS COVERED.**—Except as provided in subsection (d), the following persons are subject to this section:

(1) With respect to persons whose duties are described in subsection (c)—

(A) military and civilian personnel of the Department of Defense;

(B) personnel of defense contractors;

(C) persons assigned or detailed to the Department of Defense; and

(D) applicants for a position in the Department of Defense.

(2) A person who is—

(A) a national of the United States (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)) and also a national of a foreign state; and

(B) either—

(i) a civilian employee or contractor who requires access to classified information; or

(ii) a member of the armed forces who requires access to classified information.

(c) **COVERED TYPES OF DUTIES.**—The Secretary of Defense may provide, under standards established by the Secretary, that a person described in subsection (b)(1) is subject to this section if that person's duties involve—

(1) access to information that—

(A) has been classified at the level of top secret; or

(B) is designated as being within a special access program under section 4.4(a) of Executive Order No. 12958 (or a successor Executive order); or

(2) assistance in an intelligence or military mission in a case in which the unauthorized

disclosure or manipulation of information, as determined under standards established by the Secretary of Defense, could reasonably be expected to—

(A) jeopardize human life or safety;

(B) result in the loss of unique or uniquely productive intelligence sources or methods vital to United States security; or

(C) compromise technologies, operational plans, or security procedures vital to the strategic advantage of the United States and its allies.

(d) EXCEPTIONS FROM COVERAGE FOR CERTAIN INTELLIGENCE AGENCIES AND FUNCTIONS.—This section does not apply to the following persons:

(1) A person assigned or detailed to the Central Intelligence Agency or to an expert or consultant under a contract with the Central Intelligence Agency.

(2) A person who is—

(A) employed by or assigned or detailed to the National Security Agency;

(B) an expert or consultant under contract to the National Security Agency;

(C) an employee of a contractor of the National Security Agency; or

(D) a person applying for a position in the National Security Agency.

(3) A person assigned to a space where sensitive cryptographic information is produced, processed, or stored.

(4) A person employed by, or assigned or detailed to, an office within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs or a contractor of such an office.

(e) STANDARDS.—(1) Polygraph examinations conducted under this section shall comply with all applicable laws and regulations.

(2) Such examinations may be authorized for any of the following purposes:

(A) To assist in determining the initial eligibility for duties described in subsection (c) of, and aperiodically thereafter, on a random basis, to assist in determining the continued eligibility of, persons described in subsections (b)(1) and (c).

(B) With the consent of, or upon the request of, the examinee, to—

(i) resolve serious credible derogatory information developed in connection with a personnel security investigation; or

(ii) exculpate him- or herself of allegations or evidence arising in the course of a counterintelligence or personnel security investigation.

(C) To assist, in a limited number of cases when operational exigencies require the immediate use of a person's services before the completion of a personnel security investigation, in determining the interim eligibility for duties described in subsection (c) of the person.

(D) With respect to persons described in subsection (b)(2), to assist in assessing any counterintelligence threats identified in an authorized investigation of foreign preference or foreign influence risks, as described in part 147 of title 32, Code of Federal Regulations, or such successor regulations.

(3) Polygraph examinations conducted under this section shall provide adequate safeguards, prescribed by the Secretary of Defense, for the protection of the rights and privacy of persons subject to this section under subsection (b) who are considered for or administered polygraph examinations under this section. Such safeguards shall include the following:

(A) The examinee shall receive timely notification of the examination and its intended purpose and may only be given the examination with the consent of the examinee.

(B) The examinee shall be advised of the examinee's right to consult with legal counsel.

(C) All questions asked concerning the matter at issue, other than technical questions necessary to the polygraph technique, must have a relevance to the subject of the inquiry.

(f) OVERSIGHT.—(1) The Secretary shall establish a process to monitor responsible and effective application of polygraph examinations within the Department of Defense.

(2) The Secretary shall make information on the use of polygraphs within the Department of Defense available to the congressional defense committees.

(g) POLYGRAPH RESEARCH PROGRAM.—The Secretary shall carry out a continuing research program to support the polygraph examination activities of the Department of Defense. The program shall include the following:

(1) An on-going evaluation of the validity of polygraph techniques used by the Department.

(2) Research on polygraph countermeasures and anti-countermeasures.

(3) Developmental research on polygraph techniques, instrumentation, and analytic methods.

(Added Pub. L. 108-136, div. A, title X, §1041(a)(1), Nov. 24, 2003, 117 Stat. 1607; amended Pub. L. 109-163, div. A, title X, §1054(a), Jan. 6, 2006, 119 Stat. 3436; Pub. L. 115-232, div. A, title XVI, §1623(a)-(c), Aug. 13, 2018, 132 Stat. 2119.)

REFERENCES IN TEXT

Executive Order No. 12958, referred to in subsec. (c)(1)(B), which was formerly set out as a note under section 435 (now section 3161) of Title 50, War and National Defense, was revoked by Ex. Ord. No. 13526, § 6.2(g), Dec. 29, 2009, 75 F.R. 731.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 100-180, title XI, §1121, Dec. 4, 1987, 101 Stat. 1147, as amended, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 108-136, div. A, title X, §1041(b), Nov. 24, 2003, 117 Stat. 1608.

AMENDMENTS

2018—Subsec. (b). Pub. L. 115-232, §1623(a), amended subsec. (b) generally. Prior to amendment, text read as follows: "Except as provided in subsection (d), the following persons, if their duties are described in subsection (c), are subject to this section:

"(1) Military and civilian personnel of the Department of Defense.

"(2) Personnel of defense contractors.

"(3) A person assigned or detailed to the Department of Defense.

"(4) An applicant for a position in the Department of Defense."

Subsec. (c). Pub. L. 115-232, §1623(c)(1), substituted "subsection (b)(1)" for "subsection (b)" in introductory provisions.

Subsec. (e)(2)(A). Pub. L. 115-232, §1623(c)(2), substituted “subsections (b)(1) and (c)” for “subsections (b) and (c)”.

Subsec. (e)(2)(D). Pub. L. 115-232, §1623(b), added subpar. (D).

2006—Pub. L. 109-163 reenacted section catchline without change and amended text generally. Prior to amendment, section related to authority for program for administration of counterintelligence polygraph examinations in subsec. (a), persons covered in subsec. (b), exceptions from coverage for certain intelligence agencies and functions in subsec. (c), oversight in subsec. (d), and polygraph research program in subsec. (e).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-163, div. A, title X, §1054(b), Jan. 6, 2006, 119 Stat. 3438, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to polygraph examinations administered beginning on the date of the enactment of this Act [Jan. 6, 2006].”

CONSTRUCTION

Pub. L. 115-232, div. A, title XVI, §1623(d), Aug. 13, 2018, 132 Stat. 2119, provided that: “Nothing in section 1564a of title 10, United States Code, as amended by this section, shall be construed to prohibit the granting of a security clearance to persons described in subsection (b)(2) of such section absent information relevant to the adjudication process, as described in part 147 of title 32, Code of Federal Regulations, or such successor regulations.”

§ 1564b. Security vetting for foreign nationals

(a) **STANDARDS AND PROCESS.**—(1) The Secretary of Defense, in coordination with the Security Executive Agent established pursuant to Executive Order 13467 (73 Fed. Reg. 38103; 50 U.S.C. 3161 note), shall develop uniform and consistent standards and a centralized process for the screening and vetting of covered foreign individuals requiring access to systems, facilities, personnel, information, or operations, of the Department of Defense, including with respect to the background investigations of covered foreign individuals requiring access to classified information.

(2) The Secretary shall ensure that the standards developed under paragraph (1) are consistent with relevant directives of the Security Executive Agent.

(3) The Secretary shall designate an official of the Department of Defense to be responsible for executing the centralized process developed under paragraph (1) and adjudicating any information discovered pursuant to such process.

(b) **OTHER USES.**—In addition to using the centralized process developed under subsection (a)(1) for covered foreign individuals, the Secretary may use the centralized process in determining whether to grant a security clearance to any individual with significant foreign influence or foreign preference issues, in accordance with the adjudicative guidelines under part 147 of title 32, Code of Federal Regulations, or such successor regulation.

(c) **COVERED FOREIGN INDIVIDUAL DEFINED.**—In this section, the term “covered foreign individual” means an individual who meets the following criteria:

- (1) The individual is—
 - (A) a national of a foreign state;
 - (B) a national of the United States (as such term is defined in section 101 of the Im-

migration and Nationality Act (8 U.S.C. 1101)) and also a national of a foreign state; or

(C) an alien who is lawfully admitted for permanent residence (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

(2) The individual is either—

(A) a civilian employee of the Department of Defense or a contractor of the Department; or

(B) a member of the armed forces.

(Added Pub. L. 115-232, div. A, title XVI, §1622(a), Aug. 13, 2018, 132 Stat. 2117.)

REFERENCES IN TEXT

Executive Order 13467, referred to in subsec. (a)(1), is Ex. Ord. No. 13467, June 30, 2008, 73 F.R. 38103, which is set out as a note under section 3161 of Title 50, War and National Defense.

§ 1565. DNA identification information: collection from certain offenders; use

(a) **COLLECTION OF DNA SAMPLES.**—(1) The Secretary concerned shall collect a DNA sample from each member of the armed forces under the Secretary’s jurisdiction who is, or has been, convicted of a qualifying military offense (as determined under subsection (d)).

(2) For each member described in paragraph (1), if the Combined DNA Index System (in this section referred to as “CODIS”) of the Federal Bureau of Investigation contains a DNA analysis with respect to that member, or if a DNA sample has been or is to be collected from that member under section 3(a) of the DNA Analysis Backlog Elimination Act of 2000, the Secretary concerned may (but need not) collect a DNA sample from that member.

(3) The Secretary concerned may enter into agreements with other Federal agencies, units of State or local government, or private entities to provide for the collection of samples described in paragraph (1).

(b) **ANALYSIS AND USE OF SAMPLES.**—The Secretary concerned shall furnish each DNA sample collected under subsection (a) to the Secretary of Defense. The Secretary of Defense shall—

(1) carry out a DNA analysis on each such DNA sample in a manner that complies with the requirements for inclusion of that analysis in CODIS; and

(2) furnish the results of each such analysis to the Director of the Federal Bureau of Investigation for inclusion in CODIS.

(c) **DEFINITIONS.**—In this section:

(1) The term “DNA sample” means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

(2) The term “DNA analysis” means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(d) **QUALIFYING MILITARY OFFENSES.**—The offenses that shall be treated for purposes of this section as qualifying military offenses are the following offenses, as determined by the Secretary of Defense, in consultation with the Attorney General:

(1) Any offense under the Uniform Code of Military Justice for which a sentence of con-