

pilot outreach program to reduce demand for illegal drugs, required program to include outreach activities by active and reserve components of Armed Forces and focus primarily on youths in general and inner-city youths in particular, and related to payment of travel and living expenses, funding, duration of program, and reporting requirements, prior to repeal by Pub. L. 104-106, div. A, title V, §571(b), Feb. 10, 1996, 110 Stat. 353.

CONGRESSIONAL FINDINGS

Pub. L. 102-484, div. A, title X, §1081(a), Oct. 23, 1992, 106 Stat. 2514, related to findings of Congress as to use of military resources to assist in addressing domestic needs, prior to repeal by Pub. L. 104-106, div. A, title V, §571(a)(2), Feb. 10, 1996, 110 Stat. 353.

CHAPTER 21—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

Subchapter I. General Matters 421
II. Intelligence Commercial Activities 431

Editorial Notes

AMENDMENTS

1991—Pub. L. 102-88, title V, §504(a)(1), Aug. 14, 1991, 105 Stat. 437, added items for subchapters I and II.

Statutory Notes and Related Subsidiaries

NOTIFICATION OF CERTAIN THREATS TO UNITED STATES ARMED FORCES BY FOREIGN GOVERNMENTS

Pub. L. 117-81, div. A, title XVI, §1621, Dec. 27, 2021, 135 Stat. 2084, provided that:

“(a) DETERMINATION THAT FOREIGN GOVERNMENT INTENDS TO CAUSE THE DEATH OF OR SERIOUS BODILY INJURY TO MEMBERS OF THE ARMED FORCES.—The Secretary of Defense shall carry out the notification requirement under subsection (b) whenever the Secretary, in consultation with the Director of National Intelligence, determines with high confidence that, on or after the date of the enactment of this Act [Dec. 27, 2021], an official of a foreign government has taken a substantial step that is intended to cause the death of, or serious bodily injury to, any member of the United States Armed Forces, whether through direct means or indirect means, including through a promise or agreement by the foreign government to pay anything of pecuniary value to an individual or organization in exchange for causing such death or serious bodily injury.

“(b) NOTICE TO CONGRESS.—

“(1) NOTIFICATION.—Except as provided by paragraph (2), not later than 14 days after making a determination under subsection (a), the Secretary shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of such determination. Such notification shall include, at a minimum, the following:

“(A) A description of the nature and extent of the effort by the foreign government to target members of the United States Armed Forces.

“(B) An assessment of what specific officials, agents, entities, and departments within the foreign government authorized the effort.

“(C) An assessment of the motivations of the foreign government for undertaking such an effort.

“(D) An assessment of whether the effort of the foreign government was a substantial factor in the death or serious bodily injury of any member of the United States Armed Forces.

“(E) Any other information the Secretary determines appropriate.

“(2) WAIVER.—On a case-by-case basis, the Secretary may waive the notification requirement under paragraph (1) if the Secretary—

“(A) determines that the waiver is in the national security interests of the United States; and

“(B) submits to the congressional defense committees a written justification of such determination.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘anything of pecuniary value’ has the meaning given that term in section 1958(b)(1) of title 18, United States Code.

“(2) The term ‘determines with high confidence’—

“(A) means that the official making the determination—

“(i) has concluded that the judgments in the determination are based on sound analytic argumentation and high-quality, consistent reporting from multiple sources, including through clandestinely obtained documents, clandestine and open source reporting, and in-depth expertise;

“(ii) with respect to such judgments, has concluded that the intelligence community has few intelligence gaps and few assumptions underlying the analytic line and that the intelligence community has concluded that the potential for deception is low; and

“(iii) has examined long-standing analytic judgments and considered alternatives in making the determination; but

“(B) does not mean that the official making the determination has concluded that the judgments in the determination are fact or certainty.

“(3) The term ‘direct means’ means without the use of intermediaries.

“(4) The term ‘foreign government’ means the government of a foreign country with which the United States is at peace.

“(5) The term ‘indirect means’ means through, or with the assistance of, intermediaries.”

STRATEGY AND PLAN TO IMPLEMENT CERTAIN DEFENSE INTELLIGENCE REFORMS

Pub. L. 117-81, div. A, title XVI, §1622, Dec. 27, 2021, 135 Stat. 2086, provided that:

“(a) STRATEGY AND PLAN.—The Secretary of Defense, in coordination with the Director of National Intelligence, shall develop and implement a strategy and plan to enable the Defense Intelligence Enterprise to more effectively fulfill the intelligence and information requirements of the commanders of the combatant commands with respect to efforts by the combatant commands to expose and counter foreign malign influence, coercion, and subversion activities undertaken by, or at the direction, on behalf, or with substantial support of the governments of, covered foreign countries.

“(b) MATTERS INCLUDED IN PLAN.—The plan under subsection (a) shall include the following:

“(1) A plan to improve policies and procedures of the Defense Intelligence Enterprise to assemble and release facts about the foreign malign influence, coercion, and subversion activities of a covered foreign country described in such subsection in a timely way and in forms that allow for greater distribution and release.

“(2) A plan to develop and publish validated priority intelligence requirements of the commanders of the combatant commands.

“(3) A plan to better leverage open-source and commercially available information and independent analyses to support the efforts by the combatant commands described in such subsection.

“(4) A review by each element of the Defense Intelligence Enterprise of the approaches used by that element—

“(A) with respect to intelligence that has not been processed or analyzed, to separate out data from the sources and methods by which the data is obtained (commonly known as ‘tearlining’); and

“(B) with respect to finished intelligence products that relate to foreign malign influence, coercion, and subversion activities of a covered foreign country described in such subsection, to downgrade the classification level of the product.

“(6) [(5)] An identification of any additional resources or legislative authority necessary to better meet the intelligence and information requirements described in such subsection.

“(7) [(6)] An assignment of responsibilities and timelines for the implementation of the plans described in paragraphs (1), (2), and (3).

“(8) [(7)] Any other matters the Secretary determines relevant.

“(c) SUBMISSION.—Not later than 90 days after the date of the enactment of this Act [Dec. 27, 2021], the Secretary of Defense, in coordination with the Director of National Intelligence, shall submit to the appropriate congressional committees and the Comptroller General of the United States the plan developed under subsection (a).

“(d) COMPTROLLER GENERAL REVIEW.—

“(1) REQUIREMENT.—The Comptroller General shall conduct a review of—

“(A) the plan submitted under subsection (c); and

“(B) the activities and future plans of the Defense Intelligence Enterprise for meeting the intelligence and information requirements described in subsection (a).

“(2) ELEMENTS.—The review under paragraph (1) shall include the following:

“(A) The extent to which the plan submitted under subsection (c) includes the elements identified in subsection (b).

“(B) The extent to which the Defense Intelligence Enterprise has clearly assigned roles, responsibilities, and processes for fulfilling the intelligence and information requirements described in subsection (a).

“(C) The extent to which the Defense Intelligence Enterprise is planning to obtain additional capabilities and resources to improve the quality and timeliness of intelligence and information provided to the commanders of the combatant commands to aid in the efforts described in subsection (a).

“(D) The extent to which the Defense Intelligence Enterprise is identifying, obtaining, and using commercial and publicly available information to aid in such efforts.

“(E) Any other related issues that the Comptroller General determines appropriate.

“(3) BRIEFING AND REPORT.—Not later than 120 days after the date on which the Comptroller General receives the plan under subsection (c), the Comptroller General shall provide to the appropriate congressional committees a briefing on any initial findings about the plan. After such briefing, the Comptroller General shall submit to the committees a report on the plan at a date mutually agreed upon by the Comptroller General and the committees.

“(e) CONGRESSIONAL BRIEFING.—Not later than 90 days after the date of the enactment of this Act [Dec. 27, 2021], and annually thereafter through December 31, 2026, the Secretary, in coordination with the Director of National Intelligence, shall provide to the appropriate congressional committees a briefing on the strategy and plan under subsection (a).

“(f) DEFINITIONS.—In this section:

“(1) The term ‘appropriate congressional committees’ means the following:

“(A) The congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

“(B) The Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

“(2) The term ‘covered foreign country’ means any of the following:

“(A) The People’s Republic of China.

“(B) The Russian Federation.

“(C) The Islamic Republic of Iran.

“(D) The Democratic People’s Republic of Korea.

“(E) Any other foreign country the Secretary of Defense and the Director of National Intelligence determine appropriate.

“(3) The term ‘Defense Intelligence Enterprise’ has the meaning given that term in section 426(b)(4) of title 10, United States Code.”

LIMITATION ON USE OF FUNDS

Pub. L. 115–31, div. C, title VIII, §8037, May 5, 2017, 131 Stat. 255, provided that: “Notwithstanding any other provision of law, funds made available in this Act [div. C of Pub. L. 115–31, see Tables for classification] and hereafter for the Defense Intelligence Agency may be used for the design, development, and deployment of General Defense Intelligence Program intelligence communications and intelligence information systems for the Services, the Unified and Specified Commands, and the component commands.”

DEPARTMENT OF DEFENSE INTELLIGENCE PRIORITIES

Pub. L. 113–66, div. A, title IX, §922, Dec. 26, 2013, 127 Stat. 828, provided that: “Not later than 180 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall—

“(1) establish a written policy governing the internal coordination and prioritization of intelligence priorities of the Office of the Secretary of Defense, the Joint Staff, the combatant commands, and the military departments to improve identification of the intelligence needs of the Department of Defense;

“(2) identify any significant intelligence gaps of the Office of the Secretary of Defense, the Joint Staff, the combatant commands, and the military departments; and

“(3) provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate a briefing on the policy established under paragraph (1) and the gaps identified under paragraph (2).”

DEFENSE CLANDESTINE SERVICE

Pub. L. 113–66, div. A, title IX, §923, Dec. 26, 2013, 127 Stat. 828, as amended by Pub. L. 115–91, div. A, title X, §1051(s)(2), Dec. 12, 2017, 131 Stat. 1566, provided that:

“(a) CERTIFICATION REQUIRED.—Not more than 50 percent of the funds authorized to be appropriated by this Act [see Tables for classification] or otherwise available to the Department of Defense for the Defense Clandestine Service for fiscal year 2014 may be obligated or expended for the Defense Clandestine Service until such time as the Secretary of Defense certifies to the covered congressional committees that—

“(1) the Defense Clandestine Service is designed primarily to—

“(A) fulfill priorities of the Department of Defense that are unique to the Department of Defense or otherwise unmet; and

“(B) provide unique capabilities to the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))); and

“(2) the Secretary of Defense has designed metrics that will be used to ensure that the Defense Clandestine Service is employed as described in paragraph (1).

“(b) NOTIFICATION OF FUTURE CHANGES TO DESIGN.—Following the submittal of the certification referred to in subsection (a), in the event that any significant change is made to the Defense Clandestine Service, the Secretary shall promptly notify the covered congressional committees of the nature of such change.

“(c) QUARTERLY BRIEFINGS.—The Secretary of Defense shall quarterly provide to the covered congressional committees a briefing on the deployments and collection activities of personnel of the Defense Clandestine Service.

“(d) COVERED CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term ‘covered congressional committees’ means the congressional defense committees

[Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate.”

SUBCHAPTER I—GENERAL MATTERS

- Sec.
421. Funds for foreign cryptologic support.
422. Use of funds for certain incidental purposes.
423. Authority to use proceeds from counterintelligence operations of the military departments or the Defense Intelligence Agency.
424. Disclosure of organizational and personnel information: exemption for specified intelligence agencies.
425. Prohibition of unauthorized use of name, initials, or seal: specified intelligence agencies.
426. Integration of Department of Defense intelligence, surveillance, and reconnaissance capabilities.
427. Conflict Records Research Center.
428. Defense industrial security.
429. Appropriations for Defense intelligence elements: accounts for transfers; transfer authority.
430. Tactical Exploitation of National Capabilities Executive Agent.
430a. Executive agent for management and oversight of alternative compensatory control measures.
430b. Executive agent for open-source intelligence tools.

Editorial Notes

AMENDMENTS

2015—Pub. L. 114-92, div. A, title X, §§1081(a)(5), 1083(a)(2), title XVI, §1631(b), Nov. 25, 2015, 129 Stat. 1001, 1004, 1111, added items 430 to 430b.

2013—Pub. L. 113-66, div. A, title X, §1071(b), Dec. 26, 2013, 127 Stat. 868, added item 427.

2012—Pub. L. 112-87, title IV, §433(b), Jan. 3, 2012, 125 Stat. 1895, added item 429.

2011—Pub. L. 112-81, div. A, title X, §1061(4)(B), Dec. 31, 2011, 125 Stat. 1583, struck out item 427 “Intelligence oversight activities of Department of Defense: annual reports”.

Pub. L. 111-383, div. A, title X, §1075(d)(10), Jan. 7, 2011, 124 Stat. 4373, made technical correction to directory language of Pub. L. 111-84, §921(b)(2). See 2009 Amendment note below.

2009—Pub. L. 111-84, div. A, title X, §1073(a)(5), Oct. 28, 2009, 123 Stat. 2472, redesignated item 438 as 428.

Pub. L. 111-84, div. A, title IX, §921(b)(2), Oct. 28, 2009, 123 Stat. 2432, as amended by Pub. L. 111-383, div. A, title X, §1075(d)(10), Jan. 7, 2011, 124 Stat. 4373, added item 423 and struck out former item 423 “Authority to use proceeds from counterintelligence operations of the military departments”.

2008—Pub. L. 110-417, [div. A], title VIII, §845(a)(2), Oct. 14, 2008, 122 Stat. 4542, added item 438.

2006—Pub. L. 109-364, div. A, title IX, §932(b), Oct. 17, 2006, 120 Stat. 2363, added item 427.

2003—Pub. L. 108-136, div. A, title IX, §§921(d)(5)(B)(ii), 923(c)(2), Nov. 24, 2003, 117 Stat. 1569, 1576, substituted “Disclosure of organizational and personnel information: exemption for specified intelligence agencies” for “Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency, National Reconnaissance Office, and National Imagery and Mapping Agency” in item 424 and added item 426.

2001—Pub. L. 107-108, title V, §501(b)(3), Dec. 28, 2001, 115 Stat. 1404, substituted “Use of funds for certain incidental purposes” for “Counterintelligence official reception and representation expenses” in item 422.

1997—Pub. L. 105-107, title V, §503(d)(2), Nov. 20, 1997, 111 Stat. 2263, added items 424 and 425 and struck out

former items 424 “Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency” and 425 “Disclosure of personnel information: exemption for National Reconnaissance Office”.

1993—Pub. L. 103-178, title V, §503(a)(2), Dec. 3, 1993, 107 Stat. 2039, added item 425.

1991—Pub. L. 102-88, title V, §504(a)(1), Aug. 14, 1991, 105 Stat. 437, added subchapter heading.

1989—Pub. L. 101-189, div. A, title XVI, §1622(c)(2), Nov. 29, 1989, 103 Stat. 1604, substituted “Funds for foreign cryptologic support” for “Funds for Foreign Cryptologic Support” in item 421.

1988—Pub. L. 100-453, title VII, §§701(b), 703(b), Sept. 29, 1988, 102 Stat. 1912, 1913, in item 421 substituted “Funds for Foreign Cryptologic Support” for “Funds transfers for foreign cryptologic support” and added item 424.

1987—Pub. L. 100-180, div. A, title XII, §1231(3), Dec. 4, 1987, 101 Stat. 1160, substituted “departments” for “department” in item 423.

§ 421. Funds for foreign cryptologic support

(a) The Secretary of Defense may use appropriated funds available to the Department of Defense for intelligence and communications purposes to pay for the expenses of arrangements with foreign countries for cryptologic support.

(b) The Secretary of Defense may use funds other than appropriated funds to pay for the expenses of arrangements with foreign countries for cryptologic support without regard for the provisions of law relating to the expenditure of United States Government funds, except that—

(1) no such funds may be expended, in whole or in part, by or for the benefit of the Department of Defense for a purpose for which Congress had previously denied funds; and

(2) proceeds from the sale of cryptologic items may be used only to purchase replacement items similar to the items that are sold; and

(3) the authority provided by this subsection may not be used to acquire items or services for the principal benefit of the United States.

(c) Any funds expended under the authority of subsection (a) shall be reported to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives pursuant to the provisions of title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.). Funds expended under the authority of subsection (b) shall be reported pursuant to procedures jointly agreed upon by such committees and the Secretary of Defense.

(Added Pub. L. 96-450, title IV, §401(a), Oct. 14, 1980, 94 Stat. 1977, §140a; amended Pub. L. 97-258, §3(b)(2), Sept. 13, 1982, 96 Stat. 1063; renumbered §128 and amended Pub. L. 99-433, title I, §§101(a)(3), 110(d)(5), Oct. 1, 1986, 100 Stat. 994, 1002; renumbered §421, Pub. L. 100-26, §9(a)(2), Apr. 21, 1987, 101 Stat. 287; Pub. L. 100-453, title VII, §701(a), Sept. 29, 1988, 102 Stat. 1911; Pub. L. 101-189, div. A, title XVI, §1622(c)(3), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 113-291, div. A, title X, §1071(c)(3), Dec. 19, 2014, 128 Stat. 3508.)

Editorial Notes

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsection (c), is act July 26, 1947, ch. 343, 61 Stat. 495. Title