

**§ 201. Certain intelligence officials: consultation and concurrence regarding appointments; evaluation of performance**

(a) CONSULTATION REGARDING APPOINTMENT.—Before submitting a recommendation to the President regarding the appointment of an individual to the position of Director of the Defense Intelligence Agency, the Secretary of Defense shall consult with the Director of National Intelligence regarding the recommendation.

(b) CONCURRENCE IN APPOINTMENT.—(1) In the event of a vacancy in a position referred to in paragraph (2), before appointing an individual to fill the vacancy or recommending to the President an individual to be nominated to fill the vacancy, the Secretary of Defense shall obtain the concurrence of the Director of National Intelligence as provided in section 106(b) of the National Security Act of 1947 (50 U.S.C. 3041(b)).

(2) Paragraph (1) applies to the following positions:

(A) The Director of the National Security Agency.

(B) The Director of the National Reconnaissance Office.

(C) The Director of the National Geospatial-Intelligence Agency.

(c) PERFORMANCE EVALUATIONS.—(1) The Director of National Intelligence shall provide annually to the Secretary of Defense, for the Secretary's consideration, an evaluation of the performance of the individuals holding the positions referred to in paragraph (2) in fulfilling their respective responsibilities with regard to the National Intelligence Program.

(2) The positions referred to in paragraph (1) are the following:

(A) The Director of the National Security Agency.

(B) The Director of the National Reconnaissance Office.

(C) The Director of the National Geospatial-Intelligence Agency.

(Added Pub. L. 102-190, div. A, title IX, §922(a)(2), Dec. 5, 1991, 105 Stat. 1453; amended Pub. L. 104-201, div. A, title XI, §1103(a), Sept. 23, 1996, 110 Stat. 2676; Pub. L. 108-136, div. A, title IX, §921(d)(4), Nov. 24, 2003, 117 Stat. 1569; Pub. L. 110-181, div. A, title IX, §931(a)(4), (5), (c)(2), Jan. 28, 2008, 122 Stat. 285; Pub. L. 110-417, [div. A], title IX, §932(a)(3)-(5), Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111-84, div. A, title X, §1073(c)(10), Oct. 28, 2009, 123 Stat. 2475; Pub. L. 113-291, div. A, title X, §1071(c)(4), Dec. 19, 2014, 128 Stat. 3508.)

**Editorial Notes**

**PRIOR PROVISIONS**

A prior section 201 was renumbered section 202 of this title and subsequently repealed.

**AMENDMENTS**

2014—Subsec. (b)(1). Pub. L. 113-291 substituted “(50 U.S.C. 3041(b))” for “(50 U.S.C. 403-6(b))”.

2009—Subsecs. (a), (b)(1), (c)(1). Pub. L. 111-84 repealed Pub. L. 110-417, §932(a)(3)-(5). See 2008 Amendment notes below.

2008—Subsec. (a). Pub. L. 110-181, §931(a)(4), and Pub. L. 110-417, §932(a)(3), amended subsec. (a) identically, substituting “Director of National Intelligence” for

“Director of Central Intelligence”. Pub. L. 110-417, §932(a)(3), was repealed by Pub. L. 111-84.

Subsec. (b)(1). Pub. L. 110-417, §932(a)(4), which directed substitution of “Director of National Intelligence” for “Director of Central Intelligence”, could not be executed because of the intervening amendment by Pub. L. 110-181, §931(c)(2)(A), and was repealed by Pub. L. 111-84.

Pub. L. 110-181, §931(c)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Before submitting a recommendation to the President regarding the appointment of an individual to a position referred to in paragraph (2), the Secretary of Defense shall seek the concurrence of the Director of Central Intelligence in the recommendation. If the Director does not concur in the recommendation, the Secretary may make the recommendation to the President without the Director's concurrence, but shall include in the recommendation a statement that the Director does not concur in the recommendation.”

Subsec. (c)(1). Pub. L. 110-181, §931(c)(2)(B), substituted “National Intelligence Program” for “National Foreign Intelligence Program”.

Pub. L. 110-181, §931(a)(5), and Pub. L. 110-417, §932(a)(5), amended par. (1) identically, substituting “Director of National Intelligence” for “Director of Central Intelligence”. Pub. L. 110-417, §932(a)(5), was repealed by Pub. L. 111-84.

2003—Subsecs. (b)(2)(C), (c)(2)(C). Pub. L. 108-136 substituted “National Geospatial-Intelligence Agency” for “National Imagery and Mapping Agency”.

1996—Pub. L. 104-201 substituted “Certain intelligence officials: consultation and concurrence regarding appointments; evaluation of performance” for “Consultation regarding appointment of certain intelligence officials” in section catchline and amended text generally. Prior to amendment, text read as follows: “Before submitting a recommendation to the President regarding the appointment of an individual to the position of Director of the Defense Intelligence Agency or Director of the National Security Agency, the Secretary of Defense shall consult with the Director of Central Intelligence regarding the recommendation.”

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE OF 2009 AMENDMENT**

Pub. L. 111-84, div. A, title X, §1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(10) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110-417 as enacted.

**EFFECTIVE DATE OF 1996 AMENDMENT**

Amendment by Pub. L. 104-201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104-201, set out as a note under section 193 of this title.

**DEFENSE INTELLIGENCE AGENCY**

Pub. L. 102-190, div. A, title IX, §921, Dec. 5, 1991, 105 Stat. 1452, as amended by Pub. L. 103-337, div. A, title X, §1070(d)(1), Oct. 5, 1994, 108 Stat. 2858, provided that, during the period beginning on Dec. 5, 1991, and ending on Jan. 1, 1993, the Assistant Secretary of Defense referred to in section 138(b)(3) of this title could be assigned supervision of the Defense Intelligence Agency other than day-to-day operational control over the Agency, set forth the responsibilities of the Director of the Defense Intelligence Agency during the period beginning on Dec. 5, 1991, and ending on Jan. 1, 1993, and directed the Secretary of the Army and the Director of the Defense Intelligence Agency to take all required actions in order to transfer the Armed Forces Medical Intelligence Center and the Missile and Space Intelligence Center from the Department of the Army to the control of the Defense Intelligence Agency not later than Jan. 1, 1992.

**JOINT INTELLIGENCE CENTER**

Pub. L. 102-190, div. A, title IX, §923, Dec. 5, 1991, 105 Stat. 1453, provided that:

“(a) REQUIREMENT FOR CENTER.—The Secretary of Defense shall direct the consolidation of existing single-service current intelligence centers that are located within the District of Columbia or its vicinity into a joint intelligence center that is responsible for preparing current intelligence assessments (including indications and warning). The joint intelligence center shall be located within the District of Columbia or its vicinity. As appropriate for the support of military operations, the joint intelligence center shall provide for and manage the collection and analysis of intelligence.

“(b) MANAGEMENT.—The center shall be managed by the Defense Intelligence Agency in its capacity as the intelligence staff activity of the Chairman of the Joint Chiefs of Staff.

“(c) RESPONSIVENESS TO COMMAND AUTHORITIES.—The Secretary shall ensure that the center is fully responsive to the intelligence needs of the Secretary, the Chairman of the Joint Chiefs of Staff, and the commanders of the combatant commands.”

**[§ 202. Repealed. Pub. L. 105-107, title V, § 503(c), Nov. 20, 1997, 111 Stat. 2262]**

Section, added Pub. L. 97-269, title V, § 501(a), Sept. 27, 1982, 96 Stat. 1145, § 191; amended Pub. L. 98-525, title XIV, § 1405(6), Oct. 19, 1984, 98 Stat. 2622; renumbered § 201, Pub. L. 99-433, title III, § 301(a)(1), Oct. 1, 1986, 100 Stat. 1019; renumbered § 202, Pub. L. 102-190, div. A, title IX, § 922(a)(1), Dec. 5, 1991, 105 Stat. 1453; Pub. L. 105-107, title V, § 503(b), Nov. 20, 1997, 111 Stat. 2262, related to unauthorized use of Defense Intelligence Agency name, initials, or seal, after amendment by Pub. L. 105-107, which transferred subsec. (b) to end of section 425.

**[§ 203. Repealed. Pub. L. 114-328, div. A, title V, § 502(d)(1), Dec. 23, 2016, 130 Stat. 2102]**

Section, added Pub. L. 105-85, div. A, title II, § 235(a), Nov. 18, 1997, 111 Stat. 1665; amended Pub. L. 107-314, div. A, title II, § 225(b)(1)(A), (B)(i), Dec. 2, 2002, 116 Stat. 2486, related to appointment of Director of Missile Defense Agency.

**[§ 204. Renumbered § 3848]**

**§ 205. Missile Defense Agency**

(a) APPOINTMENT OF DIRECTOR.—The Director of the Missile Defense Agency shall be appointed for a six-year term.

(b) NOTIFICATION OF CHANGES TO NON-STANDARD ACQUISITION AND REQUIREMENTS PROCESSES AND RESPONSIBILITIES.—(1) The Secretary of Defense may not make any changes to the missile defense non-standard acquisition and requirements processes and responsibilities unless, with respect to those proposed changes—

(A) the Secretary, without delegation, has taken each of the actions specified in paragraph (2); and

(B) a period of 120 days has elapsed following the date on which the Secretary submits the report under subparagraph (C) of such paragraph.

(2) If the Secretary proposes to make changes to the missile defense non-standard acquisition and requirements processes and responsibilities, the Secretary shall—

(A) consult with the Under Secretary of Defense for Research and Engineering, the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Policy, the Secretaries of the military departments, the Chairman of the Joint Chiefs of Staff, the Commander of the United States

Strategic Command, the Commander of the United States Northern Command, and the Director of the Missile Defense Agency, regarding the changes;

(B) certify to the congressional defense committees that the Secretary has coordinated the changes with, and received the views of, the individuals referred to in subparagraph (A);

(C) submit to the congressional defense committees a report that contains—

(i) a description of the changes, the rationale for the changes, and the views of the individuals referred to in subparagraph (A) with respect to the changes;

(ii) a certification that the changes will not impair the missile defense capabilities of the United States nor degrade the unique special acquisition authorities of the Missile Defense Agency; and

(iii) with respect to any such changes to Department of Defense Directive 5134.09, or successor directive issued in accordance with this subsection, a final draft of the proposed modified directive, both in an electronic format and in a hard copy format; and

(D) with respect to any such changes to Department of Defense Directive 5134.09, or successor directive issued in accordance with this subsection, provide to such committees a briefing on the proposed modified directive described in subparagraph (C)(iii).

(3) In this subsection, the term “non-standard acquisition and requirements processes and responsibilities” means the processes and responsibilities described in—

(A) the memorandum of the Secretary of Defense titled “Missile Defense Program Direction” signed on January 2, 2002, as in effect on the date of the enactment of this subsection or as modified in accordance with this subsection, or any successor memorandum issued in accordance with this subsection;

(B) Department of Defense Directive 5134.09, as in effect on the date of the enactment of this subsection (without regard to any modifications described in Directive-type Memorandum 20-002 of the Deputy Secretary of Defense, or any amendments or extensions thereto made before the date of such enactment), or as modified in accordance with this subsection, or any successor directive issued in accordance with this subsection; and

(C) United States Strategic Command Instruction 538-3 titled “MD Warfighter Involvement Process”, as in effect on the date of the enactment of this subsection or as modified in accordance with this subsection, or any successor instruction issued in accordance with this subsection.

(Added Pub. L. 115-91, div. A, title XVI, § 1676(c)(1), Dec. 12, 2017, 131 Stat. 1773; amended Pub. L. 116-283, div. A, title XVI, § 1641(a), Jan. 1, 2021, 134 Stat. 4061; Pub. L. 117-81, div. A, title XVI, § 1661(a), Dec. 27, 2021, 135 Stat. 2101.)

**Editorial Notes**

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (b)(3), is the date of enactment of Pub. L. 117-81, which was approved Dec. 27, 2021.