

zation and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

### § 4833. Procedures

#### (a) Evidence

##### (1) United States Government personnel and contractors

(A) With respect to any individual described in subparagraph (B), a Board may—

- (i) administer oaths and affirmations;
- (ii) require that depositions be given and interrogatories answered; and
- (iii) require the attendance and presentation of testimony and evidence by such individual.

Failure of any such individual to comply with a request of the Board shall be grounds for disciplinary action by the head of the Federal agency in which such individual is employed or serves, or in the case of a contractor, debarment.

(B) The individuals referred to in subparagraph (A) are—

- (i) employees as defined by section 2105 of title 5 (including members of the Foreign Service);
- (ii) members of the uniformed services as defined by section 101(3) of title 37;
- (iii) employees of instrumentalities of the United States; and
- (iv) individuals employed by any person or entity under contract with agencies or instrumentalities of the United States Government to provide services, equipment, or personnel.

##### (2) Other persons

With respect to a person who is not described in paragraph (1)(B), a Board may administer oaths and affirmations and require that depositions be given and interrogatories answered.

##### (3) Subpoenas

(A) The Board may issue a subpoena for the attendance and testimony of any person (other than a person described in clause (i), (ii), or (iii) of paragraph (1)(B)) and the production of documentary or other evidence from any such person if the Board finds that such a subpoena is necessary in the interests of justice for the development of relevant evidence.

(B) In the case of contumacy or refusal to obey a subpoena issued under this paragraph, a court of the United States within the jurisdiction of which a person is directed to appear or produce information, or within the jurisdiction of which the person is found, resides, or transacts business, may upon application of the Attorney General, issue to such person an order requiring such person to appear before the Board to give testimony or produce information as required by the subpoena.

(C) Subpoenaed witnesses shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

#### (b) Confidentiality

A Board shall adopt for administrative proceedings under this subchapter such procedures

with respect to confidentiality as may be deemed necessary, including procedures relating to the conduct of closed proceedings or the submission and use of evidence in camera, to ensure in particular the protection of classified information relating to national defense, foreign policy, or intelligence matters. The Director of Central Intelligence shall establish the level of protection required for intelligence information and for information relating to intelligence personnel, including standards for secure storage.

#### (c) Records

Records pertaining to administrative proceedings under this subchapter shall be separated from all other records of the Department of State and shall be maintained under appropriate safeguards to preserve confidentiality and classification of information. Such records shall be prohibited from disclosure to the public until such time as a Board completes its work and is dismissed. The Department of State shall turn over to the Director of Central Intelligence intelligence information and information relating to intelligence personnel which shall then become records of the Central Intelligence Agency. After that time, only such exemptions from disclosure under section 552(b) of title 5 (relating to freedom of information), as apply to other records of the Department of State, and to any information transmitted under section 4834(c) of this title to the head of a Federal agency or instrumentality, shall be available for the remaining records of the Board.

#### (d) Status of Boards

The provisions of the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) and section 552b of title 5 (relating to open meetings) shall not apply to any Board.

(Pub. L. 99-399, title III, § 303, Aug. 27, 1986, 100 Stat. 859.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (d), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 3001 of Title 50, War and National Defense.

### § 4834. Findings and recommendations by a Board

#### (a) Findings

A Board convened in any case shall examine the facts and circumstances surrounding the se-

rious injury, loss of life, or significant destruction of property at or related to a United States Government mission abroad or surrounding the serious breach of security involving intelligence activities of a foreign government directed at a United States Government mission abroad (as the case may be) and shall make written findings determining—

- (1) the extent to which the incident or incidents with respect to which the Board was convened was security related;
- (2) whether the security systems and security procedures at that mission were adequate;
- (3) whether the security systems and security procedures were properly implemented;
- (4) the impact of intelligence and information availability;
- (5) such other facts and circumstances which may be relevant to the appropriate security management of United States missions abroad.

**(b) Program recommendations**

A Board shall submit its findings (which may be classified to the extent deemed necessary by the Board) to the Secretary of State, together with recommendations as appropriate to improve the security and efficiency of any program or operation which the Board has reviewed.

**(c) Personnel recommendations**

If a Board finds reasonable cause to believe that an individual described in section 4833(a)(1)(B) of this title has engaged in misconduct or unsatisfactorily performed the duties of employment of that individual, and such misconduct or unsatisfactory performance has significantly contributed to the serious injury, loss of life, or significant destruction of property, or the serious breach of security that is the subject of the Board's examination as described in subsection (a), the Board shall—

- (1) notify the individual concerned,
- (2) transmit the findings of reasonable cause, together with all information relevant to such findings, to the head of the appropriate Federal agency or instrumentality, and
- (3) recommend that such agency or instrumentality initiate an appropriate investigatory or disciplinary action.

In determining whether an individual has engaged in misconduct or unsatisfactorily performed the duties of employment of that individual as described in this subsection, the Board shall take into account any standard of conduct, law, rule, regulation, contract, or order which is pertinent.

**(d) Reports**

**(1) Program recommendations**

In any case in which a Board transmits recommendations to the Secretary of State under subsection (b), the Secretary shall, not later than 90 days after the receipt of such recommendations, submit a report to the Congress on each such recommendation and the action taken with respect to that recommendation.

**(2) Personnel recommendations**

In any case in which a Board transmits a finding of reasonable cause under subsection

(c), the head of the Federal agency or instrumentality receiving the information shall review the evidence and recommendations and shall, not later than 30 days after the receipt of that finding, transmit to the Congress a report specifying—

- (A) the nature of the case and a summary of the evidence transmitted by the Board; and
- (B) the decision by the Federal agency or instrumentality to take disciplinary or other appropriate action against that individual or the reasons for deciding not to take disciplinary or other action with respect to that individual.

(Pub. L. 99-399, title III, §304, Aug. 27, 1986, 100 Stat. 861; Pub. L. 100-204, title I, §156(b), Dec. 22, 1987, 101 Stat. 1354; Pub. L. 114-323, title I, §104(a), Dec. 16, 2016, 130 Stat. 1909.)

**Editorial Notes**

**AMENDMENTS**

2016—Subsec. (c). Pub. L. 114-323, §104(a)(3), in concluding provisions, substituted “has engaged in misconduct or unsatisfactorily performed the duties of employment of that individual as described in this subsection” for “has breached a duty of that individual” and struck out “to the performance of the duties of that individual” after “pertinent”.

Pub. L. 114-323, §104(a)(1), in introductory provisions, substituted “If” for “Whenever” and “has engaged in misconduct or unsatisfactorily performed the duties of employment of that individual, and such misconduct or unsatisfactory performance has significantly contributed to the serious injury, loss of life, or significant destruction of property, or the serious breach of security that is the subject of the Board's examination as described in subsection (a)” for “has breached the duty of that individual”.

Subsec. (c)(2). Pub. L. 114-323, §104(a)(2), substituted “findings” for “finding” in two places.

1987—Subsec. (a). Pub. L. 100-204 inserted “or surrounding the serious breach of security involving intelligence activities of a foreign government directed at a United States Government mission abroad (as the case may be)” after first reference to “mission abroad”.

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE OF 2016 AMENDMENT**

Pub. L. 114-323, title I, §104(b), Dec. 16, 2016, 130 Stat. 1910, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to any Accountability Review Board that is convened under section 301 of the Diplomatic Security Act (22 U.S.C. 4831) on or after the date of the enactment of this Act [Dec. 16, 2016].”

**§ 4835. Relation to other proceedings**

Nothing in this subchapter shall be construed to create administrative or judicial review remedies or rights of action not otherwise available by law, nor shall any provision of this subchapter be construed to deprive any person of any right or legal defense which would otherwise be available to that person under any law, rule, or regulation.

(Pub. L. 99-399, title III, §305, Aug. 27, 1986, 100 Stat. 862.)