

Subsec. (d). Pub. L. 111-259, §331(c)(3), designated existing provisions as par. (1), inserted “in writing” after “notified”, and added par. (2).

Subsec. (g). Pub. L. 111-259, §331(c)(4), added subsec. (g).

2004—Subsec. (b). Pub. L. 108-458 substituted “Director of National Intelligence” for “Director of Central Intelligence” in introductory provisions.

2002—Subsecs. (b), (c)(1) to (3). Pub. L. 107-306, §353(b)(3)(C), substituted “congressional intelligence committees” for “intelligence committees” wherever appearing.

Subsec. (c)(4). Pub. L. 107-306, §353(b)(8), substituted “congressional intelligence committee” for “intelligence committee”.

Subsec. (d). Pub. L. 107-306, §353(b)(3)(C), substituted “congressional intelligence committees” for “intelligence committees”.

#### Statutory Notes and Related Subsidiaries

##### 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.

#### § 3094. Funding of intelligence activities

##### (a) Obligations and expenditures for intelligence or intelligence-related activity; prerequisites

Appropriated funds available to an intelligence agency may be obligated or expended for an intelligence or intelligence-related activity only if—

(1) those funds were specifically authorized by the Congress for use for such activities; or

(2) in the case of funds from the Reserve for Contingencies of the Central Intelligence Agency and consistent with the provisions of section 3093 of this title concerning any significant anticipated intelligence activity, the Director of the Central Intelligence Agency has notified the appropriate congressional committees of the intent to make such funds available for such activity; or

(3) in the case of funds specifically authorized by the Congress for a different activity—

(A) the activity to be funded is a higher priority intelligence or intelligence-related activity;

(B) the use of such funds for such activity supports an emergent need, improves program effectiveness, or increases efficiency; and

(C) the Director of National Intelligence, the Secretary of Defense, or the Attorney General, as appropriate, has notified the appropriate congressional committees of the intent to make such funds available for such activity;

(4) nothing in this subsection prohibits obligation or expenditure of funds available to an intelligence agency in accordance with sections 1535 and 1536 of title 31.

##### (b) Activities denied funding by Congress

Funds available to an intelligence agency may not be made available for any intelligence or in-

telligence-related activity for which funds were denied by the Congress.

##### (c) Presidential finding required for expenditure of funds on covert action

No funds appropriated for, or otherwise available to, any department, agency, or entity of the United States Government may be expended, or may be directed to be expended, for any covert action, as defined in section 3093(e) of this title, unless and until a Presidential finding required by subsection (a) of section 3093 of this title has been signed or otherwise issued in accordance with that subsection.

##### (d) Report to congressional committees required for expenditure of nonappropriated funds for intelligence activity

(1) Except as otherwise specifically provided by law, funds available to an intelligence agency 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 non-appropriated 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; Pub. L. 116-92, div. E, title LXVII, §6742(b)(13), Dec. 20, 2019, 133 Stat. 2240.)

### Editorial Notes

#### 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

2019—Subsec. (a)(3)(B). Pub. L. 116-92 realigned margin.

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 unforeseen 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).

### Statutory Notes and Related Subsidiaries

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#### 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 8677(a) of title 10), or 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, 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