

## EXISTING RIGHTS PRESERVED

Pub. L. 113-126, title VI, § 602(d), July 7, 2014, 128 Stat. 1419, provided that: “Nothing in this section [amending this section and enacting provisions set out as notes under this section] or the amendments made by this section shall be construed to preempt, preclude, or otherwise prevent an individual from exercising rights, remedies, or avenues of redress currently provided under any other law, regulation, or rule.”

## STRATEGY FOR SECURITY CLEARANCE RECIPROCITY

Pub. L. 112-277, title III, § 306, Jan. 14, 2013, 126 Stat. 2472, provided that:

“(a) STRATEGY.—The President shall develop a strategy and a schedule for carrying out the requirements of section 3001(d) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 435b(d)) [now 50 U.S.C. 3341(d)]. Such strategy and schedule shall include—

“(1) a process for accomplishing the reciprocity required under such section for a security clearance issued by a department or agency of the Federal Government, including reciprocity for security clearances that are issued to both persons who are and who are not employees of the Federal Government; and

“(2) a description of the specific circumstances under which a department or agency of the Federal Government may not recognize a security clearance issued by another department or agency of the Federal Government.

“(b) CONGRESSIONAL NOTIFICATION.—Not later than 180 days after the date of the enactment of this Act [Jan. 14, 2013], the President shall inform Congress of the strategy and schedule developed under subsection (a).”

### § 3342. Security clearances for transition team members

#### (1) Definition

In this section, the term “eligible candidate” has the meaning given such term by section 3(h)(4) of the Presidential Transition Act of 1963 (3 U.S.C. 102 note).

#### (2) In general

Each eligible candidate for President may submit, before the date of the general election, requests for security clearances for prospective transition team members who will have a need for access to classified information to carry out their responsibilities as members of the President-elect’s transition team.

#### (3) Completion date

Necessary background investigations and eligibility determinations to permit appropriate prospective transition team members to have access to classified information shall be completed, to the fullest extent practicable, by the day after the date of the general election.

(Pub. L. 108-458, title VII, § 7601(c), Dec. 17, 2004, 118 Stat. 3857; Pub. L. 111-283, § 2(c)(1), Oct. 15, 2010, 124 Stat. 3048.)

### Editorial Notes

#### REFERENCES IN TEXT

This section, referred to in par. (1), is section 7601 of Pub. L. 108-458. See Codification note below.

Section 3(h)(4) of the Presidential Transition Act of 1963, referred to in par. (1), is section 3(h)(4) of Pub. L. 88-277, which is set out in a note under section 102 of Title 3, The President.

#### CODIFICATION

Section was formerly classified as a note under section 435b of this title prior to editorial reclassification as this section.

Section is comprised of subsec. (c) of section 7601 of Pub. L. 108-458. Subsec. (a) of section 7601 amended provisions set out as a note under section 102 of Title 3, The President, subsec. (b) of section 7601 is not classified to the Code, and subsec. (d) of section 7601 is set out as a note under section 102 of Title 3.

#### AMENDMENTS

2010—Par. (1). Pub. L. 111-283, § 2(c)(1)(A), added par. (1) and struck out former par. (1) which read as follows: “In this section, the term ‘major party’ shall have the meaning given under section 9002(6) of title 26.”

Par. (2). Pub. L. 111-283, § 2(c)(1)(B), substituted “eligible candidate” for “major party candidate”.

### § 3343. Security clearances; limitations

#### (a) Definitions

In this section:

##### (1) Controlled substance

The term “controlled substance” has the meaning given that term in section 802 of title 21.

##### (2) Covered person

The term “covered person” means—

(A) an officer or employee of a Federal agency;

(B) a member of the Army, Navy, Air Force, or Marine Corps who is on active duty or is in an active status; and

(C) an officer or employee of a contractor of a Federal agency.

##### (3) Restricted Data

The term “Restricted Data” has the meaning given that term in section 2014 of title 42.

##### (4) Special access program

The term “special access program” has the meaning given that term in section 4.1 of Executive Order No. 12958 (60 Fed. Reg. 19825).

#### (b) Prohibition

After January 1, 2008, the head of a Federal agency may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict (as defined in section 802(1) of title 21).

#### (c) Disqualification

##### (1) In general

After January 1, 2008, absent an express written waiver granted in accordance with paragraph (2), the head of a Federal agency may not grant or renew a security clearance described in paragraph (3) for a covered person who—

(A) has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than 1 year;

(B) has been discharged or dismissed from the Armed Forces under dishonorable conditions; or

(C) is mentally incompetent, as determined by an adjudicating authority, based on an evaluation by a duly qualified mental health professional employed by, or acceptable to and approved by, the United States Government and in accordance with the adjudicative guidelines required by subsection (d).

**(2) Waiver authority**

In a meritorious case, an exception to the disqualification in this subsection may be authorized if there are mitigating factors. Any such waiver may be authorized only in accordance with—

(A) standards and procedures prescribed by, or under the authority of, an Executive order or other guidance issued by the President; or

(B) the adjudicative guidelines required by subsection (d).

**(3) Covered security clearances**

This subsection applies to security clearances that provide for access to—

(A) special access programs;

(B) Restricted Data; or

(C) any other information commonly referred to as “sensitive compartmented information”.

**(4) Annual report****(A) Requirement for report**

Not later than February 1 of each year, the head of a Federal agency shall submit a report to the appropriate committees of Congress if such agency employs or employed a person for whom a waiver was granted in accordance with paragraph (2) during the preceding year. Such annual report shall not reveal the identity of such person, but shall include for each waiver issued the disqualifying factor under paragraph (1) and the reasons for the waiver of the disqualifying factor.

**(B) Definitions**

In this paragraph:

**(i) Appropriate committees of Congress**

The term “appropriate committees of Congress” means, with respect to a report submitted under subparagraph (A) by the head of a Federal agency—

(I) the congressional defense committees;

(II) the congressional intelligence committees;

(III) the Committee on Homeland Security and Governmental Affairs of the Senate;

(IV) the Committee on Oversight and Government Reform of the House of Representatives; and

(V) each Committee of the Senate or the House of Representatives with oversight authority over such Federal agency.

**(ii) Congressional defense committees**

The term “congressional defense committees” has the meaning given that term in section 101(a)(16) of title 10.

**(iii) Congressional intelligence committees**

The term “congressional intelligence committees” has the meaning given that term in section 3003 of this title.

**(d) Adjudicative guidelines****(1) Requirement to establish**

The President shall establish adjudicative guidelines for determining eligibility for access to classified information.

**(2) Requirements related to mental health**

The guidelines required by paragraph (1) shall—

(A) include procedures and standards under which a covered person is determined to be mentally incompetent and provide a means to appeal such a determination; and

(B) require that no negative inference concerning the standards in the guidelines may be raised solely on the basis of seeking mental health counseling.

(Pub. L. 108–458, title III, §3002, as added Pub. L. 110–181, div. A, title X, §1072(a), Jan. 28, 2008, 122 Stat. 328.)

**Editorial Notes**

## REFERENCES IN TEXT

Executive Order 12958, referred to in subsec. (a)(4), which was formerly set out as a note under section 435 (now section 3161) of this title, was revoked by Ex. Ord. No. 13526, §6.2(g), Dec. 29, 2009, 75 F.R. 731.

## CODIFICATION

Section was formerly classified to section 435c of this title prior to editorial reclassification and renumbering as this section.

**Statutory Notes and Related Subsidiaries**

## CHANGE OF NAME

Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

**§ 3344. Classification training program****(a) In general**

The head of each Executive agency, in accordance with Executive Order 13526, shall require annual training for each employee who has original classification authority. For employees who perform derivative classification, or are responsible for analysis, dissemination, preparation, production, receipt, publication, or otherwise communication of classified information, training shall be provided at least every two years. Such training shall—

(1) educate the employee, as appropriate, regarding—

(A) the guidance established under subparagraph (G) of section 3024(g)(1) of this title, as added by section 5(a)(3),<sup>1</sup> regarding the formatting of finished intelligence products;

(B) the proper use of classification markings, including portion markings that indicate the classification of portions of information; and

(C) any incentives and penalties related to the proper classification of intelligence information; and

(2) ensure such training is a prerequisite, once completed successfully, as evidenced by an appropriate certificate or other record, for—

(A) obtaining original classification authority or derivatively classifying information; and

<sup>1</sup> See References in Text note below.