

50 USC 3341: Security clearances

Text contains those laws in effect on November 6, 2019

From Title 50-WAR AND NATIONAL DEFENSE

CHAPTER 45-MISCELLANEOUS INTELLIGENCE COMMUNITY AUTHORITIES
SUBCHAPTER III-SECURITY CLEARANCES AND CLASSIFIED INFORMATION

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§3341. Security clearances

(a) Definitions

In this section:

(1) The term "agency" means-

(A) an executive agency (as that term is defined in section 105 of title 5);

(B) a military department (as that term is defined in section 102 of title 5); and

(C) an element of the intelligence community.

(2) The term "authorized investigative agency" means an agency designated by the head of the agency selected pursuant to subsection (b) to conduct a counterintelligence investigation or investigation of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information.

(3) The term "authorized adjudicative agency" means an agency authorized by law, regulation, or direction of the Director of National Intelligence to determine eligibility for access to classified information in accordance with Executive Order 12968.

(4) The term "highly sensitive program" means-

(A) a government program designated as a Special Access Program (as that term is defined in section 4.1(h) of Executive Order 12958 or any successor Executive order); or

(B) a government program that applies restrictions required for-

(i) restricted data (as that term is defined in section 2014(y) of title 42; ¹ or

(ii) other information commonly referred to as "sensitive compartmented information".

(5) The term "current investigation file" means, with respect to a security clearance, a file on an investigation or adjudication that has been conducted during-

(A) the 5-year period beginning on the date the security clearance was granted, in the case of a Top Secret Clearance, or the date access was granted to a highly sensitive program;

(B) the 10-year period beginning on the date the security clearance was granted in the case of a Secret Clearance; and

(C) the 15-year period beginning on the date the security clearance was granted in the case of a Confidential Clearance.

(6) The term "personnel security investigation" means any investigation required for the purpose of determining the eligibility of any military, civilian, or government contractor personnel to access classified information.

(7) The term "periodic reinvestigations" means investigations conducted for the purpose of updating a previously completed background investigation-

(A) every 5 years in the case of a top secret clearance or access to a highly sensitive program;

(B) every 10 years in the case of a secret clearance; or

(C) every 15 years in the case of a Confidential Clearance.

(8) The term "appropriate committees of Congress" means-

(A) the Permanent Select Committee on Intelligence and the Committees on Armed Services, Homeland Security, Government Reform, and the Judiciary of the House of Representatives; and

(B) the Select Committee on Intelligence and the Committees on Armed Services, Homeland Security and Governmental Affairs, and the Judiciary of the Senate.

(9) ACCESS DETERMINATION.-The term "access determination" means the determination regarding whether an employee-

- (A) is eligible for access to classified information in accordance with Executive Order 12968 (60 Fed. Reg. 40245; relating to access to classified information), or any successor thereto, and Executive Order 10865 (25 Fed. Reg. 1583; relating to safeguarding classified information with ² industry), or any successor thereto; and
- (B) possesses a need to know under such an Order.

(b) Selection of entity

Except as otherwise provided, not later than 90 days after December 17, 2004, the President shall select a single department, agency, or element of the executive branch to be responsible for-

- (1) directing day-to-day oversight of investigations and adjudications for personnel security clearances, including for highly sensitive programs, throughout the United States Government;
- (2) developing and implementing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of security clearances and determinations for access to highly sensitive programs, including the standardization of security questionnaires, financial disclosure requirements for security clearance applicants, and polygraph policies and procedures;
- (3) serving as the final authority to designate an authorized investigative agency or authorized adjudicative agency;
- (4) ensuring reciprocal recognition of access to classified information among the agencies of the United States Government, including acting as the final authority to arbitrate and resolve disputes involving the reciprocity of security clearances and access to highly sensitive programs pursuant to subsection (d);
- (5) ensuring, to the maximum extent practicable, that sufficient resources are available in each agency to achieve clearance and investigative program goals;
- (6) reviewing and coordinating the development of tools and techniques for enhancing the conduct of investigations and granting of clearances; and
- (7) not later than 180 days after July 7, 2014, and consistent with subsection (j)-
 - (A) developing policies and procedures that permit, to the extent practicable, individuals alleging reprisal for having made a protected disclosure (provided the individual does not disclose classified information or other information contrary to law) to appeal any action affecting an employee's access to classified information and to retain their government employment status while such challenge is pending; and
 - (B) developing and implementing uniform and consistent policies and procedures to ensure proper protections during the process for denying, suspending, or revoking a security clearance or access to classified information following a protected disclosure, including the ability to appeal such a denial, suspension, or revocation, except that there shall be no appeal of an agency's suspension of a security clearance or access determination for purposes of conducting an investigation, if that suspension lasts no longer than 1 year or the head of the agency or a designee of the head of the agency certifies that a longer suspension is needed before a final decision on denial or revocation to prevent imminent harm to the national security.

(c) Performance of security clearance investigations

(1) Notwithstanding any other provision of law, not later than 180 days after December 17, 2004, the President shall, in consultation with the head of the entity selected pursuant to subsection (b), select a single agency of the executive branch to conduct, to the maximum extent practicable, security clearance investigations of employees and contractor personnel of the United States Government who require access to classified information and to provide and maintain all security clearances of such employees and contractor personnel. The head of the entity selected pursuant to subsection (b) may designate other agencies to conduct such investigations if the head of the entity selected pursuant to subsection (b) considers it appropriate for national security and efficiency purposes.

(2) The agency selected under paragraph (1) shall-

- (A) take all necessary actions to carry out the requirements of this section, including entering into a memorandum of understanding with any agency carrying out responsibilities relating to security clearances or security clearance investigations before December 17, 2004;
- (B) as soon as practicable, integrate reporting of security clearance applications, security clearance investigations, and determinations of eligibility for security clearances, with the database required by subsection (e); and
- (C) ensure that security clearance investigations are conducted in accordance with uniform standards and requirements established under subsection (b), including uniform security questionnaires and financial disclosure requirements.

(d) Reciprocity of security clearance and access determinations

(1) All security clearance background investigations and determinations completed by an authorized investigative agency or authorized adjudicative agency shall be accepted by all agencies.

(2) All security clearance background investigations initiated by an authorized investigative agency shall be transferable to any other authorized investigative agency.

(3)(A) An authorized investigative agency or authorized adjudicative agency may not establish additional investigative or adjudicative requirements (other than requirements for the conduct of a polygraph examination) that exceed requirements specified in Executive Orders establishing security requirements for access to classified information without the approval of the head of the entity selected pursuant to subsection (b).

(B) Notwithstanding subparagraph (A), the head of the entity selected pursuant to subsection (b) may establish such additional requirements as the head of such entity considers necessary for national security purposes.

(4) An authorized investigative agency or authorized adjudicative agency may not conduct an investigation for purposes of determining whether to grant a security clearance to an individual where a current investigation or clearance of equal level already exists or has been granted by another authorized adjudicative agency.

(5) The head of the entity selected pursuant to subsection (b) may disallow the reciprocal recognition of an individual security clearance by an agency under this section on a case-by-case basis if the head of the entity selected pursuant to subsection (b) determines that such action is necessary for national security purposes.

(6) The head of the entity selected pursuant to subsection (b) shall establish a review procedure by which agencies can seek review of actions required under this section.

(e) Database on security clearances

(1) Not later than 12 months after December 17, 2004, the Director of the Office of Personnel Management shall, in cooperation with the heads of the entities selected pursuant to subsections (b) and (c), establish and commence operating and maintaining an integrated, secure, database into which appropriate data relevant to the granting, denial, or revocation of a security clearance or access pertaining to military, civilian, or government contractor personnel shall be entered from all authorized investigative and adjudicative agencies.

(2) The database under this subsection shall function to integrate information from existing Federal clearance tracking systems from other authorized investigative and adjudicative agencies into a single consolidated database.

(3) Each authorized investigative or adjudicative agency shall check the database under this subsection to determine whether an individual the agency has identified as requiring a security clearance has already been granted or denied a security clearance, or has had a security clearance revoked, by any other authorized investigative or adjudicative agency.

(4) The head of the entity selected pursuant to subsection (b) shall evaluate the extent to which an agency is submitting information to, and requesting information from, the database under this subsection as part of a determination of whether to certify the agency as an authorized investigative agency or authorized adjudicative agency.

(5) The head of the entity selected pursuant to subsection (b) may authorize an agency to withhold information about certain individuals from the database under this subsection if the head of the entity considers it necessary for national security purposes.

(f) Evaluation of use of available technology in clearance investigations and adjudications

(1) The head of the entity selected pursuant to subsection (b) shall evaluate the use of available information technology and databases to expedite investigative and adjudicative processes for all and to verify standard information submitted as part of an application for a security clearance.

(2) The evaluation shall assess the application of the technologies described in paragraph (1) for-

(A) granting interim clearances to applicants at the secret, top secret, and special access program levels before the completion of the appropriate full investigation;

(B) expediting investigations and adjudications of security clearances, including verification of information submitted by the applicant;

(C) ongoing verification of suitability of personnel with security clearances in effect for continued access to classified information;

(D) use of such technologies to augment periodic reinvestigations;

(E) assessing the impact of the use of such technologies on the rights of applicants to verify, correct, or challenge information obtained through such technologies; and

(F) such other purposes as the head of the entity selected pursuant to subsection (b) considers appropriate.

(3) An individual subject to verification utilizing the technology described in paragraph (1) shall be notified of such verification, shall provide consent to such use, and shall have access to data being verified in order to correct errors or challenge information the individual believes is incorrect.

(4) Not later than one year after December 17, 2004, the head of the entity selected pursuant to subsection (b) shall submit to the President and the appropriate committees of Congress a report on the results of the evaluation, including recommendations on the use of technologies described in paragraph (1).

(g) Reduction in length of personnel security clearance process

(1) The head of the entity selected pursuant to subsection (b) shall, within 90 days of selection under that subsection, develop, in consultation with the appropriate committees of Congress and each authorized adjudicative agency, a plan to reduce the length of the personnel security clearance process.

(2)(A) To the extent practical the plan under paragraph (1) shall require that each authorized adjudicative agency make a determination on at least 90 percent of all applications for a personnel security clearance within an average of 60 days after the date of receipt of the completed application for a security clearance by an authorized investigative agency. Such 60-day average period shall include-

(i) a period of not longer than 40 days to complete the investigative phase of the clearance review; and

(ii) a period of not longer than 20 days to complete the adjudicative phase of the clearance review.

(B) Determinations on clearances not made within 60 days shall be made without delay.

(3)(A) The plan under paragraph (1) shall take effect 5 years after December 17, 2004.

(B) During the period beginning on a date not later than 2 years after December 17, 2004, and ending on the date on which the plan under paragraph (1) takes effect, each authorized adjudicative agency shall make a determination on at least 80 percent of all applications for a personnel security clearance pursuant to this section within an average of 120 days after the date of receipt of the application for a security clearance by an authorized investigative agency. Such 120-day average period shall include-

- (i) a period of not longer than 90 days to complete the investigative phase of the clearance review; and
- (ii) a period of not longer than 30 days to complete the adjudicative phase of the clearance review.

(h) Reports

(1) Not later than February 15, 2006, and annually thereafter through 2011, the head of the entity selected pursuant to subsection (b) shall submit to the appropriate committees of Congress a report on the progress made during the preceding year toward meeting the requirements of this section.

(2) Each report shall include, for the period covered by such report-

(A) the periods of time required by the authorized investigative agencies and authorized adjudicative agencies for conducting investigations, adjudicating cases, and granting clearances, from date of submission to ultimate disposition and notification to the subject and the subject's employer;

(B) a discussion of any impediments to the smooth and timely functioning of the requirements of this section; and

(C) such other information or recommendations as the head of the entity selected pursuant to subsection (b) considers appropriate.

(i) Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary for fiscal year 2005 and each fiscal year thereafter for the implementation, maintenance, and operation of the database required by subsection (e).

(j) Retaliatory revocation of security clearances and access determinations

(1) In general

Agency personnel with authority over personnel security clearance or access determinations shall not take or fail to take, or threaten to take or fail to take, any action with respect to any employee's security clearance or access determination in retaliation for-

(A) any lawful disclosure of information to the Director of National Intelligence (or an employee designated by the Director of National Intelligence for such purpose) or the head of the employing agency (or employee designated by the head of that agency for such purpose) by an employee that the employee reasonably believes evidences-

- (i) a violation of any Federal law, rule, or regulation; or
- (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(B) any lawful disclosure to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee reasonably believes evidences-

- (i) a violation of any Federal law, rule, or regulation; or
- (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(C) any lawful disclosure that complies with-

- (i) subsections (a)(1), (d), and (h) of section 8H of the Inspector General Act of 1978 (5 U.S.C. App.);
- (ii) subparagraphs (A), (D), and (H) of section 3517(d)(5) of this title; or
- (iii) subparagraphs (A), (D), and (I) of section 3033(k)(5) of this title; and

(D) if the actions do not result in the employee or applicant unlawfully disclosing information specifically required by Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs, any lawful disclosure in conjunction with-

- (i) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;
- (ii) testimony for or otherwise lawfully assisting any individual in the exercise of any right referred to in clause (i); or
- (iii) cooperation with or disclosing information to the Inspector General of an agency, in accordance with applicable provisions of law in connection with an audit, inspection, or investigation conducted by the Inspector General.

(2) Rule of construction

Consistent with the protection of sources and methods, nothing in paragraph (1) shall be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who lawfully discloses information to Congress.

(3) Disclosures

(A) In general

A disclosure shall not be excluded from paragraph (1) because-

- (i) the disclosure was made to a person, including a supervisor, who participated in an activity that the employee reasonably believed to be covered by paragraph (1)(A)(ii);
- (ii) the disclosure revealed information that had been previously disclosed;
- (iii) the disclosure was not made in writing;
- (iv) the disclosure was made while the employee was off duty; or
- (v) of the amount of time which has passed since the occurrence of the events described in the disclosure.

(B) Reprisals

If a disclosure is made during the normal course of duties of an employee, the disclosure shall not be excluded from paragraph (1) if any employee who has authority to take, direct others to take, recommend, or approve any personnel action with respect to the employee making the disclosure, took, failed to take, or threatened to take or fail to take a personnel action with respect to that employee in reprisal for the disclosure.

(4) Agency adjudication

(A) Remedial procedure

An employee or former employee who believes that he or she has been subjected to a reprisal prohibited by paragraph (1) may, within 90 days after the issuance of notice of such decision, appeal that decision within the agency of that employee or former employee through proceedings authorized by subsection (b)(7), except that there shall be no appeal of an agency's suspension of a security clearance or access determination for purposes of conducting an investigation, if that suspension lasts not longer than 1 year (or a longer period in accordance with a certification made under subsection (b)(7)).

(B) Corrective action

If, in the course of proceedings authorized under subparagraph (A), it is determined that the adverse security clearance or access determination violated paragraph (1), the agency shall take specific corrective action to return the employee or former employee, as nearly as practicable and reasonable, to the position such employee or former employee would have held had the violation not occurred. Such corrective action may include back pay and related benefits, travel expenses, and compensatory damages not to exceed \$300,000.

(C) Contributing factor

In determining whether the adverse security clearance or access determination violated paragraph (1), the agency shall find that paragraph (1) was violated if a disclosure described in paragraph (1) was a contributing factor in the adverse security clearance or access determination taken against the individual, unless the agency demonstrates by a preponderance of the evidence that it would have taken the same action in the absence of such disclosure, giving the utmost deference to the agency's assessment of the particular threat to the national security interests of the United States in the instant matter.

(5) Appellate review of security clearance access determinations by Director of National Intelligence

(A) Appeal

Within 60 days after receiving notice of an adverse final agency determination under a proceeding under paragraph (4), an employee or former employee may appeal that determination in accordance with the procedures established under subparagraph (B).

(B) Policies and procedures

The Director of National Intelligence, in consultation with the Attorney General and the Secretary of Defense, shall develop and implement policies and procedures for adjudicating the appeals authorized by subparagraph (A).

(C) Congressional notification

Consistent with the protection of sources and methods, at the time the Director of National Intelligence issues an order regarding an appeal pursuant to the policies and procedures established by this paragraph, the Director of National Intelligence shall notify the congressional intelligence committees.

(6) Judicial review

Nothing in this section shall be construed to permit or require judicial review of any-

- (A) agency action under this section; or
- (B) action of the appellate review procedures established under paragraph (5).

(7) Private cause of action

Nothing in this section shall be construed to permit, authorize, or require a private cause of action to challenge the merits of a security clearance determination.

(8) Inclusion of contractor employees

In this subsection, the term "employee" includes an employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of an agency. With respect to such employees, the term "employing agency" shall be deemed to be the contracting agency.

(Pub. L. 108–458, title III, §3001, Dec. 17, 2004, 118 Stat. 3705 ; Pub. L. 113–126, title VI, §602(a)(1), (b), (c), July 7, 2014, 128 Stat. 1416 , 1417, 1419; Pub. L. 113–293, title III, §310, Dec. 19, 2014, 128 Stat. 3999 ; Pub. L. 115–118, title I, §110(c), Jan. 19, 2018, 132 Stat. 17 .)

REFERENCES IN TEXT

Executive Order 12968, referred to in subsec. (a)(3), (9)(A), is set out as a note under section 3161 of this title.

Executive Order 12958, referred to in subsec. (a)(4)(A), 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.

Executive Order 10865, referred to in subsec. (a)(9)(A), is set out as a note under section 3161 of this title.

Section 8H of the Inspector General Act of 1978, referred to in subsec. (j)(1)(C)(i), is section 8H of Pub. L. 95–452, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

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

AMENDMENTS

2018-Subsec. (j)(8). Pub. L. 115–118 added par. (8).

2014-Subsec. (a)(9). Pub. L. 113–126, §602(c), added par. (9).

Subsec. (b). Pub. L. 113–126, §602(a)(1)(A), substituted "Except as otherwise provided, not" for "Not" in introductory provisions.

Subsec. (b)(7). Pub. L. 113–293, §310(1), inserted ", and consistent with subsection (j)" after "2014" in introductory provisions.

Pub. L. 113–126, §602(a)(1)(B)–(D), added par. (7).

Subsec. (b)(7)(A). Pub. L. 113–293, §310(2), substituted "alleging reprisal for having made a protected disclosure (provided the individual does not disclose classified information or other information contrary to law) to appeal any action affecting an employee's access to classified information" for "to appeal a determination to suspend or revoke a security clearance or access to classified information".

Subsec. (b)(7)(B). Pub. L. 113–293, §310(3), substituted "information following a protected disclosure," for "information,".

Subsec. (j). Pub. L. 113–126, §602(b), added subsec. (j).

CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

CONSTRUCTION

Pub. L. 113–126, title VI, §602(e), July 7, 2014, 128 Stat. 1419 , provided that: "Nothing in section 3001 of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3341), as amended by this title, shall be construed to require the repeal or replacement of agency appeal procedures implementing Executive Order 12968 (60 Fed. Reg. 40245; relating to access to classified information) [50 U.S.C. 3161 note], or any successor thereto, and Executive Order 10865 (25 Fed. Reg. 1583; relating to safeguarding classified information with[in] industry) [50 U.S.C. 3161 note], or any successor thereto, that meet the requirements of paragraph (7) of section 3001(b) of such Act [50 U.S.C. 3341(b)(7)], as added by this section."

REQUIRED ELEMENTS OF POLICIES AND PROCEDURES

Pub. L. 113–126, title VI, §602(a)(2), July 7, 2014, 128 Stat. 1416 , provided that: "The policies and procedures for appeal developed under paragraph (7) of section 3001(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 [50 U.S.C. 3341(b)(7)], as added by subsection (a), shall provide for the Inspector General of the Intelligence Community, or the inspector general of the employing agency, to conduct fact-finding and report to the agency head or the designee of the agency head within 180 days unless the employee and the agency agree to an extension or the investigating inspector general determines in writing that a greater period of time is required. To the fullest extent possible, such fact-finding shall include an opportunity for the employee to present relevant evidence such as witness testimony."

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)."

¹ So in original. There probably should be a closing parenthesis before the semicolon.

² So in original. Probably should be "within".