

## **50 USC 3234: Prohibited personnel practices in the intelligence community**

Text contains those laws in effect on May 31, 2022

### **From Title 50-WAR AND NATIONAL DEFENSE**

CHAPTER 44-NATIONAL SECURITY

SUBCHAPTER IX-ADDITIONAL MISCELLANEOUS PROVISIONS

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## **§3234. Prohibited personnel practices in the intelligence community**

### **(a) Definitions**

In this section:

#### **(1) Agency**

The term "agency" means an executive department or independent establishment, as defined under sections 101 and 104 of title 5, that contains an intelligence community element, except the Federal Bureau of Investigation.

#### **(2) Covered intelligence community element**

The term "covered intelligence community element"-

(A) means-

(i) the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, the Office of the Director of National Intelligence, and the National Reconnaissance Office; and

(ii) any executive agency or unit thereof determined by the President under section 2302(a)(2)(C)(ii) of title 5 to have as its principal function the conduct of foreign intelligence or counterintelligence activities; and

(B) does not include the Federal Bureau of Investigation.

#### **(3) Personnel action**

The term "personnel action" means, with respect to an employee in a position in a covered intelligence community element (other than a position excepted from the competitive service due to its confidential, policy-determining, policymaking, or policy-advocating character) or a contractor employee-

(A) an appointment;

(B) a promotion;

(C) a disciplinary or corrective action;

(D) a detail, transfer, or reassignment;

(E) a demotion, suspension, or termination;

(F) a reinstatement or restoration;

(G) a performance evaluation;

(H) a decision concerning pay, benefits, or awards;

(I) a decision concerning education or training if such education or training may reasonably be expected to lead to an appointment, promotion, or performance evaluation; or

(J) any other significant change in duties, responsibilities, or working conditions.

#### **(4) Contractor employee**

The term "contractor employee" means an employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of a covered intelligence community element.

### **(b) Agency employees**

Any employee of a covered intelligence community element or an agency who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee of a covered intelligence community element as a reprisal for-

(1) any lawful disclosure of information by the employee to the Director of National Intelligence (or an employee designated by the Director of National Intelligence for such purpose), the Inspector General of the Intelligence Community, a supervisor in the employee's direct chain of command, or a supervisor of the employing agency with responsibility for the subject matter of the disclosure, up to and including the head of the employing agency (or an employee designated by the head of that agency for such purpose), the appropriate inspector general of the

employing agency, a congressional intelligence committee, or a member of a congressional intelligence committee, which the employee reasonably believes evidences-

(A) a violation of any Federal law, rule, or regulation; or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(2) any lawful disclosure that complies with-

(A) subsections (a)(1), (d), and (g) of section 8H of the Inspector General Act of 1978 (5 U.S.C. App.);

(B) subparagraphs (A), (D), and (H) of section 3517(d)(5) of this title; or

(C) subparagraphs (A), (D), and (I) of section 3033(k)(5) of this title; or

(3) if the actions do not result in the employee 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-

(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;

(B) testimony for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A); or

(C) 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.

### **(c) Contractor employees**

(1) Any employee of an agency or of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of a covered intelligence community element who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, a personnel action with respect to any contractor employee as a reprisal for-

(A) any lawful disclosure of information by the contractor employee to the Director of National Intelligence (or an employee designated by the Director of National Intelligence for such purpose), the Inspector General of the Intelligence Community, a supervisor in the contractor employee's direct chain of command, or a supervisor of the contracting agency with responsibility for the subject matter of the disclosure, up to and including the head of the contracting agency (or an employee designated by the head of that agency for such purpose), the appropriate inspector general of the contracting agency, a congressional intelligence committee, or a member of a congressional intelligence committee, which the contractor employee reasonably believes evidences-

(i) a violation of any Federal law, rule, or regulation (including with respect to evidence of another employee or contractor employee accessing or sharing classified information without authorization); or

(ii) 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 that complies with-

(i) subsections (a)(1), (d), and (g) 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; or

(C) if the actions do not result in the contractor employee 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) A personnel action under paragraph (1) is prohibited even if the action is undertaken at the request of an agency official, unless the request takes the form of a nondiscretionary directive and is within the authority of the agency official making the request.

### **(d) Rule of construction**

Consistent with the protection of intelligence sources and methods, nothing in subsection (b) or (c) shall be construed to authorize-

(1) the withholding of information from Congress; or

(2) the taking of any personnel action against an employee who lawfully discloses information to Congress.

### **(e) Disclosures**

A disclosure shall not be excluded from this section because-

- (1) the disclosure was made to an individual, including a supervisor, who participated in an activity that the employee reasonably believed to be covered under subsection (b)(1)(B) or the contractor employee reasonably believed to be covered under subsection (c)(1)(A)(ii);
- (2) the disclosure revealed information that had been previously disclosed;
- (3) the disclosure was not made in writing;
- (4) the disclosure was made while the employee was off duty;
- (5) of the amount of time which has passed since the occurrence of the events described in the disclosure; or
- (6) the disclosure was made during the normal course of duties of an employee or contractor employee.

**(f) Enforcement**

The President shall provide for the enforcement of this section consistent, to the fullest extent possible, with the policies and procedures used to adjudicate alleged violations of section 2302(b)(8) of title 5.

**(g) Existing rights preserved**

Nothing in this section shall be construed to-

(1) preempt or preclude any employee, contractor employee, or applicant for employment, at the Federal Bureau of Investigation from exercising rights provided under any other law, rule, or regulation, including section 2303 of title 5; or

(2) repeal section 2303 of title 5.

(July 26, 1947, ch. 343, title XI, §1104, as added Pub. L. 113–126, title VI, §601(a), July 7, 2014, 128 Stat. 1414 ; amended Pub. L. 115–118, title I, §110(a), Jan. 19, 2018, 132 Stat. 15 ; Pub. L. 117–103, div. X, title V, §501(a), (d)(2), (e)(1), (f), (g), Mar. 15, 2022, 136 Stat. 981–984 .)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 8H of the Inspector General Act of 1978, referred to in subsecs. (b)(2)(A) and (c)(1)(B)(i), is section 8H of Pub. L. 95–452, which is set out in the Appendix to Title 5, Government Organization and Employees.

**AMENDMENTS**

**2022-**Subsec. (b). Pub. L. 117–103, §501(f)(1), substituted "(1) any lawful disclosure" for "a lawful disclosure", inserted dash after "for", redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), realigned margins, and added pars. (2) and (3).

Pub. L. 117–103, §501(a)(1)(A), (e)(1)(A), in introductory provisions, substituted "Any employee of a covered intelligence community element or an agency" for "Any employee of an agency" and inserted ", or threaten to take or fail to take," after "take or fail to take" and "a supervisor in the employee's direct chain of command, or a supervisor of the employing agency with responsibility for the subject matter of the disclosure, up to and including" before "the head of the employing agency".

Subsec. (c)(1). Pub. L. 117–103, §501(f)(2), substituted "(A) any lawful disclosure" for "a lawful disclosure", inserted dash after "for", redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), realigned margins, and added subpars. (B) and (C).

Pub. L. 117–103, §501(a)(1)(B), (2), (e)(1)(B), in introductory provisions, inserted "of an agency or" after "Any employee", ", or threaten to take or fail to take," after "take or fail to take", and "a supervisor in the contractor employee's direct chain of command, or a supervisor of the contracting agency with responsibility for the subject matter of the disclosure, up to and including" before "the head of the contracting agency".

Subsec. (c)(1)(B). Pub. L. 117–103, §501(d)(2), substituted "mismanagement" for "gross mismanagement".

Subsec. (d). Pub. L. 117–103, §501(g)(2), added subsec. (d). Former subsec. (d) redesignated (f).

Pub. L. 117–103, §501(a)(3), amended subsec. (d) generally. Prior to amendment, text read as follows: "The President shall provide for the enforcement of this section."

Subsec. (e). Pub. L. 117–103, §501(g)(2), added subsec. (e). Former subsec. (e) redesignated (g).

Subsecs. (f), (g). Pub. L. 117–103, §501(g)(1), redesignated subsecs. (d) and (e) as (f) and (g), respectively.

**2018-**Subsec. (a)(3). Pub. L. 115–118, §110(a)(1)(A), inserted "or a contractor employee" after "character)" in introductory provisions.

Subsec. (a)(4). Pub. L. 115–118, §110(a)(1)(B), added par. (4).

Subsec. (b). Pub. L. 115–118, §110(a)(4), substituted "Agency employees" for "In general" in heading.

Subsecs. (c) to (e). Pub. L. 115–118, §110(a)(2), (3), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

Subsec. (e)(1). Pub. L. 115–118, §110(a)(5), inserted "contractor employee," after "any employee,".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### **POLICIES AND PROCEDURES; NONAPPLICABILITY TO CERTAIN TERMINATIONS**

Pub. L. 113–126, title VI, §604, July 7, 2014, 128 Stat. 1421, provided that:

"(a) COVERED INTELLIGENCE COMMUNITY ELEMENT DEFINED.-In this section, the term 'covered intelligence community element'-

"(1) means-

"(A) the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, the Office of the Director of National Intelligence, and the National Reconnaissance Office; and

"(B) any executive agency or unit thereof determined by the President under section 2302(a)(2)(C)(ii) of title 5, United States Code, to have as its principal function the conduct of foreign intelligence or counterintelligence activities; and

"(2) does not include the Federal Bureau of Investigation.

"(b) REGULATIONS.-In consultation with the Secretary of Defense, the Director of National Intelligence shall develop policies and procedures to ensure that a personnel action shall not be taken against an employee of a covered intelligence community element as a reprisal for any disclosure of information described in [section] 1104 of the National Security Act of 1947 [50 U.S.C. 3234], as added by section 601 of this Act.

"(c) REPORT ON THE STATUS OF IMPLEMENTATION OF REGULATIONS.-Not later than 2 years after the date of the enactment of this Act [July 7, 2014], the Director of National Intelligence shall submit a report on the status of the implementation of the regulations promulgated under subsection (b) to the congressional intelligence committees.

"(d) NONAPPLICABILITY TO CERTAIN TERMINATIONS.-Section 1104 of the National Security Act of 1947, as added by section 601 of this Act, and section 3001 of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3341), as amended by section 602 of this Act, shall not apply if-

"(1) the affected employee is concurrently terminated under-

"(A) section 1609 of title 10, United States Code;

"(B) the authority of the Director of National Intelligence under section 102A(m) of the National Security Act of 1947 (50 U.S.C. 3024(m)), if the Director determines that the termination is in the interest of the United States;

"(C) the authority of the Director of the Central Intelligence Agency under section 104A(e) of the National Security Act of 1947 (50 U.S.C. 3036(e)), if the Director determines that the termination is in the interest of the United States; or

"(D) section 7532 of title 5, United States Code, if the head of the agency determines that the termination is in the interest of the United States; and

"(2) not later than 30 days after such termination, the head of the agency that employed the affected employee notifies the congressional intelligence committees of the termination."

[For definition of "congressional intelligence committees" as used in section 604 of Pub. L. 113–126, set out above, see section 2 of Pub. L. 113–126, set out as a note under section 3003 of this title.]