

Congressional Notification



INTELLIGENCE COMMUNITY DIRECTIVE 112

A. AUTHORITY: The National Security Act of 1947, as amended (hereinafter, National Security Act); Executive Order 12333, as amended; and other applicable provisions of law.

B. PURPOSE: This Directive establishes Intelligence Community (IC) policy to provide written notification to the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence (collectively the "Congressional intelligence committees") in order to keep them fully and currently informed of intelligence activities. This revision updates Intelligence Community Directive (ICD) 112, *Congressional Notification*, dated November 16, 2011, to reflect Congressional direction and notification as a matter of policy.

C. APPLICABILITY

1. This Directive applies to the IC, as defined by the National Security Act, and to elements of any other department or agency as may be designated by the President, or designated jointly by the Director of National Intelligence (DNI) and the head of the department or agency concerned, as an element of the IC.

2. This Directive does not preclude or alter reporting responsibilities to the President's Intelligence Oversight Board as specified in Executive Order 13462 and any successor thereto.

3. This Directive does not apply to reporting of covert actions to the Congressional intelligence committees, to statutory reporting requirements for IC Inspectors General, or to routine informational briefings.

4. Nothing in this directive amends or alters any requirement to submit a report under any provision of law.

D. POLICY

1. The IC is committed to full and current notification of all intelligence activities as required by the National Security Act, both as a matter of law and as a matter of policy as further described below.

2. IC element heads are responsible for determining whether an event is reportable under this Directive and for ensuring that Congressional intelligence committees receive notification of all intelligence activities in accordance with the provisions of this Directive. Facts and circumstances of intelligence activities change over time; therefore, IC elements must continually assess whether there is an obligation to report a matter pursuant to the National Security Act and this Directive.

3. The provisions of this Directive shall be interpreted with a presumption of written notification in fulfillment of the statutory and policy requirements to keep the Congressional intelligence committees fully and currently informed of all intelligence activities.

4. Determining whether written notification should be provided of a particular intelligence activity is a judgment based on all the facts and circumstances known to the IC element, and on the nature and extent of previous notifications or briefings to Congressional intelligence committees on the same matter. Not every intelligence activity warrants written notification.

5. As required by the National Security Act, Congressional intelligence committees must receive written notification of significant anticipated intelligence activities and significant intelligence failures. General guidelines for determining the types of intelligence activities that warrant written notification follow:

a. Significant anticipated intelligence activities include:

(1) Intelligence activities that entail, with reasonable foreseeability, significant risk of exposure, compromise, and loss of human life;

(2) Intelligence activities that are expected to have a major impact on important foreign policy or national security interests;

(3) An IC element's transfer, to a recipient outside that IC element, of defense articles, personnel services, or "controlled equipment" valued in excess of \$1 million as provided in Section 505 of the National Security Act;

(4) Extensive organizational changes within an IC element;

(5) Deployment of new collection techniques that represent a significant departure from previous operations or activities or that result from evidence of significant foreign developments;

(6) Significant activities undertaken pursuant to specific direction of the President or the National Security Council (this is not applicable to covert action, which is covered by Section 503 of the National Security Act); or

(7) Significant acquisition, reprogramming, or non-routine budgetary actions that are of Congressional concern and that are not otherwise reportable under the National Intelligence Program Procedures for Reprogramming and Transfers.

b. Significant intelligence failures are failures that are extensive in scope, continuing in nature, or likely to have a serious impact on U.S. national security interests, and include:

(1) The loss or compromise of classified intelligence information on such a scale or over such an extended period as to indicate a systemic loss or compromise of such information that may pose a substantial risk to U.S. national security interests;

(2) A significant unauthorized disclosure of classified intelligence information that may pose a substantial risk to U.S. national security interests;

(3) A potentially pervasive failure, interruption, or compromise of a collection capability or collection system; or

(4) A conclusion that an intelligence product is the result of foreign deception or denial activity, or otherwise contains major errors in analysis, with a significant impact on U.S. national security policies, programs, or activities.

6. Significant Legal Interpretations: The General Counsel of each IC element shall notify the Congressional intelligence committees, in writing, of any significant legal interpretation of the U.S. Constitution or Federal law affecting intelligence activities conducted by such element, no later than 30 days after the date of commencement of any intelligence activity pursuant to such interpretation.

a. Responsibility for determining whether a particular legal interpretation requires notification to the Congressional intelligence committees rests with the General Counsel of each IC element concerned.

b. Each notification shall include a summary of the significant legal interpretation and the intelligence activity or activities conducted pursuant to such interpretation.

c. IC elements shall also provide concurrent notification to the Office of the Director of National Intelligence (ODNI) of any notifications to Congress in this Section.

7. Annual Report on Violations of Law or Executive Order: The ODNI shall annually submit to the Congressional intelligence committees a report of violations of law or executive order relating to intelligence activities by personnel of elements of the IC. Each report shall, consistent with the need to preserve ongoing criminal investigations, include a description of, and any action taken in response to, any such violation committed by IC personnel in the course of the employment of such personnel that, during the previous calendar year, was:

- a. Determined by the director, head, or General Counsel of the IC element to have occurred;
- b. Referred to the Department of Justice for possible criminal prosecution; or
- c. Substantiated by the Inspector General of any IC element.

8. Individuals in Senior-Level Positions: IC elements shall provide the Congressional intelligence committees, on an annual basis, written notification of the identities of individuals occupying senior-level positions within the IC element.

a. IC elements will not provide notification of the identities of civilian employees who are classified at or below the General Schedule grade of 15 (or equivalent rank) regardless of position.

b. IC elements shall consider the following criteria to determine which positions within the IC element require notification:

- (1) Constitute the head of either an entity or a significant component within an IC element;
- (2) Are involved in the management or oversight of matters of significant import to the leadership of an IC element;
- (3) Exercise significant responsibility on behalf of the IC;
- (4) Require the management of a significant number of personnel or funds;
- (5) Responsibility for management or oversight of sensitive intelligence activities; and
- (6) Are held by individuals designated as senior intelligence management officials.

c. Written notifications required under this Section shall include the following information:

- (1) The position occupied by the individual;
- (2) The name of the individual occupying the position; and
- (3) Any previous senior-level position held by the individual, if applicable, or the position held by the individual immediately prior to the appointment.

9. As a matter of policy, IC elements shall provide the Congressional intelligence committees written notification of other significant intelligence activities, such as:

a. Substantial changes in the capabilities or known vulnerabilities of intelligence operations or intelligence systems or resources;

- b. Programmatic developments likely to be of Congressional interest, such as major cost overruns, or a major modification or termination of a significant contract;
- c. Developments that affect intelligence programs, projects, or activities that are likely to be of Congressional concern because of their substantial impact on national security or foreign policy;
- d. The loss of life in the performance of an intelligence activity;
- e. Significant developments in, or the resolution of, a matter previously reported under these procedures;
- f. An intelligence activity believed to be in violation of U.S. law, including any corrective action taken or planned in connection with such activity;
- g. Significant misconduct by an employee or contractor of an IC element that is likely to seriously affect intelligence activities or otherwise is of concern to the Congressional intelligence committees, including human rights violations;
- h. Other serious violations of U.S. criminal law by an employee of an IC element or asset, which in the discretion of the head of an IC element warrants notification to the Congressional intelligence committees;
- i. Significant activities with foreign governments and international organizations;
- j. Those likely to have significant impacts on civil liberties or privacy interests of U.S. persons.

10. Criteria described in the above Sections are not exhaustive. The absence of any of these criteria shall not be seen as determinative. Each potential determination shall be addressed on its particular merits. If it is unclear whether a notification is appropriate, IC elements should decide in favor of notification.

E. ROLES AND RESPONSIBILITIES: IC element heads shall:

- 1. Designate as a point of contact a senior official who will have access to all relevant information to assist the IC element head in identifying matters that should be reported and who will be responsible for ensuring that notifications are full and current;
- 2. Establish, in writing, internal processes that will ensure timely identification and full and current reporting of intelligence activities, consistent with this Directive, including reporting to the ODNI in support of the annual report required in Section D.7.;
- 3. Provide the ODNI, Office of Legislative Affairs with a point of contact pursuant to Section E.1 and a copy of the processes established pursuant to Section E.2.;
- 4. Ensure that written notifications required under this Directive are provided promptly upon determination that an item should be reported;
 - a. Unless otherwise specified above, within 14 days of final determination by an IC element head (or designee) that a significant activity should be reported, an IC element shall provide written notification. If a complete, written notification is not possible at that time, an IC element may provide preliminary oral notification and a projected time for further or final notification.
 - b. Written notifications shall contain a concise statement of the pertinent facts, an explanation of the significance of the intelligence activity, and the role of all departments and agencies involved in the intelligence activity.

c. Oral notifications shall be followed by a written notification, which shall include, in addition to the information described in Section E.4.b above, the date of the oral notification, the office responsible for the subject of the oral notification, and the members and staff of the Congressional intelligence committees who were orally notified.

d. Notification of routine administrative matters such as reprogramming, facility lease arrangement and renewals, or contract awards should be made with reference to the element's established timeline for such issues and consistent with Congressional requirements and budget processes.

5. Coordinate, as appropriate, with any other department, agency, or other entity of the U.S. Government involved in the intelligence activity to ensure that the activity is fully and currently reported to the Congressional intelligence committees;

6. Conduct annual training for element personnel involved in intelligence activities regarding the IC's obligation to provide information to the Congressional intelligence committees under the National Security Act and this Directive;

7. Provide the ODNI copies of all Congressional notifications at the time they are provided to the Congressional intelligence committees, and a summary of any oral notification; and

8. In addition to the requirements in Section D.8, provide the IC Chief Human Capital Officer copies of all notifications of the identities of individuals occupying senior-level positions within the IC element at the time they are provided to the Congressional intelligence committees.

F. COORDINATION WITH THE DEPARTMENT OF JUSTICE REGARDING CRIMINAL INVESTIGATIONS AND PROSECUTIONS


1. Where intelligence information subject to this Directive relates to criminal investigations and prosecutions or reasonably anticipated criminal investigations and prosecutions, the IC shall comply with the following procedures:

a. IC elements shall consult with the Attorney General's designee or designees prior to providing the information to Congressional intelligence committees, members, or staff. With respect to the Congressional intelligence committees, this coordination shall ensure that the IC meets its reporting obligations under the National Security Act in a manner consistent with the integrity and independence of criminal investigations and prosecutions.

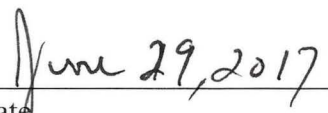
b. Disagreements between an IC element and the Department of Justice regarding the application of this Section will be referred for resolution to the Attorney General and the DNI.

G. LIMITATION: Nothing in this Directive shall be construed to limit an IC element's obligation to report matters to other Congressional committees with oversight jurisdiction or appropriations responsibility for that IC element, subject to the principles identified above regarding criminal matters or potential criminal matters.

H. EFFECTIVE DATE: This Directive becomes effective on the date of signature.



Director of National Intelligence



Date