



INTELLIGENCE  
COMMUNITY  
DIRECTIVE

712

~~SECRET~~ [REDACTED]

Approved for Public Release

## (U) Requirements for Certain Employment Activities by Former Intelligence Community Employees

**A. (U) AUTHORITY:** The National Security Act of 1947, as amended; 50 U.S.C. Sec. 3073a; Executive Order 12333, as amended; and other applicable provisions of law.

**B. (U) PURPOSE:** This Intelligence Community Directive (ICD) provides guidance on implementing the requirements in 50 U.S.C. Sec. 3073a regarding certain employment activities by former Intelligence Community (IC) employees. This ICD does not address other restrictions on foreign compensation that may apply, such as those pertaining to certain military personnel under the Emoluments Clause of the U.S. Constitution.

### C. (U) APPLICABILITY

1. (U) This Directive applies to the IC, as defined by the National Security Act of 1947, as amended, and to such other elements of any 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. (U) The terms “covered intelligence position,” “covered post-service employment,” “covered post-service position,” “designated prohibited foreign country,” “employee,” “former employee,” and “government of a foreign country” are defined in section F. of this policy.

### D. (U) POLICY

#### 1. (U) *Requirements*

a. (U) An employee of an element of the IC who occupies a covered intelligence position may not occupy a covered post-service position:

(1) (U) For a designated prohibited foreign country following the date on which the employee ceases to occupy the covered intelligence position (“permanent restriction”); or

(2) (U) During the 30-month period following the date on which the employee ceases to occupy the covered intelligence position (“temporary restriction”).

Classified By: [REDACTED]  
Derived From: [REDACTED]  
Declassify On: [REDACTED]

Upon removal of the Appendix, this document is  
UNCLASSIFIED

~~SECRET~~ [REDACTED]

(3) (U) In determining whether a position should be a “covered intelligence position,” IC element heads shall consider factors that include: whether the position requires a Top Secret clearance and sensitive compartmented information (SCI) access; whether the position requires access to compartments or sub-compartments of controlled access programs that have been established in accordance with Executive Order 13526; and the duration of access to SCI, compartments, or sub-compartments that is required by the position (for example, whether the duration is persistent or transitory, such as a one-time read-in).

b. (U) IC element heads shall inform the DNI of the positions they have determined to be covered intelligence positions, within 30 days of signature of this policy and subsequently upon any significant changes.

c. (U) On a case-by-case basis, the DNI or DNI designee may temporarily waive:

(1) (U) The permanent restriction upon a determination that not granting a waiver would result in grave detrimental impact to current or future intelligence operations of the United States; or

(2) (U) The temporary restriction upon a determination that a waiver is necessary to advance the national security interests of the United States.

(3) (U) Appendix 1 establishes a classified framework for such determinations.

d. (U) The Director, National Counterintelligence and Security Center (D/NCSC) is the Accountable Official for this policy. The D/NCSC shall serve as the DNI’s designee to approve, deny, or revoke certain waiver requests.

## 2. (U) *Waiver Process*

a. (U) An employee requesting a waiver shall submit an application to the IC element of the covered intelligence position last occupied by the applicant.

b. (U) A written application for a waiver shall include the following information:

(1) (U) For permanent restrictions, the covered intelligence position last occupied by the applicant or, for temporary restrictions, the covered intelligence position(s) occupied within the 30 months prior to the date of the application; and any other information on previous IC employment that may assist the head of the IC element to coordinate the request as needed, including with other IC elements, and to make an informed recommendation to assist with the final determination;

(2) (U) The nature of the activities of the applicant after ceasing to occupy that position, including the names of the employing entities;

(3) (U) The requested duration of the waiver, not to exceed five years, and justification for such duration;

(4) (U) The name of the prospective employer of the covered post-service position;

(5) (U) The foreign government individual, agency, or entity for whom the covered post-service employment would be performed;

(6) (U) The nature of the services to be provided;

(7) (U) A description of and specific reasons why the national security interests of the United States would be advanced by the temporary waiver; or a description of and specific reasons why not granting a waiver to the permanent restriction would result in the grave detrimental impact to current or future intelligence operations of the United States;

(8) (U) Information to assist the DNI in determining that the services provided by a former employee who occupies a covered post-service position do not pose a current or future threat to U.S. national security interests or a counterintelligence risk; include activities that violate federal law; infringe upon the privacy rights of U.S. persons; or constitute abuses of human rights.

c. (U) The head of the IC element of the covered intelligence position shall coordinate with other IC elements as needed and provide to the DNI, through the Office of the Director of National Intelligence (ODNI) Executive Secretariat, the application, a recommendation for approval or denial, recommended duration of the waiver not to exceed five (5) years, and such information as necessary to permit a fully informed review of the application.

(1) (U) IC elements shall strive to provide a recommendation to the DNI within 60 days of receipt of an applicant's waiver request.

(2) (U) ODNI shall strive to provide a determination within 60 days of receipt of an IC element head's recommendation.

d. (U) An application will not be considered unless the requirements of sections D.2.b. and D.2.c. are met in their entirety. IC elements shall notify an applicant if the requirements have not been met in their entirety.

e. (U) A waiver may be approved for a period not exceeding five (5) years. A waiver may be renewed upon request consistent with the procedures described in section D.2. The denial of a waiver may not be appealed.

f. (U) ODNI shall notify the submitting IC element head in writing of the decision on the waiver application. The IC element shall notify the applicant in writing of the decision.

g. (U) The DNI or DNI designee may revoke a waiver effective on the date that is 60 days after the date on which the DNI or DNI designee provides the IC element head and employee or former employee written notice of such revocation.

h. (U) The 30-month restriction described in section D.1.a(2) shall be tolled (i.e., paused) for an employee or former employee during the period beginning on the date on which a waiver is issued and ending on the date on which the waiver expires or on the effective date of a revocation. Therefore, the restriction would be 30 months, plus the number of months for which the employee was granted the waiver.

i. (U) Not later than 30 days after the date on which the DNI or DNI designee approves or revokes a waiver, ODNI shall submit to the congressional intelligence committees written notification of the waiver or revocation, in accordance with the requirements in 50 U.S.C. Sec. 3073a.

j. (U) Not later than 31 March of each year, ODNI shall submit to the congressional intelligence committees a report on covered post-service employment occurring during the year covered by the report, in accordance with the requirements in 50 U.S.C. Sec. 3073a.

k. (U) If the head of an IC element determines that the services provided by a former employee who occupies a covered post-service position pose a current or future threat to U.S. national security interests or a counterintelligence risk; include activities that violate federal law; infringe upon the privacy rights of U.S. persons; or constitute abuses of human rights, the IC element head shall notify the congressional intelligence committees of such determination by not later than seven (7) days after making such determination, in accordance with the requirements in 50 U.S.C. Sec. 3073a and IC Directive 112, *Congressional Notification*.

### 3. (U) *Reporting Requirements*

a. (U) Covered post-service employment reporting requirement:

(1) (U) Beginning on the date on which an employee ceases to occupy a covered intelligence position, an employee or former employee who has occupied such position and intends to commence covered post-service employment shall:

(a) (U) Obtain, if necessary, a waiver of the relevant restriction that satisfies the requirements of section D.2.;

(b) (U) Report covered post-service employment to the IC element of the covered intelligence position last occupied by the applicant upon accepting such covered post-service employment, whether during or after any period requiring a waiver; and

(c) (U) Annually (or more frequently if the head of such element considers it appropriate) report covered post-service employment to the head of such element.

### 4. (U) *Notification and Training*

a. (U) IC element heads shall establish internal policies to implement 50 U.S.C. Sec. 3073a and this policy, including requiring that each employee who is about to occupy a covered intelligence position be notified of the requirements of 50 U.S.C. Sec. 3073a and this policy; requiring, as a condition of employment, that each employee occupying a covered intelligence position sign a written agreement requiring the regular reporting of covered post service employment; and establishing a period of not fewer than 30 days and not more than 60 days after receipt of the required written notice within which personnel may opt out of a covered intelligence position and the accompanying post-employment restrictions imposed by 50 U.S.C. Sec. 3073a.

b. (U) IC element heads shall provide training regularly on the reporting requirements, including the penalties established in 50 U.S.C. Sec. 3073a for violations, to employees who occupy covered intelligence positions. IC element heads may also provide training on the reporting requirements and related penalties to employees not currently serving in covered positions if doing so is deemed to be necessary for or to contribute to the IC element's compliance with these statutory requirements.

c. (U) IC element heads shall provide written notice of the restrictions and reporting requirements, including the penalties for violations, to an employee when the employee ceases to occupy a covered intelligence position or ceases to be employed by the IC element, or may become subject to such restrictions and reporting requirements.

#### **E. (U) ROLES AND RESPONSIBILITIES**

1. (U) The DNI or DNI designee will approve, deny, renew, and revoke waivers.

2. (U) The D/NCSC shall:

a. (U) Serve as the Accountable Official responsible for supporting the DNI's implementation of this Directive including reviewing all waiver requests;

b. (U) Serve as the DNI's designee to approve, deny, renew, or revoke certain waiver requests; and

c. (U) Support the DNI in fulfilling the congressional notification and annual reporting requirements in 50 U.S.C. Sec. 3073a.

3. (U) The heads of IC elements shall:

a. (U) Consistent with this ICD, determine which positions in their elements are covered intelligence positions and periodically review and update the designation of positions;

b. (U) Inform the DNI of the positions they have determined to be covered intelligence positions, within 30 days of signature of this policy and subsequently upon any significant changes;

c. (U) Make readily available on both their classified and public-facing websites this policy, information about the requirements in 50 U.S.C. Sec. 3073a with links to the text of that statute and guidance on the submission of waiver applications;

d. (U) Review waiver applications and, if an application meets the requirements of section D.2.b. of this policy, coordinate with other IC elements as needed and provide to ODNI the application, a recommendation for approval or denial, and such information as necessary to permit a fully informed review of the application. If the application does not meet the requirements of section D.2.b., the IC element shall notify the applicant the requirements have not been met and the application will not be considered;

e. (U) Notify each applicant of the final decision on the waiver application;

f. (U) Process, store, and handle all waiver information in accordance with applicable privacy laws and IC Policy;

g. (U) Support the submission of annual reports in accordance with 50 U.S.C. Sec. 3073a and submit congressional notifications as necessary;

h. (U) Establish internal policies implementing this policy;

i. (U) Provide training regularly to employees occupying a covered intelligence position on the reporting requirements and penalties for violations; and

j. (U) Provide written notice of the restrictions and reporting requirements of this ICD to an employee when the employee ceases to occupy a covered intelligence position or ceases employment with the IC element, or may become subject to such restrictions and reporting requirements, and obtain written acknowledgement from the employee prior to leaving the covered intelligence position or IC element.

**F. (U) DEFINITIONS**

1. (U) Covered intelligence position: A position within an element of the Intelligence Community that, based on the level of access of a person occupying such position to information regarding sensitive intelligence sources or methods or other exceptionally sensitive matters, the head of such element determines should be subject to the requirements of this policy.

2. (U) Covered post-service employment: Direct or indirect employment by, representation of, or any provision of advice or services relating to national security, intelligence, the military, or internal security to, the government of a foreign country or any company, entity, or other person whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized, in whole or in major part, by any government of a foreign country.

3. (U) Covered post-service position: A position of employment described in section F.2.

4. (U) Designated prohibited foreign country: The People's Republic of China, Russian Federation, Democratic People's Republic of Korea, Islamic Republic of Iran, Republic of Cuba, and Syrian Arab Republic.

5. (U) Employee: The term "employee," with respect to an employee occupying a covered intelligence position, includes an officer or official of an element of the Intelligence Community, a contractor of such an element, a detailee to such an element, or a member of the Armed Forces assigned to such an element.

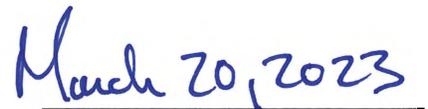
6. (U) Former employee: An individual who was an employee occupying a covered intelligence position; and who is subject to the requirements under section D.

7. (U) Government of a foreign country: The term "government of a foreign country" has the meaning given the term in section 1(e) of the Foreign Agents Registration Act of 1938 (22 U.S.C. Sec. 611(e)).

**G. (U) EFFECTIVE DATE:** This Directive becomes effective on the date of signature.



Director of National Intelligence



Date