

SEC. 1072. SECURITY CLEARANCES; LIMITATIONS.

(a) In General.-Title III of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 435b) is amended by adding at the end the following new section:

"SEC. 3002. SECURITY CLEARANCES; LIMITATIONS.

"(a) Definitions.-In this section:

"(1) Controlled substance.-The term `controlled substance' has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802).

"(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 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014).

"(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 102(1) of the Controlled Substances Act (21 U.S.C. 802)).

"(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;

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"(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, United States Code.

"(iii) Congressional intelligence committees.-The term `congressional intelligence committees' has the meaning given that term in section 3 of the National Security

Act of 1947 (50 U.S.C. 401a).

"(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.".

(b) Conforming Amendments.-

(1) Repeal.-Section 986 of title 10, United States Code, is repealed.

(2) Clerical amendment.-The table of sections at the beginning of chapter 49 of such title is amended by striking the item relating to section 986.

(3) Effective date.-The amendments made by this subsection shall take effect on January 1, 2008.