

§ 127e. Support of special operations to combat terrorism

(a) AUTHORITY.—The Secretary of Defense may, with the concurrence of the relevant Chief of Mission, expend up to \$100,000,000 during any fiscal year to provide support to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating authorized ongoing military operations by United States special operations forces to combat terrorism.

(b) FUNDS.—Funds for support under this section in a fiscal year shall be derived from amounts authorized to be appropriated for that fiscal year for the Department of Defense for operation and maintenance.

(c) PROCEDURES.—

(1) IN GENERAL.—The authority in this section shall be exercised in accordance with such procedures as the Secretary shall establish for purposes of this section. The Secretary shall notify the congressional defense committees of any material change to such procedures.

(2) ELEMENTS.—The procedures required under paragraph (1) shall establish, at a minimum, each of the following:

(A) Policy, strategy, or other guidance for the execution of, and constraints within, activities conducted under this section.

(B) The processes through which activities conducted under this section are to be developed, validated, and coordinated, as appropriate, with relevant Federal entities.

(C) The processes through which legal reviews and determinations are made to comply with this section and ensure that the exercise of the authority in this section is consistent with the national security of the United States.

(d) NOTIFICATION.—

(1) IN GENERAL.—Not later than 15 days before exercising the authority in this section to make funds available to initiate support of an approved military operation or changing the scope or funding level of any support for such an operation by \$1,000,000 or an amount equal to 20 percent of such funding level (whichever is less), or not later than 48 hours after exercising such authority if the Secretary determines that extraordinary circumstances that impact the national security of the United States exist, the Secretary shall notify the congressional defense committees of the use of such authority with respect to that operation. Any such notification shall be in writing.

(2) ELEMENTS.—A notification required by this subsection shall include the following:

(A) The type of support provided or to be provided to United States special operations forces and a description of the authorized ongoing operation.

(B) A description of the foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating the authorized ongoing operation who will receive support provided under this section.

(C) A detailed description of the support provided or to be provided to the recipient.

(D) The amount obligated under the authority to provide support.

(E) A detailed description of the legal and operational authorities related to the au-

thorized ongoing operation, including relevant execute orders issued by the Secretary of Defense and combatant commanders related to the authorized ongoing operation, including an identification of operational activities United States Special Operations Forces are authorized to conduct under such execute orders.

(F) The duration for which the support is expected to be provided and an identification of the timeframe in which the provision of support will be reviewed by the combatant commander for a determination regarding the necessity of continuation of support.

(G) A description of the entities with which the recipients of support are engaged in hostilities and whether each such entity is covered under an authorization for use of military force.

(H) A description of the steps taken to ensure the support is consistent with United States national security objectives.

(I) A description of the steps taken to ensure that the recipients of support have not engaged in human rights violations.

(e) NOTIFICATION OF SUSPENSION OR TERMINATION OF SUPPORT.—

(1) IN GENERAL.—Not later than 48 hours after suspending or terminating support to any foreign force, irregular force, group, or individual under the authority in this section, the Secretary shall submit to the congressional defense committees a written notice of such suspension or termination.

(2) ELEMENTS.—Notice provided under paragraph (1) with respect to the suspension or termination of support shall include each of the following elements:

(A) A description of the reasons for the suspension or termination of such support.

(B) A description of any effects on regional, theatre, or global campaign plan objectives anticipated to result from the suspension or termination of such support.

(C) A plan for the suspension or termination of the support, and, in the case of support that is planned to be transitioned to another program of the Department of Defense or another Federal department or agency, a detailed description of the transition plan, including the resources, equipment, capabilities, and personnel associated with such plan.

(f) LIMITATION ON DELEGATION.—The authority of the Secretary to make funds available under this section for support of a military operation may not be delegated.

(g) CONSTRUCTION OF AUTHORITY.—Nothing in this section may be construed to constitute authority to conduct or provide statutory authorization for any of the following:

(1) A covert action, as such term is defined in section 503(e) of the National Security Act of 1947 (50 U.S.C. 3093(e)).

(2) An introduction of the armed forces, (including as such term is defined in section 8(c) of the War Powers Resolution (50 U.S.C. 1547(c)), into hostilities, or into situations where hostilities are clearly indicated by the circumstances, without specific statutory au-

thorization within the meaning of section 5(b) of such Resolution (50 U.S.C. 1544(b)).

(3) Activities or support of activities, directly or indirectly, that are inconsistent with the laws of armed conflict.

(h) OVERSIGHT BY ASD FOR SOLIC.—The Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall have primary responsibility within the Office of the Secretary of Defense for oversight of policies and programs for support authorized by this section.

(i) BIENNIAL REPORTS.—

(1) REPORT ON PRECEDING CALENDAR YEAR.—Not later than 120 days after the last day of each fiscal year, the Secretary shall submit to the congressional defense committees a report on the support provided under this section during the preceding calendar year.

(2) REPORT ON CURRENT CALENDAR YEAR.—Not later than six months after the date of the submittal of the report most recently submitted under paragraph (1), the Secretary shall submit to the congressional defense committees a report on the support provided under this section during the first half of the calendar year in which the report under this paragraph is submitted.

(3) ELEMENTS.—Each report required by this subsection shall include, for the period covered by such report, the following:

(A) A summary of the ongoing military operations by United States special operations forces to combat terrorism that were supported or facilitated by foreign forces, irregular forces, groups, or individuals for which support was provided under this section.

(B) A description of the support or facilitation provided by such foreign forces, irregular forces, groups, or individuals to United States special operations forces.

(C) The type of recipients that were provided support under this section, identified by authorized category (foreign forces, irregular forces, groups, or individuals).

(D) The total amount obligated for support under this section, including budget details.

(E) The total amount obligated in prior fiscal years under this section and applicable preceding authority.

(F) The intended duration of support provided under this section.

(G) A description of the support or training provided to the recipients of support under this section.

(H) A value assessment of the support provided under this section, including a summary of significant activities undertaken by foreign forces, irregular forces, groups, or individuals to support operations by United States special operations forces to combat terrorism.

(Added Pub. L. 114-328, div. A, title XII, § 1203(a)(1), Dec. 23, 2016, 130 Stat. 2474; amended Pub. L. 115-91, div. A, title X, § 1031, Dec. 12, 2017, 131 Stat. 1550; Pub. L. 116-92, div. A, title X, § 1041, Dec. 20, 2019, 133 Stat. 1585; Pub. L. 116-283, div. A, title X, §§ 1051, 1081(a)(7), Jan. 1, 2021, 134 Stat. 3847, 3871.)

Editorial Notes

AMENDMENTS

2021—Subsec. (c). Pub. L. 116-283, § 1051(1), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: “The authority in this section shall be exercised in accordance with such procedures as the Secretary shall establish for purposes of this section. The Secretary shall notify the congressional defense committees of any material modification of such procedures.”

Subsec. (d)(2)(G) to (I). Pub. L. 116-283, § 1051(2), added subpars. (G) to (I).

Subsecs. (e), (f). Pub. L. 116-283, § 1051(3), (4), added subsec. (e) and redesignated former subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 116-283, § 1051(5), added subsec. (g) and struck out former subsec. (g). Prior to amendment, text read as follows: “This section does not constitute authority to conduct a covert action, as such term is defined in section 503(e) of the National Security Act of 1947 (50 U.S.C. 3093(e)).”

Pub. L. 116-283, § 1051(3), redesignated subsec. (f) as (g).

Subsec. (h). Pub. L. 116-283, § 1081(a)(7), which directed the substitution of “Low Intensity” for “Low-Intensity” in subsec. (g) as redesignated by section 1051 of Pub. L. 116-283, was executed by making substitution in subsec. (h) as redesignated by section 1051, to reflect the probable intent of Congress.

Pub. L. 116-283, § 1051(3), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 116-283, § 1051(3), redesignated subsec. (h) as (i).

2019—Subsec. (a). Pub. L. 116-92, § 1041(1), inserted “authorized” before “ongoing military operations”.

Subsec. (d)(2)(A). Pub. L. 116-92, § 1041(2)(A), inserted “and a description of the authorized ongoing operation” before period at end.

Subsec. (d)(2)(B) to (D). Pub. L. 116-92, § 1041(2)(B), (C), added subpars. (B) and (C), redesignated former subpar. (C) as (D), and struck out former subpar. (B) which read as follows: “The type of support provided or to be provided to the recipient of the funds.”

Subsec. (d)(2)(E), (F). Pub. L. 116-92, § 1041(2)(D), added subpars. (E) and (F).

2017—Subsecs. (g), (h). Pub. L. 115-91, § 1031(a), added subsec. (g) and redesignated former subsec. (g) as (h).

Subsec. (h)(1). Pub. L. 115-91, § 1031(b)(1), substituted “120 days after the last day of each fiscal year” for “March 1 each year”.

Subsec. (h)(2). Pub. L. 115-91, § 1031(b)(2), substituted “six months after the date of the submittal of the report most recently submitted under paragraph (1)” for “September 1 each year” and inserted “under this paragraph” after “in which the report”.

Statutory Notes and Related Subsidiaries

CHIEF OF MISSION CONCURRENCE

Pub. L. 117-81, div. E, title LVII, § 5703, Dec. 27, 2021, 135 Stat. 2382, provided that: “In the course of a chief of mission providing concurrence to the exercise of the authority pursuant to section 127e of title 10, United States Code, or section 1202 of the National Defense Authorization Act for Fiscal Year 2018 [Pub. L. 115-91; 131 Stat. 1639]—

“(1) each relevant chief of mission shall inform and consult in a timely manner with relevant individuals at relevant missions or bureaus of the Department of State; and

“(2) the Secretary of State shall take such steps as may be necessary to ensure that such relevant individuals have the security clearances necessary and access to relevant compartmented and special programs to so consult in a timely manner with respect to such concurrence.”

§ 127f. Expenditure of funds for clandestine activities that support operational preparation of the environment and non-conventional assisted recovery capabilities

(a) AUTHORITY.—(1) Amounts appropriated or otherwise made available for the Department of Defense for operation and maintenance, Defense-wide, may be used for any purpose the Secretary of Defense determines to be proper—

(A) for operational preparation of the environment for operations of a confidential nature; or

(B) to establish, develop, and maintain non-conventional assisted recovery capabilities to facilitate the recovery of United States military and civilian personnel, or other individuals, who become isolated or separated.

(2) Such a determination is final and conclusive upon the accounting officers of the United States. The Secretary may certify the amount of any such expenditure authorized by the Secretary that the Secretary considers advisable not to specify, and the Secretary's certificate is sufficient voucher for the expenditure of that amount.

(b) AUTHORIZED ACTIVITIES.—Activities authorized by subsection (a) may, in limited and special circumstances as determined by the Secretary of Defense, include the provision of support to foreign forces, irregular forces, groups, or individuals to conduct operational preparation of the environment and to conduct or support operations to establish, develop, and maintain non-conventional assisted recovery capabilities to facilitate the recovery of United States military and civilian personnel, or other individuals, who become isolated or separated. Such support may include limited amounts of equipment, supplies, training, transportation, or other logistical support or funding.

(c) PROCEDURES.—

(1) IN GENERAL.—The authority in this section shall be exercised in accordance with such procedures as the Secretary of Defense shall establish for purposes of this section.

(2) ELEMENTS.—The procedures required under paragraph (1) shall establish, at a minimum, each of the following:

(A) Policy, strategy, or other guidance for the execution of, and constraints within, activities conducted under this section.

(B) The processes through which activities conducted under this section are to be developed, validated, and coordinated, as appropriate, with relevant Federal entities.

(C) The processes through which legal reviews and determinations are made to comply with the authority in this section and ensure that the exercise of such authority is consistent with the national security interests of the United States.

(D) The processes by which the Department of Defense shall keep the congressional defense committees fully and currently informed of—

(i) the requirements for the use of the authority in this section; and

(ii) activities conducted under such authority.

(3) NOTICE TO CONGRESS.—The Secretary shall notify the congressional defense commit-

tees of any material change to the procedures established under paragraph (1).

(d) LIMITATIONS.—The Secretary of Defense—

(1) may expend up to \$40,000,000 in any fiscal year for the purposes described in subsection (a); and

(2) may not delegate the authority under this section with respect to any expenditure in excess of \$250,000.

(e) EXCLUSION OF INTELLIGENCE ACTIVITIES.—(1) This section does not constitute authority to conduct, or expend funds for, intelligence, counterintelligence, or intelligence-related activities.

(2) In this subsection, the terms “intelligence” and “counterintelligence” have the meaning given those terms in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

(f) QUARTERLY BRIEFING.—On a quarterly basis, the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, in coordination with elements of the Department of Defense that the Assistant Secretary determines appropriate, shall provide to the congressional defense committees a briefing outlining the clandestine activities carried out pursuant to subsection (a) during the period covered by the briefing, including—

(1) an update on such activities carried out in each geographic combatant command and a description of how such activities support the respective theater campaign plan;

(2) an overview of the authorities and legal issues, including limitations, relating to such activities; and

(3) any other matters the Assistant Secretary considers appropriate.

(g) ANNUAL REPORT.—Not later than December 31 each year, the Secretary of Defense shall submit to the congressional defense committees a report on expenditures made under this section during the fiscal year preceding the year in which the report is submitted. Each report shall include, for each expenditure under this section during the fiscal year covered by such report—

(1) a description of activities carried out for the purposes described in subsection (a);

(2) the amount of such expenditures;

(3) an identification of the type of recipients to receive support, including foreign forces, irregular forces, groups or individuals, as appropriate;

(4) the total amount of funds obligated for such expenditures in prior fiscal years; and

(5) any other matters the Secretary considers appropriate.

(h) NON-CONVENTIONAL ASSISTED RECOVERY CAPABILITIES.—Funding used to establish, develop, and maintain non-conventional assisted recovery capabilities under this section may only be obligated and expended with the concurrence of the relevant Chief of Mission or Chiefs of Mission.

(i) OVERSIGHT BY ASSISTANT SECRETARY OF DEFENSE FOR SPECIAL OPERATIONS AND LOW INTENSITY CONFLICT.—The Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall have primary responsibility within the Office of the Secretary of Defense for