



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON DC 20301-1010

April 9, 2018
Incorporating Change 4, June 8, 2020

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
CHIEF MANAGEMENT OFFICER OF THE DEPARTMENT OF
DEFENSE
CHIEF OF THE NATIONAL GUARD BUREAU
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF
DEFENSE
ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE
AFFAIRS
ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC
AFFAIRS
DIRECTOR, NET ASSESSMENT
DIRECTOR OF STRATEGIC CAPABILITIES OFFICE
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Directive-type Memorandum (DTM) -18-003 – Prohibition on Providing Funds to the Enemy and Authorization of Additional Access to Records.

References: See Attachment 1.

Purpose. In accordance with the authority and guidance in Sections 841-843 of Public Law 113-291, also known and referred to in this DTM as the “National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015,” this DTM:

- Establishes policy, assigns responsibilities, and provides procedures in support of the NDAA for FY 2015 to never contract with the enemy, referred to in this DTM as “covered persons or entities.”
- Is effective April 9, 2018; it will be converted to a new DoD instruction. This DTM will expire effective December 31, 2021.

Applicability. This DTM applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff (CJCS) and the Joint Staff, the covered Combatant Commands (CCMDs), the Office of the Inspector General of the Department of Defense, the

Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (referred to collectively in this DTM as the “DoD Components”).

Definitions. See Glossary.

Policy.

- In accordance with the NDAA for FY 2015, funds, including goods and services, (referred to in this DTM as “funds”) received under a covered contract, grant, or cooperative agreement (CGCA) will not be provided to a covered person or entity, either directly or indirectly.
- DoD will track the provision of CGCA funds and will report any funds delivered to covered persons or entities in accordance with this DTM.
- The provisions of this DTM do not apply to CGCAs that are performed entirely inside the United States.
- Nothing in this DTM applies to the authorized intelligence or law enforcement activities of the U.S. Government.
- Contractor and subcontractor records are restricted and may only be examined in accordance with Section 842 of the NDAA for FY 2015 as outlined in Paragraph 9 of Attachment 3.
- The authorities in this DTM will be in addition to, and not to the exclusion of, any other authorities available to the DoD Components and covered CCMDs to implement policies and purposes similar to those established in this DTM.

Responsibilities. See Attachment 2.

Procedures. See Attachment 3.

Summary of Change 4. The changes to this DTM are administrative and extend the expiration date.

Releasability. **Cleared for public release.** This DTM is available on the Directives Division Website at <https://www.esd.whs.mil/DD/>.

A handwritten signature in blue ink that reads "Paul M. Sanchez". The signature is written in a cursive, flowing style.

Attachments:
As stated

ATTACHMENT 1

REFERENCES

Code of Federal Regulations, Title 2, Part 200
Defense Federal Acquisition Regulations Supplement, “Class Deviation - Additional Access to Records in the United States Central Command,” (Deviation 2018-O0008), December 20, 2017
Defense Federal Acquisition Regulations Supplement, “Class Deviation - Prohibition on Providing Funds to the Enemy and Authorization of Additional Access to Records (Other than USCENTCOM),” (Deviation 2015-O0016), September 15, 2015
Deputy Secretary of Defense Memorandum, “Establishment of the Office of the Under Secretary of Defense for Research Engineering and the Office of the Under Secretary of Defense for Acquisition and Sustainment,” July 13, 2018
Federal Acquisition Regulation, Part 12—Acquisition of Commercial Items, January 13, 2017
Federal Acquisition Regulation, Subpart 1.6—Career Development, Contracting Authority, and Responsibilities, Section 1.601 “General.”, January 19, 2017
Federal Acquisition Regulation, Subpart 2.1—Definitions, Section 2.101 “Definitions.”, January 19, 2017
Public Law 113-291, Sections 841-843, “Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015,” December 19, 2014
United States Code, Title 10, Subsection 101(a)(13)
United States Code, Title 41, Section 133
United States Constitution, Article I and III

ATTACHMENT 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT (USD(A&S)), UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE (USD(I)), UNDER SECRETARY OF DEFENSE FOR POLICY (USD(P)), AND THE CJCS. The USD(A&S), the USD(I), the USD(P), and the CJCS will jointly develop policies, procedures, and guidance for the programs established to implement Section 841, Section 842, and Section 843 of the NDAA for FY 2015.

2. USD(A&S). In addition to the responsibilities in Paragraph 1 of this attachment, the USD(A&S):

a. In coordination with the USD(I), the USD(P), and the CJCS, establishes policies, procedures, and guidance to implement and oversee the programs.

b. In conjunction with the Director of National Intelligence (DNI) and in coordination with the USD(I) and the USD(P), annually reviews the list of identified covered persons and entities within the System for Award Management to determine if such identification is still warranted.

(1) Consults with the Secretary of State as part of the review process.

(2) If it is decided that a covered person or entity no longer warrants such identification, provides written notification to both the head of the executive agency and to the covered Combatant Commander (CCDR) concerned (or their designated deputies).

c. Consults with the Director of the Office of Management and Budget (OMB) to carry out a program for agency components to provide information to the heads of executive agencies and to the covered CCDRs (or their designated deputies) relating to persons or entities who may be covered persons or entities. The program must facilitate and encourage sharing risk and threat information among executive agencies and covered CCMDs.

3. PRINCIPAL DIRECTOR FOR DEFENSE PRICING AND CONTRACTING (DPC). Under the authority, direction, and control of the USD(A&S), through the Assistant Secretary of Defense for Acquisition, the Principal Director, DPC:

a. Revises the Defense Federal Acquisition Regulations Supplement to implement Sections 841-843 of the NDAA for FY 2015; develops and issues contracting policy, guidance, and procedures as required by Sections 841-843 of the NDAA for FY 2015.

b. Consults with the CJCS, the covered CDR concerned, and applicable DoD Component heads of contracting activities (HCAs), as needed, to enable authorities to terminate, void, or restrict covered contracts.

c. Works with the CJCS to task, collect, and report, as needed, to OMB on the programs established in each covered CCMD as well as any use of Section 841 of the NDAA for FY 2015 authorities by the covered CDR concerned on a calendar year basis.

4. UNDER SECRETARY OF DEFENSE FOR RESEARCH AND ENGINEERING. The Under Secretary of Defense for Research and Engineering updates the DoD Grant and Agreement Regulations to carry out OMB's revision of the guidance in Part 200 of Title 2, Code of Federal Regulations, to implement the provisions of Sections 841, 842, and 843 of the NDAA for FY 2015.

5. USD(I). In addition to the responsibilities in Paragraph 1 of this attachment, the USD(I):

a. In implementing Paragraph 1 of this attachment, and in coordination with the USD(A&S), the USD(P), and the CJCS, develops policies, procedures, and guidance to facilitate defense intelligence integration into the identification of covered persons and entities.

b. Ensure Defense Intelligence Enterprise resources are adequately arranged to oversee intelligence support to the identification of covered persons or entities.

c. Establishes the protocols for insider threat; counterintelligence; personnel, industrial, information, and physical security (including physical access to DoD resources and installations and logical access to DoD information) for integration into the DoD implementation of Section 841 of the NDAA for FY 2015.

6. USD(P). In addition to the responsibilities in Paragraph 1 of this attachment, the USD(P):

a. In coordination with the USD(A&S) and the appropriate Department of State counterparts, ensures that national security related activities are incorporated into the process used to establish each covered CCMD program.

b. In implementing Paragraph 1 of this attachment, and in coordination with the USD(A&S), the USD(I), and the CJCS, develops policies, procedures, and guidance to integrate DoD policy on national security, counterterrorism, and contingency operations into the DoD implementation of Section 841 of the NDAA for FY 2015.

c. Makes sure that national security policy and counterterrorism guidance are adopted and incorporated into the procedures used to identify covered persons and entities into the annual review process as required by Section 841 of the NDAA for FY 2015.

d. Coordinates pending USD(I) covered person or entity identifications of a covered person or entity with the covered CCDR concerned and the chief of mission at the appropriate U.S. mission.

e. Assesses how the identification of a covered person or entity would affect current or pending U.S. national security policy.

f. Assesses how the identification of a covered person or entity would affect U.S. international relations.

7. DoD COMPONENT HEADS.

a. The DoD Component heads will oversee their Components' implementation of this DTM. The authority to terminate, void, or restrict awards of contracts, in whole or in part, may not be delegated below the level of HCA of the DoD Component concerned or the equivalent official for grants and cooperative agreements.

b. Establish procedures to identify, collect, and submit data on the use of authorities, required in Section 841 Paragraph (i) and Section 842, Paragraph (b) of the NDAA for FY 2015 to the USD(A&S).

8. CJCS. In addition to the responsibilities in Paragraphs 1 and 7 of this attachment, the CJCS:

a. In implementing Paragraph 1 of this attachment, and in coordination with the USD(A&S), the USD(I), and the USD(P), develops policies, procedures, and guidance to facilitate execution of the established program in each covered CCMD.

b. Coordinates with the Principal Director, DPC, and the covered CCDR concerned regarding the execution of authority to restrict, terminate, or void covered contracts.

c. Coordinates with the Principal Director, DPC, to collect information and report on the programs established in each covered CCMD, as well as any use of Section 841 of the NDAA for FY 2015 authorities by the covered CCDR concerned, on a calendar year basis. This information will be reported to OMB to support its report to the appropriate Congressional committees.

9. COVERED CCDRS. Under the oversight of the CJCS; in coordination with the USD(A&S), the USD(I), and the USD(P); in conjunction with the appropriate office of the DNI; and in addition to the responsibilities in Paragraph 7 of this attachment, the covered CCDRs:

a. Execute a program that integrates intelligence and national security policy into the CCMD's activities. The covered CCDR may delegate, in writing, the responsibilities in this

issuance to a specific deputy or designee. The program must seek to identify entities that and persons who:

(1) Provide covered CGCA funds, directly or indirectly, to a covered person or entity; or

(2) Fail to exercise due diligence to make sure that none of the covered CGCA funds are provided directly or indirectly to a covered person or entity.

b. May, upon identification of a covered person or entity, provide written notification to the appropriate HCA **after** coordinating with the USD(P) and consulting with the appropriate Department of State official on impending designations. This written notification should include enough documentation to allow the HCA concerned to exercise the authority provided in Subsection 841(c) of the NDAA for FY 2015.

c. Conduct an annual review of individuals and entities previously identified to determine if they continue to warrant identification and report the results to the USD(A&S). As part of this information collection effort, information may be provided by the head of the executive agency and the covered CCDR concerned (or their designated deputies) on persons and entities previously identified. Each covered CCDR concerned must protect any classified information used to make the identification.

ATTACHMENT 3

PROCEDURES

1. IDENTIFYING COVERED PERSONS AND ENTITIES. In consultation with the Office of the DNI and in coordination with the appropriate staff in the Offices of the USD(A&S), the USD(I), and the USD(P), the covered CCMD concerned will:

a. Notify the concerned CCDR (or specified deputy) in writing if an individual or entity meets the criteria of Subsection 841(a) of the NDAA for FY 2015.

(1) If identifying individual(s), provide names of affiliated companies or entities.

(2) If applicable, provide information on the covered CGCA, including award number, commercial and government entity code, and data universal numbering system number.

(3) Include documentation in the notice to allow the HCA concerned to exercise the authority provided in Subsection 841(c) of the NDAA for FY 2015.

b. Compile and manage a list of identified individuals or entities within the area of responsibility of the CCMD concerned, including the dates on which they were added to the list.

2. NOTICE OF IDENTIFIED COVERED PERSONS AND ENTITIES. Once a covered person or entity is identified by the CCMD the covered CCDR (or the specified deputy) may notify in writing, the HCA or other appropriate official of the DoD Component concerned, in accordance with existing command guidance.

3. ACTIONS RELATED TO COVERED CGCAs. Upon receipt of notice from the covered CCDR (or the specified deputy) of the identification of a covered person or entity, the HCA or other appropriate official of the DoD Component concerned will:

a. For covered contracts:

(1) Restrict the award of the contract that would provide funds directly or indirectly to a covered person or entity.

(2) Terminate for default the contract where the recipient has failed to exercise due diligence to make sure that none of the funds available are provided directly or indirectly to a covered person or entity.

(3) Void in whole, or in part, the contract that provides funds directly or indirectly to a covered person or entity.

(4) Notify the contractor, prospective contractor, or the recipient of the CGCA when one of the actions described in Paragraph 3(a) of this attachment has been taken, and of their opportunity to challenge the action as outlined in Subsection 841(e) of the NDAA for FY 2015.

(5) Examine records to ensure funds available under a CGCA are not provided directly or indirectly to a covered person or entity.

b. For covered grants and cooperative agreements, make sure that DoD contracting activities follow the procedures in the DoD Grant and Agreement Regulations related to:

(1) Including the types of provisions described in Subsections 841(d) and 842(a)(2) of the NDAA for FY 2015.

(2) Restricting, terminating for default, or voiding in whole or in part the award, as outlined in Subsection 841(c) of the NDAA for FY 2015.

(3) Notifying the recipient or potential recipient when one of the actions in Paragraph 3(b) of this attachment are taken, and of the recipient's or potential recipient's opportunity to challenge the action as outlined in Subsection 841(e) of the NDAA for FY 2015.

(4) Examining the records of a recipient of a grant or cooperative agreement to ensure funds available under a CGCA are not provided directly or indirectly to a covered person or entity.

(5) Complying with any other requirements that implement provisions of Section 841 and Section 842 of the NDAA for FY 2015, to include Subsection 841(h)(2) of the NDAA for FY 2015 for reporting information to Federal Awardee Performance and Integrity Information System (FAPIIS) on any of the actions related to terminating, voiding, or restricting awards.

4. DELEGATION OF CERTAIN RESPONSIBILITIES. Consistent with Subsection 841(g) of the NDAA for FY 2015:

a. The covered CCDR may delegate, in writing, the responsibilities in this issuance to a specific deputy.

b. The authority to terminate, void, or restrict awards of contracts, in whole or in part, may not be delegated below the level of HCA of the DoD Component concerned or the equivalent official for grants and cooperative agreements.

5. SHARING OF INFORMATION ON SUPPORTERS OF COVERED PERSONS OR ENTITIES. The CCDRS of the covered CCMDs (or their specified deputies) will share information relating to:

a. Persons or entities who provide funds, or fail to exercise due diligence to make sure that no funds received under CGCAs of the executive agencies are provided directly or indirectly to a covered person or entity.

b. Any other information that will allow the program to facilitate and encourage sharing risk and threat information between DoD Components, executive agencies, and the covered CCMDs.

6. INCLUSION OF INFORMATION ON CONTRACT ACTIONS IN FAPIIS AND OTHER SYSTEMS. The HCA or other appropriate official of the contracting activity will provide the appropriate information relating to the termination, voiding, or restriction, of a covered CGCA for inclusion in the FAPIIS, or other formal system of record.

7. REPORTS.

a. HCAs of DoD Components that receive notice from a covered CCDR of the identification of a covered person or entity will:

(1) Submit to the DoD Component head and covered CCDR concerned a report on any action taken by the HCA outlined in Subsection 841(c) of the NDAA for FY 2015, or on a determination to not terminate, void, or restrict the covered CGCA as otherwise authorized.

(2) Submit, via the Office of the CJCS to the Principal Director, DPC, a report on each instance the authority to terminate, void, or restrict a CGCA was exercised. This will be done no later than January 15 based on a notification within the preceding calendar year that contains the following information:

(a) The DoD Component or covered CCMD taking such action.

(b) An explanation justifying the action taken.

(c) The value of the CGCA that has been voided or terminated.

(d) The value of all CGCAs of the DoD Component concerned or the covered CCMD in force with the covered person or entity concerned at the time the CGCA was terminated or voided.

b. For each instance the DoD Component or covered CCMD did not exercise the authority to terminate, void, or restrict a CGCA pursuant to Subsection 841(c) of the NDAA for FY 2015 based on a notification in accordance with Subsection 841(b), the following information will be included in the report:

(1) The DoD Component or covered CCMD concerned.

(2) An explanation of the basis for not taking the action.

c. The reports submitted in accordance with Paragraph 7 of this attachment will:

(1) Be submitted in unclassified form, but with a classified annex; or

(2) Be submitted in classified form.

8. ANNUAL REVIEW, PROTECTION OF CLASSIFIED INFORMATION. Consistent with Subsection 841(f) of the NDAA for FY 2015:

a. If a determination is made during the CCMDs review that a person or entity no longer warrants identification, the covered CCDR concerned will:

(1) Notify, in writing, the HCA or other appropriate official of the DoD Component concerned of the decision to remove the person or entity from the list.

(2) Make sure that the HCA or other appropriate official of the DoD Component concerned removes the person or entity from FAPIIS, System for Award Management or other formal system of records on covered contractors or entities.

(3) Not later than January 15, the HCA or other appropriate official of the DoD Component concerned (or the designee of such head) will submit through the Office of the CJCS to the Director, DPAP, a report of the number of persons or entities taken off the list within the preceding calendar year.

b. Classified information used to make an identification in accordance with Subsection 841(f)(2) of the NDAA for FY 2015 may not be disclosed to a contractor or recipient of a grant or cooperative agreement on an action taken outlined in Subsection 841(c) of the NDAA for FY 2015, or to their representatives, in the absence of a protective order issued by a court of competent jurisdiction established under Article I or Article III of the Constitution of the United States that specifically addresses the conditions upon which such classified information may be so disclosed.

9. ADDITIONAL ACCESS TO CONTRACTOR AND SUBCONTRACTOR RECORDS.

a. The authority to examine contractor and subcontractor records in accordance with Section 842 of the NDAA for FY 2015 may be exercised only when:

(1) A written determination is made by the contracting officer, or comparable official responsible for a CGCA and;

(2) Upon a finding by the covered CCDR (or the specified deputy) or the DoD Component head concerned (or the designee of such head) that there is reason to believe that funds available under the CGCA concerned may have been provided directly or indirectly to a covered person or entity.

b. Defense Federal Acquisition Regulations Supplement Class Deviations 2015-O0016 and 2018-O0008 further implement Section 842 of the NDAA for FY 2015 by providing contract clauses to be included in all solicitations and resultant contracts (including when using Part 12 of the Federal Acquisition Regulations) valued at more than \$50,000, that are to be performed outside the United States and its outlying areas, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. These clauses notify the contractor of the U.S. Government's authority to access contractor and subcontractor records in order to support the program required by Section 841 of the NDAA for FY 2015.

GLOSSARYPART I. ABBREVIATIONS AND ACRONYMS

CJCS	Chairman of the Joint Chiefs of Staff
CCDR	Combatant Commander
CCMD	Combatant Command
CGCA	contract, grant, or cooperative agreement
DPC	Defense Pricing and Contracting
DNI	Director of National Intelligence
DTM	directive-type memorandum
FAPIS	Federal Awardee Performance and Integrity Information System
HCA	head of contracting activity
NDAA	National Defense Authorization Act
OMB	Office of Management and Budget
USD(A&S)	Under Secretary of Defense for Acquisition and Sustainment
USD(I)	Under Secretary of Defense for Intelligence
USD(P)	Under Secretary of Defense for Policy

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this DTM.

appropriate committees of Congress. The Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate. The Committee on Armed Services, the Committee on Oversight and Government Reform, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

contingency operation. Defined in Subsection 101(a)(13) of Title 10, United States Code.

contract. Defined in Federal Acquisition Regulation Subpart 2.101, which includes all types of commitments that obligate the Government to an expenditure of appropriated funds, including those under Other Transactions authorities.

covered CCMD. United States Africa Command; United States Central Command; United States European Command; United States Pacific Command; United States Southern Command; and United States Transportation Command.

covered CGCA. A CGCA with an estimated value in excess of \$50,000 that is performed outside the United States, including its possessions and territories, in support of a contingency operation in which Service members are actively engaged in hostilities.

covered person or entity. A person or entity that is actively opposing U.S. or coalition forces involved in a contingency operation in which Service members are actively engaged in hostilities.

executive agency. Defined in Section 133 of Title 41, United States Code.

HCA. Defined in Federal Acquisition Regulation Subpart 2.101 and established by Federal Acquisition Regulation Subpart 1.601.

void. A CGCA that is unenforceable as contrary to public policy with regard to a severable task or effort under the CGCA.