

## Calendar No. 485

113TH CONGRESS  
2D SESSION**S. 675****[Report No. 113–216]**

To prohibit contracting with the enemy.

## IN THE SENATE OF THE UNITED STATES

APRIL 9, 2013

Ms. AYOTTE (for herself, Mr. BLUMENTHAL, Mr. ROBERTS, Mr. CHAMBLISS, Mr. MORAN, Mr. MANCHIN, Mr. BOOZMAN, Mr. BURR, Mrs. SHAHEEN, and Mr. VITTER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

JULY 23, 2014

Reported by Mr. CARPER, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]**A BILL**

To prohibit contracting with the enemy.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Never Contract With  
5 the Enemy Act”.

1 **SEC. 2. PROHIBITION ON CONTRACTING WITH THE ENEMY.**

2 (a) STATEMENT OF POLICY.—It shall be the policy  
3 of the United States that executive agencies shall not con-  
4 tract with the enemy or with a person or entity that has  
5 been identified as providing funds received under a con-  
6 tract, grant, or cooperative agreement directly or indi-  
7 rectly to an enemy of the United States or otherwise sup-  
8 porting those who are actively opposing the United States  
9 or coalition forces in a contingency operation.

10 (b) AUTHORITY TO TERMINATE OR VOID CON-  
11 TRACTS, GRANTS, AND COOPERATIVE AGREEMENTS AND  
12 TO RESTRICT FUTURE AWARD.—

13 (1) IN GENERAL.—Not later than 30 days after  
14 the date of the enactment of this Act, the Federal  
15 Acquisition Regulation shall be revised to provide  
16 that, upon notice from a Senior Procurement Execu-  
17 tive or the commander of a geographic combatant  
18 command under subsection (c)(3), the head of con-  
19 tracting activity of an executive agency may do the  
20 following:

21 (A) If the notice is that a person or entity  
22 has been identified as providing funds received  
23 under a contract, grant, or cooperative agree-  
24 ment of the executive agency directly or indi-  
25 rectly to an enemy of the United States or a  
26 person or entity who is actively supporting an

1 enemy of the United States or otherwise sup-  
2 porting those who are actively opposing United  
3 States or coalition forces in a contingency oper-  
4 ation—

5 (i) either—

6 (I) terminate for default the con-  
7 tract, grant, or cooperative agreement;  
8 or

9 (II) void the contract, grant, or  
10 cooperative agreement in whole or in  
11 part; and

12 (ii) restrict the future award to the  
13 person or entity so identified of contracts,  
14 grants, or cooperative agreements of the  
15 executive agency.

16 (B) If the notice is that the person or enti-  
17 ty has failed to exercise due diligence to ensure  
18 that none of the funds received under a con-  
19 tract, grant, or cooperative agreement of the ex-  
20 ecutive entity are provided directly or indirectly  
21 to an enemy of the United States or a person  
22 or entity who is actively supporting an enemy of  
23 the United States or otherwise supporting those  
24 who are actively opposing United States or coa-  
25 lition forces in a contingency operation, termi-

1           nate for default the contract, grant, or coopera-  
2           tive agreement.

3           ~~(2) TREATMENT AS VOID.~~—For purposes of  
4           this section:

5                   (A) A contract, grant, or cooperative  
6                   agreement that is void is unenforceable as con-  
7                   trary to public policy.

8                   (B) A contract, grant, or cooperative  
9                   agreement that is void in part is unenforceable  
10                  as contrary to public policy with regard to a  
11                  segregable task or effort under the contract,  
12                  grant, or cooperative agreement.

13          ~~(c) CONTRACT CLAUSE.~~—

14                  ~~(1) IN GENERAL.~~—Not later than 30 days after  
15                  the date of the enactment of this Act, the Federal  
16                  Acquisition Regulation shall be revised to require  
17                  that—

18                          (A) the clause described in paragraph ~~(2)~~  
19                          shall be included in each covered contract,  
20                          grant, and cooperative agreement of an execu-  
21                          tive agency that is awarded on or after the date  
22                          of the enactment of this Act; and

23                          (B) to the maximum extent practicable,  
24                          each covered contract, grant, and cooperative  
25                          agreement of an executive agency that is award-

1 ed before the date of the enactment of this Act  
2 shall be modified to include the clause described  
3 in paragraph (2), other than the matter pro-  
4 vided for in subparagraph (A) of that para-  
5 graph.

6 ~~(2) CLAUSE DESCRIBED.~~—The clause described  
7 in this paragraph is a clause that—

8 (A) requires the contractor, or the recipi-  
9 ent of the grant or cooperative agreement, to  
10 certify in connection with entry into the con-  
11 tract, grant, or cooperative agreement that the  
12 contractor or recipient, as the case may be, has  
13 never knowingly provided funds directly or indi-  
14 rectly to an enemy of the United States or a  
15 person or entity who is actively supporting an  
16 enemy of the United States or otherwise know-  
17 ingly supported those who are actively opposing  
18 United States or coalition forces in a contin-  
19 gency operation;

20 (B) requires the contractor, or the recipi-  
21 ent of the grant or cooperative agreement, to  
22 exercise due diligence to ensure that none of the  
23 funds received under the contract, grant, or co-  
24 operative agreement are provided directly or in-  
25 directly to an enemy of the United States or a

1 person or entity who is actively supporting an  
2 enemy of the United States or otherwise sup-  
3 porting those who are actively opposing United  
4 States or coalition forces in a contingency oper-  
5 ation; and

6 (C) notifies the contractor, or the recipient  
7 of the grant or cooperative agreement, of the  
8 authority of the head of the contracting activity  
9 to terminate or void the contract, grant, or co-  
10 operative agreement, in whole or in part, as  
11 provided in subsection (b).

12 ~~(3) COVERED CONTRACT, GRANT, OR COOPERA-~~  
13 ~~TIVE AGREEMENT.—~~In this subsection, the term  
14 “covered contract, grant, or cooperative agreement”  
15 means a contract, grant, or cooperative agreement  
16 with an estimated value in excess of \$20,000.

17 ~~(d) REQUIREMENTS FOLLOWING CONTRACT AC-~~  
18 ~~TIONS.—~~Not later than 30 days after the date of the en-  
19 actment of this Act, the Federal Acquisition Regulation  
20 shall be revised as follows:

21 (1) To require that any head of contracting ac-  
22 tivity taking an action under subsection (b) to termi-  
23 nate, void, or restrict a contract, grant, or coopera-  
24 tive agreement notify in writing the contractor or re-

1 recipient of the grant or cooperative agreement, as ap-  
2 plicable, of the action.

3 (2) To permit, in such manner as the Federal  
4 Acquisition Regulation as so revised shall provide,  
5 the contractor or recipient of a grant or cooperative  
6 agreement subject to an action taken under sub-  
7 section (b) to terminate or void the contract, grant,  
8 or cooperative agreement, as the case may be, an op-  
9 portunity to contest the action within 30 days of re-  
10 ceipt of notice of the action.

11 (e) IDENTIFICATION OF SUPPORTERS OF THE  
12 ENEMY.—

13 (1) IDENTIFICATION.—Not later than 30 days  
14 after the date of the enactment of this Act, the Sec-  
15 retary of Defense and each Senior Procurement Ex-  
16 ecutive shall carry out a program to use available in-  
17 telligence (including information made available pur-  
18 suant to subsection (g)(1)) to—

19 (A) either—

20 (i) in the case of the geographic com-  
21 batant commands, review persons and enti-  
22 ties who receive United States funds  
23 through contracts, grants, and cooperative  
24 agreements performed for such commands  
25 in their areas of responsibility; or

1           (ii) in the case of the Senior Procure-  
2           ment Executives, review persons and enti-  
3           ties who receive United States funds  
4           through contracts, grants, and cooperative  
5           agreements performed for their agencies;  
6           and

7           (B) identify any such persons and entities  
8           who are providing funds received under a con-  
9           tract, grant, or cooperative agreement of an ex-  
10          ecutive agency directly or indirectly to an  
11          enemy of the United States or a person or enti-  
12          ty who is actively supporting an enemy of the  
13          United States or otherwise supporting those  
14          who are actively opposing United States or coa-  
15          lition forces in a contingency operation.

16          (2) DISCHARGE BY DOD THROUGH COM-  
17          MANDERS OF COMBATANT COMMANDS.—The Sec-  
18          retary of Defense shall carry out the program re-  
19          quired by paragraph (1) through the commanders of  
20          the geographic combatant commands.

21          (3) NOTIFICATION OF CONTRACTING ACTIVI-  
22          TIES.—If a Senior Procurement Executive or the  
23          commander of a geographic combatant command,  
24          acting pursuant to a program required by paragraph  
25          (1), identifies a person or entity as actively sup-



1       porting an enemy of the United States or otherwise  
2       supporting those who are actively opposing United  
3       States or coalition forces in a contingency operation,  
4       the Senior Procurement Executive or commander, as  
5       the case may be, shall notify the heads of con-  
6       tracting activities of the executive agencies in writ-  
7       ing of such identification. Any written notification  
8       pursuant to this paragraph shall be made in accord-  
9       ance with procedures established to implement the  
10      revisions to the Federal Acquisition Regulation re-  
11      quired by this section.

12           (4) ANNUAL REVIEW.—As part of the programs  
13      required by paragraph (1), the Senior Procurement  
14      Executives and the commanders of the geographic  
15      combatant commands shall, on an annual basis, re-  
16      view the lists of persons and entities previously cov-  
17      ered by a notice under paragraph (3) as having been  
18      identified pursuant to paragraph (1)(B) in order to  
19      determine whether or not such persons and entities  
20      continue to warrant identification pursuant to para-  
21      graph (1)(B). If a Senior Procurement Executive or  
22      commander determines pursuant to such a review  
23      that a person or entity no longer warrants identifica-  
24      tion pursuant to paragraph (1)(B), the Senior Pro-  
25      curement Executive or commander, as the case may

1 be, shall notify the heads of contracting activities of  
2 the executive agencies in writing of such determina-  
3 tion.

4 (5) PROTECTION OF CLASSIFIED INFORMA-  
5 TION.—Classified information relied upon to make  
6 an identification in accordance with this subsection  
7 may not be disclosed to a contractor or a recipient  
8 of a grant or cooperative agreement with respect to  
9 which an action is taken pursuant to the authority  
10 provided in subsection (b), or to their representa-  
11 tives, in the absence of a protective order issued by  
12 a court of competent jurisdiction established under  
13 Article I or Article III of the Constitution of the  
14 United States that specifically addresses the condi-  
15 tions upon which such classified information may be  
16 so disclosed.

17 (f) DELEGATION OF CERTAIN RESPONSIBILITIES.—

18 (1) RESPONSIBILITY TO IDENTIFY AND PRO-  
19 VIDE NOTICE.—A Senior Procurement Executive  
20 may delegate the responsibilities in paragraphs (1),  
21 (3), and (4) of subsection (e) to the designated dep-  
22 uty of such Executive. The commander of a geo-  
23 graphic combatant command may delegate the re-  
24 sponsibilities in such paragraphs to the deputy com-  
25 mander of that combatant command. Any delegation

1 of responsibilities under this paragraph shall be  
2 made in writing.

3 (2) NONDELEGATION OF RESPONSIBILITY FOR  
4 CONTRACT ACTIONS.—The authority provided by  
5 subsection (b) to terminate, void, or restrict con-  
6 tracts, grants, and cooperative agreements may not  
7 be delegated below the level of head of contracting  
8 activity.

9 (g) ADDITIONAL RESPONSIBILITIES OF EXECUTIVE  
10 AGENCIES.—

11 (1) DISSEMINATION OF INFORMATION ON SUP-  
12 PORTERS OF THE ENEMY.—The Secretary of De-  
13 fense and the Administrator for Federal Procure-  
14 ment Policy shall jointly carry out a program  
15 through which the contracting activities of the exec-  
16 utive agencies may provide information to Senior  
17 Procurement Executives and the commanders of the  
18 geographic combatant commands relating to persons  
19 or entities who may be providing funds received  
20 under contracts, grants, or cooperative agreements  
21 of the executive agencies directly or indirectly to an  
22 enemy of the United States or a person or entity  
23 who is actively supporting an enemy of the United  
24 States or otherwise supporting those who are ac-  
25 tively opposing United States or coalition forces in

1 a contingency operation. The program shall be de-  
2 signed to facilitate and encourage the sharing of in-  
3 formation between executive agencies and the geo-  
4 graphic combatant commands.

5 (2) INCLUSION OF INFORMATION ON CONTRACT  
6 ACTIONS IN FAPIIS.—Upon the termination, voiding,  
7 or restriction of a contract, grant, or cooperative  
8 agreement of an executive agency under subsection  
9 (b), the head of contracting activity of the executive  
10 agency shall provide for the inclusion in the Federal  
11 Awardee Performance and Integrity Information  
12 System (FAPIIS), or other formal system of records  
13 on contractors or entities, of appropriate information  
14 on the termination, voiding, or restriction, as the  
15 case may be, of the contract, grant, or cooperative  
16 agreement.

17 (3) REPORTS.—The head of contracting activity  
18 that receives a notice pursuant to subsection (c)(3)  
19 shall submit to the Senior Procurement Executives  
20 and the commanders of the geographic combatant  
21 commands a report on the action, if any, taken by  
22 the head of contracting activity pursuant to sub-  
23 section (b), including a determination not to termi-  
24 nate, void, or restrict the contract, grant, or cooper-

1       ative agreement as otherwise authorized by sub-  
2       section (b).

3       (h) REPORTS.—

4           (1) IN GENERAL.—Not later than March 1 each  
5       year, the Secretary of Defense shall, in consultation  
6       with the heads of other executive agencies, submit to  
7       the appropriate committees of Congress a report on  
8       the use of the authorities in this section in the pre-  
9       ceding calendar year, including the following:

10           (A) For each instance in which an execu-  
11       tive agency exercised the authority to terminate,  
12       void, or restrict a contract, grant, and coopera-  
13       tive agreement pursuant to subsection (b), the  
14       following:

15           (i) The executive agency taking such  
16       action.

17           (ii) An explanation of the basis for the  
18       action taken.

19           (iii) The value of the contract, grant,  
20       or cooperative agreement voided or termi-  
21       nated.

22           (iv) The value of all contracts, grants,  
23       or cooperative agreements of the executive  
24       agency in force with the person or entity  
25       concerned at the time the contract, grant,

1           or cooperative agreement was terminated  
2           or voided.

3           ~~(B)~~ For each instance in which an execu-  
4           tive agency did not exercise the authority to ter-  
5           minate, void, or restrict a contract, grant, and  
6           cooperative agreement pursuant to subsection  
7           ~~(b)~~ as requested pursuant to subsection ~~(c)(3)~~,  
8           the following:

9                   (i) The executive agency concerned.

10                   (ii) An explanation why the action was  
11                   not taken.

12           ~~(2)~~ FORM.—Any report under this subsection  
13           may be submitted in classified form.

14           ~~(i)~~ OTHER DEFINITIONS.—In this section:

15                   ~~(1)~~ The term “appropriate committees of Con-  
16                   gress” means—

17                           (A) the Committee on Armed Services, the  
18                           Committee on Homeland Security and Govern-  
19                           mental Affairs, and the Committee on Appro-  
20                           priations of the Senate; and

21                           ~~(B)~~ the Committee on Armed Services, the  
22                           Committee on Oversight and Government Re-  
23                           form, and the Committee on Appropriations of  
24                           the House of Representatives.

1           (2) The term “combatant command” means a  
2           command established pursuant to chapter 6 of title  
3           10, United States Code.

4           (3) The term “contingency operation” has the  
5           meaning given that term in section 101(a)(13) of  
6           title 10, United States Code.

7           (4) The term “enemy of the United States”  
8           means any of the following:

9                   (A) Any person or organization determined  
10                  by the Secretary of Defense or the Secretary of  
11                  State to be hostile to United States forces or  
12                  interests or providing support to any person or  
13                  organization hostile to United States forces or  
14                  interests during the time of a declared war,  
15                  peacekeeping operation, or other military or  
16                  contingency operation.

17                   (B) Any organization designated as a ter-  
18                  rorist organization under section 219(a) of the  
19                  Immigration and Nationality Act (8 U.S.C.  
20                  1189(a)).

21           (5) The term “executive agency” has the mean-  
22           ing given that term in section 133 of title 41, United  
23           States Code.

1           (6) The term “head of contracting activity” has  
2 the meaning given that term in subpart 601 of part  
3 1 of the Federal Acquisition Regulation.

4           (7) The term “Senior Procurement Executive”  
5 has the meaning given that term in section 1702 of  
6 title 41, United States Code.

7           (j) ~~COORDINATION WITH CURRENT AUTHORITIES~~  
8 ~~APPLICABLE TO CENTCOM.—~~

9           (1) ~~REPEAL OF SUPERSEDED AUTHORITY.—~~ Ef-  
10 fective 30 days after the date of the enactment of  
11 this Act, section 841 of the National Defense Au-  
12 thorization Act for Fiscal Year 2012 (Public Law  
13 112–81, 125 Stat. 1510; 10 U.S.C. 2302 note) is re-  
14 pealed.

15           (2) ~~USE OF SUPERSEDED AUTHORITIES IN DIS-~~  
16 ~~CHARGE OF REQUIREMENTS.—~~In providing for the  
17 discharge of the requirements of this section by the  
18 Department of Defense, the Secretary of Defense  
19 may use and modify for that purpose requirements  
20 and procedures established by the Secretary for pur-  
21 poses of the discharge of the requirements of section  
22 841 of the National Defense Authorization Act for  
23 Fiscal Year 2012.



1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Never Contract With*  
3 *the Enemy Act”.*

4 **SEC. 2. PROHIBITION ON PROVIDING FUNDS TO THE**  
5 **ENEMY.**

6 (a) *IDENTIFICATION OF PERSONS AND ENTITIES.—*  
7 *The Secretary of Defense shall, in conjunction with the Di-*  
8 *rector of National Intelligence and in consultation with the*  
9 *Secretary of State, establish in each covered combatant com-*  
10 *mand a program to identify persons and entities within*  
11 *the area of responsibility of such command that—*

12 (1) *provide funds, including goods and services,*  
13 *received under a contract, grant, or cooperative agree-*  
14 *ment of an executive agency directly or indirectly to*  
15 *a covered person or entity; or*

16 (2) *fail to exercise due diligence to ensure that*  
17 *none of the funds, including goods and services, re-*  
18 *ceived under a contract, grant, or cooperative agree-*  
19 *ment of an executive agency are provided directly or*  
20 *indirectly to a covered person or entity.*

21 (b) *NOTICE OF IDENTIFIED PERSONS AND ENTI-*  
22 *TIES.—*

23 (1) *NOTICE.—Upon the identification of a per-*  
24 *son or entity as being described by subsection (a), the*  
25 *head of an executive agency (or the designee of such*  
26 *head) or the commander of a covered combatant com-*

1        *mand (or the specified deputies of the commander)*  
2        *shall be notified, in writing, of such identification of*  
3        *the person or entity.*

4            (2) *RESPONSIVE ACTIONS.*—*Upon receipt of a*  
5        *notice under paragraph (1), the head of an executive*  
6        *agency (or the designee of such head) or the com-*  
7        *mander of a covered combatant command (or the*  
8        *specified deputies of the commander) may notify the*  
9        *heads of contracting activities, or other appropriate*  
10       *officials of the agency or command, in writing of such*  
11       *identification.*

12           (3) *MAKING OF NOTIFICATIONS.*—*Any written*  
13       *notification pursuant to this subsection shall be made*  
14       *in accordance with procedures established to imple-*  
15       *ment the revisions of regulations required by this sec-*  
16       *tion.*

17           (c) *AUTHORITY TO TERMINATE OR VOID CONTRACTS,*  
18 *GRANTS, AND COOPERATIVE AGREEMENTS AND TO RE-*  
19 *STRICT FUTURE AWARD.*—*Not later than 270 days after*  
20 *the date of the enactment of this Act, the Federal Acquisi-*  
21 *tion Regulation, the Defense Federal Acquisition Regula-*  
22 *tion Supplement, and the Uniform Administrative Require-*  
23 *ments, Cost Principles, and Account Requirements for Fed-*  
24 *eral Awards shall be revised to provide that, upon notice*  
25 *from the head of an executive agency (or the designee of*

1 *such head) or the commander of a covered combatant com-*  
2 *mand (or the specified deputies of the commander) pursu-*  
3 *ant to subsection (b), the head of contracting activity of an*  
4 *executive agency, or other appropriate official, may do the*  
5 *following:*

6           (1) *Restrict the award of contracts, grants, or co-*  
7 *operative agreements of the executive agency con-*  
8 *cerned upon a written determination by the head of*  
9 *contracting activity or other appropriate official that*  
10 *the contract, grant, or cooperative agreement would*  
11 *provide funds received under such contract, grant, or*  
12 *cooperative agreement directly or indirectly to a cov-*  
13 *ered person or entity.*

14           (2) *Terminate for default any contract, grant, or*  
15 *cooperative agreement of the executive agency con-*  
16 *cerned upon a written determination by the head of*  
17 *contracting activity or other appropriate official that*  
18 *the contractor, or the recipient of the grant or cooper-*  
19 *ative agreement, has failed to exercise due diligence to*  
20 *ensure that none of the funds received under the con-*  
21 *tract, grant, or cooperative agreement are provided*  
22 *directly or indirectly to a covered person or entity.*

23           (3) *Void in whole or in part any contract, grant,*  
24 *or cooperative agreement of the executive agency con-*  
25 *cerned upon a written determination by the head of*

1        *contracting activity or other appropriate official that*  
2        *the contract, grant, or cooperative agreement provides*  
3        *funds directly or indirectly to a covered person or en-*  
4        *tity.*

5        *(d) CLAUSE.—*

6            *(1) IN GENERAL.—Not later than 270 days after*  
7        *the date of the enactment of this Act, the Federal Ac-*  
8        *quisition Regulation, the Defense Federal Acquisition*  
9        *Regulation Supplement, and the Uniform Adminis-*  
10       *trative Requirements, Cost Principles, and Account*  
11       *Requirements for Federal Awards shall be revised to*  
12       *require that—*

13            *(A) the clause described in paragraph (2)*  
14        *shall be included in each covered contract, grant,*  
15        *and cooperative agreement of an executive agen-*  
16        *cy that is awarded on or after the date that is*  
17        *270 days after the date of the enactment of this*  
18        *Act; and*

19            *(B) to the maximum extent practicable,*  
20        *each covered contract, grant, and cooperative*  
21        *agreement of an executive agency that is award-*  
22        *ed before the date of the enactment of this Act*  
23        *shall be modified to include the clause described*  
24        *in paragraph (2).*

1           (2) *CLAUSE DESCRIBED.*—*The clause described*  
2           *in this paragraph is a clause that—*

3                   (A) *requires the contractor, or the recipient*  
4                   *of the grant or cooperative agreement, to exercise*  
5                   *due diligence to ensure that none of the funds,*  
6                   *including goods and services, received under the*  
7                   *contract, grant, or cooperative agreement are*  
8                   *provided directly or indirectly to a covered per-*  
9                   *son or entity; and*

10                   (B) *notifies the contractor, or the recipient*  
11                   *of the grant or cooperative agreement, of the au-*  
12                   *thority of the head of the contracting activity, or*  
13                   *other appropriate official, to terminate or void*  
14                   *the contract, grant, or cooperative agreement, in*  
15                   *whole or in part, as provided in subsection (c).*

16           (3) *TREATMENT AS VOID.*—*For purposes of this*  
17           *section:*

18                   (A) *A contract, grant, or cooperative agree-*  
19                   *ment that is void is unenforceable as contrary to*  
20                   *public policy.*

21                   (B) *A contract, grant, or cooperative agree-*  
22                   *ment that is void in part is unenforceable as*  
23                   *contrary to public policy with regard to a seg-*  
24                   *regable task or effort under the contract, grant,*  
25                   *or cooperative agreement.*

1           (4) *PUBLIC COMMENT.*—*The President shall en-*  
2           *sure that the process for amending regulations re-*  
3           *quired by paragraph (1) shall include an opportunity*  
4           *for public comment, including an opportunity for*  
5           *comment on standards of due diligence required by*  
6           *this Act.*

7           (e) *REQUIREMENTS FOLLOWING CONTRACT AC-*  
8           *TIONS.*—*Not later than 270 days after the date of the enact-*  
9           *ment of this Act, the Federal Acquisition Regulation, the*  
10          *Defense Federal Acquisition Regulation Supplement, and*  
11          *the Uniform Administrative Requirements, Cost Principles,*  
12          *and Account Requirements for Federal Awards shall be re-*  
13          *vised as follows:*

14               (1) *To require that any head of contracting ac-*  
15               *tivity, or other appropriate official, taking an action*  
16               *under subsection (c) to terminate, void, or restrict a*  
17               *contract, grant, or cooperative agreement notify in*  
18               *writing the contractor or recipient of the grant or co-*  
19               *operative agreement, as applicable, of the action.*

20               (2) *To permit the contractor or recipient of a*  
21               *grant or cooperative agreement subject to an action*  
22               *taken under subsection (c) to terminate or void the*  
23               *contract, grant, or cooperative agreement, as the case*  
24               *may be, an opportunity to challenge the action by re-*  
25               *questing an administrative review of the action under*

1        *the procedures of the executive agency concerned not*  
2        *later than 30 days after receipt of notice of the action.*

3        *(f) ANNUAL REVIEW; PROTECTION OF CLASSIFIED IN-*  
4        *FORMATION.—*

5            *(1) ANNUAL REVIEW.—The Secretary of Defense,*  
6        *in conjunction with the Director of National Intel-*  
7        *ligence and in consultation with the Secretary of*  
8        *State shall, on an annual basis, review the lists of*  
9        *persons and entities previously covered by a notice*  
10       *under subsection (b) as having been identified as de-*  
11       *scribed by subsection (a) in order to determine wheth-*  
12       *er or not such persons and entities continue to war-*  
13       *rant identification as described by subsection (a). If*  
14       *a determination is made pursuant to such a review*  
15       *that a person or entity no longer warrants identifica-*  
16       *tion as described by subsection (a), the Secretary of*  
17       *Defense shall notify the head of an executive agency*  
18       *(or designee) or commander (or deputy), as the case*  
19       *may be, in writing of such determination.*

20            *(2) PROTECTION OF CLASSIFIED INFORMATION.—*  
21        *Classified information relied upon to make an identi-*  
22        *fication in accordance with subsection (a) may not be*  
23        *disclosed to a contractor or a recipient of a grant or*  
24        *cooperative agreement with respect to which an action*  
25        *is taken pursuant to the authority provided in sub-*

1 *section (c), or to their representatives, in the absence*  
2 *of a protective order issued by a court of competent*  
3 *jurisdiction established under Article I or Article III*  
4 *of the Constitution of the United States that specifi-*  
5 *cally addresses the conditions upon which such classi-*  
6 *fied information may be so disclosed.*

7 *(g) DELEGATION OF CERTAIN RESPONSIBILITIES.—*

8 *(1) COMBATANT COMMAND RESPONSIBILITIES.—*

9 *The commander of a covered combatant command*  
10 *may delegate the responsibilities in this section to any*  
11 *deputies of the commander specified by the com-*  
12 *mander for purposes of this section. Any delegation of*  
13 *responsibilities under this paragraph shall be made*  
14 *in writing.*

15 *(2) NONDELEGATION OF RESPONSIBILITY FOR*

16 *CERTAIN ACTIONS.—The authority provided by sub-*  
17 *section (c) to terminate, void, or restrict contracts,*  
18 *grants, and cooperative agreements, in whole or in*  
19 *part, may not be delegated below the level of head of*  
20 *contracting activity, or equivalent official for pur-*  
21 *poses of grants or cooperative agreements.*

22 *(h) ADDITIONAL RESPONSIBILITIES OF EXECUTIVE*  
23 *AGENCIES.—*

24 *(1) SHARING OF INFORMATION ON SUPPORTERS*  
25 *OF THE ENEMY.—The Secretary of Defense shall, in*



1       *consultation with the Director of the Office of Man-*  
2       *agement and Budget, carry out a program through*  
3       *which agency components may provide information to*  
4       *heads of executive agencies (or the designees of such*  
5       *heads) and the commanders of the covered combatant*  
6       *commands (or the specified deputies of the com-*  
7       *manders) relating to persons or entities who may be*  
8       *providing funds, including goods and services, re-*  
9       *ceived under contracts, grants, or cooperative agree-*  
10      *ments of the executive agencies directly or indirectly*  
11      *to a covered person or entity. The program shall be*  
12      *designed to facilitate and encourage the sharing of*  
13      *risk and threat information between executive agen-*  
14      *cies and the covered combatant commands.*

15           (2) *INCLUSION OF INFORMATION ON CONTRACT*  
16      *ACTIONS IN FAPIIS AND OTHER SYSTEMS.—Upon the*  
17      *termination, voiding, or restriction of a contract,*  
18      *grant, or cooperative agreement of an executive agen-*  
19      *cy under subsection (c), the head of contracting activ-*  
20      *ity of the executive agency shall provide for the inclu-*  
21      *sion in the Federal Awardee Performance and Integ-*  
22      *rity Information System (FAPIIS), or other formal*  
23      *system of records on contractors or entities, of appro-*  
24      *priate information on the termination, voiding, or re-*

1 *striction, as the case may be, of the contract, grant,*  
2 *or cooperative agreement.*

3 (3) *REPORTS.—The head of contracting activity*  
4 *that receives a notice pursuant to subsection (b) shall*  
5 *submit to the head of the executive agency (or des-*  
6 *ignee) concerned or the appropriate covered combat-*  
7 *ant command, as the case may be, a report on the ac-*  
8 *tion, if any, taken by the head of contracting activity*  
9 *pursuant to subsection (c), including a determination*  
10 *not to terminate, void, or restrict the contract, grant,*  
11 *or cooperative agreement as otherwise authorized by*  
12 *subsection (c).*

13 (i) *REPORTS.—*

14 (1) *IN GENERAL.—Not later than March 1 of*  
15 *2016, 2017, and 2018, the Director of the Office of*  
16 *Management and Budget shall submit to the appro-*  
17 *priate committees of Congress a report on the use of*  
18 *the authorities in this section in the preceding cal-*  
19 *endar year, including the following:*

20 (A) *For each instance in which an executive*  
21 *agency exercised the authority to terminate, void,*  
22 *or restrict a contract, grant, and cooperative*  
23 *agreement pursuant to subsection (c), based on a*  
24 *notification under subsection (b), the following:*

1                   (i) *The executive agency taking such*  
2                   *action.*

3                   (ii) *An explanation of the basis for the*  
4                   *action taken.*

5                   (iii) *The value of the contract, grant,*  
6                   *or cooperative agreement voided or termi-*  
7                   *nated.*

8                   (iv) *The value of all contracts, grants,*  
9                   *or cooperative agreements of the executive*  
10                  *agency in force with the person or entity*  
11                  *concerned at the time the contract, grant, or*  
12                  *cooperative agreement was terminated or*  
13                  *voided.*

14                  (B) *For each instance in which an executive*  
15                  *agency did not exercise the authority to termi-*  
16                  *nate, void, or restrict a contract, grant, and co-*  
17                  *operative agreement pursuant to subsection (c),*  
18                  *based on a notification under subsection (b), the*  
19                  *following:*

20                         (i) *The executive agency concerned.*

21                         (ii) *An explanation why the action*  
22                         *was not taken.*

23                   (2) *FORM.—Any report under this subsection*  
24                   *may, at the election of the Director—*

1           (A) be submitted in unclassified form, but  
2           with a classified annex; or

3           (B) be submitted in classified form.

4           (j) NATIONAL SECURITY EXCEPTION.—Nothing in this  
5 section shall apply to the authorized intelligence or law en-  
6 forcement activities of the United States Government.

7           (k) CONSTRUCTION WITH OTHER AUTHORITIES.—Ex-  
8 cept as provided in subsection (l), the authorities in this  
9 section shall be in addition to, and not to the exclusion of,  
10 any other authorities available to executive agencies to im-  
11 plement policies and purposes similar to those set forth in  
12 this section.

13          (l) COORDINATION WITH CURRENT AUTHORITIES.—

14           (1) REPEAL OF SUPERSEDED AUTHORITY RE-  
15 LATED TO CENTCOM.—Effective 270 days after the  
16 date of the enactment of this Act, section 841 of the  
17 National Defense Authorization Act for Fiscal Year  
18 2012 (Public Law 112–81; 125 Stat. 1513; 10 U.S.C.  
19 2313 note) is repealed.

20           (2) REPEAL OF SUPERSEDED AUTHORITY RE-  
21 LATED TO DEPARTMENT OF DEFENSE.—Effective 270  
22 days after the date of the enactment of this Act, sec-  
23 tion 831 of the National Defense Authorization Act  
24 for Fiscal Year 2014 (Public Law 113–66; 127 Stat.  
25 810; 10 U.S.C. 2302 note) is repealed.

1           (3) *USE OF SUPERSEDED AUTHORITIES IN DIS-*  
2           *CHARGE OF REQUIREMENTS.*—*In providing for the*  
3           *discharge of the requirements of this section by the*  
4           *Department of Defense, the Secretary of Defense may*  
5           *use and modify for that purpose the regulations and*  
6           *procedures established for purposes of the discharge of*  
7           *the requirements of section 841 of the National De-*  
8           *fense Authorization Act for Fiscal Year 2012 and sec-*  
9           *tion 831 of the National Defense Authorization Act*  
10          *for Fiscal Year 2014.*

11          (m) *SUNSET.*—*The provisions of this section shall*  
12          *cease to be effective on December 31, 2019.*

13          **SEC. 3. ADDITIONAL ACCESS TO RECORDS.**

14          (a) *CONTRACTS, GRANTS, AND COOPERATIVE AGREE-*  
15          *MENTS.*—

16                 (1) *IN GENERAL.*—*Not later than 270 days after*  
17                 *the date of the enactment of this Act, applicable regu-*  
18                 *lations shall be revised to provide that the clause de-*  
19                 *scribed in paragraph (2) may, as appropriate, be in-*  
20                 *cluded in each covered contract, grant, and coopera-*  
21                 *tive agreement of an executive agency that is awarded*  
22                 *on or after the date of the enactment of this Act.*

23                 (2) *CLAUSE.*—*The clause described in this para-*  
24                 *graph is a clause authorizing the head of the executive*  
25                 *agency concerned, upon a written determination pur-*

1        *suant to paragraph (3), to examine any records of the*  
2        *contractor, the recipient of a grant or cooperative*  
3        *agreement, or any subcontractor or subgrantee under*  
4        *such contract, grant, or cooperative agreement to the*  
5        *extent necessary to ensure that funds, including goods*  
6        *and services, available under the contract, grant, or*  
7        *cooperative agreement are not provided directly or in-*  
8        *directly to a covered person or entity.*

9                (3) *WRITTEN DETERMINATION.—The authority*  
10        *to examine records pursuant to the contract clause de-*  
11        *scribed in paragraph (2) may be exercised only upon*  
12        *a written determination by the contracting officer or*  
13        *comparable official responsible for a grant or coopera-*  
14        *tive agreement, upon a finding by the commander of*  
15        *a covered combatant command (or the specified depu-*  
16        *ties of the commander) or the head of an executive*  
17        *agency (or the designee of such head) that there is*  
18        *reason to believe that funds, including goods and serv-*  
19        *ices, available under the contract, grant, or coopera-*  
20        *tive agreement concerned may have been provided di-*  
21        *rectly or indirectly to a covered person or entity.*

22                (4) *FLOWDOWN.—A clause described in para-*  
23        *graph (2) may also be included in any subcontract or*  
24        *subgrant under a covered contract, grant, or coopera-*

1        *tive agreement if the subcontract or subgrant has an*  
2        *estimated value in excess of \$50,000.*

3        *(b) REPORTS.—*

4            *(1) IN GENERAL.—Not later than March 1 of*  
5        *2016, 2017, and 2018, the Director of the Office of*  
6        *Management and Budget shall submit to the appro-*  
7        *priate committees of Congress a report on the use of*  
8        *the authority provided by this section in the pre-*  
9        *ceding calendar year.*

10           *(2) ELEMENTS.—Each report under this sub-*  
11        *section shall identify, for the calendar year covered by*  
12        *such report, each instance in which an executive*  
13        *agency exercised the authority provided under this*  
14        *section to examine records, explain the basis for the*  
15        *action taken, and summarize the results of any exam-*  
16        *ination of records so undertaken.*

17           *(3) FORM.—Any report under this subsection*  
18        *may be submitted in classified form.*

19        *(c) COORDINATION WITH CURRENT AUTHORITIES AP-*  
20        *PLICABLE TO CENTCOM.—*

21           *(1) REPEAL OF SUPERSEDED AUTHORITY.—Ef-*  
22        *fective 270 days after the date of the enactment of this*  
23        *Act, section 842 of the National Defense Authorization*  
24        *Act for Fiscal Year 2012 (Public Law 112–81; 125*  
25        *Stat. 1510; 10 U.S.C. 2302 note) is repealed.*

1           (2) *USE OF SUPERSEDED AUTHORITIES IN DIS-*  
2           *CHARGE OF REQUIREMENTS.*—*In providing for the*  
3           *discharge of the requirements of this section by the*  
4           *Department of Defense, the Secretary of Defense may*  
5           *use and modify for that purpose requirements and*  
6           *procedures established by the Secretary for purposes of*  
7           *the discharge of the requirements of section 842 of the*  
8           *National Defense Authorization Act for Fiscal Year*  
9           *2012.*

10 **SEC. 4. DEFINITIONS.**

11           *In this Act:*

12           (1) *APPROPRIATE COMMITTEES OF CONGRESS.*—  
13           *The term “appropriate committees of Congress”*  
14           *means—*

15                   (A) *the Committee on Armed Services, the*  
16                   *Committee on Homeland Security and Govern-*  
17                   *mental Affairs, the Committee on Foreign Rela-*  
18                   *tions, and the Committee on Appropriations of*  
19                   *the Senate; and*

20                   (B) *the Committee on Armed Services, the*  
21                   *Committee on Oversight and Government Re-*  
22                   *form, the Committee on Foreign Affairs, and the*  
23                   *Committee on Appropriations of the House of*  
24                   *Representatives.*



1           (2) *CONTINGENCY OPERATION.*—The term “con-  
2           tingency operation” has the meaning given that term  
3           in section 101(a)(13) of title 10, United States Code.

4           (3) *CONTRACT.*—The term “contract” includes a  
5           contract for commercial items but is not limited to a  
6           contract for commercial items.

7           (4) *COVERED COMBATANT COMMAND.*—The term  
8           “covered combatant command” means the following:

9                   (A) *The United States Africa Command.*

10                   (B) *The United States Central Command.*

11                   (C) *The United States European Command.*

12                   (D) *The United States Pacific Command.*

13                   (E) *The United States Southern Command.*

14           (5) *COVERED CONTRACT, GRANT, OR COOPERA-*  
15           *TIVE AGREEMENT DEFINED.*—The term “covered con-  
16           tract, grant, or cooperative agreement” means a con-  
17           tract, grant, or cooperative agreement with an esti-  
18           mated value in excess of \$50,000 that is performed  
19           outside the United States, including its possessions  
20           and territories.

21           (6) *COVERED PERSON OR ENTITY.*—The term  
22           “covered person or entity” means a person or entity  
23           that is actively opposing United States or coalition  
24           forces involved in a contingency operation in which

1        *members of the Armed Forces are actively engaged in*  
2        *hostilities.*

3            (7) *EXECUTIVE AGENCY.*—*The term “executive*  
4        *agency” has the meaning given that term in section*  
5        *133 of title 41, United States Code.*

6            (8) *HEAD OF CONTRACTING ACTIVITY.*—*The term*  
7        *“head of contracting activity” has the meaning given*  
8        *that term in subpart 601 of part 1 of the Federal Ac-*  
9        *quisition Regulation.*



Calendar No. 485

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 675**

[Report No. 113-216]

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**A BILL**

To prohibit contracting with the enemy.

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JULY 23, 2014

Reported with an amendment