



## DoD INSTRUCTION 5205.86

### DEFENSE INTELLIGENCE AND COUNTERINTELLIGENCE EXPENSE AUTHORITY

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**Originating Component:** Office of the Under Secretary of Defense for Intelligence and Security

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**Approved by:** Ronald S. Moultrie, Under Secretary of Defense for Intelligence and Security

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**Purpose:** In accordance with the authority in DoD Directive 5143.01 and the April 28, 2020 Secretary of Defense (SecDef) Memorandum, this issuance establishes policy, assigns responsibilities, and provides procedures for defense intelligence and counterintelligence expense (DICE) authority pursuant to Public Law 116-92, also known and referred to in this issuance as the “National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020.”

## TABLE OF CONTENTS

SECTION 1: GENERAL ISSUANCE INFORMATION .....	3
1.1. Applicability. ....	3
1.2. Policy. ....	3
SECTION 2: RESPONSIBILITIES .....	4
2.1. Under Secretary of Defense for Intelligence and Security (USD(I&S)). ....	4
2.2. Director for Defense Intelligence (Collection and Special Programs) (DDI(C&SP)).....	4
2.3. DDI(CL&S). ....	5
2.4. DDI(ISP&R). ....	5
2.5. USD(C)/CFO. ....	6
2.6. General Counsel of the Department of Defense. ....	6
2.7. DoD Component Heads. ....	6
SECTION 3: PROCEDURES .....	8
3.1. Reporting Instructions.....	8
a. Forecasting of DICE Authority.....	8
b. Recording DICE Expenses. ....	8
3.2. Single Expenditure Exceeding \$100,000.....	8
GLOSSARY .....	9
G.1. Acronyms. ....	9
G.2. Definitions.....	9
REFERENCES .....	11

## **SECTION 1: GENERAL ISSUANCE INFORMATION**

### **1.1. APPLICABILITY.**

This issuance applies to:

- a. OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).
- b. Military Intelligence Program (MIP)-funded DICE authority for FYs 2020 through 2025 and in future FYs if Section 1057 of the NDAA for FY 2020 is amended to extend this authority.

### **1.2. POLICY.**

- a. DoD Components must use DICE authority instead of the emergency and extraordinary expense authority in accordance with Section 127 of Title 10, United States Code for all MIP-funded intelligence and counterintelligence (CI) activities pursuant to Paragraph (a) of Section 1057 of the NDAA for FY 2020, regarding intelligence and CI objects of a confidential, extraordinary, or emergency nature.
- b. The SecDef must approve a single expenditure under DICE authority exceeding \$100,000.
- c. DICE authority does not provide additional appropriation, funding, or dollars to DoD Component MIP budgets.
- d. MIP-funded DICE authority for FYs 2020 through 2025 may be extended through future NDAA legislation.

## SECTION 2: RESPONSIBILITIES

### 2.1. UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE AND SECURITY (USD(I&S)).

The USD(I&S):

- a. Serves as the MIP Executive, in accordance with DoD Directive 5205.12.
- b. Establishes policy and oversees implementation of DICE authority in consultation with the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense (USD(C)/CFO).
- c. Oversees and inspects the execution of DICE expenditures.
- d. Allocates the amount of MIP funds that each DoD Component may expend using DICE authority.
- e. Executes SecDef certification and reporting responsibilities for MIP intelligence and CI activities in accordance with Section 1057 of the NDAA for FY 2020.
  - (1) Based on input from the DoD Component heads, certifies that each expenditure was made for an object of a confidential, extraordinary, or emergency nature.
  - (2) By December 31 of each calendar year, submits a report of expenditures made during the preceding FY to the congressional defense committees and the congressional intelligence committees.
- f. Obtains SecDef decision of DoD Component requests for any single expenditure exceeding \$100,000.
- g. Upon submission of appropriate rationale and justification, and in consultation with the USD(C)/CFO, may approve new allocations:
  - (1) Of five percent or less of the amounts made available for the MIP in any FY in which Section 1057 of the NDAA for FY 2020 is in effect.
  - (2) In excess of five percent of amounts made available for the MIP 30 days after notifying the congressional defense committees and congressional intelligence committees.

### 2.2. DIRECTOR FOR DEFENSE INTELLIGENCE (COLLECTION AND SPECIAL PROGRAMS) (DDI(C&SP)).

Under the authority, direction, and control of the USD(I&S), the DDI(C&SP):

a. Develops DICE policy and provides guidance to DoD Components on the implementation of DICE authority for intelligence and CI objects of a confidential, extraordinary, or emergency nature.

b. In coordination with the Director for Defense Intelligence (Counterintelligence, Law Enforcement, and Security) (DDI(CL&S)) and the Director for Defense Intelligence (Intelligence and Security Programs and Resources) (DDI(ISP&R)):

(1) Prepares and processes DoD Component DICE requests of single expenditures exceeding \$100,000 for review. Forwards recommended DICE requests to the USD(I&S) for SecDef decision.

(2) Consolidates DoD Component requests for DICE allocations and coordinates ceilings.

(3) Reviews DoD Component DICE requests of single expenditures exceeding \$100,000 for SecDef approval.

(4) Reviews DoD Component use of DICE authority to ensure that DICE funds are used only for intelligence and CI objects of a confidential, extraordinary, or emergency nature.

c. In coordination with the DDI(ISP&R), prepares the SecDef's annual report to Congress in accordance with Section 1057(d) of the NDAA for FY 2020.

### **2.3. DDI(CL&S).**

Under the authority, direction, and control of the USD(I&S), the DDI(CL&S), in coordination with the DDI(C&SP) and the DDI(ISP&R):

a. Develops guidance on the implementation of DICE for CI.

b. Reviews all DICE actions with a CI equity.

c. Reviews DoD Component CI requests for SecDef approval of any single expenditure exceeding \$100,000.

### **2.4. DDI(ISP&R).**

Under the authority, direction, and control of the USD(I&S), the DDI(ISP&R):

a. In coordination with the DDI(C&SP) and the DDI(CL&S):

(1) Establishes DoD Component allocation ceilings and tracks DICE expenditures through the overall DoD planning, programming, budgeting, and execution process.

(2) Reviews DoD Component requests for SecDef approval of any single expenditure exceeding \$100,000.

(3) Tracks allocation requirements less than \$100,000.

(4) By December 31 of each calendar year in which Section 1057 of the NDAA for FY 2020 is in effect, prepares and submits the annual report on DICE expenditures made during the preceding FY in accordance with Section 1057 of the NDAA for FY 2020.

(5) Consolidates DoD Component annual DICE requests and recommends DICE allocations to the USD(I&S).

b. Conducts reviews of DoD Component quarterly DICE execution and evaluates mid-year and end-of-year DoD Component execution data to determine the rationale and justification of DICE program resources.

c. Provides timelines and formats to DoD Components for annual requests for DICE authority, quarterly DICE updates, and the annual DICE report.

## **2.5. USD(C)/CFO.**

The USD(C)/CFO:

a. Advises the USD(I&S) on DICE best practices of use of DICE authority and recording of DICE expenses.

b. Consults with the USD(I&S) on DoD Component requests for any single expenditure exceeding \$100,000.

## **2.6. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE.**

The General Counsel of the Department of Defense provides legal review of DICE matters including, but not limited to, DoD Component requests for expenditures requiring SecDef approval.

## **2.7. DOD COMPONENT HEADS.**

The DoD Component heads authorized to expend DICE:

a. Program sufficient MIP operation and maintenance funds in accordance with DoD Directive 5205.12.

b. For any year in which Section 1057 of the NDAA for FY 2020 is in effect, expend DICE allocations for intelligence and CI objects of a confidential, extraordinary, or emergency nature, within the amounts allocated to them by the USD(I&S).

c. Establish internal policies and procedures to record and manage the DoD Component use of DICE authority and make them available to the Office of the USD(I&S) upon request.

d. Submit DICE requests for any single expenditure exceeding \$100,000 to the DDI(C&SP) for processing for SecDef decision.

e. Internally manage and approve DICE requests for single expenditures less than \$100,000.

f. Submit annual requests for DICE authority and provide quarterly DICE execution updates for the annual report on DICE expenditures to the DDI(ISP&R) in accordance with Section 1057 of the NDAA for FY 2020 and Section 3.

## SECTION 3: PROCEDURES

### 3.1. REPORTING INSTRUCTIONS.

#### a. Forecasting of DICE Authority.

Forecasting for DICE authority requires DoD Components to program operational intelligence and CI MIP funds in their annual budget. This baseline provides the USD(I&S) initial visibility of DoD Component DICE requirements.

#### b. Recording DICE Expenses.

(1) DoD Components will oversee and review execution of current allocations, submit expenditures, and coordinate with the USD(I&S) through DDI(ISP&R) and DDI(C&SP) if an increase in authority is required. DoD Components may expend DICE as reported in their program element.

(2) Quarterly DICE reports will include a description of each expenditure, purpose, program element, and certifying official. Officials must certify that expenditures are made for intelligence and CI objects of a confidential, extraordinary, or emergency nature.

### 3.2. SINGLE EXPENDITURE EXCEEDING \$100,000.

DoD Components that submit requests for SecDef approval of any single expenditure exceeding \$100,000 must provide justification to the DDI(C&SP) that the expenditure is for an intelligence and CI object of a confidential, extraordinary, or emergency nature.



## GLOSSARY

### G.1. ACRONYMS.

ACRONYM	MEANING
CI	counterintelligence
DDI(C&SP)	Director for Defense Intelligence (Collection and Special Programs)
DDI(CL&S)	Director for Defense Intelligence (Counterintelligence, Law Enforcement, and Security)
DDI(ISP&R)	Director for Defense Intelligence (Intelligence and Security Programs and Resources)
DICE	defense intelligence and counterintelligence expense
FY	fiscal year
MIP	Military Intelligence Program
NDAA	National Defense Authorization Act
SecDef	Secretary of Defense
USD(C)/CFO	Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense
USD(I&S)	Under Secretary of Defense for Intelligence and Security

### G.2. DEFINITIONS.

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

TERM	DEFINITION
CI	Defined in DoD Directive 5240.02.
<b>congressional defense committees</b>	The Committees on Armed Services and Appropriations of the Senate, and the Committees on Armed Services and Appropriations of the House of Representatives.
<b>congressional intelligence committees</b>	The Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

<b>TERM</b>	<b>DEFINITION</b>
<b>DICE authority</b>	The authority to expend MIP funds for intelligence and CI activities for any purpose the SecDef determines to be proper regarding intelligence and CI objects of a confidential, extraordinary, or emergency nature.
<b>expenditure</b>	An actual disbursement of funds or other form of payment such as cash, crypto technology, digital assets, and commodities for goods or services. Frequently used interchangeably with the term “outlay.”
<b>object</b>	The goal or end of an effort or activity; something material that may be perceived by the senses; something mental or physical towards which thought, feeling, or action is directed.
<b>objects of a confidential, extraordinary, or emergency nature</b>	Expenditures that cannot be anticipated or classified, or are not specifically appropriated for such purposes. This includes expenditures for emergent confidential military requirements.
<b>single expenditure</b>	A singular, distinct, one-time transaction for an object of a confidential, extraordinary, or emergency nature.

## **REFERENCES**

- DoD Directive 5143.01, “Under Secretary of Defense for Intelligence and Security (USD(I&S)),” October 24, 2014, as amended
- DoD Directive 5205.12, “Military Intelligence Program (MIP),” November 14, 2008, as amended
- DoD Directive 5240.02, “Counterintelligence (CI),” March 17, 2015, as amended
- Public Law 116-92, “The National Defense Authorization Act for Fiscal Year 2020,” December 20, 2019
- Secretary of Defense Memorandum, “Delegation of Defense Intelligence and Counterintelligence Expense Authority and Assignment of Responsibilities,” April 28, 2020
- United States Code, Title 10