(Pub. L. 89–329, title I, § 137, as added Pub. L. 110–315, title I, § 116, Aug. 14, 2008, 122 Stat. 3113.)

PRIOR PROVISIONS

A prior section 1016, Pub. L. 89–329, title I, § 121, as added Pub. L. 99–498, title I, § 101, Oct. 17, 1986, 100 Stat. 1285, related to adult learning research, prior to the general amendment of this subchapter by Pub. L. 102–325.

Another prior section 1016, Pub. L. 89–329, title I, § 116, as added Pub. L. 96–374, title I, § 101(a), Oct. 3, 1980, 94 Stat. 1381, provided for Federal discretionary grants, prior to the general amendment of this subchapter by Pub. L. 99–498.

A prior section 1016a, Pub. L. 89–329, title I, § 122, as added Pub. L. 99–498, title I, § 101, Oct. 17, 1986, 100 Stat. 1286, limited funds authorized to be appropriated, prior to the general amendment of this subchapter by Pub. L. 102–325.

A prior section 1017, Pub. L. 89–329, title I, § 131, as added Pub. L. 99–498, title I, § 101, Oct. 17, 1986, 100 Stat. 1286; Pub. L. 102–54, § 13(g)(1)(A), June 13, 1991, 105 Stat. 275, related to National Advisory Council on Continuing Education, prior to the general amendment of this subchapter by Pub. L. 102–325.

Another prior section 1017, Pub. L. 89–329, title I, § 117, as added Pub. L. 96–374, title I, § 101(a), Oct. 3, 1980, 94 Stat. 1382; amended Pub. L. 99–386, title I, § 103(a), Aug. 22, 1986, 100 Stat. 821, related to establishment and administration of the National Advisory Council on Continuing Education, prior to the general amendment of this subchapter by Pub. L. 99–498.

PART D—ADMINISTRATIVE PROVISIONS FOR DELIVERY OF STUDENT FINANCIAL ASSISTANCE

§ 1018. Performance-Based Organization for delivery of Federal student financial assistance

(a) Establishment and purpose

(1) Establishment

There is established in the Department a Performance-Based Organization (hereafter referred to as the ''PBO'') which shall be a discrete management unit responsible for managing the administrative and oversight functions supporting the programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as specified in subsection (b) of this section.

(2) Purposes

The purposes of the PBO are—

(A) to improve service to students and other participants in the student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, including making those programs more understandable to students and their parents;

(B) to reduce the costs of administering those programs;

(C) to increase the accountability of the officials responsible for administering the operational aspects of these programs;

(D) to provide greater flexibility in the management and administration of the Federal student financial assistance programs;

(E) to integrate the information systems supporting the Federal student financial assistance programs;

(F) to implement an open, common, integrated system for the delivery of student financial assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42; and

(G) to develop and maintain a student financial assistance system that contains complete, accurate, and timely data to ensure program integrity.

(b) General authority

(1) Authority of Secretary

Notwithstanding any other provision of this part, the Secretary shall maintain responsibility for the development and promulgation of policy and regulations relating to the programs of student financial assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42. In the exercise of its functions, the PBO shall be subject to the direction of the Secretary. The Secretary shall—

(A) request the advice of, and work in cooperation with, the Chief Operating Officer in developing regulations, policies, administrative guidance, or procedures affecting the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42;

(B) request cost estimates from the Chief Operating Officer for system changes required by specific policies proposed by the Secretary; and

(C) assist the Chief Operating Officer in identifying goals for—

(i) the administration of the systems used to administer the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42; and

(ii) the updating of such systems to current technology.

(2) PBO functions

Subject to paragraph (1), the PBO shall be responsible for the administration of Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, excluding the development of policy relating to such programs but including the following:

(A) The administrative, accounting, and financial management functions for the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, including—

(i) the collection, processing, and transmission of data to students, institutions, lenders, State agencies, and other authorized parties;

(ii) the design and technical specifications for software development and procurement for systems supporting the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42;

(iii) all software and hardware acquisitions and all information technology contracts related to the administration and management of student financial assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42;

(iv) all aspects of contracting for the information and financial systems supporting the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42;

(v) providing all customer service, training, and user support related to the administration of the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42; and

(vi) ensuring the integrity of the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(B) Annual development of a budget for the activities and functions of the PBO, in consultation with the Secretary, and for consideration and inclusion in the Department's annual budget submission.

(3) Additional functions

The Secretary may allocate to the PBO such additional functions as the Secretary and the Chief Operating Officer determine are necessary or appropriate to achieve the purposes of the PBO.

(4) Independence

Subject to paragraph (1), in carrying out its functions, the PBO shall exercise independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions.

(5) Audits and review

The PBO shall be subject to the usual and customary Federal audit procedures and to review by the Inspector General of the Department.

(6) Changes

(A) In general

The Secretary and the Chief Operating Officer shall consult concerning the effects of policy, market, or other changes on the ability of the PBO to achieve the goals and objectives established in the performance plan described in subsection (c) of this section.

(B) Revisions to agreement

The Secretary and the Chief Operating Officer may revise the annual performance agreement described in subsection (d)(4) of this section in light of policy, market, or other changes that occur after the Secretary and the Chief Operating Officer enter into the agreement.

(c) Performance plan, report, and briefing

(1) Performance plan

(A) In general

Each year, the Secretary and Chief Operating Officer shall agree on, and make available to the public, a performance plan for the PBO for the succeeding 5 years that establishes measurable goals and objectives for the organization.

(B) Consultation

In developing the 5-year performance plan and any revision to the plan, the Secretary and the Chief Operating Officer shall consult with students, institutions of higher education, Congress, lenders, the Advisory Committee on Student Financial Assistance, and other interested parties not less than 30 days prior to the implementation of the performance plan or revision.

(C) Areas

The plan shall include a concise statement of the goals for a modernized system for the delivery of student financial assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 and identify action steps necessary to achieve such goals. The plan shall address the PBO's responsibilities in the following areas:

(i) Improving service

Improving service to students and other participants in student financial aid programs authorized under under[1] subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, including making those programs more understandable to students and their parents.

(ii) Reducing costs

Reducing the costs of administering those programs.

(iii) Improvement and integration of support systems

Improving and integrating the systems that support those programs.

(iv) Delivery and information system

Developing open, common, and integrated systems for programs authorized under under[1] subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(v) Other areas

Any other areas identified by the Secretary.

(2) Annual report

Each year, the Chief Operating Officer shall prepare and submit to Congress, through the Secretary, an annual report on the performance of the PBO, including an evaluation of the extent to which the PBO met the goals and objectives contained in the 5-year performance plan described in paragraph (1) for the preceding year. The annual report shall include the following:

(A) An independent financial audit of the expenditures of both the PBO and the programs administered by the PBO.

(B) Financial and performance requirements applicable to the PBO under the Chief Financial Officers Act of 1990 and the Government Performance and Results Act of 1993.

(C) The results achieved by the PBO during the year relative to the goals established in the organization's performance plan.

(D) The evaluation rating of the performance of the Chief Operating Officer and senior managers under subsections (d)(4) and

[1] So in original.

(e)(2) of this section, including the amounts of bonus compensation awarded to these individuals.

(E) Recommendations for legislative and regulatory changes to improve service to students and their families, and to improve program efficiency and integrity.

(F) Other such information as the Director of the Office of Management and Budget shall prescribe for performance based organizations.

(3) Consultation with stakeholders

The Chief Operating Officer, in preparing the report described in paragraph (2), shall establish appropriate means to consult with students, borrowers, institutions, lenders, guaranty agencies, secondary markets, and others involved in the delivery system of student aid under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42—

(A) regarding the degree of satisfaction with the delivery system; and

(B) to seek suggestions on means to improve the delivery system.

(4) Briefing on enforcement of student loan provisions

The Secretary shall, upon request, provide a briefing to the members of the authorizing committees on the steps the Department has taken to ensure—

(A) the integrity of the student loan programs; and

(B) that lenders and guaranty agencies are adhering to the requirements of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(d) Chief Operating Officer

(1) Appointment

The management of the PBO shall be vested in a Chief Operating Officer who shall be appointed by the Secretary to a term of not less than 3 and not more than 5 years, and compensated without regard to chapters 33, 51, and 53 of title 5. The appointment shall be made on the basis of demonstrated management ability and expertise in information technology, including experience with financial systems, and without regard to political affiliation or activity.

(2) Reappointment

The Secretary may reappoint the Chief Operating Officer to subsequent terms of not less than 3 and not more than 5 years, so long as the performance of the Chief Operating Officer, as set forth in the performance agreement described in paragraph (4), is satisfactory.

(3) Removal

The Chief Operating Officer may be removed by—

(A) the President; or

(B) the Secretary, for misconduct or failure to meet performance goals set forth in the performance agreement in paragraph (4).

The President or Secretary shall communicate the reasons for any such removal to the authorizing committees.

(4) Performance agreement

(A) In general

Each year, the Secretary and the Chief Operating Officer shall enter into an annual performance agreement, that shall set forth measurable organization and individual goals for the Chief Operating Officer.

(B) Transmittal

The final agreement, and any revision to the final agreement, shall be transmitted to the authorizing committees, and made publicly available.

(5) Compensation

(A) In general

The Chief Operating Officer is authorized to be paid at an annual rate of basic pay not to exceed the maximum rate of basic pay for the Senior Executive Service under section 5382 of title 5, including any applicable locality-based comparability payment that may be authorized under section 5304(h)(2)(B) of such title. The compensation of the Chief Operating Officer shall be considered for purposes of section 207(c)(2)(A) of title 18 to be the equivalent of that described under clause (ii) of section 207(c)(2)(A) of such title.

(B) Bonus

In addition, the Chief Operating Officer may receive a bonus in an amount that does not exceed 50 percent of such annual rate of basic pay, based upon the Secretary's evaluation of the Chief Operating Officer's performance in relation to the goals set forth in the performance agreement described in paragraph (4).

(C) Payment

Payment of a bonus under subparagraph (B) may be made to the Chief Operating Officer only to the extent that such payment does not cause the Chief Operating Officer's total aggregate compensation in a calendar year to equal or exceed the amount of the President's salary under section 102 of title 3.

(e) Senior management

(1) Appointment

(A) In general

The Chief Operating Officer may appoint such senior managers as that officer determines necessary without regard to the provisions of title 5 governing appointments in the competitive service.

(B) Compensation

The senior managers described in subparagraph (A) may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(2) Performance agreement

Each year, the Chief Operating Officer and each senior manager appointed under this subsection shall enter into an annual performance agreement that sets forth measurable organization and individual goals. The agreement shall be subject to review and renegotiation at the end of each term.

(3) Compensation

(A) In general

A senior manager appointed under this subsection may be paid at an annual rate of basic pay of not more than the maximum rate of basic pay for the Senior Executive Service under section 5382 of title 5, including any applicable locality-based comparability payment that may be authorized under section 5304(h)(2)(C) of such title. The compensation of a senior manager shall be considered for purposes of section 207(c)(2)(A) of title 18 to be the equivalent of that described under clause (ii) of section 207(c)(2)(A) of such title.

(B) Bonus

In addition, a senior manager may receive a bonus in an amount such that the manager's total annual compensation does not exceed 125 percent of the maximum rate of basic pay for the Senior Executive Service, including any applicable locality-based comparability payment, based upon the Chief Operating Officer's evaluation of the manager's performance in relation to the goals set forth in the performance agreement described in paragraph (2).

(4) Removal

A senior manager shall be removable by the Chief Operating Officer, or by the Secretary if the position of Chief Operating Officer is vacant.

(f) Student Loan Ombudsman

(1) Appointment

The Chief Operating Officer, in consultation with the Secretary, shall appoint a Student Loan Ombudsman to provide timely assistance to borrowers of loans made, insured, or guaranteed under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 by performing the functions described in paragraph (3).

(2) Public information

The Chief Operating Officer shall disseminate information about the availability and functions of the Ombudsman to students, borrowers, and potential borrowers, as well as institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in those student loan programs.

(3) Functions of Ombudsman

The Ombudsman shall—

(A) in accordance with regulations of the Secretary, receive, review, and attempt to resolve informally complaints from borrowers of loans described in paragraph (1), including, as appropriate, attempts to resolve such complaints within the Department of Education and with institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in the loan programs described in paragraph (1); and

(B) compile and analyze data on borrower complaints and make appropriate recommendations.

(4) Report

Each year, the Ombudsman shall submit a report to the Chief Operating Officer, for inclusion in the annual report under subsection (c)(2) of this section, that describes the activities, and evaluates the effectiveness of the Ombudsman during the preceding year.

(g) Personnel flexibility

(1) Personnel ceilings

The PBO shall not be subject to any ceiling relating to the number or grade of employees.

(2) Administrative flexibility

The Chief Operating Officer shall work with the Office of Personnel Management to develop and implement personnel flexibilities in staffing, classification, and pay that meet the needs of the PBO, subject to compliance with title 5.

(3) Excepted service

The Chief Operating Officer may appoint, without regard to the provisions of title 5 governing appointments in the competitive service, technical and professional employees to administer the functions of the PBO. These employees may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(h) Establishment of fair and equitable system for measuring staff performance

The PBO shall establish an annual performance management system, subject to compliance with title 5, and consistent with applicable provisions of law and regulations, which strengthens the effectiveness of the PBO by providing for establishing goals or objectives for individual, group, or organizational performance (or any combination thereof), consistent with the performance plan of the PBO and its performance planning procedures, including those established under the Government Performance and Results Act of 1993, and communicating such goals or objectives to employees.

(i) Authorization of appropriations

The Secretary shall allocate from funds made available under section 1087h of this title such funds as are appropriate to the functions assumed by the PBO. In addition, there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this part.

(Pub. L. 89–329, title I, § 141, as added Pub. L. 105–244, title I, § 101(a), Oct. 7, 1998, 112 Stat. 1604; amended Pub. L. 110–315, title I, §§ 103(b)(2), 117, Aug. 14, 2008, 122 Stat. 3088, 3114; Pub. L. 111–39, title I, § 101(b)(5), July 1, 2009, 123 Stat. 1935.)

REFERENCES IN TEXT

The Chief Financial Officers Act of 1990, referred to in subsec. (c)(2)(B), is Pub. L. 101–576, Nov. 15, 1990, 104 Stat. 2838. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 501 of Title 31, Money and Finance, and Tables.

The Government Performance and Results Act of 1993, referred to in subsecs. (c)(2)(B) and (h), is Pub. L. 103–62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of Title 5, Government Organization and Employees, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101

and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

PRIOR PROVISIONS

A prior section 1018, Pub. L. 89–329, title I, § 141, as added Pub. L. 100–418, title VI, § 6201, Aug. 23, 1988, 102 Stat. 1514, set out purpose of former part D of this subchapter as being the development of student literacy corps programs, prior to the general amendment of this subchapter by Pub. L. 102–325.

Another prior section 1018, Pub. L. 89–329, title I, § 118, as added Pub. L. 96–374, title I, § 101(a), Oct. 3, 1980, 94 Stat. 1382, defined terms used in former part D of this subchapter, prior to the general amendment of this subchapter by Pub. L. 99–498.

AMENDMENTS

2009—Subsec. (c)(3). Pub. L. 111–39, § 101(b)(5)(A), substituted ''under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42'' for ''under this subchapter'' in introductory provisions.

Subsec. (d)(3). Pub. L. 111–39, § 101(b)(5)(B), substituted ''authorizing committees'' for ''appropriate committees of Congress'' in concluding provisions.

2008—Subsec. (a)(1). Pub. L. 110–315, § 117(1)(A), substituted ''administrative and oversight'' for ''operational''.

Subsec. (a)(2)(D). Pub. L. 110–315, § 117(1)(B), substituted ''and administration'' for ''of the operational functions''.

Subsec. (b)(1)(A). Pub. L. 110–315, § 117(2)(A)(i), substituted ''the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42'' for ''the information systems administered by the PBO, and other functions performed by the PBO''.

Subsec. (b)(1)(C). Pub. L. 110–315, § 117(2)(A)(ii), added subpar. (C) and struck out former subpar. (C) which read as follows: ''assist the Chief Operating Officer in identifying goals for the administration and modernization of the delivery system for student financial assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.''

Subsec. (b)(2). Pub. L. 110–315, § 117(2)(B)(i), in introductory provisions, substituted ''the administration of Federal'' for ''administration of the information and financial systems that support'' and ''subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42'' for ''this subchapter''.

Subsec. (b)(2)(A). Pub. L. 110–315, § 117(2)(B)(ii)(I), substituted ''for the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42'' for ''of the delivery system for Federal student assistance'' in introductory provisions.

Subsec. (b)(2)(A)(i), (ii). Pub. L. 110–315, § 117(2)(B)(ii)(II), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) the collection, processing and transmission of applicant data to students, institutions and authorized third parties, as provided for in section 1090 of this title;

''(ii) design and technical specifications for software development and systems supporting the delivery of student financial assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42;''.

Subsec. (b)(2)(A)(iii). Pub. L. 110–315, § 117(2)(B)(ii)(III), substituted ''administration'' for ''delivery''.

Subsec. (b)(2)(A)(iv). Pub. L. 110–315, § 117(2)(B)(ii)(IV), inserted ''the Federal'' after ''supporting'', substituted ''authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42'' for ''under this subchapter'', and struck out ''and'' after the semicolon.

Subsec. (b)(2)(A)(v). Pub. L. 110–315, § 117(2)(B)(ii)(V), substituted ''the administration of the Federal student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42; and'' for ''systems that support those programs.''

Subsec. (b)(2)(A)(vi). Pub. L. 110–315, § 117(2)(B)(ii)(VI), added cl. (vi).

Subsec. (b)(2)(B). Pub. L. 110–315, § 117(2)(B)(iii), substituted ''activities and functions'' for ''operations and services''.

Subsec. (c). Pub. L. 110–315, § 117(3)(A), substituted ''Performance plan, report, and briefing'' for ''Performance plan and report'' in heading.

Subsec. (c)(1)(C)(i). Pub. L. 110–315, § 117(3)(B)(i), substituted ''under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42'' for ''this subchapter''.

Subsec. (c)(1)(C)(iii). Pub. L. 110–315, § 117(3)(B)(ii), struck out ''information and delivery'' after ''integrating the''.

Subsec. (c)(1)(C)(iv). Pub. L. 110–315, § 117(3)(B)(i), (iii), substituted ''Developing'' for ''Developing an'', ''systems'' for ''delivery and information system'', and ''under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42'' for ''this subchapter''.

Subsec. (c)(2)(A). Pub. L. 110–315, § 117(3)(C)(i), inserted ''the'' after ''PBO and''.

Subsec. (c)(2)(B). Pub. L. 110–315, § 117(3)(C)(ii), substituted ''Officers'' for ''Officer''.

Subsec. (c)(3). Pub. L. 110–315, § 117(3)(D), inserted ''students,'' after ''consult with'' in introductory provisions.

Subsec. (c)(4). Pub. L. 110–315, § 117(3)(E), added par. (4).

Subsec. (d)(1). Pub. L. 110–315, § 117(4)(A), struck out after first sentence ''The Secretary shall appoint the Chief Operating Officer within 6 months after October 7, 1998.''

Subsec. (d)(4)(B). Pub. L. 110–315, § 103(b)(2), substituted ''authorizing committees'' for ''Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate''.

Subsec. (d)(5)(B). Pub. L. 110–315, § 117(4)(B)(i), substituted ''paragraph (4)'' for ''paragraph (2)''.

Subsec. (d)(5)(C). Pub. L. 110–315, § 117(4)(B)(ii), struck out ''this'' before ''subparagraph (B)''.

Subsec. (f)(2). Pub. L. 110–315, § 117(5)(A), substituted ''to students, borrowers,'' for ''to borrowers''.

Subsec. (f)(3)(A). Pub. L. 110–315, § 117(5)(B), substituted ''paragraph (1);'' for ''paragraph (1)(A);''.

Subsec. (g)(3). Pub. L. 110–315, § 117(6), struck out ''not more than 25'' before ''technical and professional employees''.

Subsec. (h). Pub. L. 110–315, § 117(7), substituted ''effectiveness'' for ''organizational effectiveness''.

Subsecs. (i), (j). Pub. L. 110–315, § 117(8)–(10), redesignated subsec. (j) as (i), struck out '', including transition costs'' before period at end, and struck out former subsec. (i). Text of former subsec. (i) read as follows: ''The Secretary and the Chief Operating Officer, not later than 180 days after October 7, 1998, shall report to Congress on the proposed budget and sources of funding for the operation of the PBO.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

STUDY OF MARKET MECHANISMS IN FEDERAL STUDENT LOAN PROGRAMS

Pub. L. 105–244, title VIII, § 801, Oct. 7, 1998, 112 Stat. 1803, which directed the Comptroller General and Secretary of Education, in consultation with a study group, to design and conduct a study to identify and evaluate means of establishing a market mechanism for the delivery of certain student loans made pursuant

to title IV of the Higher Education Act (20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.) and to transmit a final report to congressional committees not later than May 15, 2001, was repealed by Pub. L. 110–315, title IX, § 931(1), Aug. 14, 2008, 122 Stat. 3456.

§ 1018a. Procurement flexibility

(a) Procurement authority

Subject to the authority of the Secretary, the Chief Operating Officer of a PBO may exercise the authority of the Secretary to procure property and services in the performance of functions managed by the PBO. For the purposes of this section, the term ''PBO'' includes the Chief Operating Officer of the PBO and any employee of the PBO exercising procurement authority under the preceding sentence.

(b) In general

Except as provided in this section, the PBO shall abide by all applicable Federal procurement laws and regulations when procuring property and services. The PBO shall—

(1) enter into contracts to carry out the functions set forth in section 1018(b)(2) of this title;

(2) obtain the services of experts and consultants without regard to section 3109 of title 5 and set pay in accordance with such section; and

(3) through the Chief Operating Officer—

(A) to the maximum extent practicable, utilize procurement systems that streamline operations, improve internal controls, and enhance management; and

(B) assess the efficiency of such systems and assess such systems' ability to meet PBO requirements.

(c) Service contracts

(1) Performance-based servicing contracts

The Chief Operating Officer shall, to the extent practicable, maximize the use of performance-based servicing contracts, consistent with guidelines for such contracts published by the Office of Federal Procurement Policy, to achieve cost savings and improve service.

(2) Fee for service arrangements

The Chief Operating Officer shall, when appropriate and consistent with the purposes of the PBO, acquire services related to the functions set forth in section 1018(b)(2) of this title from any entity that has the capability and capacity to meet the requirements set by the PBO. The Chief Operating Officer is authorized to pay fees that are equivalent to those paid by other entities to an organization that provides services that meet the requirements of the PBO, as determined by the Chief Operating Officer.

(d) Two-phase source-selection procedures

(1) In general

The PBO may use a two-phase process for selecting a source for a procurement of property or services.

(2) First phase

The procedures for the first phase of the process for a procurement are as follows:

(A) Publication of notice

The contracting officer for the procurement shall publish a notice of the procurement in accordance with section 1708 of title 41 and subsections (e), (f), and (g) of section 637 of title 15, except that the notice shall include only the following:

(i) A general description of the scope or purpose of the procurement that provides sufficient information on the scope or purpose for sources to make informed business decisions regarding whether to participate in the procurement.

(ii) A description of the basis on which potential sources are to be selected to submit offers in the second phase.

(iii) A description of the information that is to be required under subparagraph (B).

(iv) Any additional information that the contracting officer determines appropriate.

(B) Information submitted by offerors

Each offeror for the procurement shall submit basic information, such as information on the offeror's qualifications, the proposed conceptual approach, costs likely to be associated with the proposed conceptual approach, and past performance of the offeror, together with any additional information that is requested by the contracting officer.

(C) Selection for second phase

The contracting officer shall select the offerors that are to be eligible to participate in the second phase of the process. The contracting officer shall limit the number of the selected offerors to the number of sources that the contracting officer determines is appropriate and in the best interests of the Federal Government.

(3) Second phase

(A) In general

The contracting officer shall conduct the second phase of the source selection process in accordance with sections 3306(a) to (e) and 3308, chapter 37, and section 4702 of title 41.

(B) Eligible participants

Only the sources selected in the first phase of the process shall be eligible to participate in the second phase.

(C) Single or multiple procurements

The second phase may include a single procurement or multiple procurements within the scope, or for the purpose, described in the notice pursuant to paragraph (2)(A).

(4) Procedures considered competitive

The procedures used for selecting a source for a procurement under this subsection shall be considered competitive procedures for all purposes.

(e) Use of simplified procedures for commercial items

Whenever the PBO anticipates that commercial items will be offered for a procurement, the PBO may use (consistent with the special rules for commercial items) the special simplified procedures for the procurement without regard to—

(1) any dollar limitation otherwise applicable to the use of those procedures; and