(g)(1)(A) If the Board orders corrective action under this section, such corrective action may include—

(i) that the individual be placed, as nearly as possible, in the position the individual would have been in had the prohibited personnel practice not occurred; and

(ii) back pay and related benefits, medical costs incurred, travel expenses, and any other reasonable and foreseeable consequential changes.

(B) Corrective action shall include attorney's fees and costs as provided for under paragraphs (2) and (3).

(2) If an employee, former employee, or applicant for employment is the prevailing party before the Merit Systems Protection Board, and the decision is based on a finding of a prohibited personnel practice, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other reasonable costs incurred.

(3) If an employee, former emloyee,[1] or applicant for employment is the prevailing party in an appeal from the Merit Systems Protection Board, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other reasonable costs incurred, regardless of the basis of the decision.

(h)(1) An employee, former employee, or applicant for employment adversely affected or aggrieved by a final order or decision of the Board under this section may obtain judicial review of the order or decision.

(2) A petition for review under this subsection shall be filed with such court, and within such time, as provided for under section 7703(b).

(i) Subsections (a) through (h) shall apply in any proceeding brought under section 7513(d) if, or to the extent that, a prohibited personnel practice as defined in section 2302(b)(8) is alleged.

(j) In determining the appealability of any case involving an allegation made by an individual under the provisions of this chapter, neither the status of an individual under any retirement system established under a Federal statute nor any election made by such individual under any such system may be taken into account.

(Added Pub. L. 101–12, § 3(a)(13), Apr. 10, 1989, 103 Stat. 29; amended Pub. L. 103–424, §§ 4, 8(b), Oct. 29, 1994, 108 Stat. 4363, 4365.)

AMENDMENTS

1994—Subsec. (d)(1). Pub. L. 103–424, § 4(a), added par. (1) and struck out former par. (1) which read as follows: ''At the request of an employee, former employee, or applicant for employment seeking corrective action under subsection (a), the Board may issue a subpoena for the attendance and testimony of any person or the production of documentary or other evidence from any person if the Board finds that such subpoena is necessary for the development of relevant evidence.''

Subsec. (e)(1). Pub. L. 103–424, § 4(b), which directed the amendment of section 1221(e)(1), without specifying the Code title to be amended, by inserting at end ''The employee may demonstrate that the disclosure was a contributing factor in the personnel action through circumstantial evidence, such as evidence that—

''(A) the official taking the personnel action knew of the disclosure; and

''(B) the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in the personnel action.'', was executed to subsec. (e)(1) of this section to reflect the probable intent of Congress.

Subsec. (f)(3). Pub. L. 103–424, § 4(c), added par. (3).

Subsec. (g). Pub. L. 103–424, § 8(b), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

EFFECTIVE DATE

Subchapter effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as an Effective Date of 1989 Amendment note under section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1212, 1214, 1222, 2105, 2303, 7121 of this title; title 22 section 4139.

### § 1222. Availability of other remedies

Except as provided in section 1221(i), nothing in this chapter or chapter 23 shall be construed to limit any right or remedy available under a provision of statute which is outside of both this chapter and chapter 23.

(Added Pub. L. 101–12, § 3(a)(13), Apr. 10, 1989, 103 Stat. 31.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2105 of this title.

## CHAPTER 13—SPECIAL AUTHORITY

Sec.
1301. Rules.
1302. Regulations.
1303. Investigations; reports.
1304. Loyalty investigations; reports; revolving fund.
1305. Administrative law judges.
1306. Oaths to witnesses.
1307. Minutes.
1308. Annual reports.

AMENDMENTS

1978—Pub. L. 95–251, § 2(c)(1), Mar. 27, 1978, 92 Stat. 183, substituted ''Administrative law judges'' for ''Hearing examiners'' in item 1305.

### § 1301. Rules

The Office of Personnel Management shall aid the President, as he may request, in preparing the rules he prescribes under this title for the administration of the competitive service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 401; Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| ..... | 5 U.S.C. 633(1) (function of Civil Service Commission). | Jan. 16, 1883, ch. 27, § 2(1) (function of Civil Service Commission), 22 Stat. 403. |

The authority of the President to prescribe rules is carried into sections 2951, 3302, 3304(a), 3306(a), 3321, 7152, 7153, 7321, and 7322 of this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

[1] So in original. Probably should be ''employee,''.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

## § 1302. Regulations

(a) The Office of Personnel Management, subject to the rules prescribed by the President under this title for the administration of the competitive service, shall prescribe regulations for, control, supervise, and preserve the records of, examinations for the competitive service.

(b) The Office shall prescribe and enforce regulations for the administration of the provisions of this title, and Executive orders issued in furtherance thereof, that implement the Congressional policy that preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention, in the competitive service in Executive agencies, permanent or temporary, and in the government of the District of Columbia.

(c) The Office shall prescribe regulations for the administration of the provisions of this title that implement the Congressional policy that preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention, in the excepted service in Executive agencies, permanent or temporary, and in the government of the District of Columbia.

(d) The Office may prescribe reasonable procedure and regulations for the administration of its functions under chapter 15 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 401; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| (a) ..... | 5 U.S.C. 633(2)7 (last 17 words), (3) (less last 10 words). | Jan. 16, 1883, ch. 27, §§ 2(2)7 (last 17 words), (3) (less last 10 words), 22 Stat. 404. |
| (b) ..... | 5 U.S.C. 851 (1st 76 words), 868 (less proviso). | June 27, 1944, ch. 287, §§ 2 (1st 76 words), 19, 58 Stat. 387, 391. |
| (c) ..... | 5 U.S.C. 851 (1st 76 words), 860. | June 27, 1944, ch. 287, §§ 2 (1st 76 words), 11, 58 Stat. 387, 390. |
| (d) ..... | 5 U.S.C. 118k(d) (1st sentence). | July 19, 1940, ch. 640 § 4 ''Sec. 12(d) (1st sentence)'', 54 Stat. 769. |

Subsection (a) is based on former section 633(3) (less last 10 words). The regulation-making power conferred by that section covers the power conferred by former section 633(2)7 (last 17 words) which is, therefore, omitted. The requirement of notice is preserved in section 3304. The words ''through its members or the examiners'' are omitted as unnecessary in view of section 1104. The authority of the President to prescribe rules, based on former section 633(1) is carried into sections 2951, 3302, 3304(a), 3306(a), 3321, 7152, 7153, 7321, and 7322 of this title.

In subsections (b)–(d), the word ''rules'' is omitted as included in ''regulations''.

The provisions of the Veterans' Preference Act of 1944 (former sections 851–869) to which the regulation-making authority of subsections (b) and (c) apply are carried into sections 2108, 3305(b), 3306(a)(2), 3308–3320, 3351, 3363, 3364, and 7701, subchapter I of chapter 35, and subchapter II of chapter 75 of this title. The first 76 words of former section 851 are added here to preserve the general statement of policy in the light of which the substantive provisions that formerly comprised the Veterans' Preference Act of 1944 are to be interpreted. See *Elder* v. *Brannan*, 241 U.S. 277, 286. In subsection (b), the words ''in the competitive service in Executive agencies, permanent or temporary, and in the government of the District of Columbia'', and in subsection (c) the words ''in the excepted service in Executive agencies, permanent or temporary, and in the government of the District of Columbia'' are coextensive with and substituted for ''in civilian positions in all establishments, agencies, bureaus, administrations, projects, and departments of the Government, permanent or temporary, and in either (a) the classified civil service; (b) the unclassified civil service; (c) any temporary or emergency establishment, agency, bureau, administration, project, and department created by Acts of Congress or Presidential Executive order'', in view of the exclusion of positions in the legislative and judicial branches by former section 869.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsecs. (a) to (d). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission'' wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EXECUTIVE ORDER NO. 10561

Ex. Ord. No. 10561, Sept. 13, 1954, 19 F.R. 5963, which related to official personnel folders, was revoked by section 2–201 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out as a note under section 1101 of this title.

EXECUTIVE ORDER NO. 11397

Ex. Ord. No. 11397, Feb. 9, 1968, 33 F.R. 2833, formerly set out as a note under this section, which related to transitional appointments of veterans who served during the Vietnam Era, was revoked by Ex. Ord. No. 11521, Mar. 26, 1970, 35 F.R. 5311, set out as a note under section 3302 of this title.

CROSS REFERENCES

Preference eligibles—
- Adverse actions, see section 7511 et seq. of this title.
- Back pay, reinstatement, or restoration after removal, suspension, or furlough, see section 5596 of this title.
- Competitive service, see section 3309 et seq. of this title.
- Definition, see section 2108 of this title.
- Retention preference, see section 3504 of this title.
- Transfers, see section 3351 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1303 of this title; title 10 section 1599c; title 18 section 1917; title 22 section 1438.

## § 1303. Investigations; reports

The Office of Personnel Management, Merit Systems Protection Board, and Special Counsel may investigate and report on matters concerning—

(1) the enforcement and effect of the rules prescribed by the President under this title for the administration of the competitive service and the regulations prescribed by the Office of Personnel Management under section 1302(a) of this title; and

(2) the action of an examiner, a board of examiners, and other employees concerning the execution of the provisions of this title that relate to the administration of the competitive service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 401; Pub. L. 95–454, title IX, § 906(a)(4), (11), Oct. 13, 1978, 92 Stat. 1225.)

HISTORICAL AND REVISION NOTES

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| ..... | 5 U.S.C. 633(4). | Jan. 16, 1883, ch. 27, § 2(4), 22 Stat. 404. |

The authority of the President to prescribe rules is carried into sections 2951, 3302, 3304(a), 3306(a), 3321, 7152, 7153, 7321, and 7322 of this title.

In paragraph (2), the words ''in respect to the execution of this act'' are changed to ''concerning the execution of the provisions of this title that relate to the administration of the competitive service'' to avoid having to refer in the text to the sections of this title into which the Civil Service Act, the act referred to, is codified. These sections are: 1101, 1102, 1105, 1302(a), 1303, 1307, 1308(a)(1), 2102, 2951, 3302, 3303, 3304(a), (d), 3305(a), 3306, 3318(a), 3319(a), 3321, 7152, 7153, 7321, 7322, and 7352. The words ''the provisions of this title that relate to the administration of the competitive service'' will include some of the sections derived from the Veterans' Preference Act of 1944 (former sections 851–869). They are based in part on former section 860 (codified in § 1302(c)). The authorization in that section to make and enforce regulations for the competitive service would include the authority to investigate and report. The words ''and other employees'' are substituted for ''and its own subordinates, and those in the public service'' in view of the definition of ''employee'' in section 2105.

Standard changes are made to conform with the definition applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted in opening par. ''Office of Personnel Management, Merit Systems Protection Board, and Special Counsel'' for ''Civil Service Commission'' and in par. (1) ''Office of Personnel Management'' for ''Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

## § 1304. Loyalty investigations; reports; revolving fund

(a) The Office of Personnel Management shall conduct the investigations and issue the reports required by the following statutes—

(1) sections 272b, 281b(e), and 290a of title 22;

(2) section 1874(c) of title 42; and

(3) section 1203(e) of title 6,[1] District of Columbia Code.

(b) When an investigation under subsection (a) of this section develops data indicating that the loyalty of the individual being investigated is questionable, the Office shall refer the matter to the Federal Bureau of Investigation for a full field investigation, a report of which shall be furnished to the Office for its information and appropriate action.

(c) When the President considers it in the national interest, he may have the investigations of a group or class, which are required by subsection (a) of this section, made by the Federal Bureau of Investigation rather than the Office.

(d) The investigation and report required by subsection (a) of this section shall be made by the Federal Bureau of Investigation rather than the Office for those specific positions which the Secretary of State certifies are of a high degree of importance or sensitivity.

(e)(1) A revolving fund is available, to the Office without fiscal year limitation, for financing investigations, training, and such other functions as the Office is authorized or required to perform on a reimbursable basis, including personnel management services performed at the request of individual agencies (which would otherwise be the responsibility of such agencies), or at the request of nonappropriated fund instrumentalities. However, the functions which may be financed in any fiscal year by the fund are restricted to those functions which are covered by the budget estimates submitted to the Congress for that fiscal year. To the maximum extent feasible, each individual activity shall be conducted generally on an actual cost basis over a reasonable period of time.

(2) The capital of the fund consists of the aggregate of—

(A) appropriations made to provide capital for the fund, which appropriations are hereby authorized, and

(B) the sum of the fair and reasonable value of such supplies, equipment, and other assets as the Office from time to time transfers to the fund (including the amount of the unexpended balances of appropriations or funds relating to activities the financing of which is transferred to the fund) less the amount of related liabilities, the amount of unpaid obligations, and the value of accrued annual leave of employees, which are attributable to the activities the financing of which is transferred to the fund.

(3) The fund shall be credited with—

(A) advances and reimbursements from available funds of the Office or other agencies, or from other sources, for those services and supplies provided at rates estimated by the Office as adequate to recover expenses of operation (including provision for accrued annual leave of employees and depreciation of equipment); and

(B) receipts from sales or exchanges of property, and payments for loss of or damage to property, accounted for under the fund.

(4) Any unobligated and unexpended balances in the fund which the Office determines to be in excess of amounts needed for activities financed by the fund shall be deposited in the Treasury of the United States as miscellaneous receipts.

(5) The Office shall prepare a business-type budget providing full disclosure of the results of

[1] See References in Text note below.

operations for each of the functions performed by the Office and financed by the fund, and such budget shall be transmitted to the Congress and considered, in the manner prescribed by law for wholly owned Government corporations.

(6) The Comptroller General of the United States shall, as a result of his periodic reviews of the activities financed by the fund, report and make such recommendations as he deems appropriate to the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives.

(f) An agency may use available appropriations to reimburse the Office or the Federal Bureau of Investigation for the cost of investigations, training, and functions performed for them under this section, or to make advances toward their cost. These advances and reimbursements shall be credited directly to the applicable appropriations of the Office or the Federal Bureau of Investigation.

(g) This section does not affect the responsibility of the Federal Bureau of Investigation to investigate espionage, sabotage, or subversive acts.

(Pub. L. 89– 554, Sept. 6, 1966, 80 Stat. 401; Pub. L. 91–189, §1, Dec. 30, 1969, 83 Stat. 851; Pub. L. 91–648, title V, §510, Jan. 5, 1971, 84 Stat. 1928; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–60, title II, §203(a)(2), Aug. 15, 1979, 93 Stat. 398; Pub. L. 97–412, §1(a), Jan. 3, 1983, 96 Stat. 2047; Pub. L. 98–224, §5(b)(1), Mar. 2, 1984, 98 Stat. 48; Pub. L. 103–437, §3(a), Nov. 2, 1994, 108 Stat. 4581; Pub. L. 104–66, title II, §2182, Dec. 21, 1995, 109 Stat. 732; Pub. L. 104–208, div. A, title I, §101(f) [title IV, §421], Sept. 30, 1996, 110 Stat. 3009–314, 3009–343.)

HISTORICAL AND REVISION NOTES

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| (b)–(d) ..... | 5 U.S.C. 655. | Apr. 5, 1952, ch. 159, §1 (provisos), 66 Stat. 44.<br>July 31, 1953, ch. 283, §9, 67 Stat. 241. |
| (e) ..... | 5 U.S.C. 657. | June 5, 1952, ch. 369, §701 (par. under ''Civil Service Commission''), 66 Stat. 107. |
| (f) ..... | [Uncodified]. | Apr. 5, 1952, ch. 159, §4, 66 Stat. 44. |
| (g) ..... | 5 U.S.C. 656. | Apr. 5, 1952, ch. 159, §3, 66 Stat. 44. |

Subsection (a) is based on section 1 of the Act of April 5, 1952, as amended, and is added for clarity. In subsection (a), the reference to section 10(b)(5)(B)(i) and (B)(ii) of the Act of August 1, 1946 (60 Stat. 766) is omitted because of the amendment of the Act of April 5, 1952, by the Act of July 31, 1953, ch. 283, 67 Stat. 240, and the reenactment of the provisions of the Act of April 5, 1952, insofar as they relate to the Atomic Energy Commission as section 145 of the Atomic Energy Act of 1954 (68 Stat. 942; 42 U.S.C. 2165). The references to section 1(2) of the Act of May 22, 1947 (61 Stat. 125), section 1 of the joint resolution of May 21, 1947 (61 Stat. 125), and section 110(c) of the Act of April 3, 1948 (62 Stat. 137) are omitted as these Acts were repealed by the Act of Aug. 26, 1954, ch. 937 §542(a) (1), (2), and (4), 68 Stat. 861. Reference to section 510 of the Mutual Security Act of 1951 (65 Stat. 381) is omitted because this section was replaced by section 531 of the Mutual Security Act of 1954 (68 Stat. 859) and the latter was repealed by the Act of Sept. 4, 1961, Pub. L. 87–195, §642(2), 75 Stat. 460.

In subsection (d), the references to section 10(b)(5)(B)(i) and (ii) of the Atomic Energy Act of 1946, section 510 of the Mutual Security Act of 1951, a majority of the members of the Atomic Energy Commission, and the Director of Mutual Security (which was changed to Director of the International Cooperation Administration on authority of section 8 of 1953 Reorg. Plan No. 7, 67 Stat. 641, and Executive Order 10610 of May 9, 1955) are omitted because of the disposition of the two sections as explained with reference to subsection (a).

In subsection (e), the words ''There is established'' are omitted as executed.

In subsection (g), the reference to statutes other than this section is omitted because nothing in those statutes affect the responsibility in question.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 1874(c) of title 42, referred to in subsec. (a)(2), which related to clearance of National Science Foundation personnel, was repealed by Pub. L. 96–516, §21(b)(1), Dec. 12, 1980, 94 Stat. 3010.

Section 1203(e) of title 6, District of Columbia Code, referred to in subsec. (a)(3), was amended and transferred to section 6–1405(5) of Title 6, Health and Safety, of the District of Columbia Code, and, as so amended, does not contain provisions relating to investigations and reports by the Office of Personnel Management.

AMENDMENTS

1996—Subsec. (e)(1). Pub. L. 104–208 inserted '', including personnel management services performed at the request of individual agencies (which would otherwise be the responsibility of such agencies), or at the request of nonappropriated fund instrumentalities'' before period at end of first sentence.

1995—Subsec. (e)(6). Pub. L. 104–66 struck out before period at end ''at least once every three years''.

1994—Subsec. (e)(6). Pub. L. 103–437 substituted ''Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House'' for ''Committees on Post Office and Civil Service of the Senate and House''.

1984—Subsec. (e)(1). Pub. L. 98–224 struck out cl. (i) designation and struck out cl. (ii) which provided that participation fees imposed by the President's Commission on Executive Exchange for private sector participation in its Executive Exchange Program be collected and credited to the fund, and be available for the costs of education and related travel of exchanged executives, for printing without regard to section 501 of title 44, and, in such amounts as specified in appropriations Acts, for entertainment expenses. See section 4109(d) of this title.

1983—Subsec. (e)(1). Pub. L. 97–412 designated existing provisions as cl. (i) and added cl. (ii).

1979—Subsec. (a)(1). Pub. L. 96–60 struck out reference to section 1434 of title 22.

1978—Subsecs. (a) to (f). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission'' wherever appearing.

1971—Subsec. (e). Pub. L. 91–648 struck out in par. (1) ''of $4,000,000'' after ''revolving fund'' and inserted in par. (2)(A) '', which appropriations are hereby authorized''.

1969—Subsec. (e). Pub. L. 91–189, §1(a), increased the scope of reimbursable services for which the fund may be used, restricted reimbursement to services which were included in the budget estimates submitted to Congress for that fiscal year, inserted a list of components which comprise the fund, specifically listed those items that would be credited directly to the capital fund, required that a budget be prepared by the Commission, and directed the Comptroller General as a result of the activities financed to make recommenda-

tions to the committees on Post Office and Civil Service of the Senate and House of Representatives at least once every three years.

Subsec. (f). Pub. L. 91–189, § 1(b), authorized an agency to use available appropriations to reimburse the Commission or the Federal Bureau of Investigation for the cost of training and functions performed.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1(b) of Pub. L. 97–412 provided that: ''The authority granted in subsection (a) [amending this section] shall terminate on December 31, 1983.''

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–60 effective Oct. 1, 1979, see section 209 of Pub. L. 96–60, set out as an Effective Date note under section 1469 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

ABOLITION OF HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Committee on Post Office and Civil Service of House of Representatives abolished by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. References to Committee on Post Office and Civil Service treated as referring to Committee on Government Reform and Oversight, see section 1(b) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1104 of this title.

## § 1305. Administrative law judges

For the purpose of sections 3105, 3344, 4301(2)(D), and 5372 of this title and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, the Office of Personnel Management may, and for the purpose of section 7521 of this title, the Merit Systems Protection Board may investigate, require reports by agencies, issue reports, including an annual report to Congress, prescribe regulations, appoint advisory committees as necessary, recommend legislation, subpena witnesses and records, and pay witness fees as established for the courts of the United States.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 402; Pub. L. 90–83, § 1(3), Sept. 11, 1967, 81 Stat. 196; Pub. L. 95–251, § 2(a)(1), (b)(1), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95–454, title VIII, § 801(a)(3)(B)(iii), title IX, § 906(a)(12), Oct. 13, 1978, 92 Stat. 1221, 1225; Pub. L. 102–378, § 2(4), Oct. 2, 1992, 106 Stat. 1346.)

HISTORICAL AND REVISION NOTES

1966 ACT

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| ..... | 5 U.S.C. 1010 (5th sentence). | June 11, 1946, ch. 324, § 11 (5th sentence), 60 Stat. 244. |

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section amends 5 U.S.C. 1305 to correct a typographical error.

AMENDMENTS

1992—Pub. L. 102–378 substituted ''sections 3105'' for ''section 3105''.

1978—Pub. L. 95–454 substituted provisions respecting functions pursuant to specified sections of this title of the Office of Personnel Management and the Merit Systems Protection Board for provisions respecting the functions pursuant to specified sections of this title of the Civil Service Commission.

Pub. L. 95–251 substituted ''Administrative law judges'' for ''Hearing examiners'' in section catchline and ''administrative law judges'' for ''hearing examiners'' in text.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 801(a)(3)(B)(iii) of Pub. L. 95–454 substituting ''5372'' for ''5362'' effective on first day of first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of this title.

Amendment by section 906(a)(12) of Pub. L. 95–454 respecting functions of the Office and the Board effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–83 effective as of Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90–83, set out as a note under section 5102 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, excluding committees composed wholly of full-time officers or employees of the Federal Government, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to this title.

CROSS REFERENCES

Additional requirements imposed by statute or otherwise recognized by law not limited or repealed by this section, see section 559 of this title.

Subsequent statutes to supersede or modify this section only to the extent that they do so expressly, see section 559 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 559 of this title.

## § 1306. Oaths to witnesses

The Director of the Office of Personnel Management and authorized representatives of the Director may administer oaths to witnesses in matters pending before the Office.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 402; Pub. L. 95–454, title IX, § 906(a)(13), Oct. 13, 1978, 92 Stat. 1226.)

HISTORICAL AND REVISION NOTES

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| ..... | 5 U.S.C. 634. | Aug. 23, 1912, ch. 350, § 1 (last par. under ''Civil Service Commission''), 37 Stat. 372. |
| ..... | [Uncodified]. | 1949 Reorg. Plan No. 5, § 2(c), eff. Aug. 19, 1949, 63 Stat. 1069. |

The section is rewritten to reflect expansion of authority of the Commission to include its Chairman under section 2(c) of 1949 Reorg. Plan No. 5.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted provisions respecting powers of the Director of the Office of Personnel Management in administering oaths in matters before the Office for provisions respecting powers of the Chairman of the Civil Service Commission and each Commissioner in administering oaths in matters before the Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

## § 1307. Minutes

The Civil Service Commission shall keep minutes of its proceedings.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 402.)

HISTORICAL AND REVISION NOTES

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| ..... | 5 U.S.C. 633(3) (last 10 words). | Jan. 16, 1883, ch. 27, § 2(3) (last 10 words), 22 Stat. 404. |

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

TRANSFER OF FUNCTIONS

Functions vested by statute in United States Civil Service Commission transferred to Director of Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of this title, effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of this title.

## § 1308. Annual reports

(a) The Office shall publish an annual report on the operation of subchapter III of chapter 83 of this title, including a statement concerning the status of the Civil Service Retirement and Disability Fund.

(b) The Office shall report annually to Congress on the operation of chapter 87 of this title.

(c) The Office shall report annually to Congress on the operation of chapter 89 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 402; Pub. L. 91–93, title I, § 104, Oct. 20, 1969, 83 Stat. 138; Pub. L. 93–156, Nov. 21, 1973, 87 Stat. 623; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–54, § 2(a)(3), Aug. 14, 1979, 93 Stat. 381; Pub. L. 96–470, title I, § 121, Oct. 19, 1980, 94 Stat. 2241.)

HISTORICAL AND REVISION NOTES

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| (a)(1) ..... | 5 U.S.C. 633(5). | Jan. 16, 1883, ch. 27, § 2(5), 22 Stat. 404. |
| (a)(2) ..... | 5 U.S.C. 2121 (less 1st 29 words). | Sept. 1, 1954, ch. 1208, § 302 (less 1st 29 words), 68 Stat. 1112. |

HISTORICAL AND REVISION NOTES—CONTINUED

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| (a)(3) ..... | 5 U.S.C. 118i(c). | Aug. 25, 1950, ch. 784, § 1 ''Sec. 9(c)'', 64 Stat. 475. |
| (a)(4) ..... | 5 U.S.C. 2317(b). | July 7, 1958, Pub. L. 85–507, § 18(b), 72 Stat. 336. |
| (b) ..... | 5 U.S.C. 2317(c). | July 7, 1958, Pub. L. 85–507, § 18(c), 72 Stat. 336. |
| (c) ..... | 5 U.S.C. 2266(f). | July 31, 1956, ch. 804, § 401 ''Sec. 16(f)'', 70 Stat. 759. |
| (d) ..... | 5 U.S.C. 2102 (less applicability to 5 U.S.C. 2099). | Aug. 17, 1954, ch. 752, § 13 (less applicability to § 10) 68 Stat. 743. |
| (e) ..... | 5 U.S.C. 3011. | Sept. 28, 1959, Pub. L. 86–382. § 12, 73 Stat. 716. |

In subsection (a)(1), the requirement of reasons for exceptions to the civil service rules and regulations is added on authority of former section 633(2)8 (last sentence), which is carried into section 3302.

In subsection (b), the words ''for his approval'' are omitted as unnecessary because the President has the inherent power, based on the Constitutional separation of powers, to approve or disapprove such a report.

Standard charges are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The Office, referred to in text, is the Office of Personnel Management.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–470 redesignated subsec. (c) as (a) and struck out former subsec. (a) which required the Office of Personnel Management to make an annual report to the President for transmittal to Congress on the Office's actions in the administration of the competitive service, the rules and regulations and exceptions to the rules and regulations, with reasons for the exceptions, in force, the practical effect of the rules and regulations, recommendations for better administration of the competitive service, results of the incentive awards program authorized by chapter 45 of this title, the names, addresses, and nature of employment of individuals on whom the Merit Systems Protection Board has imposed a penalty for prohibited political activity under section 7325 of this title, and a statement on the training of employees under chapter 41 of this title.

Subsec. (b). Pub. L. 96–470 redesignated subsec. (d) as (b) and struck out former subsec. (b) which required the Office of Personnel Management to provide annually to Congress an analysis of the administration and operation of chapter 41 of this title.

Subsecs. (c) to (e). Pub. L. 96–470 redesignated subsecs. (c) to (e) as (a) to (c), respectively.

1979—Subsec. (a)(3). Pub. L. 96–54 substituted ''Merit Systems Protection Board'' for ''Office''.

1978—Subsecs. (a) to (e). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

1973—Subsec. (b). Pub. L. 93–156 substituted requirement that Commission provide annually an analysis to Congress of the administration and operation of chapter 41 of this title, for prior requirement that Commission report annually to the President for transmittal to Congress on the administration of chapter 41 of this title, including the information received by the Commission from the agencies under section 4113(b) (2) and (3) of this title.

1969—Subsec. (c). Pub. L. 91–93 struck out ''on a normal cost plus interest basis'' after ''Fund''.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4705 of this title.

## CHAPTER 15—POLITICAL ACTIVITY OF CERTAIN STATE AND LOCAL EMPLOYEES

Sec.
1501. Definitions.
1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions.
1503. Nonpartisan candidacies permitted.
1504. Investigations; notice of hearing.
1505. Hearings; adjudications; notice of determinations.
1506. Orders; withholding loans or grants; limitations.
1507. Subpenas and depositions.
1508. Judicial review.

AMENDMENTS

1974—Pub. L. 93–443, title IV, § 401(b)(2), Oct. 15, 1974, 88 Stat. 1290, substituted ''candidacies'' for ''political activity'' in item 1503.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1212, 1215, 1216, 1302, 4703 of this title; title 23 section 142; title 42 sections 2996e, 3056, 4728, 9851.

### § 1501. Definitions

For the purpose of this chapter—

(1) ''State'' means a State or territory or possession of the United States;

(2) ''State or local agency'' means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof;

(3) ''Federal agency'' means an Executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System; and

(4) ''State or local officer or employee'' means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include—

(A) an individual who exercises no functions in connection with that activity; or

(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 403; Pub. L. 93–443, title IV, § 401(c), Oct. 15, 1974, 88 Stat. 1290.)

HISTORICAL AND REVISION NOTES

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| (1) ..... | 5 U.S.C. 118k–2. | July 19, 1940, ch. 640, § 4 ''Sec. 19'', 54 Stat. 772. |
| (2), (3) ..... | 5 U.S.C. 118k(f). | July 19, 1940, ch. 640, § 4 ''Sec. 12(f)'', 54 Stat. 770. |

HISTORICAL AND REVISION NOTES—CONTINUED

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| (4) ..... | 5 U.S.C. 118k(a) (1st 41 words), (e). | July 19, 1940, ch. 640, § 4 ''Sec 12(a) (1st 41 words), (e)'', 54 Stat. 767, 770. |
| | 5 U.S.C. 118k–1 (as applicable to 5 U.S.C. 118k). | Oct. 24, 1942, ch. 620 ''Sec. 21 (as applicable to § 12 of the Act of Aug. 2, 1939; added July 19, 1940, ch. 640, § 4, 54 Stat. 767)'', 56 Stat. 986. |
| (5) ..... | 5 U.S.C. 118*l* (as applicable to 5 U.S.C. 118k). | July 19, 1940, ch. 640, § 4 ''Sec. 15 (as applicable to § 12 of the Act of Aug. 2, 1939; added July 19, 1940, ch. 640, § 4, 54 Stat. 767)'', 54 Stat. 771. |

In paragraph (4)(B), the words ''or by any Territory or Territorial possession of the United States'' are omitted in view of the definition of ''State'' in paragraph (1).

In paragraph (5), the words ''July 19, 1940'' are substituted for ''at the time this section takes effect''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1974—Par. (5). Pub. L. 93–443 struck out par. (5) which defined ''an active part in political management or in political campaigns''.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 effective Jan. 1, 1975, see section 410(a) of Pub. L. 93–443, set out as a note under section 431 of Title 2, The Congress.

CROSS REFERENCES

Political activities of certain Federal employees and employees of the government of the District of Columbia, see section 7321 et seq. of this title.

### § 1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) A State or local officer or employee may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or

(3) be a candidate for elective office.

(b) A State or local officer or employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates.

(c) Subsection (a)(3) of this section does not apply to—

(1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;

(2) the mayor of a city;

(3) a duly elected head of an executive department of a State or municipality who is not classified under a State or municipal merit or civil-service system; or

(4) an individual holding elective office.