reorganization plan, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(d) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a reorganization plan shall be decided without debate.

(e) Prior to the passage by one House of a resolution of that House, that House receives a resolution with respect to the same reorganization plan from the other House, then—

(1) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(2) the vote on final passage shall be on the resolution of the other House.


HISTORICAL AND REVISION NOTES

<table>
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<tr>
<th>Derived from</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
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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


Subsec. (b). Pub. L. 98–614, §3(d)(1), substituted “passed or rejected” for “agreed to or disagreed to”.

Subsec. (c). Pub. L. 98–614, §3(d)(2), substituted “final passage” for “final approval”.


Subsec. (a). Pub. L. 95–17 inserted provisions that a motion to discharge a committee is not subject to a motion to postpone or to a motion to proceed to the consideration of the resolution shall remain the unfinished business of the respective House until disposed of.

Subsec. (b). Pub. L. 95–17 inserted provisions that a motion to postpone or a motion to proceed to the consideration of other business is not in order.


Subsec. (d). Pub. L. 95–17 added subsec. (d) which provisions were formerly set out in section 912(b) of this title.

§1913. Omitted

CODIFICATION

Section. Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 398, providing for decision without debate with respect to motions to postpone, motions to proceed to the consideration of other business, and appeals from decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, was omitted in the general amendment of this chapter by Pub. L. 95–17, §2, Apr. 6, 1977, 91 Stat. 29. See section 912 of this title.

PART II—CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES

Chap. 11. Office of Personnel Management .... Sec. 1101

AMENDMENTS


CHAPTER 11—OFFICE OF PERSONNEL MANAGEMENT

Sec. 1101. Office of Personnel Management.

1102. Director; Deputy Director; Associate Directors.

1103. Functions of the Director.

1104. Delegation of authority for personnel management.

1105. Administrative procedure.

AMENDMENTS

1978—Pub. L. 95–454, title II, §201(a), Oct. 13, 1978, 92 Stat. 1119, substituted in chapter heading “OFFICE OF PERSONNEL MANAGEMENT” for “ORGANIZATION”, in item 1101 “Office of Personnel Management” for “Appointment of Commissioners”, in item 1102 “Director; Deputy Director; Associate Directors” for “Term of office; filling vacancies; removal”, in item 1103 “Functions of the Director” for “Chairman; Vice Chairman; Executive Director”, in item 1104 “Delegation of authority for personnel management” for “Functions of Chairman”, and in item 1105 “Administrative procedure” for “Boards of examiners”.

§1101. Office of Personnel Management

The Office of Personnel Management is an independent establishment in the executive branch. The Office shall have an official seal, which shall be judicially noticed, and shall have its principal office in the District of Columbia, and may have field offices in other appropriate locations.


HISTORICAL AND REVISION NOTES

<table>
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<tr>
<th>Derived from</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
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</table>

The words “official place under the United States” are changed to “another office or position in the Gov-
ernment” of the “United States” to conform to the present legislative use of “office” and “position”.

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**


**EFFECTIVE DATE OF 1978 AMENDMENT**

Section 907 of Pub. L. 95–454 provided that: “Except as otherwise expressly provided in this Act, the provisions of this Act [see Tables for classification] shall take effect 90 days after the date of the enactment of this Act [Oct. 13, 1978].”

**SHORT TITLE OF 1992 AMENDMENT**


**SHORT TITLE OF 1984 AMENDMENT**


**SHORT TITLE OF 1978 AMENDMENT**

Section 1 of Pub. L. 95–454 provided that: “This Act [see Tables for classification] may be cited as the ‘Civil Service Reform Act of 1978’.”

**SAVINGS PROVISION**

Section 902 of Pub. L. 95–454 provided that: “(a) Except as otherwise provided in this Act [see Tables for classification], all executive orders, rules, and regulations affecting the Federal service shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed by the President, the Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority with respect to matters within their respective jurisdictions.

(b) No provision of this Act [see Tables for classification] shall affect any administrative proceedings pending at the time such provision takes effect. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

(c) No suit, action, or other proceeding lawfully commenced by or against the Director of the Office of Personnel Management or the members of the Merit Systems Protection Board, or officers or employees thereof, in their official capacity or in relation to the discharge of their official duties, as in effect immediately before the effective date of this Act [see Effective Date of 1978 Amendment note above], shall abate by reason of the enactment of this Act [see Tables for classification]. Determinations with respect to any such suit, action, or other proceeding shall be made as if this Act had not been enacted.”

**TRANSMITTAL OF RECORD RELATING TO PRESIDENTIALLY APPOINTED POSITIONS TO PRESIDENTIAL CANDIDATES**


(a) **TRANSFER OF FUNCTIONS.—** (1) Subject to subsection (b), the Secretary of Defense may transfer to the Office of Personnel Management the personnel security investigations functions that, as of the date of the enactment of this Act [Nov. 24, 2003], are performed by the Defense Security Service of the Department of Defense. Such a transfer may be made only with the concurrence of the Director of the Office of Personnel Management.

(2) The Director of the Office of Personnel Management may accept a transfer of functions under paragraph (1).

(b) **FUNCTIONS OF OFFICE OF PERSONNEL MANAGEMENT CONCERNING PERSONNEL SECURITY INVESTIGATIONS.—**

(1) The Secretary of Defense may transfer to the Office of Personnel Management functions under section 2203 of title 5, United States Code, as transferred by section 2209 of title 5, United States Code, if the Secretary determines that such transfer is in the national interest and is consistent with the policies and procedures of the Office of Personnel Management established by law.

(2) **TRANSFER AT ANY TIME AFTER TRANSFER.—**

At any time after the Secretary makes a transfer under paragraph (1), the Secretary may transfer to the Office of Personnel Management any function transferred by the Secretary under such paragraph.

(c) **DEFINITIONS.—**

For purposes of this section—

(1) BRANCH OF SERVICE.—The term ‘branch of service’ means—

(A) the Army;

(B) the Navy;

(C) the Air Force;

(D) the Marine Corps;

(E) the Coast Guard;

(F) the Public Health Service;

(G) the National Oceanic and Atmospheric Administration;

(H) the National Aeronautics and Space Administration;

(I) the National Science Foundation;

(J) the Smithsonian Institution;

(K) the Office of Management and Budget.

(2) GRANT ANALYST.—The term ‘grant analyst’ means—

(A) the position of grant analyst.

(3) NATIONAL SECURITY擬ION.—The term ‘national security agency’ means—

(A) the Central Intelligence Agency;

(B) the Defense Intelligence Agency;

(C) the National Geospatial–Intelligence Agency;

(D) the National Reconnaissance Office;

(E) the National Security Agency;

(F) the National Counterintelligence Center.

(4) PERSONNEL SECURITY INVESTIGATION.—The term ‘personnel security investigation’ means—

(A) a personnel security investigation conducted by the Federal Bureau of Investigation or another Federal agency;

(B) a personnel security investigation conducted by a non-Federal entity under contract to the Department of Defense.

(5) PERSONNEL SECURITY INVESTIGATIONS AND SYSTEMS.—The term ‘personnel security investigations and systems’ means—

(A) the personnel security investigations and systems of the Department of Defense;
§1101
TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES
Page 130

intelligence functions and polygraph activities of the Department.

(D) That the authority to adjudicate background investigations will remain with the Department of
Defense and that the transfer of Defense Security Service personnel to the Office of Personnel Manage-
ment will improve the speed and efficiency of the ad-
judication process.

(E) That the Department of Defense will retain
within the Defense Security Service sufficient per-
sonnel and capabilities to improve Department of De-
fense industrial security programs and practices.

(c) Transfer of Personnel.—(1) If the Director of
the Office of Personnel Management accepts a transfer
of functions under subsection (a), the Secretary of De-
fense shall also transfer to the Office of Personnel Man-
agement, and the Director shall accept—

(A) the Defense Security Service employees who
perform those functions immediately before the
transfer of functions;

(B) the Defense Security Service employees who,
as of such time, are first level supervisors of employ-
eses transferred under subparagraph (A).

(2) The Secretary may also transfer to the Office of
Personnel Management any Defense Security Service
employees (including higher level supervisors) who pro-
vide support services for the performance of the func-
tions transferred under subsection (a) or for the person-
nel (including supervisors) transferred under paragraph
(1) if the Director—

(A) determines that the transfer of such additional
employees and the positions of such employees to the
Office of Personnel Management is necessary in the
interest of effective performance of the transferred
functions; and

(B) accepts the transfer of the additional employ-
ees.

(3) In the case of an employee transferred to the Of-
fice of Personnel Management under paragraph (1) or
(2), whether a full-time or part-time employee—

(A) subsections (b) and (c) of section 5362 of title
5, United States Code, relating to grade retention,
shall apply to the employee, except that—

(i) the grade retention period shall be the one-
year period beginning on the date of the transfer;
and

(ii) paragraphs (1), (2), and (3) of such subsection
(c) shall not apply to the employee; and

(B) the employee may not be separated, other than
pursuant to chapter 75 of title 5, United States Code,
during such one-year period.

(d) Actions After Transfer.—(1) Not later than
one year after a transfer of functions to the Office of
Personnel Management under subsection (a), the Direc-
tor of the Office of Personnel Management, in coordi-
nation with the Secretary of Defense, shall review all
functions performed by personnel of the Defense Secu-
rity Service at the time of the transfer and make a
written determination regarding whether each such
function is inherently governmental or is otherwise in-
appropriate for performance by contractor personnel.

(2) A function performed by Defense Security Ser-
vice employees as of the date of the enactment of this
Act [Nov. 24, 2003] may not be converted to contractor
performance by the Director of the Office of Personnel Man-
agement until—

(A) the Director reviews the function in accord-
ance with the requirements of paragraph (1) and
makes a written determination that the function is
not inherently governmental and is not otherwise in-
appropriate for contractor performance; and

(B) the Director conducts a public-private com-
petition regarding the performance of that function
in accordance with the requirements of the Office of
Management and Budget Circular A–76.

Federal Flexible Benefits Plan Administrative
Costs
Stat. 1640, provided that:

(a) in General.—Notwithstanding any other provi-
sion of law, an agency or other employing entity of the
Government which provides or plans to provide a flexi-
ble spending account option under a program established or ad-
ministered by the Office of Personnel Management
shall periodically forward to such Office, or entity des-
gnated by such Office, the amount necessary to offset
the administrative costs of such program which are at-
tributable to such agency.

(b) Offset of Administrative Costs.—Each such
agency or employing entity that offers a flexible spend-
ing account option under a program established or ad-
ministered by the Office of Personnel Management
shall periodically forward to such Office, or entity des-
gnated by such Office, the amount necessary to offset
the administrative costs of such program for each of the 5 fiscal years thereafter.

(2) At the end of each of the first 3 calendar years
in which an agency or other employing entity offers a
flexible spending account option under this section,
such agency or entity shall submit a report to the Of-
fice of Management and Budget showing the amount of
its employment tax savings in such year which are at-
tributable to such option, net of administrative fees
paid under subsection (b).

Combined Federal Campaign Brochure List and
General Designation Option for International
Agencies
1763, provided that: "Notwithstanding any other provi-
sion of law, beginning October 1, 1992, and thereafter,
no funds made available to the Office of Personnel
Management may be used to prepare, promulgate, or
implement any rules or regulations relating to the
Combined Federal Campaign unless such rules or regu-
lations include a Combined Federal Campaign brochure
list and general designation option solely for inter-
national agencies, which list (listed by Federation in
the case of affiliated agencies) and option shall include
only those international agencies that elect in their
annual application to be included under such list and
option rather than under the national agencies list and
option: Provided. That such limitation on the use of
funds shall not apply to any activities related to the
1992 Combined Federal Campaign."

Report on Productivity of Federal Workforce;
Deadline
1470, directed Office of Personnel Management to re-
view and report to Congress, not later than 24 months
after Nov. 5, 1990, on the productivity of the Federal
workforce, such report to include recommendations
with regard to (1) how productivity within the Federal
workforce can be increased, the delivery of Government
services improved, and the payroll costs of Government
controlled through improved organization, the use of
advanced technology, and modern management practices,
(2) the size, structure, and composition of the Federal
workforce, (3) criteria for use by departments and agen-
cies to determine the level of personnel necessary to
accomplish their functions and goals, and (4) changes in
Federal law, regulations, and administrative practices
to promote economy, productivity, effectiveness, and
managerial accountability within the Federal workforce.

**Funds for Preparation, Proclamation, or Implementation of Regulations Relating to Combined Federal Campaign; Eligibility Criteria**

Pub. L. 106-202, §1101(m) [title VI, §618], Dec. 22, 1997, 111 Stat. 1329-390, 1329-423, provided that:

"(a) None of the funds appropriated by this Act, or any other Act in this or any fiscal year hereafter, may be used in preparing, promulgating, or implementing any regulations relating to the Combined Federal Campaign if such regulations are not in conformance with subsection (b)."

"(b)(1)(A) Any requirements for eligibility to receive contributions through the Combined Federal Campaign shall not, to the extent that such requirements relate to litigation, public-policy advocacy, or attempting to influence legislation, be any more restrictive than any requirements established with respect to those subject matters under section 501(c)(3) or 501(h) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3), (h)]."

"(B) Any requirements for eligibility to receive contributions through the Combined Federal Campaign shall, to the extent that such requirements relate to any subject matter other than one referred to in subparagraph (A), remain the same as the criteria in the 1984 regulations, except as otherwise provided in this section.

"(C) Notwithstanding any requirement referred to in subparagraph (A) or (B), for purposes of any Combined Federal Campaign—"

"(i) any voluntary agency or federated group which was a named plaintiff as of September 1, 1987, in a case brought in the United States District Court for the District of Columbia, and designated as Civil Action No. 83-0928 or 86-1367, and"

"(ii) The Federal Employee Education and Assistance Fund, shall be considered to have national eligibility.

"(D) Public accountability standards shall remain similar to the standards which were by regulation established with respect to the 1984-1987 Combined Federal Campaigns, except that the Office of Personnel Management shall prescribe regulations under which a voluntary agency or federated group which does not exceed a certain size (as established under such regulations) may submit a copy of an appropriate Federal tax return, rather than complying with any independent auditing requirements which would otherwise apply.

"(E)(i) A voluntary agency or federated group shall, for purposes of any Combined Federal Campaign in any year, be considered to have national eligibility if such agency or group—"

"(1) complies with all requirements for eligibility to receive contributions through the Combined Federal Campaign, without regard to any requirements relating to "local presence"; and"

"(2) demonstrates that it provided services, benefits, or assistance, or otherwise conducted program activities, in—"

"(I) 15 or more different States over the 3-year period immediately preceding the start of the year involved; or"

"(II) several foreign countries or several parts of a foreign country.

For purposes of this subparagraph, an agency or federated group shall be considered to have conducted program activities in the required number of States, countries, or parts of a country, over the period of years involved, if such agency or group conducted program activities in such number of States, countries, or parts either in any single year during such period or in the aggregate over the course of such period, provided that no State, country, or part of a country is counted more than once.

"(F) Notwithstanding any other provisions, eligibility requirements relating to International Services Agencies shall remain at least as inclusive as existing requirements. Any voluntary agency or federated group which attains national eligibility under subparagraph (A), and any voluntary agency which is a member of the International Services Agencies, shall be considered to have satisfied any requirements relating to "local presence".

"(3)(A) If a federated group is eligible to receive donations in a Combined Federal Campaign, whether on a national level (pursuant to certification by the Office) or a local level (pursuant to certification by the local Federal coordinating committee), each voluntary agency which is a member of such group may, upon certification by the federated group, be considered eligible to participate on such national or local level, as the case may be.

"(B) Notwithstanding any provision of subparagraph (A)—"

"(i) the Office may require a voluntary agency to provide information to support any certification submitted by a federated group with respect to such agency under subparagraph (A); and"

"(ii) if a determination is made, in writing after notice and opportunity to submit written comments, that the information submitted by the voluntary agency does not satisfy the applicable eligibility requirements, such agency may be barred from participating in the Combined Federal Campaign on a national or local level, as the case may be, for a period not to exceed 1 campaign year.

"(4) The Office shall exercise oversight responsibility to ensure that—"

"(A) regulations are uniformly and equitably implemented in all local combined Federal campaigns;

"(B) federated groups participating in a local combined Federal campaign are allowed to compete fairly for the role of principal combined fund organization;

"(C) federated groups participating in a local combined Federal campaign are afforded—"

"(i) adequate opportunity to consult with the PCFO for the area involved before any plans are made final relating to the design or conduct of such campaign (including plans pertaining to any materials to be printed as part of the campaign);

"(ii) adequate opportunity to participate in campaign events and other related activities; and"

"(iii) timely access to all reports, budgets, audits, and other records in the possession of, or under the control of, the PCFO for the areas involved; and"

"(D) a federated group or voluntary agency found by the Office, by a written decision issued after notice and opportunity to submit written comments, to have violated the regulations may be barred from serving as a PCFO for the next 2 combined Federal campaign years.

"(5) The Office shall prescribe regulations to ensure that PCFOs do not make inappropriate delegations of decisionmaking authority.

"(6)(A) The Office shall, in consultation with federated groups, establish a formula under which any undesignated contributions received in a local combined Federal campaign shall be allocated in any year.

"(B) Under the formula for the 1990 Combined Federal Campaign, all undesignated contributions received in a local campaign shall be allocated as follows:

"(i) 82 percent shall be allocated to the United Way.

"(ii) 7 percent shall be allocated to the International Services Agencies.

"(iii) 7 percent shall be allocated to the National Voluntary Health Agencies.

"(iv) 4 percent shall, after fair and careful consideration of all eligible federated groups and agencies, be allocated by the local Federal coordinating committee among any or all of the following:

"(I) National federated groups (other than any identified in clauses (1), (ii), or (iii)), except that a national federated group shall not be eligible under this subclause unless there are at least 15 members of such group participating in the local campaign, unless the members of such group collectively receive at least 4 percent of the designated contributions in the local campaign, and unless such group was granted national eligibility status for the 1987, 1988, 1989, or 1990 Combined Federal Campaign.
"(II) Local federated groups.

"(III) Any local, non-affiliated voluntary agency which receives at least 4 percent of the designated contributions in the local campaign.

"(C) The formula set forth in subparagraph (B)—

"(i) shall be phased in over the course of the 1988 and 1989 Combined Federal Campaigns;

"(ii) shall be fully implemented with respect to the 1990 Combined Federal Campaigns; and

"(iii) shall, with respect to any Combined Federal Campaign thereafter, be adjusted based on the experience gained in the Combined Federal Campaigns referred to in clauses (i) and (ii).

"(D) Nothing in this paragraph shall apply with respect to any campaign conducted in a foreign country.

"(E) All appropriate steps shall be taken to encourage donors to make designated contributions.

"(7) The option for a donor to write in the name of a voluntary agency or federated group not listed in the campaign brochure to receive that individual’s contribution in a local campaign shall be eliminated.

"(8) The name of any individual making a designated contribution in a campaign shall, upon request of the recipient voluntary agency or federated group, be released to such agency or group, unless the contributor indicates that his or her name is not to be released. Under no circumstance may the names of contributors be sold or otherwise released by such agency or group.

"(9)(A) The name of each participating voluntary agency and federated group, together with a brief description of their respective programs, shall be published in any information leaflet distributed to employees in a local combined Federal Campaign. Agencies shall be arranged by federated group, with combined Federal campaign organization code numbers corresponding to each such agency and group.

"(B) The requirement under subparagraph (A) relating to the inclusion of program descriptions may, at the discretion of a local Federal coordinating committee, be waived for a local campaign in any year if, in the immediately preceding campaign year, contributions received through the local campaign totalled less than $100,000.

"(10) Employee coercion is not to be tolerated in the Combined Federal Campaign, and protections against employee coercion shall be strengthened and clarified.

"(11) The Office—

"(A) may not, after the date of the enactment of this Act [Dec. 22, 1987], grant national eligibility status to any federated group unless such group has at least 15 member voluntary agencies, each of which meets the requirements for national eligibility under paragraph (2)(A); and

"(B) may withdraw federation status from any federated group for a period of not to exceed 1 campaign year if it is determined, on the record after opportunity for a hearing, that the federated group has not complied with the regulatory requirements.

"(12) The Office may bar from participation in the Combined Federal Campaign, for a period not to exceed 1 campaign year, any voluntary agency which the Office determines, in writing, and after notice and opportunity to submit written comments, did not comply with a reasonable request by the Office to furnish it with information relating to such agency’s campaign accounting and auditing practices.

"(c) For purposes of this section, a voluntary agency or federated group having ‘national eligibility’ is one which is eligible to participate in each local domestic campaign.

Civil Service Reform Act of 1978 FINDINGS AND STATEMENT OF PURPOSE

Section 3 of Pub. L. 95–454 provided that: “It is the policy of the United States that—

"(1) in order to provide the people of the United States with a competent, honest, and productive Federal work force reflective of the Nation’s diversity, and to improve the quality of public service, Federal personnel management should be implemented consistent with merit system principles and free from prohibited personnel practices;

"(2) the merit system principles which shall govern in the competitive service and in the executive branch of the Federal Government should be expressly stated to furnish guidance to Federal agencies in carrying out their responsibilities in administering the public business, and prohibited personnel practices should be statutorily defined to enable Federal employees to avoid conduct which undermines the merit system principles and the integrity of the merit system;

"(3) Federal employees should receive appropriate protection through increasing the authority and powers of the Merit Systems Protection Board in processing hearings and appeals affecting Federal employees;

"(4) the authority and power of the Special Counsel should be increased so that the Special Counsel may investigate allegations involving prohibited personnel practices and reprisals against Federal employees for the lawful disclosure of certain information and may file complaints against agency officials and employees who engage in such conduct;

"(5) the function of filling positions and other personnel functions in the competitive service and in the executive branch should be delegated in appropriate cases to the agencies to expedite processing appointments and other personnel actions, with the control and oversight of this delegation being maintained by the Office of Personnel Management to protect against prohibited personnel practices and the use of unsound management practices by the agencies;

"(6) a Senior Executive Service should be established to provide the flexibility needed by agencies to recruit and retain the highly competent and qualified executives needed to provide more effective management of agencies and their functions, and the more expeditious administration of the public business;

"(7) in appropriate instances, pay increases should be based on quality of performance rather than length of service;

"(8) research programs and demonstration projects should be authorized to permit Federal agencies to experiment, subject to congressional oversight, with new and different personnel concepts in controlled situations to achieve more efficient management of the Government’s human resources and greater productivity in the delivery of service to the public;

"(9) the training program of the Government should include retraining of employees for positions in other agencies to avoid separations during reductions in force and the loss to the Government of the knowledge and experience that these employees possess; and

"(10) the right of Federal employees to organize, bargain collectively, and participate through labor organizations in decisions which affect them, with full regard for the public interest and the effective conduct of public business, should be specifically recognized in statute.”

Powers of President Unaffected Except by Express Provisions

Section 904 of Pub. L. 95–454 provided that: “Except as otherwise expressly provided in this Act [see Tables for classification], no provision of this Act shall be construed to—

"(1) limit, curtail, abolish, or terminate any function of, or authority available to, the President which the President had immediately before the effective date of this Act [see Effective Date of 1978 Amendment note above]; or

"(2) limit, curtail, or terminate the President’s authority to delegate, redelegate, or terminate any delegation of functions.”

Reorganization Plans No. 1 and 2 of 1978 Superseded by Civil Service Reform Act of 1978

Section 905 of Pub. L. 95–454 provided that: “Any provision in either Reorganization Plan Numbered 1 [set
out in the Appendix to this title] or 2 [set out below] of 1978 inconsistent with any provision in this Act [see Tables for classification] is hereby superseded."

REORGANIZATION PLAN NO. 2 OF 1978

43 F.R. 36037, 92 Stat. 3763

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 23, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

PART I. OFFICE OF PERSONNEL MANAGEMENT

SECTION 101. ESTABLISHMENT OF THE OFFICE OF PERSONNEL MANAGEMENT AND ITS DIRECTOR AND OTHER MATTERS

There is hereby established as an independent establishment in the Executive Branch, the Office of Personnel Management (the "Office"). The head of the Office shall be the Director of the Office of Personnel Management (the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for level II of the Executive Schedule [5 U.S.C. 5313]. The position referred to in 5 U.S.C. 5109(b) is hereby abolished.

SECTION 102. TRANSFER OF FUNCTIONS

Except as otherwise specified in this Plan, all functions vested by statute in the United States Civil Service Commission, or the Chairman of said Commission, or the Boards of Examiners established by 5 U.S.C. 1106 and 1106a, are hereby transferred to the Director of the Office of Personnel Management.

SECTION 103. DEPUTY DIRECTOR AND ASSOCIATE DIRECTORS

(a) There shall be within the Office a Deputy Director who shall be appointed by the President by and with the advice and consent of the Senate and who shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule [5 U.S.C. 5314]. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or in the event of a vacancy in the Office of the Director.

(b) There shall be within the Office not more than five Associate Directors, who shall be appointed by the Director in the excepted service, shall have such titles and responsibilities as the Director may from time to time determine, and shall receive compensation at the rate now or hereafter provided for level IV of the Executive Schedule [5 U.S.C. 5315].

SECTION 104. FUNCTIONS OF THE DIRECTOR

The functions of the Director shall include, but not be limited to, the following:

(a) Aiding the President, as the President may request, in preparing such rules as the President prescribes, for the administration of civilian employment now within the jurisdiction of the United States Civil Service Commission;

(b) Advising the President, as the President may request, on any matters pertaining to civilian employment now within the jurisdiction of the United States Civil Service Commission;

(c) Executing, administering and enforcing the Civil Service rules and regulations of the President and the Office and the statutes governing the same, and other activities of the Office including retirement and classification activities except to the extent such functions remain vested in the Merit Systems Protection Board pursuant to Section 202 of this Plan, or are transferred to the Special Counsel pursuant to Section 204 of this Plan. The Director shall provide the public, where appropriate, a reasonable opportunity to comment and submit written views on the implementation and interpretation of such rules and regulations;

(d) Conducting or otherwise providing for studies and research for the purpose of assuring improvements in personnel management, and recommending to the President actions to promote an efficient Civil Service and a systematic application of the merit system principles, including measures relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separations of employees; and

(e) Performing the training responsibilities now performed by the United States Civil Service Commission as set forth in 5 U.S.C. Chapter 41.

SECTION 105. AUTHORITY TO DELEGATE FUNCTIONS

The Director may delegate, from time to time, to the head of any agency employing persons in the competitive service, the performance of all or any part of those functions transferred under this Plan to the Director which relate to employees, or applicants for employment, of such agency.

PART II. MERIT SYSTEMS PROTECTION BOARD

SECTION 201. MERIT SYSTEMS PROTECTION BOARD

(a) The United States Civil Service Commission is hereby redesignated the Merit Systems Protection Board. The Commissioners of the United States Civil Service Commission are hereby redesignated as members of the Merit Systems Protection Board (the "Board").

(b) The Chairman of the Board shall be its chief executive and administrative officer. The position of Executive Director, established by 5 U.S.C. 1103(d), is hereby abolished.

SECTION 202. FUNCTIONS OF THE MERIT SYSTEMS PROTECTION BOARD AND RELATED MATTERS

(a) There shall remain with the Board the hearing, adjudication, and appeals functions of the United States Civil Service Commission specified in 5 U.S.C. 1104(b)(4) (except hearings, adjudications and appeals with respect to examination ratings), and also found in the following statutes:

(i) 5 U.S.C. 1504-1507, 7325, 5335, 7521, 7701 and 8347(d);

(ii) 38 U.S.C. 2023

(b) There shall remain with the Board the functions vested in the United States Civil Service Commission, or its Chairman, pursuant to 5 U.S.C. 1106(a) and (b)(4) to enforce decisions rendered pursuant to the authorities described in Subsection (a) of this Section.

(c) Any member of the Board may request from the Director, in connection with a matter then pending before the Board for adjudication, an advisory opinion concerning interpretation of rules, regulations, or other policy directives promulgated by the Office of Personnel Management.

(d) Whenever the interpretation or application of a rule, regulation, or policy directive of the Office of Personnel Management is at issue in any hearing, adjudication, or appeal before the Board, the Board shall promptly notify the Director, and the Director shall have the right to intervene in such proceedings.

(e) The Board shall designate individuals to chair performance rating boards established pursuant to 5 U.S.C. 4305.

(f) The Chairman of the Board shall designate representatives to chair boards of review established pursuant to 5 U.S.C. 3347(b).

(g) The Board may from time to time conduct special studies relating to the Civil Service, and to other merit systems in the Executive Branch and report to the President and the Congress whether the public interest in a workforce free of personnel practices prohibited by law or regulations is being adequately protected. In carrying out this function the Board shall make such inquiries as may be necessary, and, to the extent permitted by law, shall have access to personnel records or information collected by the Office of Personnel Man-

1 As amended July 11, 1978.
agement and may require additional reports from other agencies as needed. The Board shall make such recommendations to the President and the Congress as it deems appropriate.

(h) The Board may delegate the performance of any of its administrative functions to any officer or employee of the Board.

(i) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. The Board may issue rules and regulations consistent with statutory requirements, defining its review procedures, including the time limits within which an appeal must be filed and the rights and responsibilities of the parties to an appeal. All regulations of the Board shall be published in the Federal Register.

SEC. 203. SAVINGS PROVISION

The Board shall accept appeals from agency actions effected prior to the effective date of this Plan. On the effective date of Part II of this Plan, proceedings then before the Federal Employee Appeals Authority shall continue before the Board; proceedings then before the Appeals Review Board and proceedings then before the United States Civil Service Commission on appeal from decisions of the Appeals Review Board shall continue before the Board; other employee appeals before boards or other bodies pursuant to law or regulation shall continue to be processed pursuant to those laws or regulations. Nothing in this section shall affect the right of a Federal employee to judicial review under applicable law.

SEC. 204. THE SPECIAL COUNSEL

(a) There shall be a Special Counsel to the Board appointed for a term of four years by the President and with the advice and consent of the Senate, who shall be compensated as now or hereafter provided for level IV of the Executive Schedule [5 U.S.C. 5313].

(b) There are hereby transferred to the Special Counsel all functions with respect to investigations relating to violations of 5 U.S.C. Chapter 15; 5 U.S.C. Subchapter III of Chapter 73 (Political Activity); and 5 U.S.C. 552(a)(4)(F) (public information).

(c) The Special Counsel may investigate, pursuant to 5 U.S.C. 1303, allegations of personnel practices which are prohibited by law or regulation.

(d) When in the judgment of the Special Counsel, such personnel practices exist, he shall report his findings and recommendations to the Chairman of the Merit Systems Protection Board, the agency affected, and to the Office of Personnel Management, and may report such findings to the President.

(e) When in the judgment of the Special Counsel, the results of an investigation would warrant the taking of disciplinary action against an employee who is within the jurisdiction of the Board, the Special Counsel shall prepare charges against such employee and present them with supporting documentation to the Board. Evidence supporting the need for disciplinary action against a Presidential appointee shall be submitted by the Special Counsel to the President.

(f) The Special Counsel may appoint personnel necessary to assist in the performance of his functions.

(g) The Special Counsel shall have the authority to prescribe rules and regulations relating to the receipt and investigation of matters under his jurisdiction. Such regulations shall be published in the Federal Register.

(h) The Special Counsel shall not issue advisory opinions.

PART III. FEDERAL LABOR RELATIONS AUTHORITY

SEC. 301. ESTABLISHMENT OF THE FEDERAL LABOR RELATIONS AUTHORITY

(a) There is hereby established, as an independent establishment in the Executive Branch, the Federal Labor Relations Authority (the "Authority"). The Authority shall be composed of three members, one of whom shall be Chairman, not more than two of whom may be adherents of the same political party, and none of whom may hold another office or position in the Government of the United States except where provided by law or by the President.

(b) Members of the Authority shall be appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member to serve as Chairman of the Authority, who shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule [5 U.S.C. 5314]. The other members shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule [5 U.S.C. 5315].

(c) The initial members of the Authority shall be appointed as follows: one member for a term of two years; one member for a term of three years; and the Chairman for a term of four years. Thereafter, each member shall be appointed for a term of four years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) The Authority shall make an annual report on its activities to the President for transmittal to Congress.

SEC. 302. ESTABLISHMENT OF THE GENERAL COUNSEL OF THE AUTHORITY

There shall be a General Counsel of the Authority, who shall be appointed by the President, by and with the advice and consent of the Senate for a term of four years, and who shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule [5 U.S.C. 5316]. The General Counsel shall perform such duties as the Authority shall from time to time prescribe, including but not limited to the duty of determining and presenting facts required by the Authority in order to decide unfair labor practice complaints.

SEC. 303. THE FEDERAL SERVICE IMPASSES PANEL

The Federal Service Impasses Panel, established under Executive Order 11491, as amended [set out under 5 U.S.C. 7101], (the "Panel") shall continue, and shall be a distinct organizational entity within the Authority.

SEC. 304. FUNCTIONS

Subject to the provisions of Section 306, the following functions are hereby transferred:

(a) To the Authority—

(1) The functions of the Federal Labor Relations Council pursuant to Executive Order 11491, as amended [set out under 5 U.S.C. 7101];

(2) The functions of the Civil Service Commission under Sections 4(a) and 6(e) of Executive Order 11491, as amended;

(3) The functions of the Assistant Secretary of Labor for Labor-Management Relations, under Executive Order 11491, as amended, except for those functions related to alleged violations of the standards of conduct for labor organizations pursuant to Section 6(a)(4) of said Executive Order; and,

(b) To the Panel—the functions and authorities of the Federal Service Impasses Panel, pursuant to Executive Order 11491, as amended.

SEC. 305. AUTHORITY DECISIONS

The decisions of the Authority on any matter within its jurisdiction shall be final and not subject to judicial review.

SEC. 306. OTHER PROVISIONS

Unless and until modified, revised, or revoked, all policies, regulations, and procedures established, and decisions issued, under Executive Order 11491, as amended [set out under 5 U.S.C. 7101], shall remain in full force and effect. There is hereby expressly reserved to the President the power to modify the functions transferred to the Federal Labor Relations Authority and the Federal Service Impasses Panel pursuant to Section 304 of this Plan.
All matters which relate to the functions transferred by Section 304 of this Plan, and which are pending on the effective date of the establishment of the Authority before the Senate, would be the responsibility of the Office of Personnel Management. Its Director, appointed by the President and confirmed by the Senate, would be responsible for administering Federal personnel matters except for presidential appointments. The Director would be the government’s principal representative in Federal labor relations matters.

**PART IV. GENERAL PROVISIONS**

**SEC. 401. INCIDENTAL TRANSFER**

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

**SEC. 402. INTERIM OFFICERS**

(a) The President may authorize any persons who, immediately prior to the effective date of this Plan, held positions in the Executive Branch of the Government, to act as Director of the Office of Personnel Management, the Deputy Director of the Office of Personnel Management, the Special Counsel, the Chairman and other members of the Federal Labor Relations Authority, the Chairman and other members of the Federal Service Impasses Panel, or the General Counsel of the Authority, until those offices are for the first time filled pursuant to the provisions of this Reorganization Plan or by recess appointment, as the case may be.

(b) The President may authorize any such person to receive the compensation attached to the Office in respect of which that person so serves, in lieu of other compensation from the United States.

**SEC. 403. EFFECTIVE DATE**

The provisions of this Reorganization Plan shall become effective at such time or times, on or before January 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5, United States Code.

**MESSAGE OF THE PRESIDENT**

To the Congress of the United States:

On March 2nd I sent to Congress a Civil Service Reform proposal to enable the Federal government to improve its service to the American people.

Today I am submitting another part of my comprehensive proposal to reform the Federal personnel management system through Reorganization Plan No. 2 of 1978. The plan will reorganize the Civil Service Commission and thereby create new institutions to increase the effectiveness of management and strengthen the protection of employee rights. The Civil Service Commission has acquired inherently conflicting responsibilities: to help manage the Federal Government and to protect the rights of Federal employees. It has done neither job well. The Plan would separate the two functions.

The positive personnel management tasks of the government—such as training, productivity programs, examinations, and pay and benefits administration—would be the responsibility of the Office of Personnel Management. Its Director, appointed by the President and confirmed by the Senate, would be responsible for administering Federal personnel matters except for presidential appointments. The Director would be the government’s principal representative in Federal labor relations matters.

**FEDERAL LABOR RELATIONS AUTHORITY**

An Executive Order now vests existing labor-management relations in a part-time Federal Labor-Relations Council, comprised of three top government managers; other important functions are assigned to the Assistant Secretary of Labor for Labor-Management Relations. This arrangement is defective because the Council members are part-time, they come exclusively from the ranks of management and their jurisdiction is fragmented.

The Plan I submit today would consolidate the central policymaking functions in labor-management relations now divided between the Council and the Assistant Secretary into one Federal Labor Relations Authority. The Authority would be composed of three full-time members appointed by the President with the advice and consent of the Senate. Its General Counsel, also appointed by the President and confirmed by the Senate, would present unfair labor practice complaints. The Plan also provides for the continuance of the Federal Service Impasses Panel within the Authority to resolve negotiating impasses between Federal employee unions and agencies.

The cost of replacing the Civil Service Commission can be paid by our present resources. The reorganization itself would neither increase nor decrease the costs of personnel management throughout the government. But taken together with the substantive reforms I have proposed, this Plan will greatly improve the government’s ability to manage programs, speed the delivery of Federal services to the public, and aid in executing other reorganizations I will propose to the Congress, by improving Federal personnel management.

Each of the provisions of this proposed reorganization would accomplish one or more of the purposes set forth in 5 U.S.C. 901(a). No functions are abolished by the Plan, but the offices referred to in 5 U.S.C. 900(b) and 5 U.S.C. 1101(d) are abolished. The portions of the Plan providing for the appointment and pay for the head and one or more officers of the Office of Personnel Management, the Merit Systems Protection Board, the Federal Labor Relations Authority and the Federal Service Impasses Panel, are necessary to carry out the reorganization. The rates of compensation are comparable to those for similar positions within the Executive Branch.

I am confident that this Plan and the companion civil service reform legislation will both lead to more effec-

EXECUTIVE ORDER NO. 10729

By virtue of the authority vested in me as President of the United States of America, and by Section 463 of Reorganization Plan No. 2 of 1978, as amended, except for Rules IV and V, as amended in this order, 10641, 10717, 10927, 11183, 11222, 11315, 11451, 11570, 11639, 11648, 11721, 11935, 12004, 12014, 12043, as amended, except for Rules IV and V, as amended in this order, 10641, 10717, 10927, 11183, 11222, 11315, 11451, 11570, 11639, 11648, 11721, 11935, 12004, 12014, 12043.

EXECUTIVE ORDER NO. 11206

By virtue of the authority vested in me as President of the United States, the position of Special Assistant to the President for Personnel Management, established by Executive Order No. 10729 of September 16, 1957, is abolished, and that Order is hereby revoked.

LYNDON B. JOHNSON.

EXECUTIVE ORDER NO. 12107

IMPLEMENTATION OF REORGANIZATION PLAN NO. 2 OF 1978


1–2. MERIT SYSTEMS PROTECTION BOARD

1–201. Redesignation of Civil Service Commission. The redesignation of the Civil Service Commission as the Merit Systems Protection Board and of the Commissioners as Members of the Board as provided in Section 101 and 103 of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1–202. Functions of the Merit Systems Protection Board. The functions of the Merit Systems Protection Board as provided in Section 102 and the savings provisions of Section 203 of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1–3. THE SPECIAL COUNSEL

1–301. Establishment of the Office of Special Counsel. The establishment of the Office of Special Counsel to the Merit Systems Protection Board as provided in Section 204 of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1–302. Functions of the Special Counsel. The transfer of functions provided for in Section 204(b) and the performance of functions set forth in Section 204(c)–(g) of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1–4. THE FEDERAL LABOR RELATIONS AUTHORITY

1–401. The Establishment of the Federal Labor Relations Authority and the Office of General Counsel. The establishment of the Federal Labor Relations Authority as provided in Section 301 and of the Office of General Counsel of the Authority as provided in Section 302 of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1–402. The Federal Service Impasses Panel. The continuation of the Federal Service Impasses Panel established under Executive Order No. 11481, as amended (set out as a note under section 7101 of this title), as a distinct organizational entity within the Federal Labor Relations Authority as provided in Section 303 of Reorganization Plan No. 2 of 1978, shall be effective on January 1, 1979.

1–403. Functions of the Federal Labor Relations Authority, the General Counsel, and the Federal Service Impasses Panel. The transfer of functions provided for in Section 304 of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1–5. GENERAL

1–501. General Effective Date. All other provisions of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

SECTION 2

REDESIGNATIONS, AMENDMENTS TO RULES AND EXECUTIVE ORDERS AND GENERAL PROVISIONS

2–1. Redesignations

2–101. Office of Personnel Management. Each of the Executive orders, as amended, listed in this Section under subsections (a) and (b), as applicable, and any other order which relates to functions or areas of responsibility delegated to the Office of Personnel Management, is amended and revised by substituting the words “Office of Personnel Management” for the words “Civil Service Commission” or “United States Civil Service Commission”; by substituting the word “Office” for the word “Commission” wherever the word “Commission” is used as a reference to United States Civil Service Commission; and by substituting the words “Director, Office of Personnel Management” for the words “Chairman, Civil Service Commission”, “Chairman, United States Civil Service Commission”, “Commissioner” or “Commissioners” wherever they appear.

(a) Executive orders relating to the Civil Service Rules, ethics and other matters of Presidential interest.

Executive Orders Numbered

8743, 10577, as amended, except for

9712, 9830, 9932.
2–202. Savings Provision. All personnel actions and decisions affecting employees or applicants for employment made on or before January 11, 1979 shall continue to be governed by the applicable Executive order, and the rules and regulations implementing that Order, to the same extent as if that Executive order had not been revoked effective January 11, 1979 unless amended, modified or revoked pursuant to this Order.

2–3. Labor Management Relations in the Federal Service

2–301. [Amended Ex. Ord. No. 11491, set out as a note under section 7101 of this title.]


2–401. Study and Report Provisions. The Director of the Office of Personnel Management is directed to conduct a study of Executive orders listed in Section 2–101(a) and (b) and to coordinate the study with such other agencies as may be named in or affected by these orders. The Director of Personnel Management and the Director of the Office of Management and Budget are directed to submit a report on or before July 1, 1981 to the President concerning the performance of functions specified in these Executive orders and any other Executive orders affecting the functions or responsibilities of the Office of Personnel Management. The report shall contain specific detailed recommendations for the continuation, modification, revision or revocation of each Executive order.

2–402. Continuing Effect of this Order. Except as required by the Civil Service Reform Act of 1978 [Pub. L. 95–454] as its provisions become effective, in accord with Section 7135 of Title 5, United States Code, as amended, and in accord with Section 902(a) of that Act [set out as a Savings Provisions note above], the provisions of this Order shall continue in effect, according to its terms, until modified, terminated or suspended.

2–403. Transfers and Determinations.
(a) The records, property, personnel and positions, and unexpended balances of appropriations or funds related to Civil Service Commission functions reassigned by this Order that are available, or to be made available, and necessary to finance or discharge the reassigned functions are transferred to the Director of the Office of Personnel Management, the Federal Labor Relations Authority, or the Federal Service Impasses Panel, as appropriate.

(b) The Director of the Office of Management and Budget shall make such determinations, issue such Orders and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property and personnel.

2–404. Effective Date. Except as otherwise specifically provided in this Order, this Order shall be effective on January 1, 1979.

JIMMY CARTER.

EXECUTIVE ORDER No. 12157
Ex. Ord. No. 12157, Sept. 14, 1979, 44 F.R. 54035, which related to the President’s Management Improvement Council, was revoked by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, set out as a note under section 14 of the Appendix to this title.
§ 1102. Director; Deputy Director; Associate Directors

(a) There is at the head of the Office of Personnel Management a Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. The term of office of any individual appointed as Director shall be 4 years.

(b) There is in the Office a Deputy Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or when the office of Director is vacant.

(c) No individual shall, while serving as Director or Deputy Director, serve in any other office or position in the Government of the United States except as otherwise provided by law or at the direction of the President. The Director and Deputy Director shall not recommend any individual for appointment to any position (other than Deputy Director of the Office) which requires the advice and consent of the Senate.

(d) There may be within the Office of Personnel Management not more than 5 Associate Directors, as determined from time to time by the Director. Each Associate Director shall be appointed by the Director.


§ 1103. Functions of the Director

(a) The following functions are vested in the Director of the Office of Personnel Management, and shall be performed by the Director, or subject to section 1104 of this title, by such employees of the Office as the Director designates:

(1) securing accuracy, uniformity, and justice in the functions of the Office;

(2) appointing individuals to be employed by the Office;

(3) directing and supervising employees of the Office, distributing business among employees and organizational units of the Office, and directing the internal management of the Office;

(4) directing the preparation of requests for appropriations for the Office and the use and expenditure of funds by the Office;

(5) executing, administering, and enforcing—

(A) the civil service rules and regulations of the President and the Office and the laws governing the civil service; and

(B) the other activities of the Office including retirement and classification activities;

except with respect to functions for which the Merit Systems Protection Board or the Special Counsel is primarily responsible;

(6) reviewing the operations under chapter 47 of this title;

(7) aiding the President, as the President may request, in preparing such civil service rules as the President prescribes, and otherwise advising the President on actions which may be taken to promote an efficient civil service and a systematic application of the merit system principles, including recommending policies relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separation of employees;

(8) conducting, or otherwise providing for the conduct of, studies and research under chapter 47 of this title into methods of assuring improvements in personnel management; and

(9) incurring official reception and representation expenses of the Office subject to any limitation prescribed in any law.

(b)(1) The Director shall publish in the Federal Register general notice of any rule or regulation which is proposed by the Office and the application of which does not apply solely to the Office or its employees. Any such notice shall include the matter required under section 553(b)(1), (2), and (3) of this title.

(2) The Director shall take steps to ensure that—

(A) any proposed rule or regulation to which paragraph (1) of this subsection applies is posted in offices of Federal agencies maintaining copies of the Federal personnel regulations; and

(B) to the extent the Director determines appropriate and practical, exclusive representatives of employees affected by such proposed rule or regulation and interested members of the public are notified of such proposed rule or regulation.

(3) Paragraphs (1) and (2) of this subsection shall not apply to any proposed rule or regula-
§ 1104. Delegation of authority for personnel management

(a) Subject to subsection (b)(3) of this section—

(1) the President may delegate, in whole or in part, authority for personnel management functions, including authority for competitive examinations, to the Director of the Office of Personnel Management; and

(2) the Director may delegate, in whole or in part, any function vested in or delegated to the Director, including authority for competitive examinations (except competitive examinations for administrative law judges appointed under section 3105 of this title, the cost of which examinations shall be reimbursed by payments from the agencies employing such judges to the revolving fund established under section 1304(e)), to the heads of agencies in the executive branch and other agencies employing persons in the competitive service.

(b)(1) The Office shall establish standards which shall apply to the activities of the Office or any other agency under authority delegated under subsection (a) of this section.

(2) The Office shall establish and maintain an oversight program to ensure that activities under any authority delegated under subsection (a) of this section are in accordance with the merit system principles and the standards established under paragraph (1) of this subsection.

(3) Nothing in subsection (a) of this section shall be construed as affecting the responsibility of the Director to prescribe regulations and to ensure compliance with the civil service laws, rules, and regulations.

(4) At the request of the head of an agency to whom a function has been delegated under subsection (a)(2), the Office may provide assistance to the agency in performing such function. Such assistance shall, to the extent determined appropriate by the Director of the Office, be performed on a reimbursable basis through the revolving fund established under section 1304(e).

(c) If the Office makes a written finding, on the basis of information obtained under the program established under subsection (b)(2) of this section or otherwise, that any action taken by an agency pursuant to authority delegated under subsection (a)(2) of this section is contrary to any law, rule, or regulation, or is contrary to any standard established under subsection (b)(1) of this section, the agency involved shall take any corrective action the Office may require.
In the first sentence, the word “officers’” is omitted as included in “employees’.”

Subsection (a)(1) is added on authority of the words “to secure accuracy, uniformity, and justice in all their proceedings” in the first sentence of former section 635, which is carried into section 1105. The function in this paragraph was transferred from the chief examiner to the Chairman of the United States Civil Service Commission by 1949 Reorg. Plan No. 5, § 2(a)(2).

In subsection (a)(4), the words “requests for appropriations” are substituted for “budget estimates” on authority of the Act of Sept. 12, 1950, ch. 946, §102(f), 64 Stat. 833; 31 U.S.C. 22.

In subsection (b)(2), the word “prescription” is substituted for “promulgation” and the words “now vested in the Commission” are omitted as surplusage.

In subsection (b)(4), the words “as is now authorized to be taken by the Commission” are omitted as surplusage.

In subsection (b)(5), the words “service” are substituted for “Federal service.”

In subsection (b)(7), the words “submission of requests for appointments” are substituted for “revision and submission . . . of budget estimates” on authority of the Act of Sept. 12, 1950, ch. 946, §102(f), 64 Stat. 833; 31 U.S.C. 22.

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

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<th>Section of title</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
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<tr>
<td>1104(a)(6)</td>
<td>[Uncodified]</td>
<td>5 U.S.C. 635 (less last 24 words of 6th sentence, and less 7th sentence).</td>
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<td>[None.]</td>
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<td>1965 Reorg. Plan No. 4, §§11(a), (e) (as applicable to (a), 12 (as applicable to §11(a)), 13 (as applicable to §11(a)), eff. July 27, 1965, 79 Stat. 1322.</td>
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The paragraph added by this section is based on 5 U.S.C. §713(a), and is restated to reflect the effect of sections 11-13 of 1965 Reorganization Plan No. 4, effective July 27, 1965.

AMENDMENTS

1955—Subsec. (a). Pub. L. 84–52, §1(a)(B), struck out closing provisions which read as follows: “except that the Director may not delegate authority for competitive examinations with respect to positions that have requirements which are common to agencies in the Federal Government, other than in exceptional cases in which the interests of economy and efficiency require such delegation and in which such delegation will not weaken the application of the merit system principles.”

Subsec. (a)(2). Pub. L. 84–52, §1(a)(A), inserted “, the cost of which examinations shall be reimbursed by payments from the agencies employing such judges to the revolving fund established under section 1304(e)” after “title” and substituted period for semicolon at end.


EFFECTIVE DATE OF 1978 AMENDMENT


$ 1105. Administrative procedure

Subject to section 1103(b) of this title, in the exercise of the functions assigned under this chapter, the Director shall be subject to subsections (b), (c), and (d) of section 553 of this title, notwithstanding subsection (a) of such section.


HISTORICAL AND REVISION NOTES

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<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
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In subsection (a), the words “the District of Columbia” are substituted for “Washington”. The words “at least three individuals in the service of the United States” are substituted for “a suitable number of persons, not less than three, in the official service of the United States”. So much of the first three sentences of former section 635 as related to the offices of the Chief Examiner and the Secretary are omitted because the offices were abolished by 1949 Reorg. Plan No. 5, §4.

In subsection (b), the words “Chairman, United States Civil Service Commission” are substituted for “chief examiner” on authority of 1949 Reorg. Plan No. 5, §2(a)(2). The words “at all times” are omitted as surplusage.

In subsection (c), the words “the examination board” are substituted for “boards of examiners” in section catchline, and in text provisions relating to boards of examiners for provisions relating to functions of the United States Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

CHAPTER 12—MERIT SYSTEMS PROTECTION BOARD, OFFICE OF SPECIAL COUNSEL, AND EMPLOYEE RIGHT OF ACTION

SUBCHAPTER I—MERIT SYSTEMS PROTECTION BOARD

Sec. 1201. Appointment of members of the Merit Systems Protection Board.
1202. Term of office; filling vacancies; removal.
1203. Chairman; Vice Chairman.
1204. Powers and functions of the Merit Systems Protection Board.
1205. Transmittal of information to Congress.
1206. Annual report.

SUBCHAPTER II—OFFICE OF SPECIAL COUNSEL

1211. Establishment.
1212. Powers and functions of the Office of Special Counsel.
1213. Provisions relating to disclosures of violations of law, mismanagement, and certain other matters.
1214. Investigation of prohibited personnel practices; corrective action.
1215. Disciplinary action.
1216. Other matters within the jurisdiction of the Office of Special Counsel.
1217. Transmittal of information to Congress.
1218. Annual report.
1219. Public information.

SUBCHAPTER III—INDIVIDUAL RIGHT OF ACTION IN CERTAIN REPRISAL CASES

1221. Individual right of action in certain reprisal cases.
1222. Availability of other remedies.

AMENDMENTS


EFFECTIVE DATE OF 1989 AMENDMENT

Section 11 of Pub. L. 101–12 provided that: “This Act and the amendments made by this Act [see Short Title of 1989 Amendment note below] shall take effect 90 days following the date of enactment of this Act [Apr. 10, 1989].”

EFFECTIVE DATE


SHORT TITLE OF 1989 AMENDMENT

Section 1 of Pub. L. 101–12 provided that: “This Act [enacting subchapters II and III of this chapter and sections 1207 to 1206, 1209, 1211, 2302, 2303, 3393, 7502, 7512, 7521, 7542, 7701, and 7703 of this title and section 4139 of Title 22, Foreign Relations and Intercourse, repealing sections 1207 and 1208 of this title, and enacting provisions set out as notes under this section and sections 1211 and 5509 of this title] may be cited as the ‘Whistleblower Protection Act of 1989’.”

SAVINGS PROVISION

Section 7 of Pub. L. 101–12 provided that:
“(a) ORDERS, RULES, AND REGULATIONS.—All orders, rules, and regulations issued by the Merit Systems Protection Board or the Special Counsel before the effective date of this Act [see Effective Date of 1989 Amendment note above] shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed.
“(b) ADMINISTRATIVE PROCEEDINGS.—No provision of this Act [see Short Title of 1989 Amendment note above] shall affect any administrative proceeding pending at the time such provisions take effect. Orders shall be issued in such proceedings, and appeals shall be taken therefrom, as if this Act had not been enacted.
“(c) SUITS AND OTHER PROCEEDINGS.—No suit, action, or other proceeding lawfully commenced by or against the members of the Merit Systems Protection Board, the Special Counsel, or officers or employees thereof, in their official capacity or in relation to the discharge of their official duties, as in effect immediately before the effective date of this Act [see Effective Date of 1989 Amendment note above], shall abate by reason of the enactment of this Act. Determinations with respect to any such suit, action, or other proceeding shall be made as if this Act had not been enacted.”

WHISTLEBLOWER PROTECTION: CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE

Section 2 of Pub. L. 101–12 provided that:
“(a) FINDINGS.—The Congress finds that—
“(1) Federal employees who make disclosures described in section 2302(b)(5) of title 5, United States Code, serve the public interest by assisting in the elimination of fraud, waste, abuse, and unnecessary Government expenditures;

1 So in original. Does not conform to section catchline.
(2) protecting employees who disclose Government illegality, waste, and corruption is a major step toward a more effective civil service; and

(3) in passing the Civil Service Reform Act of 1978 [Pub. L. 95–454, see Tables for classification], Congress established the Office of Special Counsel to protect whistleblowers (those individuals who make disclosures described in such section 2302(b)(8)) from reprisal.

(b) Purpose.—The purpose of this Act [see Short Title of 1989 Amendment note above] is to strengthen and improve protection for the rights of Federal employees, to prevent reprisals, and to help eliminate wrongdoing within the Government by—

(1) mandating that employees should not suffer adverse consequences as a result of prohibited personnel practices; and

(2) establishing—

(A) that the primary role of the Office of Special Counsel is to protect employees, especially whistleblowers, from prohibited personnel practices;

(B) that the Office of Special Counsel shall act in the interests of employees who seek assistance from the Office of Special Counsel; and

(C) that while disciplining those who commit prohibited personnel practices may be used as a means by which to help accomplish that goal, the protection of individuals who are the subject of prohibited personnel practices remains the paramount consideration.

Terms of Office of Members

Section 202(b) of Pub. L. 95–454 provided that: “Any term of office of any member of the Merit Systems Protection Board serving on the effective date of this Act [see Effective Date of 1978 Amendment note set out under section 1101 of this title] shall continue in effect until the term would expire under section 1102 of title 5, United States Code, as in effect immediately before the effective date of this Act, and upon expiration of the term, appointments to such office shall be made under sections 1201 and 1202 of title 5, United States Code (as added by this section).”

§ 1202. Term of office; filling vacancies; removal

(a) The term of office of each member of the Merit Systems Protection Board is 7 years.

(b) A member appointed to fill a vacancy occurring before the end of a term of office of the member’s predecessor serves for the remainder of that term. Any appointment to fill a vacancy is subject to the requirements of section 1201. Any new member serving only a portion of a seven-year term in office may continue to serve until a successor is appointed and has qualified, except that such member may not continue to serve for more than one year after the date on which the term of the member would otherwise expire, unless reappointed.

(c) Any member appointed for a 7-year term may not be reappointed to any following term but may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that such member may not continue to serve for more than one year after the date on which the term of the member would otherwise expire under this section.

(d) Any member may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.


AMENDMENTS

1987—Subsec. (b). Pub. L. 100–202 inserted provision permitting any new member serving portion of seven-year term to continue serving until successor is appointed and has qualified, with exception limiting duration of such service.

Effective Date of 1989 Amendment

Amendment by Pub. L. 100–202 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

§ 1203. Chairman; Vice Chairman

(a) The President shall from time to time appoint, by and with the advice and consent of the Senate, one of the members of the Merit Systems Protection Board as the Chairman of the Board. The Chairman is the chief executive and administrative officer of the Board.

(b) The President shall from time to time designate one of the members of the Board as Vice Chairman of the Board. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

(c) During the absence or disability of both the Chairman and the Vice Chairman, or when the offices of Chairman and Vice Chairman are vacant, the remaining Board member shall perform the functions vested in the Chairman.


AMENDMENTS
1989—Subsec. (a). Pub. L. 100–202, §3(a)(4), struck out the comma after “time” in first sentence. Subsec. (c). Pub. L. 101–12, §3(a)(5), substituted “the Chairman and the Vice Chairman” for “the Chairman and Vice Chairman” after “both.”

Effective Date of 1989 Amendment


§ 1204. Powers and functions of the Merit Systems Protection Board

(a) The Merit Systems Protection Board shall—

(1) hear, adjudicate, or provide for the hearing or adjudication, of all matters within the jurisdiction of the Board under this title, chapter 43 of title 38, or any other law, rule, or regulation, and, subject to otherwise applicable provisions of law, take final action on any such matter;

(2) order any Federal agency or employee to comply with any order or decision issued by the Board under the authority granted under paragraph (1) of this subsection and enforce compliance with any such order;

(3) conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service
free of prohibited personnel practices is being adequately protected; and
(4) review, as provided in subsection (f), rules and regulations of the Office of Personnel Management.

(b)(1) Any member of the Merit Systems Protection Board, any administrative law judge appointed by the Board under section 3105 of this title, and any employee of the Board designated by the Board may administer oaths, examine witnesses, take depositions, and receive evidence.

(2) Any member of the Board, any administrative law judge appointed by the Board under section 3105, and any employee of the Board designated by the Board may, with respect to any individual—

(A) issue subpoenas requiring the attendance and presentation of testimony of any such individual, and the production of documentary or other evidence from any place in the United States, any territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; and

(B) order the taking of depositions from, and responses to written interrogatories by, any such individual.

(3) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

(c) In the case of contumacy or failure to obey a subpoena issued under subsection (b)(2)(A) or section 1214(b), upon application by the Board, the United States district court for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(d) A subpoena referred to in subsection (b)(2)(A) may, in the case of any individual outside the territorial jurisdiction of any court of the United States, be served in such manner as the Federal Rules of Civil Procedure prescribe for service of a subpoena in a foreign country. To the extent that the courts of the United States can assert jurisdiction over such individual, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance under this subsection by such individual that such court would have if such individual were personally within the jurisdiction of such court.

(e)(1)(A) In any proceeding under subsection (a)(1), any member of the Board may request from the Director of the Office of Personnel Management an advisory opinion concerning the interpretation of any rule, regulation, or other policy directive promulgated by the Office of Personnel Management.

(B) The Merit Systems Protection Board may, during an investigation by the Office of Special Counsel or during the pendency of any proceeding before the Board, issue any order which may be necessary to protect a witness or other individual from harassment, except that an agency (other than the Office of Special Counsel) may not request any such order with regard to an investigation by the Office of Special Counsel from the Board during such investigation.

(2) An order issued under this subparagraph may be enforced in the same manner as provided for under paragraph (2) with respect to any order under subsection (a)(2).

(3) In carrying out any study under subsection (a)(3), the Board shall make such inquiries as may be necessary and, unless otherwise prohibited by law, shall have access to personnel records or information collected by the Office of Personnel Management and may require additional reports from other agencies as needed.

(f)(1) At any time after the effective date of any rule or regulation issued by the Director of the Office of Personnel Management in carrying out functions under section 1103, the Board shall review any provision of such rule or regulation—

(A) on its own motion;

(B) on the granting by the Board, in its sole discretion, of any petition for such review filed with the Board by any interested person, after consideration of the petition by the Board; or

(C) on the filing of a written complaint by the Special Counsel requesting such review.

(2) In reviewing any provision of any rule or regulation pursuant to this subsection, the Board shall declare such provision—

(A) invalid on its face, if the Board determines that such provision would, if implemented by any agency, on its face, require any employee to violate section 2302(b); or

(B) invalidly implemented by any agency, if the Board determines that such provision, as it has been implemented by the agency through any personnel action taken by the agency or through any policy adopted by the agency in conformity with such provision, has required any employee to violate section 2302(b).

(3) The Director of the Office of Personnel Management, and the head of any agency implementing any provision of any rule or regulation under review pursuant to this subsection, shall have the right to participate in such review.

(4) The Board shall require any agency—
(A) to cease compliance with any provisions of any rule or regulation which the Board declares under this subsection to be invalid on its face; and
(B) to correct any invalid implementation by the agency of any provision of any rule or regulation which the Board declares under this subsection to have been invalidly implemented by the agency.

(g) The Board may delegate the performance of any of its administrative functions under this title to any employee of the Board.

(h) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. All regulations of the Board shall be published in the Federal Register.

(i) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Board may appear for the Board, and represent the Board, in any civil action brought in connection with any function carried out by the Board pursuant to this title or as otherwise authorized by law.

(j) The Chairman of the Board may appoint such personnel as may be necessary to perform the functions of the Board. Any appointment made under this subsection shall comply with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33).

(k) The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall, as revised, be included as a separate item in the budget required to be transmitted to the Congress under section 1105 of title 31.

(l) The Board shall submit to the President, and, at the same time, to each House of the Congress, any legislative recommendations of the Board relating to any of its functions under this title.

(m)(1) Except as provided in paragraph (2) of this subsection, the Board, or an administrative law judge appointed by the Board pursuant to this title or as otherwise authorized by law.

(n) The Board may delegate the performance of any of its administrative functions under this title to any employee of the Board.

(o) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. All regulations of the Board shall be published in the Federal Register.

(p) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Board may appear for the Board, and represent the Board, in any civil action brought in connection with any function carried out by the Board pursuant to this title or as otherwise authorized by law.

(q) The Chairman of the Board may appoint such personnel as may be necessary to perform the functions of the Board. Any appointment made under this subsection shall comply with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33).

(r) The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall, as revised, be included as a separate item in the budget required to be transmitted to the Congress under section 1105 of title 31.

(s) The Board shall submit to the President, and, at the same time, to each House of the Congress, any legislative recommendations of the Board relating to any of its functions under this title.
and inserted "of Personnel Management" after "Office".


Subsec. (f)(g). Pub. L. 101–12, §3(a)(7)(H)(i), inserted "of the Office of Personnel Management" after "Director" and struck out "of this title" after "section 1103".

Subsec. (h)(1). Pub. L. 101–12, §3(a)(7)(H)(ii), inserted comma after "subsection" and in subpars. (A) and (B) struck out "of this title" after "section 2302(b)".


Subsecs. (g) to (i). Pub. L. 101–12, §3(a)(7)(F), redesignated former subsec. (f) to (h) as (g) to (i), respectively. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 101–12, §3(a)(7)(F), (I), redesignated former subsec. (i) as (j) and substituted "chapter 33" for "chapter 33 of this title". Former subsec. (j) redesignated (k).

Subsecs. (k), (l). Pub. L. 101–12, §3(a)(7)(F), redesignated former subsec. (j) and (k) as (l) and (i), respectively.


EFFECTIVE DATE OF 1994 AMENDMENTS

Section 14 of Pub. L. 103–424 provided that: "The provisions of this Act [amending this section and sections 1211, 1212, 1214, 1218, 1221, 2105, 2302, 4313, 7121, and 8348 of this title, enacting provisions set out as notes under sections 1212 and 1214 of this title and section 1441a of Title 12, Banks and Banking, and amending provisions set out as a note under section 5509 of this title] and the amendments made by this Act shall be effective on and after the date of the enactment of this Act [Oct. 29, 1994]."

Amendment by Pub. L. 103–353 effective with respect to reemploys initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as an Effective Date note under section 4301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1989 AMENDMENT


§ 1205. Transmittal of information to Congress

Notwithstanding any other provision of law or any rule, regulation or policy directive, any member of the Board, or any employee of the Board designated by the Board, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Board, without review, clearance, or approval by any other administrative authority.


PRIORITY PROVISIONS

A prior section 1205 was renumbered section 1204 of this title as this section and inserted section catchline.

AMENDMENTS

1989—Pub. L. 101–12 renumbered section 1209(a) of this title as this section and inserted section catchline.

EFFECTIVE DATE OF 1989 AMENDMENT


§ 1206. Annual report

The Board shall submit an annual report to the President and the Congress on its activities, which shall include a description of significant actions taken by the Board to carry out its functions under this title. The report shall also review the significant actions of the Office of Personnel Management, including an analysis of whether the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices.


PRIORITY PROVISIONS


AMENDMENTS

1989—Pub. L. 101–12 renumbered section 1209(b) of this title as this section and inserted section catchline.

EFFECTIVE DATE OF 1989 AMENDMENT


TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in first sentence of this section relating to annual reports to Congress (formerly § 5 U.S.C. 1209(b)), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 176 of House Document No. 104–7.


EFFECTIVE DATE OF REPEAL

Repeal of sections 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.

[§ 1209. Repealed §§ 1205 and 1206]

CODIFICATION

Subsecs. (a) and (b) of this section were renumbered as sections 1205 and 1206, respectively, of this title by Pub. L. 101–12, §3(a)(9), (10), Pub. L. 102–376, §22, Oct. 2, 1992, 106 Stat. 1346, struck out section catchline of prior section 1209.
§ 1211. Establishment

(a) There is established the Office of Special Counsel, which shall be headed by the Special Counsel. The Office shall have an official seal which shall be judicially noticed. The Office shall have its principal office in the District of Columbia and shall have field offices in other appropriate locations.

(b) The Special Counsel shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The Special Counsel may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that the Special Counsel may not continue to serve for more than one year after the date on which the term of the Special Counsel would otherwise expire under this subsection. The Special Counsel shall be an attorney who, by demonstrated ability, background, training, or experience, is especially qualified to carry out the functions of the position. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of the Special Counsel’s predecessor serves for the remainder of the term. The Special Counsel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. The Special Counsel may not hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President.

Amendments

1994—Subsec. (b). Pub. L. 103–424 inserted after first sentence “The Special Counsel may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that the Special Counsel may not continue to serve for more than one year after the date on which the term of the Special Counsel would otherwise expire under this subsection.”


§ 1212. Powers and functions of the Office of Special Counsel

(a) The Office of Special Counsel shall—

(1) in accordance with section 1214(a) and other applicable provisions of this subchapter, protect employees, former employees, and applicants for employment from prohibited personnel practices;

(2) receive and investigate allegations of prohibited personnel practices, and, where appropriate—

(A) bring petitions for stays, and petitions for corrective action, under section 1214; and

(B) file a complaint or make recommendations for disciplinary action under section 1215;

(3) receive, review, and, where appropriate, forward to the Attorney General or an agency
head under section 1213, disclosures of violations of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(3) review rules and regulations issued by the Director of the Office of Personnel Management in carrying out functions under section 1103 and, where the Special Counsel finds that any such rule or regulation would, on its face or as implemented, require the commission of a prohibited personnel practice, file a written complaint with the Board; and

(5) investigate and, where appropriate, bring actions concerning allegations of violations of other laws within the jurisdiction of the Office of Special Counsel (as referred to in section 1216).

(b)(1) The Special Counsel and any employee of the Office of Special Counsel designated by the Special Counsel may administer oaths, examine witnesses, take depositions, and receive evidence.

(2) The Special Counsel may—

(A) issue subpoenas; and

(B) order the taking of depositions and order responses to written interrogatories;

in the same manner as provided under section 1204.

(3)(A) In the case of contumacy or failure to obey a subpoena issued under paragraph (2)(A), the Special Counsel may apply to the Merit Systems Protection Board to enforce the subpoena in court pursuant to section 1204(c).

(B) A subpoena under paragraph (2)(A) may, in the case of any individual outside the territorial jurisdiction of any court of the United States, be served in the manner referred to in subsection (d) of section 1204, and the United States District Court for the District of Columbia may, with respect to any such individual, compel compliance in accordance with such subsection.

(4) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

(c)(1) Except as provided in paragraph (2), the Special Counsel may as a matter of right intervene or otherwise participate in any proceeding before the Merit Systems Protection Board, except that the Special Counsel shall comply with the rules of the Board.

(2) The Special Counsel may not intervene in an action brought by an individual under section 1221, or in an appeal brought by an individual under section 7701, without the consent of such individual.

(d)(1) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

(2) Any appointment made under this subsection shall be made in accordance with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or chapter VIII of chapter 33).

(e) The Special Counsel may prescribe such regulations as may be necessary to perform the functions of the Special Counsel. Such regulations shall be published in the Federal Register.

(f) The Special Counsel may not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73).

(g)(1) The Special Counsel may not respond to any inquiry or disclose any information from or about any person making an allegation under section 1214(a), except in accordance with the provisions of section 552a of title 5, United States Code, or as required by any other applicable Federal law.

(2) Notwithstanding the exception under paragraph (1), the Special Counsel may not respond to any inquiry concerning an evaluation of the work performance, ability, aptitude, general qualifications, character, loyalty, or suitability for any personnel action of any person described in paragraph (1)—

(A) unless the consent of the individual as to whom the information pertains is obtained in advance; or

(B) except upon request of an agency which requires such information in order to make a determination concerning an individual’s having access to the information unauthorized disclosure of which could be expected to cause exceptionally grave damage to the national security.


AMENDMENTS

1994—Subsec. (g)(1). Pub. L. 103–424, §3(b)(1) substituted “disclose any information from or about” for “provide information concerning”.

Subsec. (g)(2). Pub. L. 103–424, §3(b)(2), substituted “an evaluation of the work performance, ability, aptitude, general qualifications, character, loyalty, or suitability for any personnel action of any” for “a matter described in subparagraph (A) or (B) of section 2302(b)(2) in connection with a”.

POLICY STATEMENT REGARDING IMPLEMENTATION OF WHISTLEBLOWER PROTECTION ACT

Section 12(a) of Pub. L. 103–424 provided that: “No later than 6 months after the date of enactment of this Act (Oct. 29, 1994), the Special Counsel shall issue a policy statement regarding the implementation of the Whistleblower Protection Act of 1989 [see Short Title of 1989 Amendment note set out under section 1201 of this title]. Such policy statement shall be made available to each person alleging a prohibited personnel practice described under section 2302(b)(8) of title 5, United States Code, and shall include detailed guidelines identifying specific categories of information that may (or may not) be communicated to agency officials for an investigative purpose, or for the purpose of obtaining corrective action under section 1214 of title 5, United States Code, or disciplinary action under section 1215 of such title, the circumstances under which such information is likely to be disclosed, and whether or not the consent of any person is required in advance of any such communication.”

ANNUAL SURVEY OF INDIVIDUALS SEEKING ASSISTANCE

Section 13 of Pub. L. 103–424 provided that:

“(a) IN GENERAL.—The Office of Special Counsel shall, after consulting with the Office of Policy and Evaluation of the Merit Systems Protection Board, conduct
§ 1213. Provisions relating to disclosures of violations of law, gross mismanagement, and certain other matters

(a) This section applies with respect to—

(1) any disclosure of information by an employee, former employee, or applicant for employment which the employee, former employee, or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; and

(2) any disclosure by an employee, former employee, or applicant for employment to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee, former employee, or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(b) Whenever the Special Counsel receives information of a type described in subsection (a) of this section, the Special Counsel shall review such information and, within 15 days after receiving the information, determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety.

(c)(1) Subject to paragraph (2), if the Special Counsel makes a positive determination under subsection (b) of this section, the Special Counsel shall promptly transmit the information with respect to which the determination was made to the appropriate agency head and require that the agency head—

(A) conduct an investigation with respect to the information and any related matters transmitted by the Special Counsel to the agency head; and

(B) submit a written report setting forth the findings of the agency head within 60 days after the date on which the information is transmitted to the agency head or within any longer period of time agreed to in writing by the Special Counsel.

(2) The Special Counsel may require an agency head to conduct an investigation and submit a written report under paragraph (1) only if the information was transmitted to the Special Counsel by—

(A) an employee, former employee, or applicant for employment in the agency which the information concerns; or

(B) an employee who obtained the information in connection with the performance of the employee’s duties and responsibilities.

(d) Any report required under subsection (c) shall be reviewed and signed by the head of the agency and shall include—

(1) a summary of the information with respect to which the investigation was initiated; (2) a description of the conduct of the investigation;

(3) a summary of any evidence obtained from the investigation;

(4) a listing of any violation or apparent violation of any law, rule, or regulation; and

(5) a description of any action taken or planned as a result of the investigation, such as—

(A) changes in agency rules, regulations, or practices;

(B) the restoration of any aggrieved employee;

(C) disciplinary action against any employee; and

(D) referral to the Attorney General of any evidence of a criminal violation.

(e)(1) Any such report shall be submitted to the Special Counsel, and the Special Counsel shall transmit a copy to the complainant, except as provided under subsection (f) of this section. The complainant may submit comments to the Special Counsel on the agency report within 15 days of having received a copy of the report.

(2) Upon receipt of any report of the head of an agency required under subsection (c) of this section, the Special Counsel shall review the report and determine whether—

(A) the findings of the head of the agency appear reasonable; and

(B) the report of the agency under subsection (c)(1) of this section contains the information required under subsection (d) of this section.

(3) The Special Counsel shall transmit any agency report received pursuant to subsection (c) of this section, any comments provided by the complainant pursuant to subsection (e)(1), and any appropriate comments or recommendations by the Special Counsel to the President and the congressional committees with jurisdiction over the agency which the disclosure involves.

(4) Whenever the Special Counsel does not receive the report of the agency within the time prescribed in subsection (c)(2) of this section, the Special Counsel shall transmit a copy of the
information which was transmitted to the agency head to the President and the congressional committees with jurisdiction over the agency which the disclosure involves together with a statement noting the failure of the agency to file the required report.

(f) In any case in which evidence of a criminal violation obtained by an agency in an investigation under subsection (c) of this section is referred to the Attorney General—

(1) the report shall not be transmitted to the complainant; and

(2) the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

(g)(1) If the Special Counsel receives information of a type described in subsection (a) from an individual other than an individual described in subparagraph (A) or (B) of subsection (c)(2), the Special Counsel may transmit the information to the head of the agency which the information concerns. The head of such agency shall, within a reasonable time after the information is transmitted, inform the Special Counsel in writing of what action has been or is being taken and when such action shall be completed. The Special Counsel shall inform the individual of the report of the agency head.

(2) If the Special Counsel receives information of a type described in subparagraph (A) or (B) of subsection (c)(2), but does not make a positive determination under subsection (b), the Special Counsel may transmit the information to the head of the agency which the information concerns, except that the information may not be transmitted to the head of the agency without the consent of the individual. The head of such agency shall, within a reasonable time after the information is transmitted, inform the Special Counsel in writing of what action has been or is being taken and when such action will be completed. The Special Counsel shall inform the individual of the report of the agency head.

(3) If the Special Counsel does not transmit the information to the head of the agency under paragraph (2), the Special Counsel shall inform the individual of—

(A) the reasons why the disclosure may not be further acted on under this chapter; and

(B) other offices available for receiving disclosures, should the individual wish to pursue the matter further.

(h) The identity of any individual who makes a disclosure described in subsection (a) may not be disclosed by the Special Counsel without such individual’s consent unless the Special Counsel determines that the disclosure of the individual’s identity is necessary because of an imminent danger to public health or safety or imminent violation of any criminal law.

(i) Except as specifically authorized under this section, the provisions of this section shall not be considered to authorize disclosure of any information by any agency or any person which is—

(1) specifically prohibited from disclosure by any other provision of law; or

(2) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(j) With respect to any disclosure of information described in subsection (a) which involves foreign intelligence or counterintelligence information, if the disclosure is specifically prohibited by law or by Executive order, the Special Counsel shall transmit such information to the National Security Advisor, the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate.


AMENDMENTS

2002—Subsec. (g)(1). Pub. L. 107–304, §3(1), struck out at end “If the Special Counsel does not transmit the information to the head of the agency, the Special Counsel shall return any documents and other matter provided by the individual who made the disclosure.

Subsec. (g)(3). Pub. L. 107–304, §3(2), added par. (3) and struck out former par. (3) which read as follows: “If the Special Counsel does not transmit the information to the head of the agency under paragraph (2), the Special Counsel shall—

(A) return any documents and other matter provided by the individual who made the disclosure; and

(B) inform the individual of—

(i) the reasons why the disclosure may not be further acted on under this chapter; and

(ii) other offices available for receiving disclosures, should the individual wish to pursue the matter further.”

1996—Subsec. (e)(3). Pub. L. 104–316, §103(a)(1), substituted “President” and “for President,” and struck out “and the Comptroller General” before period at end.

Subsec. (e)(4). Pub. L. 104–316, §103(a)(2), substituted “President” and “for President,” and struck out “and the Comptroller General” before “together with a”.

§1214. Investigation of prohibited personnel practices; corrective action

(a)(1)(A) The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

(B) Within 15 days after the date of receiving an allegation of a prohibited personnel practice under paragraph (1), the Special Counsel shall provide written notice to the person who made the allegation that—

(i) the allegation has been received by the Special Counsel; and

(ii) shall include the name of a person at the Office of Special Counsel who shall serve as a contact with the person making the allegation.

(C) Unless an investigation is terminated under paragraph (2), the Special Counsel shall—

(i) within 90 days after notice is provided under subparagraph (B), notify the person who made the allegation of the status of the investigation and any action taken by the Office of the Special Counsel since the filing of the allegation; and

(ii) notify such person of the status of the investigation and any action taken by the Office of the Special Counsel since the last notice, at
least every 60 days after notice is given under clause (i); and
(iii) notify such person of the status of the investigation and any action taken by the Special Counsel at such time as determined appropriate by the Special Counsel.

(D) No later than 10 days before the Special Counsel terminates any investigation of a prohibited personnel practice, the Special Counsel shall provide a written status report to the person who made the allegation of the proposed findings of fact and legal conclusions. The person may submit written comments about the report to the Special Counsel. The Special Counsel shall not be required to provide a subsequent written status report under this subparagraph after the submission of such written comments.

(2)(A) If the Special Counsel terminates any investigation under paragraph (1), the Special Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated a written statement notifying the person of—
(i) the termination of the investigation;
(ii) a summary of relevant facts ascertained by the Special Counsel, including the facts that support, and the facts that do not support, the allegations of such person;
(iii) the reasons for terminating the investigation; and
(iv) a response to any comments submitted under paragraph (1)(D).

(B) A written statement under subparagraph (A) may not be admissible as evidence in any judicial or administrative proceeding, without the consent of the person who received such statement under subparagraph (A).

(3) Except in a case in which an employee, former employee, or applicant for employment has the right to appeal directly to the Merit Systems Protection Board under any law, rule, or regulation, any such employee, former employee, or applicant shall seek corrective action from the Special Counsel before seeking corrective action from the Board. An employee, former employee, or applicant for employment may seek corrective action from the Board under section 1221, if such employee, former employee, or applicant seeks corrective action for a prohibited personnel practice described in section 2302(b)(8) from the Special Counsel and—
(A)(i) the Special Counsel notifies such employee, former employee, or applicant that an investigation concerning such employee, former employee, or applicant has been terminated; and
(ii) no more than 60 days have elapsed since notification was provided to such employee, former employee, or applicant for employment that such investigation was terminated; or
(B) 120 days after seeking corrective action from the Special Counsel, such employee, former employee, or applicant has not been notified by the Special Counsel that the Special Counsel shall seek corrective action on behalf of such employee, former employee, or applicant.

(4) If an employee, former employee, or applicant seeks a corrective action from the Board under section 1221, pursuant to the provisions of paragraph (3)(B), the Special Counsel may continue to seek corrective action personal to such employee, former employee, or applicant only with the consent of such employee, former employee, or applicant.

(5) In addition to any authority granted under paragraph (1), the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice (or a pattern of prohibited personnel practices) has occurred, exists, or is to be taken.

(b)(1)(A) The Special Counsel may request any member of the Merit Systems Protection Board to order a stay of any personnel action for 45 days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.

(ii) Any member of the Board requested by the Special Counsel to order a stay under clause (i) shall order such stay unless the member determines that, under the facts and circumstances involved, such a stay would not be appropriate.

(iii) Unless denied under clause (ii), any stay under this subparagraph shall be granted within 3 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of the request for the stay by the Special Counsel.

(B) The Board may extend the period of any stay granted under subparagraph (A) for any period which the Board considers appropriate.

(C) The Board shall allow any agency which is the subject of a stay to comment to the Board on any extension of stay proposed under subparagraph (B).

(D) A stay may be terminated by the Board at any time, except that a stay may not be terminated by the Board—
(i) on its own motion or on the motion of an agency, unless notice and opportunity for oral or written comments are first provided to the Special Counsel and the individual on whose behalf the stay was ordered; or
(ii) on motion of the Special Counsel, unless notice and opportunity for oral or written comments are first provided to the individual on whose behalf the stay was ordered.

(2)(A)(i) Except as provided under clause (ii), no later than 240 days after the date of receiving an allegation of a prohibited personnel practice under paragraph (1), the Special Counsel shall make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

(ii) If the Special Counsel is unable to make the required determination within the 240-day period specified under clause (i) and the person submitting the allegation of a prohibited personnel practice agrees to an extension of time, the determination shall be made within such additional period of time as shall be agreed upon between the Special Counsel and the person submitting the allegation.

(B) If, in connection with any investigation, the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken which requires corrective action, the
Special Counsel shall report the determination together with any findings or recommendations to the Board, the agency involved and to the Office of Personnel Management, and may report such determination, findings and recommendations to the President. The Special Counsel may include in the report recommendations for corrective action to be taken.

(C) If, after a reasonable period of time, the agency does not act to correct the prohibited personnel practice, the Special Counsel may petition the Board for corrective action.

(D) If the Special Counsel finds, in consultation with the individual subject to the prohibited personnel practice, that the agency has acted to correct the prohibited personnel practice, the Special Counsel shall file such finding with the Board, together with any written comments which the individual may provide.

(E) A determination by the Special Counsel under this paragraph shall not be cited or referred to in any proceeding under this paragraph or any other administrative or judicial proceeding for any purpose, without the consent of the person submitting the allegation of a prohibited personnel practice.

(3) Whenever the Special Counsel petitions the Board for corrective action, the Board shall provide an opportunity for—

(A) oral or written comments by the Special Counsel, the agency involved, and the Office of Personnel Management; and
(B) written comments by any individual who alleges to be the subject of the prohibited personnel practice.

(4)(A) The Board shall order such corrective action as the Board considers appropriate, if the Board determines that the Special Counsel has demonstrated that a prohibited personnel practice, other than one described in section 2302(b)(8), has occurred, exists, or is to be taken.

(B)(i) Subject to the provisions of clause (ii), in any case involving an alleged prohibited personnel practice as described under section 2302(b)(8), the Board shall order such corrective action as the Board considers appropriate if the Special Counsel has demonstrated that a disclosure described under section 2302(b)(8) was a contributing factor in the personnel action which was taken or is to be taken against the individual.

(ii) Corrective action under clause (i) may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

(c)(1) Judicial review of any final order or decision of the Board under this section may be obtained by any employee, former employee, or applicant for employment adversely affected by such 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).

(d)(1) If, in connection with any investigation under this subchapter, the Special Counsel determines that there is reasonable cause to believe that there has occurred, exists, or is to be taken, the Special Counsel shall proceed with any investigation or proceeding unless—

(A) the alleged violation has been reported to the Attorney General; and
(B) the Attorney General is pursuing an investigation, in which case the Special Counsel, after consultation with the Attorney General, has discretion as to whether to proceed.

(e) If, in connection with any investigation under this subchapter, the Special Counsel determines that there is reasonable cause to believe that any violation of any law, rule, or regulation has occurred other than one referred to in subsection (b) or (d), the Special Counsel shall report such violation to the head of the agency involved. The Special Counsel shall require, within 30 days after the receipt of the report by the agency, a certification by the head of the agency which states—

(1) that the head of the agency has personally reviewed the report; and
(2) what action has been or is to be taken, and when the action will be completed.

(f) During any investigation initiated under this subchapter, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

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

(1) 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
(2) reimbursement for attorney’s fees, back pay and related benefits, medical costs incurred, travel expenses, and any other reasonable and foreseeable consequential damages.


Amendments

Subsec. (b)(2). Pub. L. 103–424, § 3(d), added subpars. (A) and (E) and redesignated former subpars. (A) to (C) as (B) to (D), respectively.
Subsec. (g). Pub. L. 103–424, § 3(a), added subsec. (g).

Termination Statement

Section 12(b) of Pub. L. 103–424 provided that: “The Special Counsel shall include in any letter terminating an investigation under section 1214(a)(2) of title 5, United States Code, the name and telephone number of an employee of the Special Counsel who is available to respond to reasonable questions from the person regarding the investigation or review conducted by the Special Counsel, the relevant facts ascertained by the Special Counsel, and the law applicable to the person’s allegations.”
§ 1215. Disciplinary action

(a)(1) Except as provided in subsection (b), if the Special Counsel determines that disciplinary action should be taken against any employee for having—
(A) committed a prohibited personnel practice,
(B) violated the provisions of any law, rule, or regulation, or engaged in any other conduct within the jurisdiction of the Special Counsel as described in section 1216, or
(C) knowingly and willfully refused or failed to comply with an order of the Merit Systems Protection Board,

the Special Counsel shall prepare a written complaint against the employee containing the Special Counsel’s determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the Board, in accordance with this subsection.

(2) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under paragraph (1) is entitled to—
(A) a reasonable time to answer orally and in writing, and to furnish affidavits and other documentary evidence in support of the answer;
(B) be represented by an attorney or other representative;
(C) a hearing before the Board or an administrative law judge appointed under section 3105 and designated by the Board;
(D) have a transcript kept of any hearing under subparagraph (C); and
(E) a written decision and reasons therefor at the earliest practicable date, including a copy of any final order imposing disciplinary action.

(3) A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed $1,000.

(4) There may be no administrative appeal from an order of the Board. An employee subject to a final order imposing disciplinary action under this subsection may obtain judicial review of the order by filing a petition therefor with such court, and within such time, as provided for under section 7703(b).

(5) In the case of any State or local officer or employee, the Board shall consider the case in accordance with the provisions of such chapter.

(b) In the case of an employee in a confidential, policy-making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the complaint and statement referred to in subsection (a)(1), together with any response of the employee, shall be presented to the President for appropriate action in lieu of being presented under subsection (a).

(c)(1) In the case of members of the uniformed services and individuals employed by any person under contract with an agency to provide goods or services, the Special Counsel may transmit recommendations for disciplinary or other appropriate action (including the evidence on which such recommendations are based) to the head of the agency concerned.

(2) In any case in which the Special Counsel transmits recommendations to an agency head under paragraph (1), the agency head shall, within 60 days after receiving such recommendations, transmit a report to the Special Counsel on each recommendation and the action taken, or proposed to be taken, with respect to each such recommendation.


§ 1216. Other matters within the jurisdiction of the Office of Special Counsel

(a) In addition to the authority otherwise provided in this chapter, the Special Counsel shall, except as provided in subsection (b), conduct an investigation of any allegation concerning—

(1) political activity prohibited under subchapter III of chapter 73, relating to political activities by Federal employees;

(2) political activity prohibited under chapter 15, relating to political activities by certain State and local officers and employees;

(3) arbitrary or capricious withholding of information prohibited under section 552, except that the Special Counsel shall make no investigation of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order;

(4) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking; and

(5) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

(b) The Special Counsel shall make no investigation of any allegation of any prohibited activity referred to in subsection (a)(5), if the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure.

(c) If the Special Counsel receives an allegation concerning any matter under paragraph (1), (3), (4), or (5) of subsection (a), the Special Counsel may investigate and seek corrective action under section 1214 and disciplinary action under section 1215 in the same way as if a prohibited personnel practice were involved.


AMENDMENTS

1993—Subsec. (c). Pub. L. 103–94 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

"(1) If an investigation by the Special Counsel under subsection (a)(1) substantiates an allegation relating to any activity prohibited under section 7324, the Special Counsel may petition the Merit Systems Protection Board for any penalties provided for under section 7323.

"(2) If the Special Counsel receives an allegation concerning any matter under paragraph (3), (4), or (5) of
substitution (a), the Special Counsel may investigate and seek corrective action under section 1214 in the same way as if a prohibited personnel practice were involved."

**Effective Date of 1993 Amendment; Savings Provision**

Amendment by Pub. L. 103–94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any penalty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purposes of that penalty, forfeiture, or liability, and no provision of Pub. L. 103–94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103–94 had not been enacted, see section 12 of Pub. L. 103–94, set out as an Effective Date; Savings Provision note under section 7321 of this title.

§ 1217. Transmittal of information to Congress

The Special Counsel or any employee of the Special Counsel designated by the Special Counsel, shall transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and the Special Counsel’s views on functions, responsibilities, or other matters relating to the Office. Such information shall be transmitted concurrently to the President and any other appropriate agency in the executive branch.


§ 1218. Annual report

The Special Counsel shall submit an annual report to the Congress on the activities of the Special Counsel, including the number, types, and disposition of allegations of prohibited personnel practices filed with it, investigations conducted by it, cases in which it did not make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken within the 240-day period specified in section 1214(b)(2)(A)(i), and actions initiated by it before the Merit Systems Protection Board, as well as a description of the recommendations and reports made by it to other agencies pursuant to this subchapter, and the actions taken by the agencies as a result of the reports or recommendations. The report required by this section shall include whatever recommendations for legislation or other action by Congress the Special Counsel may consider appropriate.


**Amendments**

1994—Pub. L. 103–424 inserted "cases in which it did not make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken within the 240-day period specified in section 1214(b)(2)(A)(i)," after "investigations conducted by it.",

**Termination of Reporting Requirements**

For termination, effective May 15, 2000, of reporting provisions in this section, see section 3003 of Pub. L. 101–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 188 of House Document No. 103–7.

§ 1219. Public information

(a) The Special Counsel shall maintain and make available to the public—
(1) a list of noncriminal matters referred to heads of agencies under subsection (c) of section 1213, together with reports from heads of agencies under subsection (c)(1)(B) of such section relating to such matters;
(2) a list of matters referred to heads of agencies under section 1215(c)(2);
(3) a list of matters referred to heads of agencies under subsection (e) of section 1214, together with certifications from heads of agencies under such subsection; and
(4) reports from heads of agencies under section 1213(g)(1).

(b) The Special Counsel shall take steps to ensure that any list or report made available to the public under this section does not contain any information the disclosure of which is prohibited by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs.


**Subchapter III—Individual Right of Action in Certain Reprisal Cases**

§ 1221. Individual right of action in certain reprisal cases

(a) Subject to the provisions of subsection (b) of this section and subsection 1214(a)(3), an employee, former employee, or applicant for employment may, with respect to any personnel action taken, or proposed to be taken, against such employee, former employee, or applicant for employment, as a result of a prohibited personnel practice described in section 2302(b)(8), seek corrective action from the Merit Systems Protection Board.

(b) This section may not be construed to prohibit any employee, former employee, or applicant for employment from seeking corrective action from the Merit Systems Protection Board before seeking corrective action from the Special Counsel, if such employee, former employee, or applicant for employment has the right to appeal directly to the Board under any law, rule, or regulation.

(c)(1) Any employee, former employee, or applicant for employment seeking corrective action under subsection (a) may request that the Board order a stay of the personnel action involved.

(2) Any stay requested under paragraph (1) shall be granted within 10 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date the request is made, if the Board determines that such a stay would be appropriate.

(3)(A) The Board shall allow any agency which would be subject to a stay under this subsection to comment to the Board on such stay request.

(B) Except as provided in subparagraph (C), a stay granted under this subsection shall remain
in effect for such period as the Board determines to be appropriate.
(C) The Board may modify or dissolve a stay under this subsection at any time, if the Board determines that such a modification or dissolution is appropriate.
(d)(1) At the request of an employee, former employee, or applicant for employment seeking corrective action under subsection (a), the Board shall 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 the testimony or production requested is not unduly burdensome and appears reasonably calculated to lead to the discovery of admissible evidence.
(2) A subpoena under this subsection may be issued, and shall be enforced, in the same manner as applies in the case of subpoenas under section 1204.
(e)(1) Subject to the provisions of paragraph (2), in any case involving an alleged prohibited personnel practice as described under section 2302(b)(8), the Board shall order such corrective action as the Board considers appropriate if the employee, former employee, or applicant for employment has demonstrated that a disclosure described under section 2302(b)(8) was a contributing factor in the personnel action which was taken or is to be taken against such employee, former employee, or applicant. 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.
(2) Corrective action under paragraph (1) may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.
(f)(1) A final order or decision shall be rendered by the Board as soon as practicable after the commencement of any proceeding under this section.
(2) A decision to terminate an investigation under subchapter II may not be considered in any action or other proceeding under this section.
(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 a current employee may have committed a prohibited personnel practice, the Board shall order such corrective action under subsection (a), the 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.

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 adversely affected or aggrieved by a final order or decision of the Board under this section, the Merit Systems Protection Board may not be considered in any action or other proceeding under this section.
(3) If, based on evidence presented to it under this section, the Merit Systems Protection Board determines that there is reason to believe that a current employee may have committed a prohibited personnel practice, the Board shall refer the matter to the Special Counsel to investigate and take appropriate action under section 1215.
(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 employee, 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.

1 So in original. Probably should be “employee.”
## 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. Repealed.

### Amendments


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) .............</td>
<td>5 U.S.C. 633(2) (last 17 words), (3) (less last 10 words)</td>
<td>Jan. 16, 1883, ch. 27, §§ 2, 3 (last 17 words), (3) (less last 10 words), 22 Stat. 404.</td>
</tr>
<tr>
<td>(b) .............</td>
<td>5 U.S.C. 651 (1st 76 words), 868 (less provision)</td>
<td>June 27, 1944, ch. 287, §§ 2, 11 (1st 76 words), 19, 58 Stat. 367, 369.</td>
</tr>
<tr>
<td>(c) .............</td>
<td>5 U.S.C. 651 (1st 76 words), 860</td>
<td>June 27, 1944, ch. 287, §§ 2, 11 (1st 76 words), 19, 58 Stat. 367, 369.</td>
</tr>
<tr>
<td>(d) .............</td>
<td>5 U.S.C. 114(k)(1) (1st sentence)</td>
<td>July 19, 1940, ch. 640 § 4 (&quot;Sec. 12(d) (1st sentence)&quot;) , 54 Stat. 769.</td>
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</table>

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) (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, 3303(a), 3306(a), 3321, 7125, 7132, 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), 3306–3320, 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 651 are added here to preserve the general statement of 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.

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 for, control, supervise, and preserve the records of, examinations for the competitive service.
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 669.

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


EFFECTIVE DATE OF 1978 AMENDMENT


EXECUTIVE ORDER No. 10561


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.

§ 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.

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 unexpired 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 operations (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 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.

(Historical and Revision Notes

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<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
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<tr>
<td>(b)-(d)</td>
<td>§ 655</td>
<td>Apr. 5, 1962, ch. 159, §1 (provision).</td>
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<tr>
<td>(e)</td>
<td>§ 657</td>
<td>June 5, 1953, ch. 369, §701 (par. under “Civil Service Commission”).</td>
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<tr>
<td>(f)</td>
<td>[Uncodified].</td>
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<td>(g)</td>
<td>§ 656</td>
<td>Apr. 5, 1962, ch. 159, §4, 66 Stat. 44.</td>
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<td>Apr. 5, 1952, ch. 159, §3, 66 Stat. 44.</td>
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Subsection (a) is based on section 1 of the Act of April 3, 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 3, 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. 2156). 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 10(c) of the Act of April 3, 1948 (62 Stat. 127) 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 the latter was repealed by the Act 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 affects 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 subsection (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.

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”.


1971—Subsec. (e). Pub. L. 91–468 struck out in par. (1) “$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 recommendations 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.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

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 208 of Pub. L. 96–60, set out as a note under section 1471 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT


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. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

§ 1305. Administrative law judges

For the purpose of sections 3105, 3341, 4061(2)(D), and 5372 of this title and the provisions of section 3355(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, prescribe regulations, appoint advisory committees as necessary, recommend legislation, subpoena witnesses and records, and pay witness fees as established for the courts of the United States.


HISTORICAL AND REVISION NOTES

1966 ACT

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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

1998—Pub. L. 105–362 struck out “require reports by agencies, issue reports, including an annual report to Congress,” after “may investigate.”


1979—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 catchlines and “administrative law judges” for “hearing examiners” in text.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 801(a)(3)(B)(i) 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 907 of Pub. L. 95–454, set out as an Effective Date note under section 5361 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 5302 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.

§ 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.


Historical and Revision Notes

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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


§ 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

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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


Chapter 14—Agency Chief Human Capital Officers

Sec. 1401. Establishment of agency Chief Human Capital Officers.

1402. Authority and functions of agency Chief Human Capital Officers.

§ 1401. Establishment of agency Chief Human Capital Officers

The head of each agency referred to under paragraphs (1) and (2) of section 901(b) of title 31 shall appoint or designate a Chief Human Capital Officer, who shall—

(1) advise and assist the head of the agency and other agency officials in carrying out the agency’s responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

(2) implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and

(3) carry out such functions as the primary duty of the Chief Human Capital Officer.


Effective Date

Chapter effective 180 days after Nov. 25, 2002, see section 1305 of Pub. L. 107–296, set out as an Effective Date of 2002 Amendment note under section 1103 of this title.

Chief Human Capital Officers Council


“(a) Establishment.—There is established a Chief Human Capital Officers Council, consisting of—

“(1) the Director of the Office of Personnel Management, who shall act as chairperson of the Council;

“(2) the Deputy Director for Management of the Office of Management and Budget, who shall act as vice chairperson of the Council; and

“(3) the Chief Human Capital Officers of Executive departments and any other members who are designated by the Director of the Office of Personnel Management.

“(b) Functions.—The Chief Human Capital Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as modernization of human resources systems, improved quality of human resources information, and legislation affecting human resources operations and organizations.

“(c) EMPLOYEE LABOR ORGANIZATIONS AT MEETINGS.—The Chief Human Capital Officers Council shall ensure...
that representatives of Federal employee labor organizations are present at a minimum of 1 meeting of the Council each year. Such representatives shall not be members of the Council.

“(d) ANNUAL REPORT.—Each year the Chief Human Capital Officers Council shall submit a report to Congress on the activities of the Council.”

§ 1402. Authority and functions of agency Chief Human Capital Officers

(a) The functions of each Chief Human Capital Officer shall include—

(1) setting the workforce development strategy of the agency;
(2) assessing workforce characteristics and future needs based on the agency’s mission and strategic plan;
(3) aligning the agency’s human resources policies and programs with organization mission, strategic goals, and performance outcomes;
(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;
(5) identifying best practices and benchmarking studies;4 and
(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

(b) In addition to the authority otherwise provided by this section, each agency Chief Human Capital Officer—

(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that—
(A) are the property of the agency or are available to the agency; and
(B) relate to programs and operations with respect to which that agency Chief Human Capital Officer has responsibilities under this chapter; and
(2) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this chapter from any Federal, State, or local governmental entity.


CHAPTER 15—POLITICAL ACTIVITY OF CERTAIN STATE AND LOCAL EMPLOYEES

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

AMENDMENTS


1 So in original. The comma probably should be a semicolon.

§ 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;
(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.


HISTORICAL AND REVISION NOTES

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<th>Derivation</th>
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<tr>
<td>(1) ..........</td>
<td>5 U.S.C. 118k-2</td>
<td>July 19, 1940, ch. 640, § 4</td>
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<td>(2), (3) .....</td>
<td>5 U.S.C. 118k(f)</td>
<td>July 19, 1940, ch. 640, § 4</td>
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<td>(4) ..........</td>
<td>5 U.S.C. 118k(a) (1st 41 words), (e)</td>
<td>July 19, 1940, ch. 640, § 4</td>
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<tr>
<td>(5) ..........</td>
<td>5 U.S.C. 118 (as applicable to 5 U.S.C. 118k)</td>
<td>July 19, 1940, ch. 640, § 4</td>
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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 431 of Title 2, The Congress.
§ 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 personal 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.


Historical and Revision Notes

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<td>§ 5 U.S.C. 118k(a) (less 1st 41 words).</td>
<td>July 19, 1940, ch. 646, §4 &quot;Sec. 12(a) (less 1st 41 words)&quot;, 54 Stat. 567.</td>
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In subsection (a), the term “State or local officer or employee”, defined in section 1501, is substituted for the first 41 words of former section 118k(a). The words “any part of his salary or compensation” are omitted as included in “anything of value”.

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—Subsec. (a)(3). Pub. L. 93–443 substituted “be a candidate for elective office” for “take an active part in political campaigns”.

Effective Date of 1974 Amendment

Amendment by Pub. L. 93–443 effective Jan. 1, 1975, see section 418(a) of Pub. L. 93–443, set out as a note under section 411 of Title 2, The Congress.

§ 1504. Investigations; notice of hearing

When a Federal agency charged with the duty of making a loan or grant of funds of the United States for use in an activity by a State or local officer or employee has reason to believe that the officer or employee has violated section 1502 of this title, it shall report the matter to the Special Counsel. On receipt of the report or on receipt of other information which seems to the Special Counsel to warrant an investigation, the Special Counsel shall investigate the report and such other information and present his findings and any charges based on such findings to the Merit Systems Protection Board, which shall—

(1) fix a time and place for a hearing; and

(2) send, by registered or certified mail, to the officer or employee charged with the violation and to the State or local agency employing him a notice setting forth a summary of the alleged violation and giving the time and place of the hearing.

The hearing may not be held earlier than 10 days after the mailing of the notice.


Historical and Revision Notes

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§ 1505. Hearings; adjudications; notice of determinations

Either the State or local officer or employee or the State or local agency employing him, or both, are entitled to appear with counsel at the hearing under section 1504 of this title, and be heard. After this hearing, the Merit Systems Protection Board shall—

1. determine whether a violation of section 1502 of this title has occurred;
2. determine whether the violation warrants the removal of the officer or employee from his office or employment; and
3. notify the officer or employee and the agency of the determination by registered or certified mail.


§ 1506. Orders; withholding loans or grants; limitations

(a) When the Merit Systems Protection Board finds—

1. that a State or local officer or employee has not been removed from his office or employment within 30 days after notice of a determination by the Board that he has violated section 1502 of this title and that the violation warrants removal; or
2. that the State or local officer or employee has been removed and has been appointed within 18 months after his removal to an office or employment in the same State in a State or local agency which does not receive loans or grants from a Federal agency;

the Board shall make and certify to the appropriate Federal agency an order requiring that agency to withhold from its loans or grants to the State or local agency to which notice was given an amount equal to 2 years' pay at the rate the officer or employee was receiving at the time of the violation. When the State or local agency to which appointment within 18 months after removal has been made is one that receives loans or grants from a Federal agency, the Board order shall direct that the withholding be made from that State or local agency.

(b) Notice of the order shall be sent by registered or certified mail to the State or local agency from which the amount is ordered to be withheld. After the order becomes final, the Federal agency to which the order is certified shall withhold the amount in accordance with the terms of the order. Except as provided by section 1508 of this title, a determination or order of the Board becomes final at the end of 30 days after mailing the notice of the determination or order.

(c) The Board may not require an amount to be withheld from a loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of that amount would jeopardize the payment of the principal or interest on the bonds or notes.


Historical and Revision Notes

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<td>§ 1506(a)(6)</td>
<td>July 19, 1940, ch. 640, §4</td>
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<td></td>
<td>118k(b)</td>
<td>&quot;Sec. 12(b) (3d sentence, less 4th through 17th words, and 4th sentence)&quot;</td>
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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


Effective Date of 1978 Amendment


§ 1507. Subpenas and depositions

(a) The Merit Systems Protection Board may require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter before it as a result of this chapter. Any member of the Board may sign subpenas, and members of the Board and its examiners when authorized by the Board may administer oaths, examine witnesses, and receive evidence. The attendance of witnesses and the production of documentary evi-
dence may be required from any place in the United States at the designated place of hearing. In case of disobedience to a subpoena, the Board may invoke the aid of a court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contempt or refusal to obey a subpoena issued to a person, the United States District Court within whose jurisdiction the inquiry is carried on may issue an order requiring him to appear before the Board, or to produce documentary evidence if so ordered, or to give evidence concerning the matter in question; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The Board may order testimony to be taken by deposition at any stage of a proceeding or investigation before it as a result of this chapter. Depositions may be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by the individual taking the deposition, or under his direction, and shall be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Board as provided by this section.

(c) A person may not be excused from attending and testifying or from producing documentary evidence or in obedience to a subpoena on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty to which he is not subject, or to give evidence concerning the matter in question; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

§ 1508. Judicial review

A party aggrieved by a determination or order of the Merit Systems Protection Board under section 1504, 1505, or 1506 of this title may, within 30 days after the mailing of notice of the determination or order, institute proceedings for review thereof by filing a petition in the United States District Court for the district in which the State or local officer or employee resides. The institution of the proceedings does not operate as a stay of the determination or order unless—

(1) the court specifically orders a stay; and

(2) the officer or employee is suspended from his office or employment while the proceedings are pending.

A copy of the petition shall immediately be served on the Board, and thereupon the Board shall certify and file in the court a transcript of the record on which the determination or order was made. The court shall review the entire record including questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce this evidence in the hearing before the Board, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions fixed by the court. The Board may modify its findings of fact or its determination or order in view of the additional evidence and shall file with the court the modified findings, determination, or order; and the modified findings of fact, if supported by substantial evidence, are conclusive. The court shall affirm the determination or order, or the modified determination or order, if the court determines that it is in accordance with law. If the court determines that the determination or order, or the modified determination or order, is not in accordance with law, the court shall remand the proceeding to the Board with directions either to make a determination or order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court are final, subject to review by the appropriate United States Court of Appeals as in other cases, and the judgment and decree of the court of appeals are final, subject to review by the Supreme Court of the United States on certiorari or certification as provided by section 1254 of title 28. If a provision of this section is held to be invalid as applied to a party by a determination or order of the Board, the determination or order becomes final and effective as to that party as if the provision had not been enacted.

HISTORICAL AND REVISION NOTES

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<td>............</td>
<td>5 U.S.C. 118k(d) (less 1st sentence).</td>
<td>July 19, 1940, ch. 640, § 4 (Sec. 12(d) (less 1st sentence)”), 54 Stat. 769.</td>
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In subsection (a), the word “affirmation” is omitted as included in “oath” on authority of section 1 of title 1, United States Code. The title of the court is changed to conform to title 28.

In subsection (c), the prohibition is restated in positive form.

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


EFFECTIVE DATE OF 1978 AMENDMENT

Sections 346 and 347 of title 28 referred to in former section 118k(c) were repealed by the Act of June 25, 1948, ch. 646, §39, 62 Stat. 862, and are now covered by section 1254 of title 28. The titles of the courts are changed to conform to title 28.

In the reference to filing a written petition, “written” is omitted as unnecessary.

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 “Merit Systems Protection Board” and “Board” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

Effective Date of 1978 Amendment...


PART III—EMPLOYEES

Subpart A—General Provisions

Chap. 21. 23. 29.

Subpart B—Employment and Retention

31. 33. 34. 35.

Subpart C—Employee Performance

37. Information Technology Exchange Program

Subpart D—Pay and Allowances

51. Classification

53. Pay Rates and Systems

54. Human Capital Performance Fund

55. Pay Administration

57. Travel, Transportation, and Subsistence

59. Allowances

Subpart E—Attendance and Leave

61. Hours of Work

63. Leave

65. Telework

Subpart F—Labor-Management and Employee Relations

71. Labor-Management Relations

72. Antidiscrimination; Right to Petition Congress

73. Suitability, Security, and Conduct

75. Adverse Actions

77. Appeals

79. Services to Employees

Subpart G—Insurance and Annuities

81. Compensation for Work Injuries

83. Retirement

84. Federal Employees’ Retirement System

85. Unemployment Compensation

87. Life Insurance

89. Health Insurance

89A. Enhanced Dental Benefits

89B. Enhanced Vision Benefits

90. Long-Term Care Insurance

Subpart H—Access to Criminal History Record Information

91. Access to Criminal History Records for National Security and Other Purposes

Subpart I—Miscellaneous

95. Personnel flexibilities relating to the Internal Revenue Service

97. Department of Homeland Security

98. National Aeronautics and Space Administration

99. Department of Defense Personnel Authorities

101. Federal Emergency Management Agency Personnel

102. United States Secret Service Uniformed Division Personnel

AMENDMENTS


1Chapter heading amended by Pub. L. 107–296 without corresponding amendment of part analysis.

2So in original. Probably should be capitalized.