

any part of the official personnel record of the member;

(B) other alleged violation, misinterpretation, or misapplication of applicable laws, regulations, or published policy affecting the terms and conditions of the employment or career status of the member;

(C) allegedly wrongful disciplinary action against the member;

(D) dissatisfaction with respect to the working environment of the member;

(E) alleged inaccuracy, omission, error, or falsely prejudicial character of information in the official personnel record of the member which is or could be prejudicial to the member;

(F) action alleged to be in the nature of reprisal or other interference with freedom of action in connection with participation by the member in procedures under this subchapter;

(G) alleged denial of an allowance, premium pay, or other financial benefit to which the member claims entitlement under applicable laws or regulations; and

(H) any discrimination prohibited by—

- (i) section 2000e-16 of title 42,
- (ii) section 206(d) of title 29,
- (iii) section 791 of title 29,
- (iv) sections 631 and 633a of title 29, or
- (v) any rule, regulation, or policy directive prescribed under any provision of law described in clauses (i) through (iv).

(2) The scope of grievances described in paragraph (1) may be modified by written agreement between the Department and the labor organization accorded recognition as the exclusive representative under subchapter X of this chapter (hereinafter in this subchapter referred to as the “exclusive representative”).

(b) For purposes of this subchapter, the term “grievance” does not include—

(1) an individual assignment of a member under subchapter V of this chapter, other than an assignment alleged to be contrary to law or regulation;

(2) the judgment of a selection board established under section 4002 of this title, a tenure board established under section 3946(b) of this title, or any other equivalent body established by laws or regulations which similarly evaluates the performance of members of the Service on a comparative basis;

(3) the expiration of a limited appointment, the termination of a limited appointment under section 4011 of this title, or the denial of a limited career extension or of a renewal of a limited career extension under section 4007(b) of this title; or

(4) any complaint or appeal where a specific statutory hearing procedure exists, except as provided in section 4139(a)(2) of this title.

Nothing in this subsection shall exclude any act, omission, or condition alleged to violate any law, rule, regulation, or policy directive referred to in subsection (a)(1)(H) of this section from such term.

(c) This subchapter applies only with respect to the Department of State, Broadcasting<sup>1</sup>

Board of Governors, the Agency for International Development, the Department of Agriculture, and the Department of Commerce.

(Pub. L. 96-465, title I, §1101, Oct. 17, 1980, 94 Stat. 2142; Pub. L. 97-241, title III, §303(b), Aug. 24, 1982, 96 Stat. 291; Pub. L. 102-138, title I, §153(a), Oct. 28, 1991, 105 Stat. 673; Pub. L. 103-236, title I, §§180(a)(10), 181(a)(4)(A), Apr. 30, 1994, 108 Stat. 416, 417; Pub. L. 105-277, div. G, subdiv. A, title XIII, §1335(k)(4), title XIV, §1422(b)(4)(D), Oct. 21, 1998, 112 Stat. 2681-789, 2681-793.)

#### AMENDMENTS

1998—Subsec. (c). Pub. L. 105-277, §1422(b)(4)(D), substituted “Agency for International Development” for “United States International Development Cooperation Agency”.

Pub. L. 105-277, §1335(k)(4), substituted “Broadcasting Board of Governors,” for “the United States Information Agency.”

1994—Subsec. (a)(1). Pub. L. 103-236, §180(a)(10), inserted “(other than a United States citizen employed under section 3951 of this title who is not a family member)” after “citizen of the United States” in introductory provisions.

Subsec. (b)(3). Pub. L. 103-236, §181(a)(4), made technical amendment to reference to section 4011 of this title to reflect renumbering of corresponding section of original act.

1991—Subsec. (a)(1)(H). Pub. L. 102-138, §153(a)(1), added subpar. (H).

Subsec. (b). Pub. L. 102-138, §153(a)(2), in par. (4), substituted “section 4139(a)(2)” for “section 4139(b)” and inserted at end “Nothing in this subsection shall exclude any act, omission, or condition alleged to violate any law, rule, regulation, or policy directive referred to in subsection (a)(1)(H) of this section from such term.”

#### CHANGE OF NAME

“United States Information Agency” substituted for “International Communication Agency” in subsec. (c), pursuant to section 303(b) of Pub. L. 97-241, set out as a note under section 1461 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 1335(k)(4) of Pub. L. 105-277 effective Oct. 1, 1999, see section 1301 of Pub. L. 105-277, set out as an Effective Date note under section 6531 of this title.

Amendment by section 1422(b)(4)(D) of Pub. L. 105-277 effective Apr. 1, 1999, see section 1401 of Pub. L. 105-277, set out as an Effective Date note under section 6561 of this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-138 not applicable with respect to any grievance, within the meaning of this section, arising before Oct. 28, 1991, see section 153(f) of Pub. L. 102-138, set out as a note under section 4115 of this title.

### § 4132. Grievances concerning former members or their survivors

Within the time limitations of section 4134 of this title, a former member of the Service or the surviving spouse (or, if none, another member of the family) of a deceased member or former member of the Service may file a grievance under this subchapter only with respect to allegations described in section 4131(a)(1)(G) of this title.

(Pub. L. 96-465, title I, §1102, Oct. 17, 1980, 94 Stat. 2143.)

<sup>1</sup> So in original. Probably should be “the Broadcasting”.

**§ 4133. Freedom of action****(a) Nature of protection**

Any individual filing a grievance under this subchapter (hereinafter in this subchapter referred to as the “grievant”), and any witness, labor organization, or other person involved in a grievance proceeding, shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them.

**(b) Right to representation**

(1) The grievant has the right to a representative of his or her own choosing at every stage of the proceedings under this subchapter.

(2) In any case where the grievant is a member of a bargaining unit represented by an exclusive representative, but is not represented in the grievance by that exclusive representative, the exclusive representative shall have the right to appear during the grievance proceedings.

(3) The grievant, and any representative of the grievant who is a member of the Service or employee of the Department, shall be granted reasonable periods of administrative leave to prepare and present the grievance and to attend proceedings under this subchapter.

**(c) Administrative leave for witnesses**

Any witness who is a member of the Service or employee of the Department shall be granted reasonable periods of administrative leave to appear and testify at any proceedings under this subchapter.

**(d) Records**

(1) No record of—

(A) a determination by the Secretary to reject a recommendation of the Foreign Service Grievance Board,

(B) a finding by the Grievance Board against the grievant, or

(C) the fact that a grievance proceeding is pending or has been held,

shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other individual connected with the grievance. Nothing in this subsection shall prevent a grievant from placing a rebuttal to accompany a record of disciplinary action in such grievant’s personnel records nor prevent the Department from including a response to such rebuttal, including documenting those cases in which the Board has reviewed and upheld the discipline.

(2) The Department shall maintain records pertaining to grievances under appropriate safeguards to preserve confidentiality.

(3) The Foreign Service Grievance Board may enforce compliance with the requirements of paragraphs (1) and (2).

**(e) Expedition of security clearance procedures**

The Department will use its best endeavors to expedite security clearance procedures whenever necessary to assure a fair and prompt resolution of a grievance.

(Pub. L. 96-465, title I, §1103, Oct. 17, 1980, 94 Stat. 2143; Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title III, §329], Nov. 29, 1999, 113 Stat. 1536, 1501A-438.)

## AMENDMENTS

1999—Subsec. (d)(1). Pub. L. 106-113 inserted at end “Nothing in this subsection shall prevent a grievant from placing a rebuttal to accompany a record of disciplinary action in such grievant’s personnel records nor prevent the Department from including a response to such rebuttal, including documenting those cases in which the Board has reviewed and upheld the discipline.”

**§ 4134. Time limitations****(a) Limitations period**

A grievance is forever barred under this subchapter unless it is filed with the Department not later than two years after the occurrence giving rise to the grievance or, in the case of a grievance with respect to the grievant’s rater or reviewer, one year after the date on which the grievant ceased to be subject to rating or review by that person, but in no case more than three years after the occurrence giving rise to the grievance. There shall be excluded from the computation of any such period any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance and could not have discovered such grounds through reasonable diligence.

**(b) Failure of Department to resolve grievance; grievance filed with Foreign Service Grievance Board**

If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any) within ninety days after it is filed with the Department, the grievant or the exclusive representative (on behalf of a grievant who is a member of the bargaining unit) shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

**(c) Grievances based on alleged discrimination**

(1) In applying subsection (a) of this section with respect to an alleged violation of a law, rule, regulation, or policy directive referred to in section 4131(a)(1)(H) of this title, the reference to “2 years” shall be deemed to read “180 days”, subject to paragraph (2).

(2) If the occurrence or occurrences giving rise to the grievance are alleged to have occurred while the grievant was assigned to a post abroad, the 180-day period provided for under paragraph (1) shall not commence until the earlier of—

(A) the date as of which the grievant is no longer assigned to such post; or

(B) the expiration of the 18-month period beginning on the date of the occurrence giving rise to the grievance or the last such occurrence, as the case may be.

(Pub. L. 96-465, title I, §1104, Oct. 17, 1980, 94 Stat. 2144; Pub. L. 102-138, title I, §153(b), Oct. 28, 1991, 105 Stat. 673; Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title III, §330(a), (b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-438; Pub. L. 107-228, div. A, title III, §317, Sept. 30, 2002, 116 Stat. 1379.)

## AMENDMENTS

2002—Subsec. (a). Pub. L. 107-228 substituted “but in no case more than three years” for “but in no case less than two years”.