

95-454, title II, §201(a), Oct. 13, 1978, 92 Stat. 1120; Pub. L. 104-52, title IV, §1, Nov. 19, 1995, 109 Stat. 489.)

HISTORICAL AND REVISION NOTES
1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|--|---|
| | [Uncodified]. | 1949 Reorg. Plan No. 5, §2(a) (less 35th through 46th words), (b), eff. Aug. 20, 1949, 63 Stat. 1067. |
| | 5 U.S.C. 3013(a) (1st sentence, less 10th through 24th words). | Sept. 28, 1959, Pub. L. 86-382, §14(a) (1st sentence, less 10th through 24th words), 73 Stat. 716. |

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 “civil service” are substituted for “Federal service”.

In subsection (b)(7), the words “submission of requests for appropriations” 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

| <i>Section of title 5</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|---------------------------|-----------------------------|--|
| 1104(a)(6) ... | 5:8713(a). [Uncodified]. | [None.] 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. |

The paragraph added by this section is based on 5 U.S.C. 8713(a), and is restated to reflect the effect of sections 11-13 of 1965 Reorganization Plan No. 4, effective July 27, 1965.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104-52, §1(1)(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. 104-52, §1(1)(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.

Subsec. (b)(4). Pub. L. 104-52, §1(2), added par. (4).
1978—Pub. L. 95-454 substituted “Delegation of authority for personnel management” for “Functions of Chairman” in section catchline, and in text provisions relating to the delegation of authority for personnel management for provisions relating to functions of the Chairman of the United States Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

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

§ 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 553.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 400; Pub. L. 95-454, title II, §201(a), Oct. 13, 1978, 92 Stat. 1121.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|---|--|
| | 5 U.S.C. 635 (less last 24 words of 6th sentence, and less 7th sentence). | Jan. 16, 1883, ch. 27, §3 (less last 24 words of 6th sentence, and less 7th sentence), 22 Stat. 404. |
| | [Uncodified]. | 1949 Reorg. Plan No. 5, §4, eff. Aug. 19, 1949, 63 Stat. 1069. |

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 “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. So much of the first sentence as imposed a duty on the Chief Examiner, under the Commission’s direction, to act with the examining boards to secure accuracy, uniformity, and justice in all their proceedings is restated in section 1104(a)(1). The fourth sentence of former section 635, authorizing the Commission to employ a stenographer and a messenger, is omitted as obsolete. The remainder is rewritten for clarity. The text of 1949 Reorg. Plan No. 5, §4, is omitted as executed.

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.

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 “Administrative procedure” for “Boards of examiners” in section catchline, and in text provisions relating to administrative procedure applicable to administration of this chapter for provisions relating to boards of examiners for the United States Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

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

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.¹
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

1989—Pub. L. 101–12, §3(b)(2), (3), Apr. 10, 1989, 103 Stat. 31, substituted “, OFFICE OF SPECIAL COUNSEL, AND EMPLOYEE RIGHT OF ACTION” for “AND SPECIAL COUNSEL” in chapter heading, and amended chapter analysis generally, inserting subchapter I heading, and in item 1204 substituting “Powers and functions of the Merit Systems Protection Board” for “Special Counsel; appointment and removal”, in item 1205 substituting “Transmittal of information to Congress” for “Powers and functions of the Merit Systems Protection Board and Special Counsel”, in item 1206 substituting “Annual report” for “Authority and responsibilities of the Special Counsel”, omitting items 1207 “Hearings and decisions on complaints filed by the Special Counsel”, 1208 “Stays of certain personnel actions”, and 1209 “Information”, and inserting subchapters II and III headings and items 1211 to 1219, 1221, and 1222.

SUBCHAPTER I—MERIT SYSTEMS PROTECTION BOARD

AMENDMENTS

1989—Pub. L. 101–12, §3(b)(4), Apr. 10, 1989, 103 Stat. 31, inserted subchapter heading.

§ 1201. Appointment of members of the Merit Systems Protection Board

The Merit Systems Protection Board is composed of 3 members appointed by the President, by and with the advice and consent of the Senate, not more than 2 of whom may be adherents of the same political party. The members of the Board shall be individuals who, by demonstrated ability, background, training, or experience are especially qualified to carry out the functions of

¹ So in original. Does not conform to section catchline.

the Board. No member of the Board may 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. The Board shall have an official seal which shall be judicially noticed. The Board shall have its principal office in the District of Columbia and may have field offices in other appropriate locations.

(Added Pub. L. 95–454, title II, §202(a), Oct. 13, 1978, 92 Stat. 1121; amended Pub. L. 101–12, §3(a)(1), Apr. 10, 1989, 103 Stat. 16.)

AMENDMENTS

1989—Pub. L. 101–12 substituted “The members” for “The Chairman and members” in second sentence.

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

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

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 section 3352 of this title, amending this section and sections 1202 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)(8) of title 5, United States Code, serve the public interest by assisting in the elimination of fraud, waste, abuse, and unnecessary Government expenditures;