

(Pub. L. 96-465, title I, § 601, Oct. 17, 1980, 94 Stat. 2094; Pub. L. 100-204, title I, § 185(b), Dec. 22, 1987, 101 Stat. 1366; Pub. L. 103-236, title I, § 180(a)(6), Apr. 30, 1994, 108 Stat. 416; Pub. L. 106-113, div. B, § 1000(a)(7) [div. A, title III, § 326], Nov. 29, 1999, 113 Stat. 1536, 1501A-437.)

AMENDMENTS

1999—Subsec. (c)(4), (5). Pub. L. 106-113 added pars. (4) and (5) and struck out former par. (4), which required report not later than Mar. 1 of each year, describing steps taken and planned in furtherance of compatibility and development of uniform procedures and consolidated personnel functions, specifying upper and lower limits planned for recruitment, retention, and advancement of members, and specifying numbers of members assigned to positions more than one grade higher or lower than the member.

1994—Subsec. (b). Pub. L. 103-236, which directed amendment of par. (2) by striking “and” the last place it appears and by inserting “and other members of the Service” after “categories of career candidates,” was executed by striking “and” after “categories of career members,” and making the insertion in concluding provisions below par. (2), to reflect the probable intent of Congress.

1987—Subsec. (c)(4). Pub. L. 100-204 added par. (4).

REPORTS ELIMINATED

Pub. L. 104-66, title II, § 2241, Dec. 21, 1995, 109 Stat. 733, which provided that reports required under section 4001(c)(4) of this title would not cover activities of the United States Information Agency, was repealed by Pub. L. 105-277, div. G, subd. A, title XIII, § 1336(5), Oct. 21, 1998, 112 Stat. 2681-790.

LANGUAGE TRAINING IN FOREIGN SERVICE

Pub. L. 102-138, title I, § 155, Oct. 28, 1991, 105 Stat. 675, as amended by Pub. L. 105-277, div. G, subd. A, title XIII, § 1335(q), Oct. 21, 1998, 112 Stat. 2681-789, provided that: “The Department of State and the Department of Commerce shall ensure that the precepts for promotion of Foreign Service employees provide that end-of-training reports for employees in full-time language training shall be weighed as heavily as the annual employee efficiency reports, in order to ensure that employees in language training are not disadvantaged in the promotion process.”

FOREIGN SERVICE PROMOTION PANELS

Pub. L. 101-246, title I, § 163, Feb. 16, 1990, 104 Stat. 47, as amended by Pub. L. 107-132, § 1(b), Jan. 16, 2002, 115 Stat. 2412, provided that: “It is the sense of the Congress that, to the greatest extent possible, Foreign Service promotion panels should—

“(1) only promote candidates to the Senior Foreign Service who have demonstrated foreign language proficiency in at least one language at the General Professional Speaking Proficiency level, as defined by the George P. Shultz National Foreign Affairs Training Center;

“(2) strive for the objective stipulated in the Foreign Service Manual ‘to be able to use two foreign languages at a minimum professional level of proficiency of S-3/R-3, which is the general professional speaking proficiency level’; and

“(3) have at least one person on each Foreign Service promotion panel who has attained at least the General Professional Speaking Proficiency level in one language level.”

LANGUAGE PROFICIENCY IN EMPLOYEE EVALUATION REPORT

Pub. L. 101-246, title I, § 164, Feb. 16, 1990, 104 Stat. 47, required revision of employee and officer evaluation reports for Foreign Service officers of Department of State and Agency for International Development to include separate assessment of employee’s effectiveness

in using foreign language and required that precedence in promotion be given to officers achieving certain levels of proficiency in foreign language, prior to repeal by Pub. L. 103-236, title I, § 191(b), Apr. 30, 1994, 108 Stat. 418. See section 191(a) of Pub. L. 103-236, set out as a note under section 3926 of this title.

§ 4002. Establishment of selection boards

(a) Evaluation of performance; recommendations

The Secretary shall establish selection boards to evaluate the performance of members of the Senior Foreign Service and members of the Service assigned to a salary class in the Foreign Service Schedule. Selection boards shall, in accordance with precepts prescribed by the Secretary, rank the members of a salary class on the basis of relative performance and may make recommendations for—

(1) promotions in accordance with section 4001 of this title;

(2) awards of performance pay under section 3965(c) of this title;

(3) denials of within-class step increases under section 3966(a) of this title;

(4) offer or renewal of limited career extensions under section 4007(b) of this title; and

(5) such other actions as the Secretary may prescribe by regulation.

(b) Public members; appointment of women and minority groups

All selection boards established under this section shall include public members. The Secretary shall assure that a substantial number of women and members of minority groups are appointed to each selection board established under this section.

(c) Disqualification for service on foreign service selection boards

No public members appointed pursuant to this section may be, at the time of their appointment or during their appointment, an agent of a foreign principal (as defined by section 611(b) of this title) or a lobbyist for a foreign entity (as defined in section 1602(6) of title 2) or receive income from a government of a foreign country.

(Pub. L. 96-465, title I, § 602, Oct. 17, 1980, 94 Stat. 2095; Pub. L. 101-246, title I, § 142, Feb. 16, 1990, 104 Stat. 36; Pub. L. 104-65, § 12(c), Dec. 19, 1995, 109 Stat. 701.)

AMENDMENTS

1995—Subsec. (c). Pub. L. 104-65 inserted “or a lobbyist for a foreign entity (as defined in section 1602(6) of title 2)” before “or receive income”.

1990—Subsec. (c). Pub. L. 101-246 added subsec. (c).

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-65 effective Jan. 1, 1996, except as otherwise provided, see section 24 of Pub. L. 104-65, set out as an Effective Date note under section 1601 of Title 2, The Congress.

§ 4003. Recommendations and rankings

(a) Recommendations and rankings by selection boards shall be based upon records of the character, ability, conduct, quality of work, industry, experience, dependability, usefulness, and general performance of members of the Service. Such records may include reports prepared by or on behalf of the Inspector General of

the Department of State and the Foreign Service, performance evaluation reports of supervisors, records of commendations, reports of language test scores from the George P. Shultz National Foreign Affairs Training Center, awards, reprimands, and other disciplinary actions, and (with respect to members of the Senior Foreign Service) records of current and prospective assignments.

(b) Precepts for selection boards shall include a description of the needs of the Service for performance requirements, skills, and qualities, which are to be considered in recommendations for promotion. The precepts for selection boards responsible for recommending promotions into and within the Senior Foreign Service shall emphasize performance which demonstrates the strong policy formulation capabilities, executive leadership qualities, and highly developed functional and area expertise, which are required for the Senior Foreign Service. The precepts for selection boards shall include, whether the member of the Service or the member of the Senior Foreign Service, as the case may be, has demonstrated—

- (1) a willingness and ability to explain United States policies in person and through the media when occupying positions for which such willingness and ability is, to any degree, an element of the member's duties, or
- (2) other experience in public diplomacy.

(Pub. L. 96-465, title I, § 603, Oct. 17, 1980, 94 Stat. 2095; Pub. L. 107-132, § 1(b), Jan. 16, 2002, 115 Stat. 2412; Pub. L. 108-458, title VII, § 7110(c), Dec. 17, 2004, 118 Stat. 3794.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108-458 inserted at end “The precepts for selection boards shall include, whether the member of the Service or the member of the Senior Foreign Service, as the case may be, has demonstrated—” and pars. (1) and (2).

2002—Subsec. (a). Pub. L. 107-132 substituted “George P. Shultz National Foreign Affairs Training Center” for “Foreign Service Institute”.

§ 4004. Records

(a) The records described in section 4003(a) of this title shall be maintained in accordance with regulations prescribed by the Secretary. Except to the extent that they pertain to the receipt, disbursement, and accounting for public funds, such records shall be confidential and subject to inspection only by the President, the Secretary, such employees of the Government as may be authorized by law or assigned by the Secretary to work on such records, the legislative and appropriations committees of the Congress charged with considering legislation and appropriations for the Service, and representatives duly authorized by such committees. Access to such records relating to a member of the Service shall be granted to such member, upon written request.

(b) Notwithstanding subsection (a) of this section, any record of disciplinary action that includes a suspension of more than five days taken against a member of the Service, including any correction of that record under section 4137(b)(1) of this title, shall remain a part of the personnel records until the member is tenured as a career member of the Service or next promoted.

(Pub. L. 96-465, title I, § 604, Oct. 17, 1980, 94 Stat. 2096; Pub. L. 106-113, div. B, § 1000(a)(7) [div. A, title III, § 327(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-438.)

AMENDMENTS

1999—Pub. L. 106-113, in section catchline, substituted “Records” for “Confidentiality of records”, designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, § 1000(a)(7) [div. A, title III, § 327(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-438, provided that: “The amendments made by this section [amending this section] apply to all disciplinary actions initiated on or after the date of enactment of this Act [Nov. 29, 1999].”

§ 4005. Implementation of selection board recommendations

(a) Recommendations for promotion made by selection boards shall be submitted to the Secretary in rank order by salary class or in rank order by specialization within a salary class. The Secretary shall make promotions and, with respect to career appointments into or within the Senior Foreign Service, shall make recommendations to the President for promotions, in accordance with the rankings of the selection boards.

(b) Notwithstanding subsection (a) of this section, in special circumstances set forth by regulation, the Secretary may remove the name of an individual from the rank order list submitted by a selection board or delay the promotion of an individual named in such a list.

(Pub. L. 96-465, title I, § 605, Oct. 17, 1980, 94 Stat. 2096.)

§ 4006. Other bases for promoting or increasing pay

(a) The Secretary may pursuant to a recommendation of the Foreign Service Grievance Board, an equal employment opportunity appeals examiner, or the Special Counsel of the Merit Systems Protection Board, and shall pursuant to a decision or order of the Merit Systems Protection Board—

- (1) recommend to the President a promotion of a member of the Service under section 3942(a) of this title;
- (2) promote a member of the Service under section 3943 of this title;
- (3) grant performance pay to a member of the Senior Foreign Service under section 3965(c) of this title; or
- (4) grant a within-class salary increase under section 3966 of this title to a member of the Service who is assigned to a salary class in the Foreign Service Schedule.

(b) In implementing subsection (a) of this section and in cases in which the Secretary has exercised the authority of section 4005(b) of this title, the Secretary may, in special circumstances set forth by regulation, make retroactive promotions, grant performance pay, make retroactive within-class salary increases, and recommend retroactive promotions by the President.

(Pub. L. 96-465, title I, § 606, Oct. 17, 1980, 94 Stat. 2096.)