

ment Opportunity Commission if a charge or claim alleging discrimination under such law, rule, regulation, or policy directive had been filed with the commission.<sup>1</sup>

(Pub. L. 96-465, title I, §1107, Oct. 17, 1980, 94 Stat. 2146; Pub. L. 100-204, title I, §§181(a), (b), 182, Dec. 22, 1987, 101 Stat. 1363, 1364; Pub. L. 102-138, title I, §153(c), Oct. 28, 1991, 105 Stat. 673.)

#### AMENDMENTS

1991—Subsec. (f). Pub. L. 102-138 added subsec. (f).  
1987—Subsec. (d). Pub. L. 100-204, §181(a), (b), designated existing provisions as par. (1), inserted “, tenure” after “promotion” in first sentence, and added pars. (2) and (3).

Subsec. (e). Pub. L. 100-204, §182, added subsec. (e).

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-138 not applicable with respect to any grievance, within the meaning of section 4131 of this title, 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.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-204 not applicable with respect to any grievance in which the Board has issued a final decision pursuant to this section before Dec. 22, 1987, see section 181(e) of Pub. L. 100-204, set out as a note under section 3946 of this title.

### § 4138. Access to records

#### (a) Review by Foreign Service Grievance Board of decision denying access

If a grievant is denied access to any agency record prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance.

#### (b) Access by Foreign Service Grievance Board; relevant and material records; adverse effect on national security or foreign policy

In considering a grievance, the Board shall have access to any agency record as follows:

(1)(A) The Board shall request access to any agency record which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.

(B) The Board may request access to any other agency record which the Board determines may be relevant and material to the grievance.

(2) Any agency shall make available to the Board any agency record requested under paragraph (1) unless the head or deputy head of such agency personally certifies in writing to the Board that disclosure of the record to the Board and the grievant would adversely affect the foreign policy or national security of the United States or that such disclosure is prohibited by law. If such a certification is made with respect to any record, the agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

#### (c) Access by grievant

If the Board determines that an agency record, or a summary or extract of a record, made avail-

able to the Board under subsection (b) of this section is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract, as the case may be, available to the grievant.

#### (d) Denial of access as factor in determination of grievance

In considering a grievance, the Board may take into account the fact that the grievant or the Board was denied access to an agency record which the Board determines is or may be relevant and material to the grievance.

#### (e) Proceedings and decisions of Foreign Service Grievance Board

The grievant in any case decided by the Board shall have access to the record of the proceedings and the decision of the Board.

(Pub. L. 96-465, title I, §1108, Oct. 17, 1980, 94 Stat. 2147.)

### § 4139. Relationship to other remedies

(a)(1) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided under another provision of law, regulation, or Executive order, other than under section 1214 or 1221 of title 5, and the matter has been carried to final decision under such provision on its merits or is still under consideration.

(2) If a grievant is not prohibited from filing a grievance under paragraph (1), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5 or a regulation or Executive order other than under this subchapter. An election of remedies under this subsection shall be final upon the acceptance of jurisdiction by the Board.

(3) This subsection shall not apply to any grievance with respect to which subsection (b) of this section applies.

(b)(1) With respect to a grievance based on an alleged violation of a law, rule, regulation, or policy directive referred to in section 4131(a)(1)(H) of this title, a grievant may either—

(A) file a grievance under this subchapter, or

(B) initiate in writing a proceeding under another provision of law, regulation, or Executive order that authorizes relief,

but not both.

(2) A grievant shall be considered to have exercised the option under paragraph (1) as soon as the grievant timely either—

(A) files a grievance under this subchapter, or

(B) initiates in writing a proceeding under such other provision of law, regulation, or Executive order.

(Pub. L. 96-465, title I, §1109, Oct. 17, 1980, 94 Stat. 2148; Pub. L. 101-12, §9(a)(3), Apr. 10, 1989, 103 Stat. 35; Pub. L. 102-138, title I, §153(d)(1), Oct. 28, 1991, 105 Stat. 673.)

#### AMENDMENTS

1991—Subsec. (a). Pub. L. 102-138, §153(d)(1)(A), (B), redesignated former subsec. (a) as par. (1), redesignated

former subsec. (b) as par. (2) of subsec. (a) and substituted “paragraph (1)” for “subsection (a) of this section” and “under this subsection” for “under this section”, and added par. (3).

Subsec. (b). Pub. L. 102-138, § 153(d)(1)(C), added subsec. (b). Former subsec. (b) redesignated (a)(2).

1989—Subsec. (a). Pub. L. 101-12 substituted “1214 or 1221” for “1206”.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-138 not applicable with respect to any grievance, within the meaning of section 4131 of this title, 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.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of Title 5, Government Organization and Employees.

### § 4140. Judicial review

(a) Any aggrieved party may obtain judicial review of a final action of the Secretary or the Board on any grievance in the district courts of the United States in accordance with the standards set forth in chapter 7 of title 5, if the request for judicial review is filed not later than 180 days after the final action of the Secretary or the Board (or in the case of an aggrieved party who is posted abroad at the time of the final action of the Secretary or the Board, if the request for judicial review is filed not later than 180 days after the aggrieved party's return to the United States). Section 706 of title 5 shall apply without limitation or exception. This subsection shall not apply to any grievance with respect to which subsection (b) of this section applies.

(b)(1) For purposes of this subsection, the term “aggrieved party” means a grievant.

(2) With respect to a grievance based on an alleged violation of a law, rule, regulation, or policy directive referred to in section 4131(a)(1)(H) of this title, judicial review of whether the act, omission, or condition that is the basis of the grievance violates such law, rule, regulation, or policy directive may be obtained by an aggrieved party only if such party commences a civil action, not later than 90 days after such party receives notice of the final action of the Secretary or the Board, in an appropriate district court of the United States for de novo review.

(Pub. L. 96-465, title I, § 1110, Oct. 17, 1980, 94 Stat. 2148; Pub. L. 102-138, title I, § 153(e), Oct. 28, 1991, 105 Stat. 674; Pub. L. 103-236, title I, § 177(b), Apr. 30, 1994, 108 Stat. 414.)

#### AMENDMENTS

1994—Subsec. (a). Pub. L. 103-236 inserted before period at end of first sentence “, if the request for judicial review is filed not later than 180 days after the final action of the Secretary or the Board (or in the case of an aggrieved party who is posted abroad at the time of the final action of the Secretary or the Board, if the request for judicial review is filed not later than 180 days after the aggrieved party's return to the United States)”.

1991—Pub. L. 102-138 designated existing provisions as subsec. (a), inserted provision that subsec. (a) not apply to any grievance with respect to which subsec. (b) applies, and added subsec. (b).

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-138 not applicable with respect to any grievance, within the meaning of section 4131 of this title, 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.

#### JUDICIAL REVIEW OF CERTAIN FOREIGN SERVICE GRIEVANCES

Pub. L. 101-246, title I, § 152, Feb. 16, 1990, 104 Stat. 42, provided that: “For the purposes of judicial review under section 1110 of the Foreign Service Act of 1980 [22 U.S.C. 4140], any recommendation made by the Foreign Service Grievance Board with respect to the tenure of a grievant which was reviewed by the Secretary of State before the date of enactment of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 [Dec. 22, 1987], shall be considered to be a final action of the Department of State, and any such recommendation shall be considered to have been made within the authority of the Foreign Service Grievance Board.”

#### SUBCHAPTER XI-A—FOREIGN SERVICE INTERNSHIP PROGRAM

### § 4141. Statement of policy; objectives

#### (a) Statement of policy

Consistent with the findings of section 3901 of this title, the Foreign Service of the United States should be representative of the American people. In order to facilitate and encourage the entry into the Foreign Service of individuals who meet the rigorous requirements of the Service, while ensuring a Foreign Service system which reflects the cultural and ethnic diversity of the United States, intensive recruitment efforts are mandated. This is particularly true for Native Americans, African Americans, and Hispanic Americans, where other affirmative action and equal opportunity efforts have not been successful in attracting the ablest applicants for entry into the Foreign Service. The United States remains committed to equal opportunity and to a Foreign Service system operated on the basis of merit principles.

#### (b) Objectives

The objective of this subchapter is to strengthen and improve the Foreign Service of the United States through the establishment of a Foreign Service Internship Program. The program shall promote the Foreign Service as a viable and rewarding career opportunity for qualified individuals who reflect the cultural and ethnic diversity of the United States through a highly selective internship program for students enrolled in institutions of higher education.

(Pub. L. 96-465, title I, § 1201, as added Pub. L. 101-246, title I, § 149(b), Feb. 16, 1990, 104 Stat. 39.)

### § 4141a. Foreign Service Internship Program

#### (a) Establishment

In consultation with the heads of other agencies utilizing the Foreign Service system, the Secretary of State shall establish a Foreign Service internship program to carry out the objectives of this subchapter in accordance with the provisions of this subchapter.

#### (b) Foreign Service Internship Program

The program shall introduce interns to the practice of diplomacy and the unique rewards of