

Date of 1978 Amendment note under section 1101 of this title.

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101-12, § 1, Apr. 10, 1989, 103 Stat. 16, 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

Pub. L. 101-12, § 7, Apr. 10, 1989, 103 Stat. 34, 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Date of 1989 Amendment note above] shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed.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

Pub. L. 101-12, § 2, Apr. 10, 1989, 103 Stat. 16, 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;

"(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

Pub. L. 95-454, title II, § 202(b), Oct. 13, 1978, 92 Stat. 1131, 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.

(Added Pub. L. 95-454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1122; amended Pub. L. 100-202, § 101(m) [title VI, § 620], Dec. 22, 1987, 101 Stat. 1329-390, 1329-427; Pub. L. 101-12, § 3(a)(2), (3), Apr. 10, 1989, 103 Stat. 17.)

AMENDMENTS

1989—Pub. L. 101-12, § 3(a)(2), substituted a semicolon for the comma after "office" in section catchline.

Subsec. (b). Pub. L. 101-12, § 3(a)(3), substituted "the member's" for "his" in first sentence and struck out "of this title" after "section 1201" in second sentence.

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. 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 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.

(Added Pub. L. 95-454, title II, §202(a), Oct. 13, 1978, 92 Stat. 1122; amended Pub. L. 101-12, §3(a)(4), (5), Apr. 10, 1989, 103 Stat. 17.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-12, §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

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 this title.

§ 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)(i) 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.

(ii) 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).

(2)(A) In enforcing compliance with any order under subsection (a)(2), the Board may order that any employee charged with complying with such order, other than an employee appointed by the President by and with the advice and consent of the Senate, shall not be entitled to receive payment for service as an employee during any period that the order has not been complied with. The Board shall certify to the Comptroller General of the United States that such an order has been issued and no payment shall be made out of the Treasury of the United States for any service specified in such order.

(B) The Board shall prescribe regulations under which any employee who is aggrieved by