

§ 202(a), Oct. 13, 1978, 92 Stat. 1122, § 1204; renumbered § 1211(b) and amended Pub. L. 101-12, § 3(a)(6), (12), Apr. 10, 1989, 103 Stat. 17, 19; Pub. L. 103-424, § 3(a), Oct. 29, 1994, 108 Stat. 4361.)

#### AMENDMENTS

1994—Subsec. (b). Pub. L. 103-424 inserted after first sentence “The Special Counsel may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that the Special Counsel may not continue to serve for more than one year after the date on which the term of the Special Counsel would otherwise expire under this subsection.”

1989—Subsec. (b). Pub. L. 101-12, § 3(a)(6), (12), renumbered section 1204 of this title as subsec. (b) of this section, substituted “Special Counsel shall be appointed by the President” for “Special Counsel of the Merit Systems Protection Board shall be appointed by the President from attorneys”, substituted “The Special Counsel shall be an attorney who, by demonstrated ability, background, training, or experience, is especially qualified to carry out the functions of the position. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of the Special Counsel’s predecessor serves for the remainder of the term.” for “A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of the term.”, and inserted at end “The Special Counsel may not 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.”

#### EFFECTIVE DATE

Subchapter 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.

#### ALLEGATIONS OF WRONGDOING AGAINST SPECIAL COUNSEL OR DEPUTY SPECIAL COUNSEL

Pub. L. 110-409, § 7(b), Oct. 14, 2008, 122 Stat. 4312, which provided for review by the Integrity Committee of allegations of wrongdoing against the Special Counsel or the Deputy Special Counsel, was repealed by Pub. L. 114-317, § 7(a)(1), Dec. 16, 2016, 130 Stat. 1605. See section 11(d)(12) of Pub. L. 95-452, set out in the Appendix to this title.

#### TRANSFER OF FUNDS

Pub. L. 101-12, § 8(c), Apr. 10, 1989, 103 Stat. 34, provided that: “The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available to the Special Counsel of the Merit Systems Protection Board are, subject to section 1531 of title 31, United States Code, transferred to the Special Counsel referred to in section 1211 of title 5, United States Code (as added by section 3(a) of this Act), for appropriate allocation.”

#### § 1212. Powers and functions of the Office of Special Counsel

(a) The Office of Special Counsel shall—

(1) in accordance with section 1214(a) and other applicable provisions of this subchapter, protect employees, former employees, and applicants for employment from prohibited personnel practices;

(2) receive and investigate allegations of prohibited personnel practices, and, where appropriate—

(A) bring petitions for stays, and petitions for corrective action, under section 1214; and

(B) file a complaint or make recommendations for disciplinary action under section 1215;

(3) receive, review, and, where appropriate, forward to the Attorney General or an agency head under section 1213, disclosures of violations of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(4) review rules and regulations issued by the Director of the Office of Personnel Management in carrying out functions under section 1103 and, where the Special Counsel finds that any such rule or regulation would, on its face or as implemented, require the commission of a prohibited personnel practice, file a written complaint with the Board; and

(5) investigate and, where appropriate, bring actions concerning allegations of violations of other laws within the jurisdiction of the Office of Special Counsel (as referred to in section 1216).

(b)(1) The Special Counsel and any employee of the Office of Special Counsel designated by the Special Counsel may administer oaths, examine witnesses, take depositions, and receive evidence.

(2) The Special Counsel may—

(A) issue subpoenas; and

(B) order the taking of depositions and order responses to written interrogatories;

in the same manner as provided under section 1204.

(3)(A) In the case of contumacy or failure to obey a subpoena issued under paragraph (2)(A), the Special Counsel may apply to the Merit Systems Protection Board to enforce the subpoena in court pursuant to section 1204(c).

(B) A subpoena under paragraph (2)(A) may, in the case of any individual outside the territorial jurisdiction of any court of the United States, be served in the manner referred to in subsection (d) of section 1204, and the United States District Court for the District of Columbia may, with respect to any such individual, compel compliance in accordance with such subsection.

(4) 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)(1) Except as provided in paragraph (2), the Special Counsel may as a matter of right intervene or otherwise participate in any proceeding before the Merit Systems Protection Board, except that the Special Counsel shall comply with the rules of the Board.

(2) The Special Counsel may not intervene in an action brought by an individual under section 1221, or in an appeal brought by an individual under section 7701, without the consent of such individual.

(d)(1) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

(2) Any appointment made under this subsection shall be made in accordance with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President

(other than approval required under section 3324 or subchapter VIII of chapter 33).

(e) The Special Counsel may prescribe such regulations as may be necessary to perform the functions of the Special Counsel. Such regulations shall be published in the Federal Register.

(f) The Special Counsel may not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73).

(g)(1) The Special Counsel may not respond to any inquiry or disclose any information from or about any person making an allegation under section 1214(a), except in accordance with the provisions of section 552a of title 5, United States Code, or as required by any other applicable Federal law.

(2) Notwithstanding the exception under paragraph (1), the Special Counsel may not respond to any inquiry concerning an evaluation of the work performance, ability, aptitude, general qualifications, character, loyalty, or suitability for any personnel action of any person described in paragraph (1)—

(A) unless the consent of the individual as to whom the information pertains is obtained in advance; or

(B) except upon request of an agency which requires such information in order to make a determination concerning an individual's having access to the information unauthorized disclosure of which could be expected to cause exceptionally grave damage to the national security.

(h)(1) The Special Counsel is authorized to appear as amicus curiae in any action brought in a court of the United States related to section 2302(b)(8) or (9), or as otherwise authorized by law. In any such action, the Special Counsel is authorized to present the views of the Special Counsel with respect to compliance with section 2302(b)(8) or (9) and the impact court decisions would have on the enforcement of such provisions of law.

(2) A court of the United States shall grant the application of the Special Counsel to appear in any such action for the purposes described under subsection (a).

(Added Pub. L. 101-12, §3(a)(13), Apr. 10, 1989, 103 Stat. 19; amended Pub. L. 103-424, §3(b), Oct. 29, 1994, 108 Stat. 4362; Pub. L. 112-199, title I, §113, Nov. 27, 2012, 126 Stat. 1472.)

#### AMENDMENTS

2012—Subsec. (h). Pub. L. 112-199 added subsec. (h).  
1994—Subsec. (g)(1). Pub. L. 103-424, §3(b)(1) substituted “disclose any information from or about” for “provide information concerning”.

Subsec. (g)(2). Pub. L. 103-424, §3(b)(2), substituted “an evaluation of the work performance, ability, aptitude, general qualifications, character, loyalty, or suitability for any personnel action of any” for “a matter described in subparagraph (A) or (B) of section 2302(b)(2) in connection with a”.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-199 effective 30 days after Nov. 27, 2012, see section 202 of Pub. L. 112-199, set out as a note under section 1204 of this title.

#### POLICY STATEMENT REGARDING IMPLEMENTATION OF WHISTLEBLOWER PROTECTION ACT

Pub. L. 103-424, §12(a), Oct. 29, 1994, 108 Stat. 4366, provided that: “No later than 6 months after the date of

enactment of this Act [Oct. 29, 1994], the Special Counsel shall issue a policy statement regarding the implementation of the Whistleblower Protection Act of 1989 [see Short Title of 1989 Amendment note set out under section 1201 of this title]. Such policy statement shall be made available to each person alleging a prohibited personnel practice described under section 2302(b)(8) of title 5, United States Code, and shall include detailed guidelines identifying specific categories of information that may (or may not) be communicated to agency officials for an investigative purpose, or for the purpose of obtaining corrective action under section 1214 of title 5, United States Code, or disciplinary action under section 1215 of such title, the circumstances under which such information is likely to be disclosed, and whether or not the consent of any person is required in advance of any such communication.”

#### ANNUAL SURVEY OF INDIVIDUALS SEEKING ASSISTANCE

Pub. L. 103-424, §13, Oct. 29, 1994, 108 Stat. 4367, provided that:

“(a) IN GENERAL.—The Office of Special Counsel shall, after consulting with the Office of Policy and Evaluation of the Merit Systems Protection Board, conduct an annual survey of all individuals who contact the Office of Special Counsel for assistance. The survey shall—

“(1) determine if the individual seeking assistance was fully apprised of their rights;

“(2) determine whether the individual was successful either at the Office of Special Counsel or the Merit Systems Protection Board; and

“(3) determine if the individual, whether successful or not, was satisfied with the treatment received from the Office of Special Counsel.

“(b) REPORT.—The results of the survey conducted under subsection (a) shall be published in the annual report of the Office of Special Counsel.”

#### § 1213. Provisions relating to disclosures of violations of law, gross mismanagement, and certain other matters

(a) This section applies with respect to—

(1) any disclosure of information by an employee, former employee, or applicant for employment which the employee, former employee, or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; and

(2) any disclosure by an employee, former employee, or applicant for employment to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee, former employee, or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(b) Whenever the Special Counsel receives information of a type described in subsection (a)