

(2) the number of investigations conducted by the Special Counsel;

(3) the number of stays and disciplinary actions negotiated with agencies by the Special Counsel;

(4) the number of subpoenas issued by the Special Counsel;

(5) the number of instances in which the Special Counsel reopened an investigation after the Special Counsel had made an initial determination with respect to the investigation;

(6) the actions that resulted from reopening investigations, as described in paragraph (5);

(7) the number of instances in which the Special Counsel did not make a determination before the end of the 240-day period described in section 1214(b)(2)(A)(i) regarding whether there were reasonable grounds to believe that a prohibited personnel practice had occurred, existed, or was to be taken;

(8) a description of the recommendations and reports made by the Special Counsel to other agencies under this subchapter and the actions taken by the agencies as a result of the recommendations or reports;

(9) the number of—

(A) actions initiated before the Merit Systems Protection Board, including the number of corrective action petitions and disciplinary action complaints initiated; and

(B) stays and extensions of stays obtained from the Merit Systems Protection Board;

(10) the number of prohibited personnel practice complaints that resulted in a favorable action for the complainant, other than a stay or an extension of a stay, organized by actions in—

(A) complaints dealing with reprisals against whistleblowers; and

(B) all other complaints;

(11) the number of prohibited personnel practice complaints that were resolved by an agreement between an agency and an individual, organized by agency and agency components in—

(A) complaints dealing with reprisals against whistleblowers; and

(B) all other complaints;

(12) the number of corrective actions that the Special Counsel required an agency to take after a finding by the Special Counsel of a prohibited personnel practice, as defined in section 2302(a)(1); and

(13) the results for the Office of Special Counsel of any employee viewpoint survey conducted by the Office of Personnel Management or any other agency.

(Added Pub. L. 101-12, §3(a)(13), Apr. 10, 1989, 103 Stat. 29; amended Pub. L. 103-424, §3(e), Oct. 29, 1994, 108 Stat. 4363; Pub. L. 115-91, div. A, title X, §1097(h)(1), Dec. 12, 2017, 131 Stat. 1623.)

AMENDMENTS

2017—Pub. L. 115-91 amended section generally. Prior to amendment, text read as follows: “The Special Counsel shall submit an annual report to the Congress on the activities of the Special Counsel, including the number, types, and disposition of allegations of prohibited personnel practices filed with it, investigations

conducted by it, cases in which it did not make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken within the 240-day period specified in section 1214(b)(2)(A)(i), and actions initiated by it before the Merit Systems Protection Board, as well as a description of the recommendations and reports made by it to other agencies pursuant to this subchapter, and the actions taken by the agencies as a result of the reports or recommendations. The report required by this section shall include whatever recommendations for legislation or other action by Congress the Special Counsel may consider appropriate.”

1994—Pub. L. 103-424 inserted “cases in which it did not make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken within the 240-day period specified in section 1214(b)(2)(A)(i),” after “investigations conducted by it.”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in this section, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 188 of House Document No. 103-7.

§ 1219. Public information

(a) The Special Counsel shall maintain and make available to the public—

(1) a list of any noncriminal matters referred to the head of an agency under section 1213(c), together with—

(A) a copy of the information transmitted to the head of the agency under section 1213(c)(1);

(B) any report from the agency under section 1213(c)(1)(B) relating to the matter;

(C) if appropriate, not otherwise prohibited by law, and consented to by the complainant, any comments from the complainant under section 1213(e)(1) relating to the matter; and

(D) the comments or recommendations of the Special Counsel under paragraph (3) or (4) of section 1213(e);

(2) a list of matters referred to heads of agencies under section 1215(c)(2);

(3) a list of matters referred to heads of agencies under subsection (e) of section 1214, together with certifications from heads of agencies under such subsection; and

(4) reports from heads of agencies under section 1213(g)(1).

(b) The Special Counsel shall take steps to ensure that any list or report made available to the public under this section does not contain any information the disclosure of which is prohibited by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs.

(Added Pub. L. 101-12, §3(a)(13), Apr. 10, 1989, 103 Stat. 29; Pub. L. 115-91, div. A, title X, §1097(h)(2), Dec. 12, 2017, 131 Stat. 1624.)

AMENDMENTS

2017—Subsec. (a)(1). Pub. L. 115-91 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “a list of noncriminal matters referred to heads of agencies under subsection (c) of section 1213, together with reports from heads of agencies under subsection (c)(1)(B) of such section relating to such matters;”

SUBCHAPTER III—INDIVIDUAL RIGHT OF ACTION IN CERTAIN REPRISAL CASES

§ 1221. Individual right of action in certain reprisal cases

(a) Subject to the provisions of subsection (b) of this section and subsection 1214(a)(3), an employee, former employee, or applicant for employment may, with respect to any personnel action taken, or proposed to be taken, against such employee, former employee, or applicant for employment, as a result of a prohibited personnel practice described in section 2302(b)(8) or section 2302(b)(9)(A)(i), (B), (C), or (D), seek corrective action from the Merit Systems Protection Board.

(b) This section may not be construed to prohibit any employee, former employee, or applicant for employment from seeking corrective action from the Merit Systems Protection Board before seeking corrective action from the Special Counsel, if such employee, former employee, or applicant for employment has the right to appeal directly to the Board under any law, rule, or regulation.

(c)(1) Any employee, former employee, or applicant for employment seeking corrective action under subsection (a) may request that the Board order a stay of the personnel action involved.

(2) Any stay requested under paragraph (1) shall be granted within 10 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date the request is made, if the Board determines that such a stay would be appropriate.

(3)(A) The Board shall allow any agency which would be subject to a stay under this subsection to comment to the Board on such stay request.

(B) Except as provided in subparagraph (C), a stay granted under this subsection shall remain in effect for such period as the Board determines to be appropriate.

(C) The Board may modify or dissolve a stay under this subsection at any time, if the Board determines that such a modification or dissolution is appropriate.

(d)(1) At the request of an employee, former employee, or applicant for employment seeking corrective action under subsection (a), the Board shall issue a subpoena for the attendance and testimony of any person or the production of documentary or other evidence from any person if the Board finds that the testimony or production requested is not unduly burdensome and appears reasonably calculated to lead to the discovery of admissible evidence.

(2) A subpoena under this subsection may be issued, and shall be enforced, in the same manner as applies in the case of subpoenas under section 1204.

(e)(1) Subject to the provisions of paragraph (2), in any case involving an alleged prohibited personnel practice as described under section 2302(b)(8) or section 2302(b)(9)(A)(i), (B), (C), or (D), the Board shall order such corrective action as the Board considers appropriate if the employee, former employee, or applicant for employment has demonstrated that a disclosure or protected activity described under section 2302(b)(8) or section 2302(b)(9)(A)(i), (B), (C), or

(D) was a contributing factor in the personnel action which was taken or is to be taken against such employee, former employee, or applicant. The employee may demonstrate that the disclosure or protected activity was a contributing factor in the personnel action through circumstantial evidence, such as evidence that—

(A) the official taking the personnel action knew of the disclosure or protected activity; and

(B) the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure or protected activity was a contributing factor in the personnel action.

(2) Corrective action under paragraph (1) may not be ordered if, after a finding that a protected disclosure was a contributing factor, the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

(f)(1) A final order or decision shall be rendered by the Board as soon as practicable after the commencement of any proceeding under this section.

(2) A decision to terminate an investigation under subchapter II may not be considered in any action or other proceeding under this section.

(3) If, based on evidence presented to it under this section, the Merit Systems Protection Board determines that there is reason to believe that a current employee may have committed a prohibited personnel practice, the Board shall refer the matter to the Special Counsel to investigate and take appropriate action under section 1215.

(g)(1)(A) If the Board orders corrective action under this section, such corrective action may include—

(i) that the individual be placed, as nearly as possible, in the position the individual would have been in had the prohibited personnel practice not occurred; and

(ii) back pay and related benefits, medical costs incurred, travel expenses, any other reasonable and foreseeable consequential damages, and compensatory damages (including interest, reasonable expert witness fees, and costs).

(B) Corrective action shall include attorney's fees and costs as provided for under paragraphs (2) and (3).

(2) If an employee, former employee, or applicant for employment is the prevailing party before the Merit Systems Protection Board, and the decision is based on a finding of a prohibited personnel practice, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other reasonable costs incurred.

(3) If an employee, former employee,¹ or applicant for employment is the prevailing party in an appeal from the Merit Systems Protection Board, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other reason-

¹ So in original. Probably should be "employee."