

in, and through Government facilities and non-Government facilities” are omitted as unnecessary.

In subsection (b)(2) and (3), the words “by, in, or through a non-Government facility” are omitted as unnecessary in view of the previous reference in the subsection.

In subsection (c), the words “From time to time” are omitted as unnecessary.

In subsection (d), the prohibition is restated in positive form.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### AMENDMENTS

1994—Subsec. (a)(7). Pub. L. 103-226, § 2(a)(9)(A), struck out before semicolon at end “by, in, and through non-Government facilities”.

Subsecs. (b) to (d). Pub. L. 103-226, § 2(a)(9)(B), (C), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b) which read as follows: “In addition to the matters set forth by subsection (a) of this section, the regulations, concerning training of employees by, in, or through non-Government facilities, shall—

“(1) prescribe general policies governing the selection of a non-Government facility to provide training;

“(2) authorize training of employees only after the head of the agency concerned determines that adequate training for employees by, in, or through a Government facility is not reasonably available, and that consideration has been given to the existing or reasonably foreseeable availability and use of fully trained employees; and

“(3) prohibit training an employee for the purpose of filling a position by promotion if there is in the agency concerned another employee, of equal ability and suitability, fully qualified to fill the position and available at, or within a reasonable distance from, the place where the duties of the position are to be performed.”

1978—Subsecs. (a), (c), (d). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

#### DEPARTMENT OF HOMELAND SECURITY

Exception from provisions of this section of those elements of the Department of Homeland Security that are supervised by the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection through the Department’s Assistant Secretary for Information Analysis, see Ex. Ord. No. 13286, § 86, Feb. 28, 2003, 68 F.R. 10632, set out as a note under section 111 of Title 6, Domestic Security.

#### CENTRAL INTELLIGENCE AGENCY

Exception of Central Intelligence Agency from provisions of this section, see Ex. Ord. No. 10805, Feb. 18, 1959, 24 F.R. 1301, set out as a note under section 4102 of this title.

### § 4119. Training for employees under the Office of the Architect of the Capitol and the Botanic Garden

(a) The Architect of the Capitol may, by regulation, make applicable such provisions of this chapter as the Architect determines necessary to provide for training of (1) individuals employed under the Office of the Architect of the Capitol and the Botanic Garden and (2) other

congressional employees who are subject to the administrative control of the Architect. The regulations shall provide for training which, in the determination of the Architect, is consistent with the training provided by agencies under the preceding sections of this chapter.

(b) The Office of Personnel Management shall provide the Architect of the Capitol with such advice and assistance as the Architect may request in order to enable the Architect to carry out the purposes of this section.

(Added Pub. L. 97-346, § 1(a), Oct. 15, 1982, 96 Stat. 1647.)

### § 4120. Training for employees of the Capitol Police

(a) The Chief of the Capitol Police may, by regulation, make applicable such provisions of this chapter as the Chief determines necessary to provide for training of employees of the Capitol Police. The regulations shall provide for training which, in the determination of the Chief, is consistent with the training provided by agencies under the preceding sections of this chapter.

(b) The Office of Personnel Management shall provide the Chief of the Capitol Police with such advice and assistance as the Chief may request in order to enable the Chief to carry out the purposes of this section.

(Added Pub. L. 108-7, div. H, title I, § 1010(a), Feb. 20, 2003, 117 Stat. 360.)

### § 4121. Specific training programs

In consultation with the Office of Personnel Management, the head of each agency shall establish—

(1) a comprehensive management succession program to provide training to employees to develop managers for the agency; and

(2) a program to provide training to managers on actions, options, and strategies a manager may use in—

(A) relating to employees with unacceptable performance;

(B) mentoring employees and improving employee performance and productivity; and

(C) conducting employee performance appraisals.

(Added Pub. L. 108-411, title II, § 201(b)(1), Oct. 30, 2004, 118 Stat. 2311.)

## CHAPTER 43—PERFORMANCE APPRAISAL

### SUBCHAPTER I—GENERAL PROVISIONS

Sec.	
4301.	Definitions.
4302.	Establishment of performance appraisal systems.
[4302a.	Repealed.]
4303.	Actions based on unacceptable performance.
4304.	Responsibilities of <sup>1</sup> Office of Personnel Management.
4305.	Regulations.

### SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

4311.	Definitions.
4312.	Senior Executive Service performance appraisal systems.

<sup>1</sup> So in original. Does not conform to section catchline.

4313. Criteria for performance appraisals.  
 4314. Ratings for performance appraisals.  
 4315. Regulations.

## AMENDMENTS

1993—Pub. L. 103-89, §3(b)(1)(B)(ii), Sept. 30, 1993, 107 Stat. 981, struck out item 4302a “Establishment of performance appraisal systems for performance management and recognition system employees”.

1984—Pub. L. 98-615, title II, §202(b), Nov. 8, 1984, 98 Stat. 3216, added item 4302a.

1978—Pub. L. 95-454, title II, §203(a), title IV, §405(b), Oct. 13, 1978, 92 Stat. 1131, 1170, in chapter heading substituted “APPRAISAL” for “RATING”, added heading for subchapter I, in item 4302 substituted “Establishment of performance appraisal systems” for “Performance-rating plans; establishment of”, in item 4303 substituted “Actions based on unacceptable performance” for “Performance-rating plans; requirements for”, in item 4304 substituted “Responsibilities of Office of Personnel Management” for “Ratings for performance”, in item 4305 substituted “Regulations” for “Review of ratings”, struck out items 4306 to 4308 “Performance-rating plans; inspection of”, “Other rating procedures prohibited”, and “Regulations”, respectively, and added item for subchapter II and items 4311 to 4315.

## SUBCHAPTER I—GENERAL PROVISIONS

## AMENDMENTS

1979—Pub. L. 96-54, §2(a)(20), Aug. 14, 1979, 93 Stat. 382, added heading for subchapter I.

## § 4301. Definitions

Except as otherwise expressly provided, for the purpose of this subchapter—

(1) “agency” means—

- (A) an Executive agency; and  
 (B) the Government Publishing Office;

but does not include—

- (i) a Government corporation;  
 (ii) the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or  
 (iii) the Government Accountability Office;

(2) “employee” means an individual employed in or under an agency, but does not include—

- (A) an employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;  
 (B) an individual in the Foreign Service of the United States;  
 (C) a physician, dentist, nurse, or other employee in the Veterans Health Administration of the Department of Veterans Affairs whose pay is fixed under chapter 73 of title 38;  
 (D) an administrative law judge appointed under section 3105 of this title;  
 (E) an individual in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;  
 (F) an individual appointed by the President;

(G) an individual occupying a position not in the competitive service excluded from coverage of this subchapter by regulations of the Office of Personnel Management; or

(H) an individual who (i) is serving in a position under a temporary appointment for less than one year, (ii) agrees to serve without a performance evaluation, and (iii) will not be considered for a reappointment or for an increase in pay based in whole or in part on performance; and

(3) “unacceptable performance” means performance of an employee which fails to meet established performance standards in one or more critical elements of such employee’s position.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 440; Pub. L. 91-375, §6(c)(8), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95-251, §2(a)(1), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-454, title II, §203(a), Oct. 13, 1978, 92 Stat. 1131; Pub. L. 100-325, §2(f), May 30, 1988, 102 Stat. 581; Pub. L. 101-474, §5(e), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101-510, div. A, title XII, §1206(e), Nov. 5, 1990, 104 Stat. 1661; Pub. L. 102-54, §13(b)(2), June 13, 1991, 105 Stat. 274; Pub. L. 103-359, title V, §501(e), Oct. 14, 1994, 108 Stat. 3429; Pub. L. 104-201, div. A, title XI, §1122(a)(1), Sept. 23, 1996, 110 Stat. 2687; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110-417, [div. A], title IX, §931(a)(1), Oct. 14, 2008, 122 Stat. 4575; Pub. L. 113-235, div. H, title I, §1301(b), Dec. 16, 2014, 128 Stat. 2537; Pub. L. 115-91, div. A, title X, §1097(d)(4), Dec. 12, 2017, 131 Stat. 1621.)

## HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 2001.	Sept. 30, 1950, ch. 1123, §2, 64 Stat. 1098. Sept. 1, 1954, ch. 1208, §601(a), 68 Stat. 1115. June 17, 1957, Pub. L. 85-56, §2201(21), 71 Stat. 159. July 11, 1957, Pub. L. 85-101, 71 Stat. 293. Sept. 2, 1958, Pub. L. 85-857, §13(p), 72 Stat. 1266. Mar. 26, 1964, Pub. L. 88-290, “Sec. 306(b)”, 78 Stat. 170.

In paragraph (1), the term “Executive agency” is substituted for the reference to “executive departments, the independent establishments and agencies in the executive branch, including corporations wholly owned by the United States” and “the General Accounting Office”. The exception of “a Government controlled corporation” is added in subparagraph (vii) to preserve the application of this chapter to “corporations wholly owned by the United States”. The exceptions for Production credit corporations and Federal intermediate credit banks in former section 2001(b)(5), (6) are omitted as they are no longer “corporations wholly owned by the United States”. Under the Farm Credit Act of 1956, 70 Stat. 659, the production credit corporations were merged in the Federal intermediate credit banks, and pursuant to that Act the Federal intermediate credit banks have ceased to be corporations owned by the United States. The exceptions for Federal land banks and banks for cooperatives in former section 2001(b)(7), (8) are omitted as included within the exception of “a Government controlled corporation” in subparagraph (vii).

Paragraph (2) is supplied because the definition of “employee” in section 2105 does not encompass individuals employed by the government of the District of Co-