

and which has as its principal function the conduct of foreign intelligence or counter-intelligence activities; or

(C) the Government Accountability Office;

(2) “employee” means an individual employed in or under an agency;

(3) “eligible” means an individual who has qualified for appointment in an agency and whose name has been entered on the appropriate register or list of eligibles;

(4) “demonstration project” means a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management; and

(5) “research program” means a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.

(b) This chapter shall not apply to any position in the Drug Enforcement Administration which is excluded from the competitive service under section 201 of the Crime Control Act of 1976 (28 U.S.C. 509 note; 90 Stat. 2425).

(Added Pub. L. 95-454, title VI, §601(a), Oct. 13, 1978, 92 Stat. 1185; amended Pub. L. 96-54, §2(a)(21), Aug. 14, 1979, 93 Stat. 382; Pub. L. 101-474, §5(g), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 103-359, title V, §501(f), 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.)

### Editorial Notes

#### AMENDMENTS

2008—Subsec. (a)(1)(B). Pub. L. 110-417 substituted “National Geospatial-Intelligence Agency” for “National Imagery and Mapping Agency”.

2004—Subsec. (a)(1)(C). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

1996—Subsec. (a)(1)(B). Pub. L. 104-201 substituted “National Imagery and Mapping Agency” for “Central Imagery Office”.

1994—Subsec. (a)(1)(B). Pub. L. 103-359 inserted “the Central Imagery Office,” after “Defense Intelligence Agency.”

1990—Subsec. (a)(1). Pub. L. 101-474 struck out “, the Administrative Office of the United States Courts,” after “means an Executive agency”.

1979—Subsec. (b). Pub. L. 96-54 substituted “chapter” for “subchapter” and “28 U.S.C. 509” for “5 U.S.C. 5108”.

### Statutory Notes and Related Subsidiaries

#### CHANGE OF NAME

“Government Publishing Office” substituted for “Government Printing Office” in subsec. (a)(1) on authority of section 1301(b) of Pub. L. 113-235, set out as a note preceding section 301 of Title 44, Public Printing and Documents.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104-201, set out as a note under section 193 of Title 10, Armed Forces.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

#### EFFECTIVE DATE

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

#### DESIGN ELEMENTS OF PAY-FOR-PERFORMANCE SYSTEMS IN DEMONSTRATION PROJECTS

Pub. L. 108-136, div. A, title XI, §1126, Nov. 24, 2003, 117 Stat. 1640, provided that: “A pay-for-performance system may not be initiated under chapter 47 of title 5, United States Code, after the date of the enactment of this Act [Nov. 24, 2003], unless it incorporates the following elements:

“(1) Adherence to merit principles set forth in section 2301 of such title.

“(2) A fair, credible, and transparent employee performance appraisal system.

“(3) A link between elements of the pay-for-performance system, the employee performance appraisal system, and the agency’s strategic plan.

“(4) A means for ensuring employee involvement in the design and implementation of the system.

“(5) Adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the pay-for-performance system.

“(6) A process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review.

“(7) Effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance.

“(8) A means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the pay-for-performance system.”

### § 4702. Research programs

The Office of Personnel Management shall—

(1) establish and maintain (and assist in the establishment and maintenance of) research programs to study improved methods and technologies in Federal personnel management;

(2) evaluate the research programs established under paragraph (1) of this section;

(3) establish and maintain a program for the collection and public dissemination of information relating to personnel management research and for encouraging and facilitating the exchange of information among interested persons and entities; and

(4) carry out the preceding functions directly or through agreement or contract.

(Added Pub. L. 95-454, title VI, §601(a), Oct. 13, 1978, 92 Stat. 1185.)

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE

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

### § 4703. Demonstration projects

(a) Except as provided in this section, the Office of Personnel Management may, directly or through agreement or contract with one or more

agencies and other public and private organizations, conduct and evaluate demonstration projects. Subject to the provisions of this section, the conducting of demonstration projects shall not be limited by any lack of specific authority under this title to take the action contemplated, or by any provision of this title or any rule or regulation prescribed under this title which is inconsistent with the action, including any law or regulation relating to—

- (1) the methods of establishing qualification requirements for, recruitment for, and appointment to positions;
- (2) the methods of classifying positions and compensating employees;
- (3) the methods of assigning, reassigning, or promoting employees;
- (4) the methods of disciplining employees;
- (5) the methods of providing incentives to employees, including the provision of group or individual incentive bonuses or pay;
- (6) the hours of work per day or per week;
- (7) the methods of involving employees, labor organizations, and employee organizations in personnel decisions; and
- (8) the methods of reducing overall agency staff and grade levels.

(b) Before conducting or entering into any agreement or contract to conduct a demonstration project, the Office shall—

- (1) develop a plan for such project which identifies—
  - (A) the purposes of the project;
  - (B) the types of employees or eligibles, categorized by occupational series, grade, or organizational unit;
  - (C) the number of employees or eligibles to be included, in the aggregate and by category;
  - (D) the methodology;
  - (E) the duration;
  - (F) the training to be provided;
  - (G) the anticipated costs;
  - (H) the methodology and criteria for evaluation;
  - (I) a specific description of any aspect of the project for which there is a lack of specific authority; and
  - (J) a specific citation to any provision of law, rule, or regulation which, if not waived under this section, would prohibit the conducting of the project, or any part of the project as proposed;

- (2) publish the plan in the Federal Register;
- (3) submit the plan so published to public hearing;

- (4) provide notification of the proposed project, at least 180 days in advance of the date any project proposed under this section is to take effect—

- (A) to employees who are likely to be affected by the project; and
- (B) to each House of the Congress;

- (5) obtain approval from each agency involved of the final version of the plan; and

- (6) provide each House of the Congress with a report at least 90 days in advance of the date the project is to take effect setting forth the final version of the plan as so approved.

(c) No demonstration project under this section may provide for a waiver of—

- (1) any provision of chapter 63 or subpart G of this title;

- (2)(A) any provision of law referred to in section 2302(b)(1) of this title; or

- (B) any provision of law implementing any provision of law referred to in section 2302(b)(1) of this title by—

- (i) providing for equal employment opportunity through affirmative action; or
- (ii) providing any right or remedy available to any employee or applicant for employment in the civil service;

- (3) any provision of chapter 15 or subchapter III of chapter 73 of this title;

- (4) any rule or regulation prescribed under any provision of law referred to in paragraph (1), (2), or (3) of this subsection; or

- (5) any provision of chapter 23 of this title, or any rule or regulation prescribed under this title, if such waiver is inconsistent with any merit system principle or any provision thereof relating to prohibited personnel practices.

(d)(1) Each demonstration project shall—

- (A) involve not more than 5,000 individuals other than individuals in any control groups necessary to validate the results of the project; and

- (B) terminate before the end of the 5-year period beginning on the date on which the project takes effect, except that the project may continue beyond the date to the extent necessary to validate the results of the project.

- (2)(A) Except as provided in subparagraph (B), not more than 10 active demonstration projects may be in effect at any time.

- (B) Any demonstration project authorized under this section that is active for a period greater than 10 years shall not count for purposes of applying the limitation in subparagraph (A).

- (e) Subject to the terms of any written agreement or contract between the Office and an agency, a demonstration project involving the agency may be terminated by the Office, or the agency, if either determines that the project creates a substantial hardship on, or is not in the best interests of, the public, the Federal Government, employees, or eligibles.

- (f) Employees within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of this title shall not be included within any project under subsection (a) of this section—

- (1) if the project would violate a collective bargaining agreement (as defined in section 7103(8) of this title) between the agency and the labor organization, unless there is another written agreement with respect to the project between the agency and the organization permitting the inclusion; or

- (2) if the project is not covered by such a collective bargaining agreement, until there has been consultation or negotiation, as appropriate, by the agency with the labor organization.

- (g) Employees within any unit with respect to which a labor organization has not been accorded exclusive recognition under chapter 71 of

this title shall not be included within any project under subsection (a) of this section unless there has been agency consultation regarding the project with the employees in the unit.

(h) The Office shall provide for an evaluation of the results of each demonstration project and its impact on improving public management.

(i) Upon request of the Director of the Office of Personnel Management, agencies shall cooperate with and assist the Office, to the extent practicable, in any evaluation undertaken under subsection (h) of this section and provide the Office with requested information and reports relating to the conducting of demonstration projects in their respective agencies.

(j) Each agency at which a demonstration project authorized by this section is ongoing shall submit an annual report to the Office of Personnel Management, the Office and<sup>1</sup> Management and Budget, the Committee on Homeland Security and Governmental Affairs of the United States Senate, and the Committee on Oversight and Government Reform of the United States House of Representatives that includes—

(1) the aggregate performance appraisal ratings and compensation costs for employees under a demonstration project;

(2) an assessment of the results of the demonstration project, including its impact on mission goals, employee recruitment, retention, and satisfaction, and which may include the results of the survey authorized under section 1128 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 5 U.S.C. 7101 note), commonly referred to as the Federal Employee Viewpoint Survey, and performance management for employees; and

(3) a comparison of the items listed in (1) and (2) with employees not covered by the demonstration project.

(Added Pub. L. 95-454, title VI, §601(a), Oct. 13, 1978, 92 Stat. 1186; amended Pub. L. 115-232, div. A, title XI, §1106, Aug. 13, 2018, 132 Stat. 2001.)

#### Editorial Notes

##### AMENDMENTS

2018—Subsec. (d)(2). Pub. L. 115-232, §1106(1), added par. (2) and struck out former par. (2) which read as follows: “Not more than 10 active demonstration projects may be in effect at any time.”

Subsec. (j). Pub. L. 115-232, §1106(2), added subsec. (j).

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

##### EFFECTIVE DATE

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

##### AUTHORITY OF EXPORT-IMPORT BANK TO CONDUCT DEMONSTRATION PROGRAM

Pub. L. 104-97, §2, Jan. 11, 1996, 109 Stat. 984, provided that: “Notwithstanding section 4701(a)(1)(A) of title 5,

United States Code, the Export-Import Bank of the United States may conduct a demonstration project in accordance with section 4703 of such title.”

#### § 4704. Allocation of funds

Funds appropriated to the Office of Personnel Management for the purpose of this chapter may be allocated by the Office to any agency conducting demonstration projects or assisting the Office in conducting such projects. Funds so allocated shall remain available for such period as may be specified in appropriation Acts. No contract shall be entered into under this chapter unless the contract has been provided for in advance in appropriation Acts.

(Added Pub. L. 95-454, title VI, §601(a), Oct. 13, 1978, 92 Stat. 1188.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

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

#### § 4705. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter.

(Added Pub. L. 95-454, title VI, §601(a), Oct. 13, 1978, 92 Stat. 1188, §4706; renumbered §4705, Pub. L. 105-362, title XIII, §1302(b)(2)(B)(i), Nov. 10, 1998, 112 Stat. 3293.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 4705, added Pub. L. 95-454, title VI, §601(a), Oct. 13, 1978, 92 Stat. 1188, required annual report on research programs and demonstration projects, prior to repeal by Pub. L. 105-362, title XIII, §1302(b)(2)(B)(i), Nov. 10, 1998, 112 Stat. 3293.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

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

#### [§ 4706. Renumbered § 4705]

### CHAPTER 48—AGENCY PERSONNEL DEMONSTRATION PROJECT

Sec.

4801. Nonapplicability of chapter 47.

4802. Securities and Exchange Commission.

#### § 4801. Nonapplicability of chapter 47

Chapter 47 shall not apply to this chapter.

(Added Pub. L. 107-123, §8(a), Jan. 16, 2002, 115 Stat. 2398.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Oct. 1, 2001, see section 11 of Pub. L. 107-123, set out as an Effective Date of 2002 Amendment note under section 78ee of Title 15, Commerce and Trade.

#### § 4802. Securities and Exchange Commission

(a) In this section, the term “Commission” means the Securities and Exchange Commission.

<sup>1</sup> So in original. Probably should be “of”.