

“, tenure” after “promotion” in first sentence, and added pars. (2) and (3).

Subsec. (e). Pub. L. 100-204, §182, added subsec. (e).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-138 not applicable with respect to any grievance, within the meaning of section 4131 of this title, arising before Oct. 28, 1991, see section 153(f) of Pub. L. 102-138, set out as a note under section 4115 of this title.

##### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-204 not applicable with respect to any grievance in which the Board has issued a final decision pursuant to this section before Dec. 22, 1987, see section 181(e) of Pub. L. 100-204, set out as a note under section 3946 of this title.

#### § 4138. Access to records

##### (a) Review by Foreign Service Grievance Board of decision denying access

If a grievant is denied access to any agency record prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance.

##### (b) Access by Foreign Service Grievance Board; relevant and material records; adverse effect on national security or foreign policy

In considering a grievance, the Board shall have access to any agency record as follows:

(1)(A) The Board shall request access to any agency record which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.

(B) The Board may request access to any other agency record which the Board determines may be relevant and material to the grievance.

(2) Any agency shall make available to the Board any agency record requested under paragraph (1) unless the head or deputy head of such agency personally certifies in writing to the Board that disclosure of the record to the Board and the grievant would adversely affect the foreign policy or national security of the United States or that such disclosure is prohibited by law. If such a certification is made with respect to any record, the agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

##### (c) Access by grievant

If the Board determines that an agency record, or a summary or extract of a record, made available to the Board under subsection (b) is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract, as the case may be, available to the grievant.

##### (d) Denial of access as factor in determination of grievance

In considering a grievance, the Board may take into account the fact that the grievant or the Board was denied access to an agency record which the Board determines is or may be relevant and material to the grievance.

#### (e) Proceedings and decisions of Foreign Service Grievance Board

The grievant in any case decided by the Board shall have access to the record of the proceedings and the decision of the Board.

(Pub. L. 96-465, title I, §1108, Oct. 17, 1980, 94 Stat. 2147.)

#### § 4139. Relationship to other remedies

(a)(1) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided under another provision of law, regulation, or Executive order, other than under section 1214 or 1221 of title 5, and the matter has been carried to final decision under such provision on its merits or is still under consideration.

(2) If a grievant is not prohibited from filing a grievance under paragraph (1), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5 or a regulation or Executive order other than under this subchapter. An election of remedies under this subsection shall be final upon the acceptance of jurisdiction by the Board.

(3) This subsection shall not apply to any grievance with respect to which subsection (b) applies.

(b)(1) With respect to a grievance based on an alleged violation of a law, rule, regulation, or policy directive referred to in section 4131(a)(1)(H) of this title, a grievant may either—

(A) file a grievance under this subchapter, or

(B) initiate in writing a proceeding under another provision of law, regulation, or Executive order that authorizes relief,

but not both.

(2) A grievant shall be considered to have exercised the option under paragraph (1) as soon as the grievant timely either—

(A) files a grievance under this subchapter, or

(B) initiates in writing a proceeding under such other provision of law, regulation, or Executive order.

(Pub. L. 96-465, title I, §1109, Oct. 17, 1980, 94 Stat. 2148; Pub. L. 101-12, §9(a)(3), Apr. 10, 1989, 103 Stat. 35; Pub. L. 102-138, title I, §153(d)(1), Oct. 28, 1991, 105 Stat. 673.)

#### Editorial Notes

##### AMENDMENTS

1991—Subsec. (a). Pub. L. 102-138, §153(d)(1)(A), (B), redesignated former subsec. (a) as par. (1), redesignated former subsec. (b) as par. (2) of subsec. (a) and substituted “paragraph (1)” for “subsection (a) of this section” and “under this subsection” for “under this section”, and added par. (3).

Subsec. (b). Pub. L. 102-138, §153(d)(1)(C), added subsec. (b). Former subsec. (b) redesignated (a)(2).

1989—Subsec. (a). Pub. L. 101-12 substituted “1214 or 1221” for “1206”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-138 not applicable with respect to any grievance, within the meaning of section