

thority and responsibilities of Special Counsel, was repealed by Pub. L. 101-12, §§3(a)(8), 11, Apr. 10, 1989, 103 Stat. 18, effective 90 days following Apr. 10, 1989. See section 1212 of this title.

AMENDMENTS

1989—Pub. L. 101-12 renumbered section 1209(b) of this title as this section and inserted section catchline.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-12 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.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in first sentence of this section relating to annual reports to Congress (formerly 5 U.S.C. 1209(b)), 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 176 of House Document No. 103-7.

[§§ 1207, 1208. Repealed. Pub. L. 101-12, §3(a)(8), Apr. 10, 1989, 103 Stat. 18]

Section 1207, added Pub. L. 95-454, title II, §202(a), Oct. 13, 1978, 92 Stat. 1130, provided for hearings and decisions on complaints filed by Special Counsel. See section 1215(a)(2) to (5) of this title.

Section 1208, added Pub. L. 95-454, title II, §202(a), Oct. 13, 1978, 92 Stat. 1130, related to stays of certain personnel actions. See section 1214(b) of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal of sections effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as an Effective Date of 1989 Amendment note under section 1201 of this title.

[§ 1209. Renumbered §§ 1205 and 1206]

Editorial Notes

CODIFICATION

Subsecs. (a) and (b) of this section were renumbered as sections 1205 and 1206, respectively, of this title by Pub. L. 101-12, §3(a)(9), (10). Pub. L. 102-378, §2(2), Oct. 2, 1992, 106 Stat. 1346, struck out section catchline of prior section 1209.

SUBCHAPTER II—OFFICE OF SPECIAL COUNSEL

§ 1211. Establishment

(a) There is established the Office of Special Counsel, which shall be headed by the Special Counsel. The Office shall have an official seal which shall be judicially noticed. The Office shall have its principal office in the District of Columbia and shall have field offices in other appropriate locations.

(b) The Special Counsel shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. 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. 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. The Special Counsel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. 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.

(Added Pub. L. 101-12, §3(a)(11), Apr. 10, 1989, 103 Stat. 19, §1211(a), and Pub. L. 95-454, title II, §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.)

Editorial Notes

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."

Statutory Notes and Related Subsidiaries

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.

(5)(A) Except as provided in subparagraph (B), the Special Counsel, in carrying out this subchapter, is authorized to—

(i) have timely access to all records, data, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable agency that relate to an investigation, review, or inquiry conducted under—

(I) section 1213, 1214, 1215, or 1216 of this title; or

(II) section 4324(a) of title 38;

(ii) request from any agency the information or assistance that may be necessary for the Special Counsel to carry out the duties and responsibilities of the Special Counsel under this subchapter; and

(iii) require, during an investigation, review, or inquiry of an agency, the agency to provide to the Special Counsel any record or other information that relates to an investigation, review, or inquiry conducted under—

(I) section 1213, 1214, 1215, or 1216 of this title; or

(II) section 4324(a) of title 38.

(B)(i) The authorization of the Special Counsel under subparagraph (A) shall not apply with respect to any entity that is an element of the intelligence community, as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003), unless the Special Counsel is investigating, or otherwise carrying out activities relating to the enforcement of, an action under subchapter III of chapter 73.

(ii) An Inspector General may withhold from the Special Counsel material described in subparagraph (A) if the Inspector General determines that the material contains information derived from, or pertaining to, intelligence activities.

(iii) The Attorney General or an Inspector General may withhold from the Special Counsel material described in subparagraph (A) if—

(I)(aa) disclosing the material could reasonably be expected to interfere with a criminal investigation or prosecution that is ongoing as of the date on which the Special Counsel submits a request for the material; or

(bb) the material—

(AA) may not be disclosed pursuant to a court order; or

(BB) has been filed under seal under section 3730 of title 31; and

(II) the Attorney General or the Inspector General, as applicable, submits to the Special Counsel a written report that describes—

(aa) the material being withheld; and

(bb) the reason that the material is being withheld.

(C)(i) A claim of common law privilege by an agency, or an officer or employee of an agency, shall not prevent the Special Counsel from obtaining any material described in subparagraph (A)(i) with respect to the agency.

(ii) The submission of material described in subparagraph (A)(i) by an agency to the Special Counsel may not be deemed to waive any assertion of privilege by the agency against a non-Federal entity or against an individual in any other proceeding.