FEDERAL LAWS PERTINENT TO A DISCRIMINATION CASE
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TABLE OF CONTENTS | TITLE 5 | GOVERNEMNT ORGANIZATION AND EMPLOYEES

TABLE OF CONTENTS | TITLE 5 | PART III | EMPLOYEES

TABLE OF CONTENTS | TITLE 18 PART I – CRIMES AND CRIMINAL PROCEDURES

TABLE OF CONTENTS | TITLE 20 CHAPTER 38 | EDUCATION

TABLE OF CONTENTS | TITLE 26 CHAPTER 61 | INTERNAL REVENUE CODE

TABLE OF CONTENTS | TITLE 28 PART I | ORGANIZATION OF COURTS | (5)

TABLE OF CONTENTS | TITLE 28 PART IV | JURISDICTION AND VENUE | (83)

TABLE OF CONTENTS | TITLE 28 PART IV | JURISDICTION AND VENUE | (85)

...

...TABLE OF CONTENTS | TITLE 28 PART IV | JURISDICTION AND VENUE | (85)

TABLE OF CONTENTS | TITLE 28 PART V | JURISDICTION AND VENUE | (111)

TABLE OF CONTENTS | TITLE 28 PART V | PROCEDURE | (115)

TABLE OF CONTENTS | TITLE 28 PART V | PROCEDURE | (121)

TABLE OF CONTENTS | TITLE 28 PART V | PROCEDURE | (123)

TABLE OF CONTENTS | TITLE 29 CHAPTER 8 FAIR LABOR STANDARDS

TABLE OF CONTENTS | TITLE 29 CHAPTER 9 PORTAL-TO-PORTAL PAY

...

...TABLE OF CONTENTS | TITLE 29 CHAPTER 9 PORTAL-TO-PORTAL PAY

TABLE OF CONTENTS | TITLE 29 CHAPTER 14 | AGE DISCRIMINATION IN EMPLOYMENT

TABLE OF CONTENTS | TITLE 42 CHAPTER 21 | I – GENERALLY

TABLE OF CONTENTS | TITLE 42 CHAPTER 21 | II - PUBLIC ACCOMODATIONS

TABLE OF CONTENTS | TITLE 42 CHAPTER 21 | IV – PUBLIC EDUCATION

TABLE OF CONTENTS | TITLE 42 CHAPTER 21 | V - FEDERALLY ASSISTED PROGRAMS

...

...TABLE OF CONTENTS | TITLE 42 CHAPTER 21 | V - FEDERALLY ASSISTED...

TABLE OF CONTENTS | TITLE 42 CHAPTER 21 | VI - EQUAL EMPLOYMENT...

...

...TABLE OF CONTENTS | TITLE 42 CHAPTER 21 | VI - EQUAL EMPLOYMENT...

TABLE OF CONTENTS | TITLE 42 CHAPTER 21 | IX – MISCELLANEOUS PROVISIONS

TABLE OF CONTENTS | TITLE 42 CHAPTER 21F | GENETIC INFORMATION...

TABLE OF CONTENTS | TITLE 42 CHAPTER 45 | I - FAIR HOUSING, GENERALLY

TABLE OF CONTENTS | TITLE 42 CHAPTER 126 | AMERICANS WITH DISABILITIES ACT

TABLE OF CONTENTS | TITLE 42 CHAPTER 126 | I | AMERICANS WITH...

TABLE OF CONTENTS | TITLE 42 CHAPTER 126 | II | AMERICANS WITH...

TABLE OF CONTENTS | TITLE 42 CHAPTER 126 | III | AMERICANS WITH...

TABLE OF CONTENTS | TITLE 42 CHAPTER 126 | IV | AMERICANS WITH...

...

...TABLE OF CONTENTS | TITLE 42 CHAPTER 126 | IV | AMERICANS WITH...

TABLE OF CONTENTS| TITLE 44 SUBCHAPTER I | PUBLIC PRINTING AND DOCUMENTS

...

...TABLE OF CONTENTS| TITLE 44 SUBCHAPTER I | PUBLIC PRINTING AND...

TABLE OF CONTENTS | TITLE 47 CHAPTER 5 SUBCHAPTER II | COMMON CARRIERS...

TABLE OF CONTENTS | TITLE 52 SUBTITLE I | (101) – GENERALLY

TABLE OF CONTENTS | TITLE 52 SUBTITLE I | (103) – ENFORCEMENT OF VOTING...

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 5 GOVERNMENT ORGANIZATION AND EMPLOYEES

PART: I THE AGENCIES GENERALLY

CHAPTER: 5 ADMINISTRATIVE PROCEDURE

SECTIONS: §552 through §552b

NOTE: **pertinent statutes only!!!**

5 USC §552 | PUBLIC INFORMATION; AGENCY RULES, OPINIONS, ORDERS, RECORDS, AND PROCEEDINGS

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public —

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference

therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection in an electronic format —

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(D) copies of all records, regardless of form or format —

(i) that have been released to any person under paragraph (3); and

(ii)

(I) that because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; or

(II) that have been requested 3 or more times; and

(E) a general index of the records referred to under subparagraph (D); unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy,

interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection in an electronic format current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if —

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3)

(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) [1] shall not make any record available under this paragraph to —

(i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

(ii) a representative of a government entity described in clause (i).

(4)

(A)

(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that —

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

In this clause, the term "a representative of the news media" means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn

the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the

operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section —

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court’s review of the matter shall be limited to the record before the agency.

(viii)

(I) Except as provided in subclause (II), an agency shall not assess any search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees) under this subparagraph if the agency has failed to comply with any time limit under paragraph (6).

(II)

(aa) If an agency has determined that unusual circumstances apply (as the term is defined in paragraph (6)(B)) and the agency provided a timely written notice to the requester in accordance with paragraph (6)(B), a failure described in subclause (I) is excused for an additional 10 days. If the agency fails to comply with the extended time limit, the agency may not assess any search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees).

(bb) If an agency has determined that unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, an agency may charge search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees) if the agency has provided a timely written notice to the requester in accordance with paragraph (6)(B) and the agency has discussed with the requester via written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of

the request in accordance with paragraph (6)(B)(ii).

(cc) If a court has determined that exceptional circumstances exist (as that term is defined in paragraph (6)(C)), a failure described in subclause (I) shall be excused for the length of time provided by the court order.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

[(D) Repealed. Pub. L. 98–620, title IV, § 402(2), Nov. 8, 1984, 98 Stat. 3357.]

(E)

(i) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(ii) For purposes of this subparagraph, a complainant has substantially prevailed if the complainant has obtained relief through either —

(I) a judicial order, or an enforceable written agreement or consent decree; or

(II) a voluntary or unilateral change in position by the agency, if the complainant's claim is not insubstantial.

(F)

(i) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(ii) The Attorney General shall —

(I) notify the Special Counsel of each civil action described under the first sentence of clause (i); and

(II) annually submit a report to Congress on the number of such civil actions in the preceding year.

(iii) The Special Counsel shall annually submit a report to Congress on the actions taken by the Special Counsel under clause (i).

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)

(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall —

(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of —

(I) such determination and the reasons therefor;

(II) the right of such person to seek assistance from the FOIA Public Liaison of the agency; and

(III) in the case of an adverse determination —

(aa) the right of such person to appeal to the head of the agency,

within a period determined by the head of the agency that is not less than 90 days after the date of such adverse determination; and

(bb) the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

The 20-day period under clause (i) shall commence on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of the agency that is designated in the agency's regulations under this section to receive requests under this section. The 20-day period shall not be tolled by the agency except —

(I) that the agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester under this section; or

(II) if necessary to clarify with the requester issues regarding fee assessment. In either case, the agency's

receipt of the requester's response to the agency's request for information or clarification ends the tolling period.

(B)

(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency, and notify the requester of the right of the requester to seek dispute resolution services from the Office of Government Information Services. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests —

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C)

(i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to

comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(ii) For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

(D)

(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does

not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

(E)

(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records —

(I) in cases in which the person requesting the records demonstrates a compelling need; and

(II) in other cases determined by the agency.

(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure —

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the

record before the agency at the time of the determination.

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term "compelling need" means —

(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.

(F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.

(7) Each agency shall —

(A) establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request; and

(B) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including —

(i) the date on which the agency originally received the request; and

(ii) an estimated date on which the agency will complete action on the request.

(8)

(A) An agency shall —

(i) withhold information under this section only if —

(I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or

(II) disclosure is prohibited by law; and

(ii)

(I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and

(II) take reasonable steps necessary to segregate and release nonexempt information; and

(B) Nothing in this paragraph requires disclosure of information that is otherwise prohibited from disclosure by law, or otherwise exempted from disclosure under subsection (b)(3).

(b) This section does not apply to matters that are —

(1)

(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign

policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), if that statute —

(A)

(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential

source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

> Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted, and the exemption under which the deletion is made, shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, and the exemption under which the deletion is made, shall be indicated at the place in the record where such deletion is made.

(c)

(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and —

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e)

(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States and to the Director of the Office of Government Information Services a report which shall cover the preceding fiscal year and which shall include —

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)

(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), the number of occasions on which each statute was relied upon, a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median and average number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

(E) the median number of days taken by the agency to process different types of requests, based on the date on which the requests were received by the agency;

(F) the average number of days for the agency to respond to a request beginning on the date on which the request was received by the agency, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests;

(G) based on the number of business days that have elapsed since each request was originally received by the agency —

(i) the number of requests for records to which the agency has responded with a determination within a period up to and including 20 days, and in 20-day increments up to and including 200 days;

(ii) the number of requests for records to which the agency has responded with a determination within a period greater than 200 days and less than 301 days;

(iii) the number of requests for records to which the agency has responded with a determination within a period greater than 300 days and less than 401 days; and

(iv) the number of requests for records to which the agency has responded with a determination within a period greater than 400 days;

(H) the average number of days for the agency to provide the granted information beginning on the date on which the request was originally filed, the median number of days for the agency to provide the granted information, and the range in number of days for the agency to provide the granted information;

(I) the median and average number of days for the agency to respond to administrative appeals based on the date on which the appeals originally were received by the agency, the highest number of business days taken by the agency to respond to an administrative appeal, and the lowest number of business days taken by the agency to respond to an administrative appeal;

(J) data on the 10 active requests with the earliest filing dates pending at each agency, including the amount of time that has elapsed since each request was originally received by the agency;

(K) data on the 10 active administrative appeals with the earliest filing dates pending before the agency as of September 30 of the preceding year, including the number of business days that have elapsed since the requests were originally received by the agency;

(L) the number of expedited review requests that are granted and denied, the average and median number of days for adjudicating expedited review requests, and the number adjudicated within the required 10 days;

(M) the number of fee waiver requests that are granted and denied, and the average and median number of days for adjudicating fee waiver determinations;

(N) the total amount of fees collected by the agency for processing requests;

(O) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests;

(P) the number of times the agency denied a request for records under subsection (c); and

(Q) the number of records that were made available for public inspection in an electronic format under subsection (a)(2).

(2) Information in each report submitted under paragraph (1) shall be expressed in terms of each principal component of the agency and for the agency overall.

(3) Each agency shall make each such report available for public inspection in an electronic format. In addition, each agency shall make the raw statistical data used in each report available in a timely manner for public inspection in an electronic format, which shall be made available —

(A) without charge, license, or registration requirement;

(B) in an aggregated, searchable format; and

(C) in a format that may be downloaded in bulk.

(4) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Oversight and Government Reform of the House of Representatives and the Chairman and ranking minority member of the Committees on Homeland Security and Governmental Affairs and the Judiciary of the Senate, no later than March 1 of the year in which each such report is issued, that such reports are available by electronic means.

(5) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

(6)

(A) The Attorney General of the United States shall submit to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on the Judiciary of the Senate, and the President a report on or before March 1 of each calendar year, which shall include for the prior calendar year —

(i) a listing of the number of cases arising under this section;

(ii) a listing of —

(I) each subsection, and any exemption, if applicable, involved in each case arising under this section;

(II) the disposition of each case arising under this section; and

(III) the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4); and

(iii) a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(B) The Attorney General of the United States shall make —

(i) each report submitted under subparagraph (A) available for public inspection in an electronic format; and

(ii) the raw statistical data used in each report submitted under subparagraph (A) available for public inspection in an electronic format, which shall be made available —

(I) without charge, license, or registration requirement;

(II) in an aggregated, searchable format; and

(III) in a format that may be downloaded in bulk.

(f) For purposes of this section, the term —

(1) "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

(2) "record" and any other term used in this section in reference to information includes —

(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and

(B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management.

(g) The head of each agency shall prepare and make available for public inspection in an electronic format, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including —

(1) an index of all major information systems of the agency;

(2) a description of major information and record locator systems maintained by the agency; and

(3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.

(h)

(1) There is established the Office of Government Information Services within the National Archives and Records Administration. The head of the Office shall be the Director of the Office of Government Information Services.

(2) The Office of Government Information Services shall —

(A) review policies and procedures of administrative agencies under this section;

(B) review compliance with this section by administrative agencies; and

(C) identify procedures and methods for improving compliance under this section.

(3) The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a nonexclusive alternative to litigation and may issue advisory opinions at the discretion of the Office or upon request of any party to a dispute.

(4)

(A) Not less frequently than annually, the Director of the Office of Government Information Services shall submit to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on the Judiciary of the Senate, and the President —

(i) a report on the findings of the information reviewed and identified under paragraph (2);

(ii) a summary of the activities of the Office of Government Information Services under paragraph (3), including —

(I) any advisory opinions issued; and

(II) the number of times each agency engaged in dispute resolution with the assistance of the Office of Government Information Services or the FOIA Public Liaison; and

(iii) legislative and regulatory recommendations, if any, to improve the administration of this section.

(B) The Director of the Office of Government Information Services shall make each report submitted under subparagraph (A) available for public inspection in an electronic format.

(C) The Director of the Office of Government Information Services shall not be required to obtain the prior approval, comment, or review of any officer or agency of the United States, including the Department of Justice, the Archivist of the United States, or the Office of Management and Budget before submitting to Congress, or any committee or subcommittee thereof, any reports, recommendations, testimony, or comments, if such submissions include a statement indicating that the views expressed therein are those of the Director and do not necessarily represent the views of the President.

(5) The Director of the Office of Government Information Services may directly submit additional information to Congress and the President as the Director determines to be appropriate.

(6) Not less frequently than annually, the Office of Government Information Services shall conduct a meeting that is open to the public on the review and reports by the Office and shall allow interested persons to appear and present oral or written statements at the meeting.

(i) The Government Accountability Office shall conduct audits of administrative agencies on the implementation of this section and issue reports detailing the results of such audits.

(j)

(1) Each agency shall designate a Chief FOIA Officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).

(2) The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency —

(A) have agency-wide responsibility for efficient and appropriate compliance with this section;

(B) monitor implementation of this section throughout the agency and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing this section;

(C) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section;

(D) review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing this section;

(E) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in

both the agency's handbook issued under subsection (g), and the agency's annual report on this section, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply;

(F) offer training to agency staff regarding their responsibilities under this section;

(G) serve as the primary agency liaison with the Office of Government Information Services and the Office of Information Policy; and

(H) designate 1 or more FOIA Public Liaisons.

(3) The Chief FOIA Officer of each agency shall review, not less frequently than annually, all aspects of the administration of this section by the agency to ensure compliance with the requirements of this section, including —

(A) agency regulations;

(B) disclosure of records required under paragraphs (2) and (8) of subsection (a);

(C) assessment of fees and determination of eligibility for fee waivers;

(D) the timely processing of requests for information under this section;

(E) the use of exemptions under subsection (b); and

(F) dispute resolution services with the assistance of the Office of Government Information Services or the FOIA Public Liaison.

(k)

(1) There is established in the executive branch the Chief FOIA Officers Council (referred to in this subsection as the "Council").

(2) The Council shall be comprised of the following members:

(A) The Deputy Director for Management of the Office of Management and Budget.

(B) The Director of the Office of Information Policy at the Department of Justice.

(C) The Director of the Office of Government Information Services.

(D) The Chief FOIA Officer of each agency.

(E) Any other officer or employee of the United States as designated by the Co-Chairs.

(3) The Director of the Office of Information Policy at the Department of Justice and the Director of the Office of Government Information Services shall be the Co-Chairs of the Council.

(4) The Administrator of General Services shall provide administrative and other support for the Council.

(5)

(A) The duties of the Council shall include the following:

(i) Develop recommendations for increasing compliance and efficiency under this section.

(ii) Disseminate information about agency experiences, ideas, best practices, and innovative approaches related to this section.

(iii) Identify, develop, and coordinate initiatives to increase transparency and compliance with this section.

(iv) Promote the development and use of common performance measures for agency compliance with this section.

(B) In performing the duties described in subparagraph (A), the Council shall consult on a regular basis with members of the public who make requests under this section.

(6)

(A) The Council shall meet regularly and such meetings shall be open to the public unless the Council determines to close the meeting for reasons of national security or to discuss information exempt under subsection (b).

(B) Not less frequently than annually, the Council shall hold a meeting that shall be open to the public and permit interested persons to appear and present oral and written statements to the Council.

(C) Not later than 10 business days before a meeting of the Council, notice of such meeting shall be published in the Federal Register.

(D) Except as provided in subsection (b), the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by the Council shall be made publicly available.

(E) Detailed minutes of each meeting of the Council shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the Council. The minutes shall be redacted as necessary and made publicly available.

(l) FOIA Public Liaisons shall report to the agency Chief FOIA Officer and shall serve as supervisory officials to whom a requester under this section can raise concerns about the service the requester has received from the FOIA Requester Center, following an initial response from the FOIA Requester Center Staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

(m)

(1) The Director of the Office of Management and Budget, in consultation with the Attorney General, shall ensure the operation of a consolidated online request portal that allows a member of the public to submit a request for records under subsection (a) to any agency from a single website. The portal may include any additional tools the Director of the Office of Management and Budget finds will improve the implementation of this section.

(2) This subsection shall not be construed to alter the power of any other agency to create or maintain an independent online portal for the submission of a request for records under this section. The Director of the Office of Management and Budget shall establish standards for interoperability between the portal required under paragraph (1) and other request processing software used by agencies subject to this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 383; Pub. L. 90–23, § 1, June 5, 1967, 81 Stat. 54; Pub. L. 93–502, §§ 1–3, Nov. 21, 1974, 88 Stat. 1561–1564; Pub. L. 94–409, § 5(b), Sept. 13, 1976, 90 Stat. 1247; Pub. L. 95–454, title IX, § 906(a)(10), Oct. 13, 1978, 92 Stat. 1225; Pub. L. 98–620, title IV, § 402(2), Nov. 8, 1984, 98 Stat. 3357; Pub. L. 99–570, title I, §§ 1802, 1803, Oct. 27, 1986, 100 Stat. 3207–48, 3207–49; Pub. L. 104–231, §§ 3–11, Oct. 2, 1996, 110 Stat. 3049–3054; Pub. L. 107–306, title III, § 312, Nov. 27, 2002, 116 Stat. 2390; Pub. L. 110–175, §§ 3, 4(a), 5, 6(a)(1), (b)(1), 7(a), 8–10(a), 12, Dec. 31, 2007, 121 Stat. 2525–2530; Pub. L. 111–83, title V, § 564(b), Oct. 28, 2009, 123 Stat. 2184; Pub. L. 114–185, § 2, June 30, 2016, 130 Stat. 538.)

5 USC §552a | RECORDS MAINTAINED ON INDIVIDUALS

(a) Definitions. — For purposes of this section —

(1) the term "agency" means agency as defined in section 552(e)[1] of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term "matching program" —

(A) means any computerized comparison of —

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of —

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include —

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 404(e),

464, or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches —

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel;

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(vii) matches performed incident to a levy described in section 6103(k)(8) of the Internal Revenue Code of 1986;

(viii) matches performed pursuant to section 202(x)(3) or 1611(e)(1) of the Social Security Act (42 U.S.C. 402(x)(3), 1382(e)(1));

(ix) matches performed by the Secretary of Health and Human Services or the Inspector

General of the Department of Health and Human Services with respect to potential fraud, waste, and abuse, including matches of a system of records with non-Federal records; or

(x) matches performed pursuant to section 3(d)(4) of the Achieving a Better Life Experience Act of 2014; [1]

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) Conditions of Disclosure. — No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be —

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the Government Accountability Office;

(11) to the Director of the Congressional Budget Office, or any authorized representative of the Director, in the course of performance of the duties of the Congressional Budget Office;

(12) pursuant to the order of a court of competent jurisdiction; or

(13) to a consumer reporting agency in accordance with section 3711(e) of title 31.

(c) Accounting of Certain Disclosures. — Each agency, with respect to each system of records under its control, shall —

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of —

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to Records. — Each agency that maintains a system of rec-ords shall —

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and —

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either —

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for

judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency Requirements. — Each agency that maintains a system of rec-ords shall —

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual —

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of rec-ords, which notice shall include —

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is

reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency,

with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) Agency Rules. — In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall —

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical rec-ords, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of

this section in a form available to the public at low cost.

(g)

(1) Civil Remedies. — Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)

(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this

paragraph in which the complainant has substantially prevailed.

(3)

(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of —

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the

cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) Rights of Legal Guardians. —

For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)

(1) Criminal Penalties. —

Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an

agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(j) General Exemptions. — The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of rec-ords is —

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific Exemptions. — The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d),

(e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of rec-ords is —

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: Provided, however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(l)

(1) Archival Records. —

Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m)

(1) Government Contractors. —

When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of title 31 shall not be considered a contractor for the purposes of this section.

(n) Mailing Lists. —

An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Matching Agreements. —

(1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source

agency and the recipient agency or non-Federal agency specifying —

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to —

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)

(A) A copy of each agreement entered into pursuant to paragraph (1) shall —

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data

Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if —

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) Verification and Opportunity to Contest Findings. —

(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until —

(A)

(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that —

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)

(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of —

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) Sanctions. —

(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless —

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) Report on New Systems and Matching Programs. —

Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) Biennial Report. — The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report —

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)

(1) Effect of Other Laws. —

> No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) Data Integrity Boards. —

(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board —

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including —

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)

(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.[2]

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5)

(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that —

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) In the reports required by paragraph (3)(D), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v) Office of Management and Budget Responsibilities. — The Director of the Office of Management and Budget shall —

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

(w) Applicability to Bureau of Consumer Financial Protection. —

Except as provided in the Consumer Financial Protection Act of 2010, this section shall apply with respect to the Bureau of Consumer Financial Protection.

(Added Pub. L. 93–579, § 3, Dec. 31, 1974, 88 Stat. 1897; amended Pub. L. 94–183, § 2(2), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 97–365, § 2, Oct. 25, 1982, 96 Stat. 1749; Pub. L. 97–375, title II, § 201(a), (b), Dec. 21, 1982, 96 Stat. 1821; Pub. L. 97–452, § 2(a)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–477, § 2(c), Oct. 15, 1984, 98 Stat. 2211; Pub. L. 98–497, title I, § 107(g), Oct.

19, 1984, 98 Stat. 2292; Pub. L. 100–503, §§ 2–6(a), 7, 8, Oct. 18, 1988, 102 Stat. 2507–2514; Pub. L. 101–508, title VII, § 7201(b)(1), Nov. 5, 1990, 104 Stat. 1388–334; Pub. L. 103–66, title XIII, § 13581(c), Aug. 10, 1993, 107 Stat. 611; Pub. L. 104–193, title I, § 110(w), Aug. 22, 1996, 110 Stat. 2175; Pub. L. 104–226, § 1(b)(3), Oct. 2, 1996, 110 Stat. 3033; Pub. L. 104–316, title I, § 115(g)(2)(B), Oct. 19, 1996, 110 Stat. 3835; Pub. L. 105–34, title X, § 1026(b)(2), Aug. 5, 1997, 111 Stat. 925; Pub. L. 105–362, title XIII, § 1301(d), Nov. 10, 1998, 112 Stat. 3293; Pub. L. 106–170, title IV, § 402(a)(2), Dec. 17, 1999, 113 Stat. 1908; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 111–148, title VI, § 6402(b)(2), Mar. 23, 2010, 124 Stat. 756; Pub. L. 111–203, title X, § 1082, July 21, 2010, 124 Stat. 2080; Pub. L. 113–295, div. B, title I, § 102(d), Dec. 19, 2014, 128 Stat. 4062.)

Footnotes

[1] See References in Text note below.

[2] So in original. Probably should be "cost-effective."

Editorial Notes
References in Text

Section 552(e) of this title, referred to in subsec. (a)(1), was redesignated section 552(f) of this title by section 1802(b) of Pub. L. 99–570.

Section 6103 of the Internal Revenue Code of 1986, referred to in subsec. (a)(8)(B)(iv), (vii), is classified to section 6103 of Title 26, Internal Revenue Code.

Sections 404, 464, and 1137 of the Social Security Act, referred to in subsec. (a)(8)(B)(iv), are classified to sections 604, 664, and 1320b–7, respectively, of Title 42, The Public Health and Welfare.

The Achieving a Better Life Experience Act of 2014, referred to in subsec. (a)(8)(B)(x), probably means Pub. L. 113–295, div. B, Dec. 19, 2014, 128 Stat. 4056 , known as the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 or the Stephen Beck, Jr., ABLE Act of 2014. The Act does not contain a section 3.

For effective date of this section, referred to in subsecs. (k)(2), (5), (7), (l)(2), (3), and (m), see Effective Date note below.

Section 6 of the Privacy Act of 1974, referred to in subsec. (s)(1), is section 6 of Pub. L. 93–579, which was set out below and was repealed by section 6(c) of Pub. L. 100–503.

For classification of the Privacy Act of 1974, referred to in subsec. (s)(4), see Short Title note below.

The Consumer Financial Protection Act of 2010, referred to in subsec. (w), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955 , which enacted subchapter V (§5481 et seq.) of chapter 53 of Title 12, Banks and Banking, and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12 and Tables.

Codification

Section 552a of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2244 of Title 7, Agriculture.

Amendments

2024 - Subsec. (b)(11) to (13). Pub. L. 118–104 added par. (11) and redesignated former pars. (11) and (12) as (12) and (13), respectively.

2014 - Subsec. (a)(8)(B)(x). Pub. L. 113–295 added cl. (x).

2010 - Subsec. (a)(8)(B)(ix). Pub. L. 111–148 added cl. (ix).

Subsec. (w). Pub. L. 111–203 added subsec. (w).

2004 - Subsec. (b)(10). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

1999 - Subsec. (a)(8)(B)(viii). Pub. L. 106–170 added cl. (viii).

1998 - Subsec. (u)(6), (7). Pub. L. 105–362 redesignated par. (7) as (6), substituted "paragraph (3)(D)" for "paragraphs (3)(D) and (6)", and struck out former par. (6) which read as follows: "The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver."

1997 - Subsec. (a)(8)(B)(vii). Pub. L. 105–34 added cl. (vii).

1996 - Subsec. (a)(8)(B)(iv)(III). Pub. L. 104–193 substituted "section 404(e), 464," for "section 464".

Subsec. (a)(8)(B)(v) to (vii). Pub. L. 104–226 inserted "or" at end of cl. (v), struck out "or" at end of cl. (vi), and struck out cl. (vii) which read as follows: "matches performed pursuant to section 6103(l)(12) of the Internal Revenue Code of 1986 and section 1144 of the Social Security Act;".

Subsecs. (b)(12), (m)(2). Pub. L. 104–316 substituted "3711(e)" for "3711(f)".

1993 - Subsec. (a)(8)(B)(vii). Pub. L. 103–66 added cl. (vii).

1990 - Subsec. (p). Pub. L. 101–508 amended subsec. (p) generally, restating former pars. (1) and (3) as par. (1), adding provisions relating to Data Integrity Boards, and restating former pars. (2) and (4) as (2) and (3), respectively.

1988 - Subsec. (a)(8) to (13). Pub. L. 100–503, §5, added pars. (8) to (13).

Subsec. (e)(12). Pub. L. 100–503, §3(a), added par. (12).

Subsec. (f). Pub. L. 100–503, §7, substituted "biennially" for "annually" in last sentence.

Subsecs. (o) to (q). Pub. L. 100–503, §2(2), added subsecs. (o) to (q). Former subsecs. (o) to (q) redesignated (r) to (t), respectively.

Subsec. (r). Pub. L. 100–503, §3(b), inserted "and matching programs" in heading and amended text generally. Prior to amendment, text read as follows: "Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers."

Pub. L. 100–503, §2(1), redesignated former subsec. (o) as (r).

Subsec. (s). Pub. L. 100–503, §8, substituted "Biennial" for "Annual" in heading, "biennially submit" for "annually submit" in introductory provisions, "preceding 2 years" for "preceding year" in par. (1), and "such years" for "such year" in par. (2).

Pub. L. 100–503, §2(1), redesignated former subsec. (p) as (s).

Subsec. (t). Pub. L. 100–503, §2(1), redesignated former subsec. (q) as (t).

Subsec. (u). Pub. L. 100–503, §4, added subsec. (u).

Subsec. (v). Pub. L. 100–503, §6(a), added subsec. (v).

1984 - Subsec. (b)(6). Pub. L. 98–497, §107(g)(1), substituted "National Archives and Records Administration" for "National Archives of the United States", and "Archivist of the United States or the designee of the Archivist" for "Administrator of General Services or his designee".

Subsec. (l)(1). Pub. L. 98–497, §107(g)(2), substituted "Archivist of the United States" for "Administrator of General Services" in two places.

Subsec. (q). Pub. L. 98–477 designated existing provisions as par. (1) and added par. (2).

1983 - Subsec. (b)(12). Pub. L. 97–452 substituted "section 3711(f) of title 31" for "section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))".

Subsec. (m)(2). Pub. L. 97–452 substituted "section 3711(f) of title 31" for "section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))".

1982 - Subsec. (b)(12). Pub. L. 97–365, §2(a), added par. (12).

Subsec. (e)(4). Pub. L. 97–375, §201(a), substituted "upon establishment or revision" for "at least annually" after "Federal Register".

Subsec. (m). Pub. L. 97–365, §2(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (p). Pub. L. 97–375, §201(b), substituted provisions requiring annual submission of a report by the President to the Speaker of the House and President pro tempore of the Senate relating to the Director of the Office of Management and Budget, individual rights of access, changes or additions to systems of records, and other necessary or useful information, for provisions which had directed the President to submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicate efforts to administer fully this section.

1975 - Subsec. (g)(5). Pub. L. 94–183 substituted "to September 27, 1975" for "to the effective date of this section".

Statutory Notes and Related Subsidiaries
Change of Name

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. 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. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

Effective Date of 2014 Amendment

Pub. L. 113–295, div. B, title I, §102(f)(1), Dec. 19, 2014, 128 Stat. 4062 , provided that:

> "The amendments made by this section [enacting section 529A of Title 26, Internal Revenue Code, and amending this section, section 5517 of Title 12, Banks and Banking, and sections 26, 877A, 4965, 4973, and 6693 of Title 26] shall apply to taxable years beginning after December 31, 2014."

Effective Date of 2010 Amendment

Pub. L. 111–203, title X, §1082, July 21, 2010, 124 Stat. 2080 , provided that the amendment made by section 1082 is effective on July 21, 2010.

Pub. L. 111–203, title X, §1100H, July 21, 2010, 124 Stat. 2113 , provided that:

> "Except as otherwise provided in this subtitle [subtitle H (§§1081–1100H) of title X of Pub. L. 111–203, see Tables for classification] and the amendments made by this subtitle, this subtitle and the amendments made by this subtitle, other than sections 1081 [amending section 8G of Pub. L. 95–452, formerly set out in the Appendix to this title, and enacting provisions set out as a note under section 8G of Pub. L. 95–452] and 1082 [amending this section and enacting provisions set out as a note under this section], shall become effective on the designated transfer date."

[The term "designated transfer date" is defined in section 5481(9) of Title 12, Banks and Banking, as the date established under section 5582 of Title 12, which is July 21, 2011.]

Effective Date of 1999 Amendment

Amendment by Pub. L. 106–170 applicable to individuals whose period of confinement in an institution commences on or after the first day of the fourth month beginning after December 1999, see section 402(a)(4) of Pub. L. 106–170, set out as a note under section 402 of Title 42, The Public Health and Welfare.

Effective Date of 1997 Amendment

Amendment by Pub. L. 105–34 applicable to levies issued after Aug. 5, 1997, see section 1026(c) of Pub. L. 105–34, set out as a note under section 6103 of Title 26, Internal Revenue Code.

Effective Date of 1996 Amendment

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

Effective Date of 1993 Amendment

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13581(d) of Pub. L. 103–66, set out as a note under section 1395y of Title 42, The Public Health and Welfare.

Effective Date of 1988 Amendment

Pub. L. 100–503, §10, Oct. 18, 1988, 102 Stat. 2514 , as amended by Pub. L. 101–56, §2, July 19, 1989, 103 Stat. 149 , provided that:

> "(a) In General. - Except as provided in subsections (b) and (c), the amendments made by this Act [amending this section and repealing provisions set out as a note below] shall take effect 9 months after the date of enactment of this Act [Oct. 18, 1988].
>
> "(b) Exceptions. - The amendment made by sections 3(b), 6, 7, and 8 of this Act [amending this section and repealing provisions set out as a note below] shall take effect upon enactment.
>
> "(c) Effective Date Delayed for Existing Programs. - In the case of any matching program (as defined in section 552a(a)(8) of title 5, United States Code, as added by section 5 of this Act) in operation before June 1, 1989, the amendments made by this Act (other than the amendments described in subsection (b)) shall take effect January 1, 1990, if -
>
> > "(1) such matching program is identified by an agency as being in operation before June 1, 1989; and

"(2) such identification is -

"(A) submitted by the agency to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget before August 1, 1989, in a report which contains a schedule showing the dates on which the agency expects to have such matching program in compliance with the amendments made by this Act, and

"(B) published by the Office of Management and Budget in the Federal Register, before September 15, 1989."

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–497 effective Apr. 1, 1985, see section 301 of Pub. L. 98–497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

Effective Date

Pub. L. 93–579, §8, Dec. 31, 1974, 88 Stat. 1910 , provided that:

"The provisions of this Act [enacting this section and provisions set out as notes under this section] shall be effective on and after the date of enactment [Dec. 31, 1974], except that the amendments made by sections 3 and 4 [enacting this section and amending analysis preceding section 500 of this title] shall become effective 270 days following the day on which this Act is enacted."

Short Title of 1990 Amendment

Pub. L. 101–508, title VII, §7201(a), Nov. 5, 1990, 104 Stat. 1388–334 , provided that:

"This section [amending this section and enacting provisions set out as notes below] may be cited as the 'Computer Matching and Privacy Protection Amendments of 1990'."

Short Title of 1989 Amendment

Pub. L. 101–56, §1, July 19, 1989, 103 Stat. 149 , provided that:

"This Act [amending section 10 of Pub. L. 100–503, set out as a note above] may be cited as the 'Computer Matching and Privacy Protection Act Amendments of 1989'."

Short Title of 1988 Amendment

Pub. L. 100–503, §1, Oct. 18, 1988, 102 Stat. 2507 , provided that:

> "This Act [amending this section, enacting provisions set out as notes above and below, and repealing provisions set out as a note below] may be cited as the 'Computer Matching and Privacy Protection Act of 1988'."

Short Title of 1974 Amendment

Pub. L. 93–579, §1, Dec. 31, 1974, 88 Stat. 1896 , provided:

> "That this Act [enacting this section and provisions set out as notes under this section] may be cited as the 'Privacy Act of 1974'."

Short Title

This section is popularly known as the "Privacy Act" and the "Privacy Act of 1974".

Termination of Reporting Requirements

For termination, effective May 15, 2000, of reporting provisions in subsec. (s) of 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 31 of House Document No. 103–7.

Delegation of Functions

Functions of Director of Office of Management and Budget under this section delegated to Administrator for Office of Information and Regulatory Affairs by section 3 of Pub. L. 96–511, Dec. 11, 1980, 94 Stat. 2825, set out as a note under section 3503 of Title 44, Public Printing and Documents.

OMB Guidance on Electronic Consent and Access Forms

Pub. L. 116–50, §3, Aug. 22, 2019, 133 Stat. 1073, provided that:

> "(a) Guidance. - Not later than 1 year after the date of the enactment of this Act [Aug. 22, 2019], the Director shall issue guidance that does the following:
>
> > "(1) Requires each agency to accept electronic identity proofing and authentication processes for the purposes of allowing an individual to provide prior written consent for the disclosure of the individual's records under section 552a(b) of title 5, United States Code, or for individual access to records under section 552a(d) of such title.
> >
> > "(2) Creates a template for electronic consent and access forms and requires each agency to post the template on the agency website and to accept the forms from any individual properly identity proofed and authenticated in accordance with paragraph (1) for the purpose

of authorizing disclosure of the individual's records under section 552a(b) of title 5, United States Code, or for individual access to records under section 552a(d) of such title.

"(3) Requires each agency to accept the electronic consent and access forms described in paragraph (2) from any individual properly identity proofed and authenticated in accordance with paragraph (1) for the purpose of authorizing disclosure of the individual's records to another entity, including a congressional office, in accordance with section 552a(b) of title 5, United States Code, or for individual access to records under section 552a(d) [of such title].

"(b) Agency Compliance. - Each agency shall comply with the guidance issued pursuant to subsection (a) not later than 1 year after the date on which such guidance is issued.

"(c) Definitions. - In this section:

"(1) Agency; individual; record. - The terms 'agency', 'individual', and 'record' have the meanings given those terms in section 552a(a) of title 5, United States Code.

"(2) Director. - The term 'Director' means the Director of the Office of Management and Budget."

Extension of Privacy Act Remedies to Citizens of Designated Countries

Pub. L. 114–126, Feb. 24, 2016, 130 Stat. 282 , provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Judicial Redress Act of 2015'.

"SEC. 2. EXTENSION OF PRIVACY ACT REMEDIES TO CITIZENS OF DESIGNATED COUNTRIES.

"(a) Civil Action; Civil Remedies. - With respect to covered records, a covered person may bring a civil action against an agency and obtain civil remedies, in the same manner, to the same extent, and subject to the same limitations, including exemptions and exceptions, as an individual may bring and obtain with respect to records under -

"(1) section 552a(g)(1)(D) of title 5, United States Code, but only with respect to disclosures intentionally or willfully made in violation of section 552a(b) of such title; and

"(2) subparagraphs (A) and (B) of section 552a(g)(1) of title 5, United States Code, but such an action may only be brought against a designated Federal agency or component.

"(b) Exclusive Remedies. - The remedies set forth in subsection (a) are the exclusive remedies available to a covered person under this section.

"(c) Application of the Privacy Act With Respect to a Covered Person. - For purposes of a civil action described in subsection (a), a covered person shall have the same rights, and be subject to the same limitations, including exemptions and exceptions, as an individual has and is subject to under section 552a of title 5, United States Code, when pursuing the civil remedies described in paragraphs (1) and (2) of subsection (a).

"(d) Designation of Covered Country. -

"(1) In general. - The Attorney General may, with the concurrence of the Secretary of State, the Secretary of the Treasury, and the Secretary of Homeland Security, designate a foreign country or regional economic integration organization, or member country of such organization, as a 'covered country' for purposes of this section if -

"(A)

(i) the country or regional economic integration organization, or member country of such organization, has entered into an agreement with the United States that provides for appropriate privacy protections for information shared for the purpose of preventing, investigating, detecting, or prosecuting criminal offenses; or

"(ii) the Attorney General has determined that the country or regional economic integration organization, or member country of such organization, has effectively shared information with the United States for the purpose of preventing, investigating, detecting, or prosecuting criminal offenses and has appropriate privacy protections for such shared information;

"(B) the country or regional economic integration organization, or member country of such organization, permits the transfer of personal data for commercial purposes between the territory of that country or regional economic organization and the territory of the United States, through an agreement with the United States or otherwise; and

"(C) the Attorney General has certified that the policies regarding the transfer of personal data for commercial purposes and related actions of the country or regional economic integration organization, or member country of such organization, do not materially impede the national security interests of the United States.

"(2) Removal of designation. - The Attorney General may, with the concurrence of the Secretary of State, the Secretary of the Treasury, and the Secretary of Homeland Security, revoke the designation of a foreign country or regional economic integration organization, or member country of such organization, as a 'covered country' if the Attorney General determines that such designated 'covered country' -

"(A) is not complying with the agreement described under paragraph (1)(A)(i);

"(B) no longer meets the requirements for designation under paragraph (1)(A)(ii);

"(C) fails to meet the requirements under paragraph (1)(B);

"(D) no longer meets the requirements for certification under paragraph (1)(C); or

"(E) impedes the transfer of information (for purposes of reporting or preventing unlawful activity) to the United States by a private entity or person.

"(e) Designation of Designated Federal Agency or Component. -

"(1) In general. - The Attorney General shall determine whether an agency or component thereof is a 'designated Federal agency or component' for purposes of this section. The Attorney General shall not designate any agency or

component thereof other than the Department of Justice or a component of the Department of Justice without the concurrence of the head of the relevant agency, or of the agency to which the component belongs.

"(2) Requirements for designation. - The Attorney General may determine that an agency or component of an agency is a 'designated Federal agency or component' for purposes of this section, if -

"(A) the Attorney General determines that information exchanged by such agency with a covered country is within the scope of an agreement referred to in subsection (d)(1)(A); or

"(B) with respect to a country or regional economic integration organization, or member country of such organization, that has been designated as a 'covered country' under subsection (d)(1)(B), the Attorney General determines that designating such agency or component thereof is in the law enforcement interests of the United States.

"(f) Federal Register Requirement; Nonreviewable Determination. - The Attorney General shall publish each determination made under subsections (d) and (e). Such determination shall not be subject to judicial or administrative review.

"(g) Jurisdiction. - The United States District Court for the District of Columbia shall have exclusive jurisdiction over any claim arising under this section.

"(h) Definitions. - In this Act:

"(1) Agency. - The term 'agency' has the meaning given that term in section 552(f) of title 5, United States Code.

"(2) Covered country. - The term 'covered country' means a country or regional economic integration organization, or member country of such organization, designated in accordance with subsection (d).

"(3) Covered person. - The term 'covered person' means a natural person (other than an individual) who is a citizen of a covered country.

"(4) Covered record. - The term 'covered record' has the same meaning for a covered person as a record has for an

individual under section 552a of title 5, United States Code, once the covered record is transferred -

"(A) by a public authority of, or private entity within, a country or regional economic organization, or member country of such organization, which at the time the record is transferred is a covered country; and

"(B) to a designated Federal agency or component for purposes of preventing, investigating, detecting, or prosecuting criminal offenses.

"(5) Designated federal agency or component. - The term 'designated Federal agency or component' means a Federal agency or component of an agency designated in accordance with subsection (e).

"(6) Individual. - The term 'individual' has the meaning given that term in section 552a(a)(2) of title 5, United States Code.

"(i) Preservation of Privileges. - Nothing in this section shall be construed to waive any applicable privilege or require the disclosure of classified information. Upon an agency's request, the district court shall review in camera and ex parte any submission by the agency in connection with this subsection.

"(j) Effective Date. - This Act shall take effect 90 days after the date of the enactment of this Act [Feb. 24, 2016]."

Publication of Guidance Under Subsection (p)(1)(A)(ii)

Pub. L. 101–508, title VII, §7201(b)(2), Nov. 5, 1990, 104 Stat. 1388–334 , provided that:

"Not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990], the Director of the Office of Management and Budget shall publish guidance under subsection (p)(1)(A)(ii) of section 552a of title 5, United States Code, as amended by this Act."

Limitation on Application of Verification Requirement

Pub. L. 101–508, title VII, §7201(c), Nov. 5, 1990, 104 Stat. 1388–335 , provided that:

"Section 552a(p)(1)(A)(ii)(II) of title 5, United States Code, as amended by section 2 [probably means section 7201(b)(1) of Pub. L. 101–508], shall not apply to a program referred to in paragraph (1), (2), or (4) of section 1137(b) of the Social Security Act (42 U.S.C. 1320b–7), until the earlier of -

> "(1) the date on which the Data Integrity Board of the Federal agency which administers that program determines that there is not a high degree of confidence that information provided by that agency under Federal matching programs is accurate; or
>
> "(2) 30 days after the date of publication of guidance under section 2(b) [probably means section 7201(b)(2) of Pub. L. 101–508, set out as a note above]."

Effective Date Delayed for Certain Education Benefits Computer Matching Programs

Pub. L. 101–366, title II, §206(d), Aug. 15, 1990, 104 Stat. 442 , provided that:

> "(1) In the case of computer matching programs between the Department of Veterans Affairs and the Department of Defense in the administration of education benefits programs under chapters 30 and 32 of title 38 and chapter 106 of title 10, United States Code, the amendments made to section 552a of title 5, United States Code, by the Computer Matching and Privacy Protection Act of 1988 [Pub. L. 100–503] (other than the amendments made by section 10(b) of that Act) [see Effective Date of 1988 Amendment note above] shall take effect on October 1, 1990.
>
> "(2) For purposes of this subsection, the term 'matching program' has the same meaning provided in section 552a(a)(8) of title 5, United States Code."

Implementation Guidance for 1988 Amendments

Pub. L. 100–503, §6(b), Oct. 18, 1988, 102 Stat. 2513 , required the Director, pursuant to section 552a(v) of this title, to develop guidelines and regulations for the use of agencies in implementing amendments made by Pub. L. 100–503 not later than 8 months after Oct. 18, 1988.

Construction of 1988 Amendments

Pub. L. 100–503, §9, Oct. 18, 1988, 102 Stat. 2514 , provided that: "Nothing in the amendments made by this Act [amending this section and repealing provisions set out as a note below] shall be construed to authorize –

> "(1) the establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained in systems of records by other Federal agencies;
>
> "(2) the direct linking of computerized systems of records maintained by Federal agencies;
>
> "(3) the computer matching of records not otherwise authorized by law; or
>
> "(4) the disclosure of records for computer matching except to a Federal, State, or local agency."

Congressional Findings and Statement of Purpose

Pub. L. 93–579, §2, Dec. 31, 1974, 88 Stat. 1896, provided that:

"(a) The Congress finds that -

"(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

"(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

"(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

"(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

"(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

"(b) The purpose of this Act [enacting this section and provisions set out as notes under this section] is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to -

"(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

"(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

"(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

"(4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and

accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

"(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

"(6) be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual's rights under this Act."

Privacy Protection Study Commission

Pub. L. 93–579, §5, Dec. 31, 1974, 88 Stat. 1905 , as amended by Pub. L. 95–38, June 1, 1977, 91 Stat. 179 , which established the Privacy Protection Study Commission and provided that the Commission study data banks, automated data processing programs and information systems of governmental, regional and private organizations to determine standards and procedures in force for protection of personal information, that the Commission report to the President and Congress the extent to which requirements and principles of section 552a of title 5 should be applied to the information practices of those organizations, and that it make other legislative recommendations to protect the privacy of individuals while meeting the legitimate informational needs of government and society, ceased to exist on September 30, 1977, pursuant to section 5(g) of Pub. L. 93–579.

Guidelines and Regulations for Maintenance of Privacy and Protection of Records of Individuals

Pub. L. 93–579, §6, Dec. 31, 1974, 88 Stat. 1909 , which provided that the Office of Management and Budget shall develop guidelines and regulations for use of agencies in implementing provisions of this section and provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies, was repealed by Pub. L. 100–503, §6(c), Oct. 18, 1988, 102 Stat. 2513.

Disclosure of Social Security Number

Pub. L. 93–579, §7, Dec. 31, 1974, 88 Stat. 1909 , provided that:

"(a)

(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

"(2) the [The] provisions of paragraph (1) of this subsection shall not apply with respect to -

"(A) any disclosure which is required by Federal statute, or

> "(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.
>
> "(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it."

Authorization of Appropriations to Privacy Protection Study Commission

Pub. L. 93–579, §9, Dec. 31, 1974, 88 Stat. 1910 , as amended by Pub. L. 94–394, Sept. 3, 1976, 90 Stat. 1198 , authorized appropriations for the period beginning July 1, 1975, and ending on September 30, 1977.

Executive Documents

Ex. Ord. No. 9397. Numbering System for Federal Accounts Relating to Individual Persons

Ex. Ord. No. 9397, Nov. 22, 1943, 8 F.R. 16095, as amended by Ex. Ord. No. 13478, §2, Nov. 18, 2008, 73 F.R. 70239, provided:

> WHEREAS certain Federal agencies from time to time require in the administration of their activities a system of numerical identification of accounts of individual persons; and
>
> WHEREAS some seventy million persons have heretofore been assigned account numbers pursuant to the Social Security Act; and
>
> WHEREAS a large percentage of Federal employees have already been assigned account numbers pursuant to the Social Security Act; and
>
> WHEREAS it is desirable in the interest of economy and orderly administration that the Federal Government move towards the use of a single, unduplicated numerical identification system of accounts and avoid the unnecessary establishment of additional systems:
>
> NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:
>
> > 1. Hereafter any Federal department, establishment, or agency may, whenever the head thereof finds it advisable to establish a new system of permanent account numbers pertaining to individual persons, utilize the Social Security Act account numbers assigned

pursuant to title 20, section 422.103 of the Code of Federal Regulations and pursuant to paragraph 2 of this order.

2. The Social Security Administration shall provide for the assignment of an account number to each person who is required by any Federal agency to have such a number but who has not previously been assigned such number by the Administration. The Administration may accomplish this purpose by (a) assigning such numbers to individual persons, (b) assigning blocks of numbers to Federal agencies for reassignment to individual persons, or (c) making such other arrangements for the assignment of numbers as it may deem appropriate.

3. The Social Security Administration shall furnish, upon request of any Federal agency utilizing the numerical identification system of accounts provided for in this order, the account number pertaining to any person with whom such agency has an account or the name and other identifying data pertaining to any account number of any such person.

4. The Social Security Administration and each Federal agency shall maintain the confidential character of information relating to individual persons obtained pursuant to the provisions of this order.

5. There shall be transferred to the Social Security Administration, from time to time, such amounts as the Director of the Office of Management and Budget shall determine to be required for reimbursement by any Federal agency for the services rendered by the Administration pursuant to the provisions of this order.

6. This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

7. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

8. This order shall be published in the Federal Register.

Classified National Security Information

For provisions relating to a response to a request for information under this section when the fact of its existence or nonexistence is itself classified or when it was originally classified by another agency, see Ex. Ord. No. 13526, §3.6, Dec. 29, 2009, 75 F.R. 718, set out as a note under section 3161 of Title 50, War and National Defense.

5 USC §552b | OPEN MEETINGS

(a) For purposes of this section —

(1) the term "agency" means any agency, as defined in section 552(e)[1] of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) the term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsection (d) or (e); and

(3) the term "member" means an individual who belongs to a collegial body heading an agency.

(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

(c) Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to —

(1) disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) relate solely to the internal personnel rules and practices of an agency;

(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) disclose information the premature disclosure of which would —

(A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that subparagraph (B) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

(d)

(1) Action under subsection (c) shall be taken only when a majority of the entire membership of the agency (as defined in subsection (a)(1)) votes to take such action. A separate vote of the agency members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c), or with respect to any information which is proposed to be withheld under subsection (c). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each agency member participating in

such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this subsection, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(4) Any agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: Provided, That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(e)

(1) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (1) only if the agency publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by this subsection, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting, shall also be submitted for publication in the Federal Register.

(f)

(1) For every meeting closed pursuant to paragraphs (1) through (10) of subsection (c), the General Counsel or chief legal officer of the agency shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the agency. The agency shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (8), (9)(A), or (10) of subsection (c), the agency shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(2) The agency shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (1)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency

proceeding with respect to which the meeting or portion was held, whichever occurs later.

(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any person, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section and to require the promulgation of regulations that are in accord with such subsections.

(h)

(1) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (b) through (f) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held or in which the agency in question has its headquarters, or in the District Court for the District of Columbia. In such actions a defendant shall serve his answer within thirty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases

the court may examine in camera any portion of the transcript, electronic recording, or minutes of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the parties, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section or ordering the agency to make available to the public such portion of the transcript, recording, or minutes of a meeting as is not authorized to be withheld under subsection (c) of this section.

(2) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section and afford such relief as it deems appropriate. Nothing in this section authorizes any Federal court having jurisdiction solely on the basis of paragraph (1) to set aside, enjoin, or invalidate any agency action (other than an action to close a meeting or to withhold information under this section) taken or discussed at any agency meeting out of which the violation of this section arose.

(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

(j) Each agency subject to the requirements of this section shall annually report to the Congress regarding the following:

(1) The changes in the policies and procedures of the agency under this section that have occurred during the preceding 1-year period.

(2) A tabulation of the number of meetings held, the exemptions applied to close meetings, and the days of public notice provided to close meetings.

(3) A brief description of litigation or formal complaints concerning the implementation of this section by the agency.

(4) A brief explanation of any changes in law that have affected the responsibilities of the agency under this section.

(k) Nothing herein expands or limits the present rights of any person under section 552 of this title, except that the exemptions set forth in subsection (c) of this section shall govern in the case of any request made pursuant to section 552 to copy or inspect the transcripts, recordings, or minutes described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcripts, recordings, and minutes described in subsection (f) of this section.

(l) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof required by any other provision of law to be open.

(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts, recordings, or minutes required by this section, which is otherwise accessible to such individual under section 552a of this title.

(Added Pub. L. 94–409, § 3(a), Sept. 13, 1976, 90 Stat. 1241; amended Pub. L. 104–66, title III, § 3002, Dec. 21, 1995, 109 Stat. 734.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 5 GOVERNMENT ORGANIZATION AND EMPLOYEES

PART: III EMPLOYEES

CHAPTER: 61 HOURS OF WORK

SECTIONS: §6103

NOTE: Pertinent Parts Only!!!

5 USC §6103 | HOLIDAYS

(a) The following are legal public holidays:

New Year's Day, January 1.
Birthday of Martin Luther King, Jr., the third Monday in January.
Washington's Birthday, the third Monday in February.
Memorial Day, the last Monday in May.
Juneteenth National Independence Day, June 19.
Independence Day, July 4.
Labor Day, the first Monday in September.
Columbus Day, the second Monday in October.
Veterans Day, November 11.
Thanksgiving Day, the fourth Thursday in November.
Christmas Day, December 25.

(b) For the purpose of statutes relating to pay and leave of employees, with respect to a legal public holiday and any other day declared to be a holiday by Federal statute or Executive order, the following rules apply:

(1) Instead of a holiday that occurs on a Saturday, the Friday immediately before is a legal public holiday for-

(A) employees whose basic workweek is Monday through Friday; and

(B) the purpose of section 6309[1] of this title.

(2) Instead of a holiday that occurs on a regular weekly non-workday of an employee whose basic workweek is other than Monday through Friday, except the regular weekly non-workday administratively scheduled for the employee instead of Sunday, the workday immediately before that regular weekly nonworkday is a legal public holiday for the employee.

(3) Instead of a holiday that is designated under subsection (a) to occur on a Monday, for an employee at a duty post outside the United States whose basic workweek is other than Monday through Friday, and for whom Monday is a regularly scheduled workday, the legal public holiday is the first workday of the workweek in which the Monday designated for the observance of such holiday under subsection (a) occurs.

This subsection, except subparagraph (B) of paragraph (1), does not apply to an employee whose basic workweek is Monday through Saturday.

(c) January 20 of each fourth year after 1965, Inauguration Day, is a legal public holiday for the purpose of statutes relating to pay and leave of employees as defined by section 2105 of this title and individuals employed by the government of the District of Columbia employed in the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the cities of Alexandria and Falls Church in Virginia. When January 20 of any fourth year after 1965 falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is a legal public holiday for the purpose of this subsection.

(d)

(1) For purposes of this subsection -

(A) the term "compressed schedule" has the meaning given such term by section 6121(5); and

(B) the term "adverse agency impact" has the meaning given such term by section 6131(b).

(2) An agency may prescribe rules under which employees on a compressed schedule may, in the case of a holiday that occurs on a regularly scheduled non-workday for such employees, and notwithstanding any other provision of law or the terms of any collective bargaining agreement, be required to observe such holiday on a workday other than as provided by subsection (b), if the agency head determines that it is necessary to do so in order to prevent an adverse agency impact.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 515; Pub. L. 90–363, §1(a), June 28, 1968, 82 Stat. 250; Pub. L. 94–97, Sept. 18, 1975, 89 Stat. 479; Pub. L. 98–144, §1, Nov. 2, 1983, 97 Stat. 917; Pub. L. 104–201, div. A, title XVI, §1613, Sept. 23, 1996, 110 Stat. 2739; Pub. L. 105–261, div. A, title XI, §1107, Oct. 17, 1998, 112 Stat. 2142; Pub. L. 117–17, §2, June 17, 2021, 135 Stat. 287.)

Historical and Revision Notes

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(a)	5 U.S.C. 87.	June 28, 1894, ch. 118, 28 Stat. 96 .
	5 U.S.C. 87a.	May 13, 1938, ch. 210, 52 Stat. 351 . June 1, 1954, ch. 250, 68 Stat. 168 .
	5 U.S.C. 87b.	Dec. 26, 1941, ch. 631, 55 Stat. 862 .
(b)	5 U.S.C. 87c.	Sept. 22, 1959, Pub. L. 86–362, §§1, 2, 73 Stat. 643 , 644.
(c)	[Uncodified].	Jan. 11, 1957, Pub. L. 85–1, 71 Stat. 3.

In subsection (a), former sections 87, 87a, and 87b are combined and restated for clarity. The names of all holidays are inserted for ready reference in a like manner to that used in former section 87c.

In subsection (c), the year "1965" is substituted for "1957".

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

Editorial Notes
References in Text

Section 6309 of this title, referred to in subsec. (b)(1)(B), was repealed by Pub. L. 94–183, §2(26), Dec. 31, 1975, 89 Stat. 1058 .

Amendments

2021 - Subsec. (a). Pub. L. 117–17 inserted item relating to Juneteenth National Independence Day.

1998 - Subsec. (b)(3). Pub. L. 105–261 added par. (3).

1996 - Subsec. (d). Pub. L. 104–201 added subsec. (d).

1983 - Subsec. (a). Pub. L. 98–144 inserted item relating to birthday of Martin Luther King, Jr.

1975 - Subsec. (a). Pub. L. 94–97 changed Veterans Day from fourth Monday in October to November 11.

1968 - Subsec. (a). Pub. L. 90–363 added Columbus Day, the second Monday in October, to the enumerated legal public holidays, and substituted provisions that Washington's Birthday, Memorial Day, and Veterans Day are to be celebrated on the third Monday in February, the last Monday in May, and the fourth Monday in October, respectively, for provisions that the above mentioned public holidays are to be celebrated on February 22, May 30, and November 11, respectively.

Statutory Notes and Related Subsidiaries
Effective Date of 1983 Amendment

Pub. L. 98–144, §2, Nov. 2, 1983, 97 Stat. 917 , provided that: "The amendment made by the first section of this Act [amending this section] shall take effect on the first January 1 that occurs after the two-year period following the date of the enactment of this Act [Nov. 2, 1983]."

Effective Date of 1975 Amendment

Pub. L. 94–97 provided that the amendment made by Pub. L. 94–97 is effective Jan. 1, 1978.

Effective Date of 1968 Amendment

Pub. L. 90–363, §2, June 28, 1968, 82 Stat. 251 , provided that:

> "The amendment made by subsection (a) of the first section of this Act [amending this section] shall take effect on January 1, 1971."

References in Laws of the United States to Observances of Legal Public Holidays

Pub. L. 90–363, §1(b), June 28, 1968, 82 Stat. 250 , provided that:

> "Any reference in a law of the United States (in effect on the effective date of the amendment made by subsection (a) of this section) [January 1, 1971] to the observance of a legal public holiday on a day other than the day prescribed for the observance of such holiday by section 6103(a) of title 5, United States Code, as amended by subsection (a), shall on and after such effective date be considered a reference to the day for the observance of such holiday prescribed in such amended section 6103(a)."

Executive Documents
Executive Order No. 10358

Ex. Ord. No. 10358, June 9, 1952, 17 F.R. 1529, as amended by Ex. Ord. No. 11226, May 27, 1965, 30 F.R. 7213; Ex. Ord. No. 11272, Feb. 23, 1966, 31 F.R. 3111, which related to the observance of holidays, was revoked by Ex. Ord. No. 11582, Feb. 11, 1971, 36 F.R. 2957, set out below.

Ex. Ord. No. 11582. Observance of Holidays

Ex. Ord. No. 11582, Feb. 11, 1971, 36 F.R. 2957, provided:

> By virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:
>
> > Section 1. Except as provided in section 7, this order shall apply to all executive departments, independent agencies, and Government corporations, including their field services.
> >
> > Sec. 2. As used in this order:

(a) Holiday means the first day of January, the third Monday of February, the last Monday of May, the fourth day of July, the first Monday of September, the second Monday of October, the fourth Monday of October, the fourth Thursday of November, the twenty-fifth day of December, or any other calendar day designated as a holiday by Federal statute or Executive order.

(b) Workday means those hours which comprise in sequence the employee's regular daily tour of duty within any 24-hour period, whether falling entirely within one calendar day or not.

Sec. 3.

(a) Any employee whose basic workweek does not include Sunday and who would ordinarily be excused from work on a holiday falling within his basic workweek shall be excused from work on the next workday of his basic workweek whenever a holiday falls on Sunday.

(b) Any employee whose basic workweek includes Sunday and who would ordinarily be excused from work on a holiday falling within his basic workweek shall be excused from work on the next workday of his basic workweek whenever a holiday falls on a day that has been administratively scheduled as his regular weekly nonworkday in lieu of Sunday.

Sec. 4. The holiday for a full-time employee for whom the head of a department has established the first 40 hours of duty performed within a period of not more than six days of the administrative workweek as his basic workweek because of the impracticability of prescribing a regular schedule of definite hours of duty for each workday, shall be determined as follows:

(a) If a holiday occurs on Sunday, the head of the department shall designate in advance either Sunday or Monday as the employee's holiday and the employee's basic 40-hour tour of duty shall be deemed to include eight hours on the day designated as the employee's holiday.

(b) If a holiday occurs on Saturday, the head of the department shall designate in advance either the Saturday or the preceding Friday as the employee's holiday and the employee's basic 40-hour tour of duty shall be deemed to

include eight hours on the day designated as the employee's holiday.

(c) If a holiday occurs on any other day of the week, that day shall be the employee's holiday, and the employee's basic 40-hour tour of duty shall be deemed to include eight hours on that day.

(d) When a holiday is less than a full day, proportionate credit will be given under paragraph (a), (b), or (c) of this section.

Sec. 5. Any employee whose workday covers portions of two calendar days and who would, except for this section, ordinarily be excused from work scheduled for the hours of any calendar day on which a holiday falls, shall instead be excused from work on his entire workday which commences on any such calendar day.

Sec. 6. In administering the provisions of law relating to pay and leave of absence, the workdays referred to in sections 3, 4, and 5 shall be treated as holidays in lieu of the corresponding calendar holidays.

Sec. 7. The provisions of this order shall apply to officers and employees of the Post Office Department and the United States Postal Service (except that sections 3, 4, 5, and 6 shall not apply to the Postal Field Service) until changed by the Postal Service in accordance with the Postal Reorganization Act.

Sec. 8. Executive Order No. 10358 of June 9, 1952, entitled Observance of Holidays by Government Agencies and amendatory Executive Orders No. 11226 of May 27, 1965, and No. 11272 of February 23, 1966, are revoked.

Sec. 9. This order is effective as of January 1, 1971.

References in Text

[1] See References in Text note below.

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 18 CRIMES AND CRIMINAL PROCEDURE

PART: I CRIMES

CHAPTER: 13 CIVIL RIGHTS

SECTIONS: §241 through §1621

NOTE: **not the entire chapter** (pertinent statutes only!!!)

18 USC §241 | CONSPIRACY AGAINST RIGHTS

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured —

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

(June 25, 1948, ch. 645, 62 Stat. 696; Pub. L. 90–284, title I, § 103(a), Apr. 11, 1968, 82 Stat. 75; Pub. L. 100–690, title VII, § 7018(a), (b)(1), Nov. 18, 1988, 102 Stat. 4396; Pub. L. 103–322, title VI, § 60006(a), title XXXII, §§ 320103(a), 320201(a), title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 1970, 2109, 2113, 2147; Pub. L. 104–294, title VI, §§ 604(b)(14)(A), 607(a), Oct. 11, 1996, 110 Stat. 3507, 3511.)

18 USC §242 | DEPRIVATION OF RIGHTS UNDER COLOR OF LAW

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

(June 25, 1948, ch. 645, 62 Stat. 696 ; Pub. L. 90–284, title I, §103(b), Apr. 11, 1968, 82 Stat. 75 ; Pub. L. 100–690, title VII, §7019, Nov. 18, 1988, 102 Stat. 4396 ; Pub. L. 103–322, title VI, §60006(b), title XXXII, §§320103(b), 320201(b), title XXXIII, §330016(1)(H), Sept. 13, 1994, 108 Stat. 1970 , 2109, 2113, 2147; Pub. L. 104–294, title VI, §§604(b)(14)(B), 607(a), Oct. 11, 1996, 110 Stat. 3507 , 3511.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., §52 (Mar. 4, 1909, ch. 321, §20, 35 Stat. 1092).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

A minor change was made in phraseology.

Editorial Notes

Amendments

1996-Pub. L. 104–294, §607(a), substituted "any State, Territory, Commonwealth, Possession, or District" for "any State, Territory, or District".

Pub. L. 104–294, §604(b)(14)(B), repealed Pub. L. 103–322, §320103(b)(1). See 1994 Amendment note below.

1994-Pub. L. 103–322, §330016(1)(H), substituted "shall be fined under this title" for "shall be fined not more than $1,000" after "citizens,".

Pub. L. 103–322, §320201(b), substituted "any person in any State" for "any inhabitant of any State" and "on account of such person" for "on account of such inhabitant".

Pub. L. 103–322, §320103(b)(2)–(5), substituted "bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both" for "bodily injury results shall be fined under this title or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life".

Pub. L. 103–322, §320103(b)(1), which provided for amendment identical to Pub. L. 103–322, §330016(1)(H), above, was repealed by Pub. L. 104–294, §604(b)(14)(B).

Pub. L. 103–322, §60006(b), inserted before period at end ", or may be sentenced to death".

1988-Pub. L. 100–690 inserted "and if bodily injury results shall be fined under this title or imprisoned not more than ten years, or both;" after "or both;".

1968-Pub. L. 90–284 provided for imprisonment for any term of years or for life when death results.

Statutory Notes and Related Subsidiaries

Effective Date of 1996 Amendment

Amendment by section 604(b)(14)(B) of Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

18 USC §341 | DEFINITIONS

As used in this chapter, the term "common carrier" means a locomotive, a rail carrier, a sleeping car carrier, a bus transporting passengers in interstate commerce, a water common carrier, and an air common carrier.

(Added Pub. L. 99–570, title I, §1971(a), Oct. 27, 1986, 100 Stat. 3207–59 ; amended Pub. L. 100–690, title VI, §6482(a), Nov. 18, 1988, 102 Stat. 4382 .)

Editorial Notes

Amendments

1988-Pub. L. 100–690 inserted "locomotive, a" after "means a".

18 USC §1001 | STATEMENTS OR ENTRIES GENERALLY

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully —

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

(c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to —

(1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or

(2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.

(June 25, 1948, ch. 645, 62 Stat. 749; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–292, § 2, Oct. 11, 1996, 110 Stat. 3459; Pub. L. 108–458, title VI, § 6703(a), Dec. 17, 2004, 118 Stat. 3766; Pub. L. 109–248, title I, § 141(c), July 27, 2006, 120 Stat. 603.)

18 USC §1018 | OFFICIAL CERTIFICATES OR WRITINGS

Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 753; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

18 USC §1621 | PERJURY GENERALLY

Whoever —

> (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or
>
> (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

(June 25, 1948, ch. 645, 62 Stat. 773; Pub. L. 88–619, § 1, Oct. 3, 1964, 78 Stat. 995; Pub. L. 94–550, § 2, Oct. 18, 1976, 90 Stat. 2534; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 20 EDUCATION

PART: --

CHAPTER: 38 DISCRIMINATION BASED ON SEX OR BLINDNESS

SECTIONS: §1681 through §1689

NOTE: Entire Chapter

20 USC §1681 | SEX

(a) Prohibition against discrimination; exceptions

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) Classes of educational institutions subject to prohibition

in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) Educational institutions commencing planned change in admissions

in regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education, whichever is the later;

(3) Educational institutions of religious organizations with contrary religious tenets

this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) Educational institutions training individuals for military services or merchant marine

this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) Public educational institutions with traditional and continuing admissions policy

in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) Social fraternities or sororities; voluntary youth service organizations

this section shall not apply to membership practices -

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) Boy or Girl conferences

this section shall not apply to-

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for -

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

(8) Father-son or mother-daughter activities at educational institutions

this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(9) Institution of higher education scholarship awards in "beauty" pageants

this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

(b) Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance

Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: Provided, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with

respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) "Educational institution" defined

For purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

(Pub. L. 92–318, title IX, §901, June 23, 1972, 86 Stat. 373 ; Pub. L. 93–568, §3(a), Dec. 31, 1974, 88 Stat. 1862 ; Pub. L. 94–482, title IV, §412(a), Oct. 12, 1976, 90 Stat. 2234 ; Pub. L. 96–88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677 , 692; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.)

Editorial Notes

References in Text

This chapter, referred to in subsecs. (b) and (c), was in the original "this title", meaning title IX of Pub. L. 92–318 which enacted this chapter and amended sections 203 and 213 of Title 29, Labor, and sections 2000c, 2000c–6, 2000c–9, and 2000h–2 of Title 42, The Public Health and Welfare. For complete classification of title IX to the Code, see Short Title note below and Tables.

Amendments

1986-Subsec. (a)(6)(A). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1976-Subsec. (a)(6) to (9). Pub. L. 94–482 substituted "this" for "This" in par. (6) and added pars. (7) to (9).

1974-Subsec. (a)(6). Pub. L. 93–568 added par. (6).

Statutory Notes and Related Subsidiaries

Effective Date of 1976 Amendment

Pub. L. 94–482, title IV, §412(b), Oct. 12, 1976, 90 Stat. 2234 , provided that: "The amendment made by subsection (a) [amending this section] shall take effect upon the date of enactment of this Act [Oct. 12, 1976]."

Effective Date of 1974 Amendment

Pub. L. 93–568, §3(b), Dec. 31, 1974, 88 Stat. 1862 , provided that: "The provisions of the amendment made by subsection (a) [amending this section] shall be effective on, and retroactive to, July 1, 1972."

Short Title of 1988 Amendment

Pub. L. 100–259, §1, Mar. 22, 1988, 102 Stat. 28 , provided that: "This Act [enacting sections 1687 and 1688 of this title and section 2000d–4a of Title 42, The Public Health and Welfare, amending sections 706 and 794 of Title 29, Labor, and section 6107 of Title 42, and enacting provisions set out as notes under sections 1687 and 1688 of this title] may be cited as the 'Civil Rights Restoration Act of 1987'."

Short Title

Pub. L. 107–255, Oct. 29, 2002, 116 Stat. 1734 , provided "That title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.; Public Law 92–318) [title IX of Pub. L. 92–318, enacting this chapter and amending sections 203 and 213 of Title 29, Labor, and sections 2000c, 2000c–6, 2000c–9, and 2000h–2 of Title 42, The Public Health and Welfare] may be cited as the 'Patsy Takemoto Mink Equal Opportunity in Education Act'."

Transfer of Functions

"Secretary" substituted for "Commissioner" in subsec. (a)(2) pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of this title and which transferred functions of Commissioner of Education to Secretary of Education.

Regulations; Nature of Particular Sports: Intercollegiate Athletic Activities

Pub. L. 93–380, title VIII, §844, Aug. 21, 1974, 88 Stat. 612 , directed Secretary to prepare and publish, not more than 30 days after Aug. 21, 1974, proposed regulations implementing the provisions of this chapter regarding prohibition of sex discrimination in federally assisted programs, including reasonable regulations for intercollegiate athletic activities considering the nature of the particular sports.

Executive Documents

Coordination of Implementation and Enforcement of Provisions

For provisions relating to the coordination of implementation and enforcement of the provisions of this chapter by the Attorney General, see section 1–201(b) of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out under section 2000d–1 of Title 42, The Public Health and Welfare.

Ex. Ord. No. 14021. Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity

Ex. Ord. No. 14021, Mar. 8, 2021, 86 F.R. 13803, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. It is the policy of my Administration that all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity. For students attending schools and other educational institutions that receive Federal financial assistance, this guarantee is codified, in part, in Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance.

Sec. 2. Review of Agency Actions.

(a) Within 100 days of the date of this order [Mar. 8, 2021], the Secretary of Education, in consultation with the Attorney General, shall review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that are or may be inconsistent with the policy set forth in section 1 of this order, and provide the findings of this review to the Director of the Office of Management and Budget.

(i) As part of the review required under subsection (a) of this section, the Secretary of Education shall review the rule entitled "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 85 FR 30026 (May 19, 2020), and any other agency actions taken pursuant to that rule, for consistency with governing law, including Title IX, and with the policy set forth in section 1 of this order.

(ii) As soon as practicable, and as appropriate and consistent with applicable law, the Secretary of Education shall review existing guidance and issue new guidance as needed on the implementation of the rule described in subsection (a)(i) of this section, for consistency with governing law, including Title IX, and with the policy set forth in section 1 of this order.

(iii) The Secretary of Education shall consider suspending, revising, or rescinding-or publishing for notice and comment proposed rules suspending, revising, or rescinding-those agency actions that are inconsistent with the policy set forth in section 1 of this order as soon as practicable and as appropriate and consistent with applicable law, and may issue such requests for information as would facilitate doing so.

(b) The Secretary of Education shall consider taking additional enforcement actions, as appropriate and consistent with applicable law, to enforce the policy set forth in section 1 of this order as well as legal prohibitions on sex discrimination in the form of sexual harassment, which encompasses sexual violence, to the fullest extent permissible under law; to account for intersecting forms of prohibited discrimination that can affect the

availability of resources and support for students who have experienced sex discrimination, including discrimination on the basis of race, disability, and national origin; to account for the significant rates at which students who identify as lesbian, gay, bisexual, transgender, and queer (LGBTQ+) are subject to sexual harassment, which encompasses sexual violence; to ensure that educational institutions are providing appropriate support for students who have experienced sex discrimination; and to ensure that their school procedures are fair and equitable for all.

Sec. 3. General Provisions.

(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

20 USC §1682 | FEDERAL ADMINISTRATIVE ENFORCEMENT; REPORT TO CONGRESSIONAL COMMITTEES

Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 1681 of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

(Pub. L. 92–318, title IX, §902, June 23, 1972, 86 Stat. 374.)

Executive Documents

Delegation of Functions

Functions of President relating to approval of rules, regulations, and orders of general applicability under this section, delegated to Attorney General, see section 1–102 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out under section 2000d–1 of Title 42, The Public Health and Welfare.

20 USC §1683 | JUDICIAL REVIEW

Any department or agency action taken pursuant to section 1682 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 1682 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.

(Pub. L. 92–318, title IX, §903, June 23, 1972, 86 Stat. 374.)

Editorial Notes

Codification

"Section 1682 of this title", where first appearing, substituted in text for "section 1002" as conforming to intent of Congress as Pub. L. 92–318 was enacted without any section 1002 and subsequent text refers to "section 902", which is classified to section 1682 of this title.

20 USC §1684 | BLINDNESS OR VISUAL IMPAIRMENT; PROHIBITION AGAINST DISCRIMINATION

No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity, but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.

(Pub. L. 92–318, title IX, §904, June 23, 1972, 86 Stat. 375.)

20 USC §1685 | AUTHORITY UNDER OTHER LAWS UNAFFECTED

Nothing in this chapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

(Pub. L. 92–318, title IX, §905, June 23, 1972, 86 Stat. 375.)

Editorial Notes

References in Text

This chapter, referred to in text, was in the original "this title", meaning title IX of Pub. L. 92–318 which enacted this chapter and amended sections 203 and 213 of Title 29, Labor, and sections 2000c, 2000c–6, 2000c–9, and 2000h–2 of Title 42, The Public Health and Welfare. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of this title and Tables.

20 USC §1686 | INTERPRETATION WITH RESPECT TO LIVING FACILITIES

Notwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.

(Pub. L. 92–318, title IX, §907, June 23, 1972, 86 Stat. 375.)

Editorial Notes

References in Text

This chapter, referred to in text, was in the original "this title", meaning title IX of Pub. L. 92–318 which enacted this chapter and amended sections 203 and 213 of Title 29, Labor, and sections 2000c, 2000c–6, 2000c–9, and 2000h–2 of Title 42, The Public Health and Welfare. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of this title and Tables.

This Act, referred to in text, is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, known as the Education Amendments of 1972. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

20 USC §1687 | INTERPRETATION OF PROGRAM OR ACTIVITY

For the purposes of this chapter, the term "program or activity" and "program" mean all of the operations of -

(1)

(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)

(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section section 1 7801 of this title), system of vocational education, or other school system;

(3)

(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship-

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 1681 of this title to such operation

would not be consistent with the religious tenets of such organization.

(Pub. L. 92–318, title IX, §908, as added Pub. L. 100–259, §3(a), Mar. 22, 1988, 102 Stat. 28 ; amended Pub. L. 103–382, title III, §391(g), Oct. 20, 1994, 108 Stat. 4023 ; Pub. L. 107–110, title X, §1076(j), Jan. 8, 2002, 115 Stat. 2091 ; Pub. L. 114–95, title IX, §9215(bb), Dec. 10, 2015, 129 Stat. 2173 .)

Editorial Notes

References in Text

This chapter, referred to in text, was in the original "this title", meaning title IX of Pub. L. 92–318 which enacted this chapter and amended sections 203 and 213 of Title 29, Labor, and sections 2000c, 2000c–6, 2000c–9, and 2000h–2 of Title 42, The Public Health and Welfare. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of this title and Tables.

Amendments

2015-Par. (2)(B). Pub. L. 114–95 substituted "section 7801 of this title), system of vocational education, or other school system;" for "7801 of this title), system of vocational education, or other school system;".

2002-Par. (2)(B). Pub. L. 107–110 substituted "7801" for "8801".

1994-Par. (2)(B). Pub. L. 103–382 substituted "section 8801" for "section 2854(a)(10)".

Statutory Notes and Related Subsidiaries

Effective Date of 2015 Amendment

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of this title.

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of this title.

Findings of Congress

Pub. L. 100–259, §2, Mar. 22, 1988, 102 Stat. 28, provided that: "The Congress finds that-

> "(1) certain aspects of recent decisions and opinions of the Supreme Court have unduly narrowed or cast doubt upon the broad application of title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]; and
>
> "(2) legislative action is necessary to restore the prior consistent and long-standing executive branch interpretation and broad, institution-wide application of those laws as previously administered."

Construction

Pub. L. 100–259, §7, Mar. 22, 1988, 102 Stat. 31 , provided that: "Nothing in the amendments made by this Act [see Short Title of 1988 Amendment note under section 1681 of this title] shall be construed to extend the application of the Acts so amended [Education Amendments of 1972, Pub. L. 92–318, see Short Title of 1972 Amendment, set out as a note under section 1001 of this title, Rehabilitation Act of 1973, 29 U.S.C. 701 et seq., Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq., and Civil Rights Act of 1964, 42 U.S.C. 2000a et seq.] to ultimate beneficiaries of Federal financial assistance excluded from coverage before the enactment of this Act [Mar. 22, 1988]."

Abortion Neutrality

This section not to be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub. L. 100–259, set out as a note under section 1688 of this title.

20 USC §1688 | NEUTRALITY WITH RESPECT TO ABORTION

Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.

(Pub. L. 92–318, title IX, §909, as added Pub. L. 100–259, §3(b), Mar. 22, 1988, 102 Stat. 29.)

Editorial Notes

References in Text

This chapter, referred to in text, was in the original "this title", meaning title IX of Pub. L. 92–318 which enacted this chapter and amended sections 203 and 213 of Title 29, Labor, and sections 2000c, 2000c–6, 2000c–9, and 2000h–2 of Title 42, The Public Health and Welfare. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of this title and Tables.

Statutory Notes and Related Subsidiaries

Construction

This section not to be construed to extend application of Education Amendments of 1972, Pub. L. 92–318, to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see section 7 of Pub. L. 100–259, set out as a note under section 1687 of this title.

Abortion Neutrality

Pub. L. 100–259, §8, Mar. 22, 1988, 102 Stat. 31 , provided that: "No provision of this Act or any amendment made by this Act [see Short Title of 1988 Amendment note under section 1681 of this title] shall be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal Funds [sic] to perform or pay for an abortion."

20 USC §1689 | TASK FORCE ON SEXUAL VIOLENCE IN EDUCATION

(a) Task Force on Sexual Violence in Education

Not later than September 1, 2022, the Secretary of Education, the Secretary of Health and Human Services, and the Attorney General shall establish a joint interagency task force to be known as the "Task Force on Sexual Violence in Education" that shall –

(1) provide pertinent information to the Secretary of Education, the Attorney General, Congress, and the public with respect to campus sexual violence prevention, investigations, and responses, including the creation of consistent, public complaint processes for violations of title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and section 1092(f) of this title;

(2) provide recommendations to educational institutions for establishing sexual assault prevention and response teams;

(3) develop recommendations for educational institutions on providing survivor resources, including health care, sexual assault kits, sexual assault nurse examiners, culturally responsive and inclusive standards of care, trauma-informed services, and access to confidential advocacy and support services;

(4) develop recommendations in conjunction with student groups for best practices for responses to and prevention of sexual violence and dating violence for educational institutions, taking into consideration an institution's size and resources;

(5) develop recommendations for educational institutions on sex education, as appropriate, training for school staff, and various equitable discipline models;

(6) develop recommendations on culturally responsive and inclusive approaches to supporting survivors, which include consideration of race, ethnicity, national origin, religion, immigrant status, lesbian, gay, bisexual, or transgender (commonly referred to as "LGBT") status, ability, disability, socio-economic status, exposure to trauma, and other compounding factors;

(7) solicit periodic input from a diverse group of survivors, trauma specialists, advocates from national, State, and local

anti-sexual violence advocacy organizations, institutions of higher education, and other public stakeholders;

(8) assess the Department of Education's ability under section 902 of the Education Amendments of 1972 (20 U.S.C. 1682) to levy intermediate fines for noncompliance with title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the advisability of additional remedies for such noncompliance, in addition to the remedies already available under Federal law; and

(9) create a plan described in subsection (c).

(b) Personnel details

(1) Authority to detail

Notwithstanding any other provision of law, the head of a component of any Federal agency for which appropriations are authorized under the Violence Against Women Act of 1994 (34 U.S.C. 13925 et seq.), or any amendments made by that Act, may detail an officer or employee of such component to the Task Force on Sexual Violence in Education or to the Secretary of Education to assist the Task Force with the duties described in subsection (a), as jointly agreed to by the head of such component and the Task Force.

(2) Terms of detail

A personnel detail made under paragraph (1) may be made-

(A) for a period of not more than 3 years; and

(B) on a reimbursable or nonreimbursable basis.

(c) Additional plan

Not later than 90 days after the date on which the Task Force on Sexual Violence in Education is established under subsection (a), the Task Force shall submit to Congress recommendations for recruiting, retaining, and training a highly-qualified workforce employed by the Department of Education to carry out investigation of complaints alleging a violation of title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) or section 1092(f) of this title, and enforcement of such title IX (20 U.S.C. 1681 et seq.) or such section 1092(f) of this title, with respect to sexual violence in education, which shall include -

(1) an assessment to identify gaps or challenges in carrying out such investigation and enforcement, which may include surveying the current investigative workforce to solicit feedback on areas in need of improvement;

(2) an examination of issues of recruiting, retention, and the professional development of the current investigative workforce, including the possibility of providing retention bonuses or other forms of compensation for the purpose of ensuring the Department of Education has the capacity, in both personnel and skills, needed to properly perform its mission and provide adequate oversight of educational institutions;

(3) an assessment of the benefits of outreach and training with both law enforcement agencies and educational institutions with respect to such workforce;

(4) an examination of best practices for making educational institutions aware of the most effective campus sexual violence prevention, investigation, and response practices and identifying areas where more research should be conducted; and

(5) strategies for addressing such other matters as the Secretary of Education considers necessary to sexual violence prevention, investigation, and responses.

(d) Annual reporting

The Task Force on Sexual Violence in Education shall submit to Congress, and make publicly available, an annual report of its activities and any update of the plan required under subsection (c), including -

(1) the number of complaints received regarding sexual violence at educational institutions;

(2) the number of open investigations of sexual violence at educational institutions;

(3) the number of such complaints that continued to resolution;

(4) the number of such complaints resolved using informal resolution;

(5) the average time to complete such an investigation;

(6) the number of such investigations initiated based on complaints; and

(7) the number of such investigations initiated by the Department of Education.

(e) Definitions

In this section:

(1) Educational institution

The term "educational institution" includes an institution of higher education, an elementary school, or a secondary school.

(2) Elementary school; secondary school

The terms "elementary school" and "secondary school" have the meanings given the terms in section 7801 of this title.

(3) Institution of higher education

The term "institution of higher education" has the meaning given the term in section 1002 of this title.

(Pub. L. 117–103, div. W, title XIII, §1314, Mar. 15, 2022, 136 Stat. 936.)

Editorial Notes

References in Text

The Education Amendments of 1972, referred to in subsecs. (a)(1), (8) and (c), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235 . Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to this chapter. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of this title and Tables.

The Violence Against Women Act of 1994, referred to in subsec. (b)(1), is title IV of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1902 . For complete classification of this Act to the Code, see section 40001 of Pub. L. 103–322, set out as a Short Title of 1994 Act note under section 10101 of Title 34, Crime Control and Law Enforcement, and Tables.

Section 7801 of this title, referred to in subsec. (e)(3), was in the original "section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)", and was translated as if it had been a reference to section 8101 of the Elementary and Secondary Education Act of 1965 to

reflect the probable intent of Congress and the renumbering of section 9101 of the Act as 8101 by Pub. L. 114–95, §8001(a)(1).

Codification

Section was enacted as part of the Violence Against Women Act Reauthorization Act of 2022, and also as part of the Consolidated Appropriations Act, 2022, and not as part of title IX of Pub. L. 92–318 which is classified principally to this chapter.

Statutory Notes and Related Subsidiaries

Effective Date

Section not effective until Oct. 1 of the first fiscal year beginning after Mar. 15, 2022, see section 4(a) of div. W of Pub. L. 117–103, set out as a note under section 6851 of Title 15, Commerce and Trade.

Definitions

For definitions of terms used in this section, see section 12291 of Title 34, Crime Control and Law Enforcement, as made applicable by section 2(b) of div. W of Pub. L. 117–103, which is set out as a note under section 12291 of Title 34.

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 26 INTERNAL REVENUE CODE

CHAPTER: 61 INFORMATION AND RETURNS

SUBCHAPTER: B MISCELLANEOUS PROVISIONS

SECTIONS: §6103

NOTE: **not the entire chapter** (pertinent statutes only!!!)

26 USC §6103 | CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION

(a) General rule

Returns and return information shall be confidential, and except as authorized by this title —

(1) no officer or employee of the United States,

(2) no officer or employee of any State, any local law enforcement agency receiving information under subsection (i)(1)(C) or (7)(A), any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D) who has or had access to returns or return information under this section or section 6104(c), and

(3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (c), subsection (e)(1)(D)(iii), paragraph (10), (13), (14), or (15) of subsection (k), paragraph (6), (10), (12), (13) (other than subparagraphs (D)(v) and (D)(vi) thereof), (16), (19), (20), or (21) of subsection (l), paragraph (2) or (4)(B) of subsection (m), or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

(b) Definitions

For purposes of this section —

(1) Return

The term "return" means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(2) Return information

The term "return information" means —

(A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense,

(B) any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110,

(C) any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement, and

(D) any agreement under section 7121, and any similar agreement, and any background information related to such an agreement or request for such an agreement, but such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards, if the Secretary determines that such disclosure will seriously

impair assessment, collection, or enforcement under the internal revenue laws.

(3) Taxpayer return information

The term "taxpayer return information" means return information as defined in paragraph (2) which is filed with, or furnished to, the Secretary by or on behalf of the taxpayer to whom such return information relates.

(4) Tax administration

The term "tax administration" —

(A) means —

(i) the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a State) and tax conventions to which the United States is a party, and

(ii) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions, and

(B) includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions under such laws, statutes, or conventions.

(5) State

(A) In general

The term "State" means —

(i) any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands,

(ii) for purposes of subsections (a)(2), (b)(4), (d)(1), (h)(4), and (p), any municipality —

(I) with a population in excess of 250,000 (as determined under the most recent decennial United States census data available),

(II) which imposes a tax on income or wages, and

(III) with which the Secretary (in his sole discretion) has entered into an agreement regarding disclosure, and

(iii) for purposes of subsections (a)(2), (b)(4), (d)(1), (h)(4), and (p), any governmental entity —

(I) which is formed and operated by a qualified group of municipalities, and

(II) with which the Secretary (in his sole discretion) has entered into an agreement regarding disclosure.

(B) Regional income tax agencies

For purposes of subparagraph (A)(iii) —

(i) Qualified group of municipalities

The term "qualified group of municipalities" means, with respect to any governmental entity, 2 or more municipalities —

(I) each of which imposes a tax on income or wages,

(II) each of which, under the authority of a State statute, administers the laws relating to the imposition of such taxes through such entity, and

(III) which collectively have a population in excess of 250,000 (as determined under the most recent decennial United States census data available).

(ii) References to State law, etc.

For purposes of applying subparagraph (A)(iii) to the subsections referred to in such subparagraph, any reference in such subsections to State law, proceedings, or tax returns shall be treated as references to the law, proceedings, or tax returns, as the case may be, of the municipalities which form and operate the governmental entity referred to in such subparagraph.

(iii) Disclosure to contractors and other agents

Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor or other agent of a governmental entity referred to in subparagraph (A)(iii) unless such entity, to the satisfaction of the Secretary —

(I) has requirements in effect which require each such contractor or other agent which would have access to returns or return information to provide safeguards (within the meaning of subsection (p)(4)) to protect the confidentiality of such returns or return information,

(II) agrees to conduct an on-site review every 3 years (or a mid-point review in the case of contracts or agreements of less than 3 years in duration) of each contractor or other agent to determine compliance with such requirements,

(III) submits the findings of the most recent review conducted under subclause (II) to the Secretary as part of the report required by subsection (p)(4)(E), and

(IV) certifies to the Secretary for the most recent annual period that such contractor or other agent is in compliance with all such requirements.

The certification required by subclause (IV) shall include the name and address of each contractor and other agent, a description of the contract or agreement with such contractor or other agent, and the duration of such contract or agreement. The requirements of this clause shall not apply to disclosures pursuant to subsection (n) for purposes of Federal tax administration and a rule similar to the rule of subsection (p)(8)(B) shall apply for purposes of this clause.

(6) Taxpayer identity

The term "taxpayer identity" means the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (as described in section 6109), or a combination thereof.

(7) Inspection

The terms "inspected" and "inspection" mean any examination of a return or return information.

(8) Disclosure

The term "disclosure" means the making known to any person in any manner whatever a return or return information.

(9) Federal agency

The term "Federal agency" means an agency within the meaning of section 551(1) of title 5, United States Code.

(10) Chief executive officer

The term "chief executive officer" means, with respect to any municipality, any elected official and the chief official (even if not elected) of such municipality.

(11) Terrorist incident, threat, or activity

The term "terrorist incident, threat, or activity" means an incident, threat, or activity involving an act of domestic terrorism (as defined in section 2331(5) of title 18, United States Code) or international terrorism (as defined in section 2331(1) of such title).

(c) Disclosure of returns and return information to designee of taxpayer

The Secretary may, subject to such requirements and conditions as he may prescribe by regulations, disclose the return of any taxpayer, or return information with respect to such taxpayer, to such person or persons as the taxpayer may designate in a request for or consent to such disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, return information shall not be disclosed to such person or persons if the Secretary determines that such disclosure would seriously impair Federal tax administration. Persons designated by the taxpayer under this subsection to receive return information shall not use the information for any purpose other than the express purpose for which consent was granted and shall not disclose return information to any other person without the express permission of, or request by, the taxpayer.

(d) Disclosure to State tax officials and State and local law enforcement agencies

(1) In general

Returns and return information with respect to taxes imposed by chapters 1, 2, 6, 11, 12, 21, 23, 24, 31, 32, 44, 51, and 52 and subchapter D of chapter 36 shall be open to inspection by, or disclosure to, any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws, including any procedures with respect to locating any person who may be entitled to a refund. Such inspection shall be permitted, or such disclosure made, only upon written request by the head of such agency, body, or commission, and only to the representatives of such agency, body, or commission designated in such written request as the individuals who are to inspect or to receive the returns or return information on behalf of such agency, body, or commission. Such representatives shall not include any individual who is the chief executive officer of such State or who is neither an employee or legal

representative of such agency, body, or commission nor a person described in subsection (n). However, such return information shall not be disclosed to the extent that the Secretary determines that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation.

(2) Disclosure to State audit agencies

(A) In general

Any returns or return information obtained under paragraph (1) by any State agency, body, or commission may be open to inspection by, or disclosure to, officers and employees of the State audit agency for the purpose of, and only to the extent necessary in, making an audit of the State agency, body, or commission referred to in paragraph (1).

(B) State audit agency

For purposes of subparagraph (A), the term "State audit agency" means any State agency, body, or commission which is charged under the laws of the State with the responsibility of auditing State revenues and programs.

(3) Exception for reimbursement under section 7624

Nothing in this section shall be construed to prevent the Secretary from disclosing to any State or local law enforcement agency which may receive a payment under section 7624 the amount of the recovered taxes with respect to which such a payment may be made.

(4) Availability and use of death information

(A) In general

No returns or return information may be disclosed under paragraph (1) to any agency, body, or commission of any State (or any legal representative thereof) during any period during which a contract meeting the requirements of subparagraph (B) is not in effect between such State and the Secretary of Health and Human Services.

(B) Contractual requirements

A contract meets the requirements of this subparagraph if —

(i) such contract requires the State to furnish the Secretary of Health and Human Services information concerning individuals with respect to whom death certificates (or equivalent documents maintained by the State or any subdivision thereof) have been officially filed with it, and

(ii) such contract does not include any restriction on the use of information obtained by such Secretary pursuant to such contract, except that such contract may provide that such information is only to be used by the Secretary (or any other Federal agency) for purposes of ensuring that Federal benefits or other payments are not erroneously paid to deceased individuals.

Any information obtained by the Secretary of Health and Human Services under such a contract shall be exempt from disclosure under section 552 of title 5, United States Code, and from the requirements of section 552a of such title 5.

(C) Special exception

The provisions of subparagraph (A) shall not apply to any State which on July 1, 1993, was not, pursuant to a contract, furnishing the Secretary of Health and Human Services information concerning individuals with respect to whom death certificates (or equivalent documents maintained by the State or any subdivision thereof) have been officially filed with it.

(5) Disclosure for combined employment tax reporting

(A) In general

The Secretary may disclose taxpayer identity information and signatures to any agency, body, or commission of any State for the purpose of carrying out with such agency, body, or commission a combined Federal and State employment tax reporting program approved by the Secretary. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect to disclosures or inspections made pursuant to this paragraph.

(B) Termination

The Secretary may not make any disclosure under this paragraph after December 31, 2007.

(6) Limitation on disclosure regarding regional income tax agencies treated as States

For purposes of paragraph (1), inspection by or disclosure to an entity described in subsection (b)(5)(A)(iii) shall be for the purpose of, and only to the extent necessary in, the administration of the laws of the member municipalities in such entity relating to the imposition of a tax on income or wages. Such entity may not redisclose any return or return information received pursuant to paragraph (1) to any such member municipality.

(e) Disclosure to persons having material interest

(1) In general

The return of a person shall, upon written request, be open to inspection by or disclosure to —

(A) in the case of the return of an individual —

(i) that individual,

(ii) the spouse of that individual if the individual and such spouse have signified their consent to consider a gift reported on such return as made one-half by him and one-half by the spouse pursuant to the provisions of section 2513; or

(iii) the child of that individual (or such child's legal representative) to the extent necessary to comply with the provisions of section 1(g);

(B) in the case of an income tax return filed jointly, either of the individuals with respect to whom the return is filed;

(C) in the case of the return of a partnership, any person who was a member of such partnership during any part of the period covered by the return;

(D) in the case of the return of a corporation or a subsidiary thereof —

(i) any person designated by resolution of its board of directors or other similar governing body,

(ii) any officer or employee of such corporation upon written request signed by any principal officer and attested to by the secretary or other officer,

(iii) any bona fide shareholder of record owning 1 percent or more of the outstanding stock of such corporation,

(iv) if the corporation was an S corporation, any person who was a shareholder during any part of the period covered by such return during which an election under section 1362(a) was in effect, or

(v) if the corporation has been dissolved, any person authorized by applicable State law to act for the corporation or any person who the Secretary finds to have a material interest which will be affected by information contained therein;

(E) in the case of the return of an estate —

(i) the administrator, executor, or trustee of such estate, and

(ii) any heir at law, next of kin, or beneficiary under the will, of the decedent, but only if the Secretary finds that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained therein; and

(F) in the case of the return of a trust —

(i) the trustee or trustees, jointly or separately, and

(ii) any beneficiary of such trust, but only if the Secretary finds that such beneficiary has a material interest which will be affected by information contained therein.

(2) Incompetency

If an individual described in paragraph (1) is legally incompetent, the applicable return shall, upon written request, be open to inspection by or disclosure to the committee, trustee, or guardian of his estate.

(3) Deceased individuals

The return of a decedent shall, upon written request, be open to inspection by or disclosure to —

(A) the administrator, executor, or trustee of his estate, and

(B) any heir at law, next of kin, or beneficiary under the will, of such decedent, or a donee of property, but only if the Secretary finds that such heir at law, next of kin, beneficiary, or donee has a material interest which will be affected by information contained therein.

(4) Title 11 cases and receivership proceedings

If —

(A) there is a trustee in a title 11 case in which the debtor is the person with respect to whom the return is filed, or

(B) substantially all of the property of the person with respect to whom the return is filed is in the hands of a receiver, such return or returns for prior years of such person shall, upon written request, be open to inspection by or disclosure to such trustee or receiver, but only if the Secretary finds that such trustee or receiver, in his fiduciary capacity, has a material interest which will be affected by information contained therein.

(5) Individual's title 11 case

(A) In general

In any case to which section 1398 applies (determined without regard to section 1398(b)(1)), any return of the debtor for the taxable year in which the case commenced or any preceding taxable year shall, upon written request, be open to inspection by or disclosure to the trustee in such case.

(B) Return of estate available to debtor

Any return of an estate in a case to which section 1398 applies shall, upon written request, be open to inspection by or disclosure to the debtor in such case.

(C) Special rule for involuntary cases

In an involuntary case, no disclosure shall be made under subparagraph (A) until the order for relief has been entered by the court having jurisdiction of such case unless such court finds that such disclosure is appropriate for purposes of determining whether an order for relief should be entered.

(6) Attorney in fact

Any return to which this subsection applies shall, upon written request, also be open to inspection by or disclosure to the attorney in fact duly authorized in writing by any of the persons described in paragraph (1), (2), (3), (4), (5), (8), or (9) to inspect the return or receive the information on his behalf, subject to the conditions provided in such paragraphs.

(7) Return information

Return information with respect to any taxpayer may be open to inspection by or disclosure to any person authorized by this subsection to inspect any return of such taxpayer if the Secretary determines that such disclosure would not seriously impair Federal tax administration.

(8) Disclosure of collection activities with respect to joint return

If any deficiency of tax with respect to a joint return is assessed and the individuals filing such return are no longer married or no longer reside in the same household, upon request in writing by either of such individuals, the Secretary shall disclose in writing to the individual making the request whether the Secretary has attempted to collect such deficiency from such other individual, the general nature of such collection activities, and the amount collected. The preceding sentence shall not apply to any deficiency which may not be collected by reason of section 6502.

(9) Disclosure of certain information where more than 1 person subject to penalty under section 6672

If the Secretary determines that a person is liable for a penalty under section 6672(a) with respect to any failure, upon request in writing of such person, the Secretary shall disclose in writing to such person —

> (A) the name of any other person whom the Secretary has determined to be liable for such penalty with respect to such failure, and
>
> (B) whether the Secretary has attempted to collect such penalty from such other person, the general nature of such collection activities, and the amount collected.

(10) Limitation on certain disclosures under this subsection

In the case of an inspection or disclosure under this subsection relating to the return of a partnership, S corporation, trust, or an estate, the information inspected or disclosed shall not include any supporting

schedule, attachment, or list which includes the taxpayer identity information of a person other than the entity making the return or the person conducting the inspection or to whom the disclosure is made.

(11) Disclosure of information regarding status of investigation of violation of this section

In the case of a person who provides to the Secretary information indicating a violation of section 7213, 7213A, or 7214 with respect to any return or return information of such person, the Secretary may disclose to such person (or such person's designee) —

(A) whether an investigation based on the person's provision of such information has been initiated and whether it is open or closed,

(B) whether any such investigation substantiated such a violation by any individual, and

(C) whether any action has been taken with respect to such individual (including whether a referral has been made for prosecution of such individual).

(f) Disclosure to Committees of Congress

(1) Committee on Ways and Means, Committee on Finance, and Joint Committee on Taxation

Upon written request from the chairman of the Committee on Ways and Means of the House of Representatives, the chairman of the Committee on Finance of the Senate, or the chairman of the Joint Committee on Taxation, the Secretary shall furnish such committee with any return or return information specified in such request, except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(2) Chief of Staff of Joint Committee on Taxation

Upon written request by the Chief of Staff of the Joint Committee on Taxation, the Secretary shall furnish him with any return or return information specified in such request. Such Chief of Staff may submit such return or return information to any committee described in paragraph (1), except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(3) Other committees

Pursuant to an action by, and upon written request by the chairman of, a committee of the Senate or the House of Representatives (other than a committee specified in paragraph (1)) specially authorized to inspect any return or return information by a resolution of the Senate or the House of Representatives or, in the case of a joint committee (other than the joint committee specified in paragraph (1)) by concurrent resolution, the Secretary shall furnish such committee, or a duly authorized and designated subcommittee thereof, sitting in closed executive session, with any return or return information which such resolution authorizes the committee or subcommittee to inspect. Any resolution described in this paragraph shall specify the purpose for which the return or return information is to be furnished and that such information cannot reasonably be obtained from any other source.

(4) Agents of committees and submission of information to Senate or House of Representatives

(A) Committees described in paragraph (1)

Any committee described in paragraph (1) or the Chief of Staff of the Joint Committee on Taxation shall have the authority, acting directly, or by or through such examiners or agents as the chairman of such committee or such chief of staff may designate or appoint, to inspect returns and return information at such time and in such manner as may

be determined by such chairman or chief of staff. Any return or return information obtained by or on behalf of such committee pursuant to the provisions of this subsection may be submitted by the committee to the Senate or the House of Representatives, or to both. The Joint Committee on Taxation may also submit such return or return information to any other committee described in paragraph (1), except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(B) Other committees

Any committee or subcommittee described in paragraph (3) shall have the right, acting directly, or by or through no more than four examiners or agents, designated or appointed in writing in equal numbers by the chairman and ranking minority member of such committee or subcommittee, to inspect returns and return information at such time and in such manner as may be determined by such chairman and ranking minority member. Any return or return information obtained by or on behalf of such committee or subcommittee pursuant to the provisions of this subsection may be submitted by the committee to the Senate or the House of Representatives, or to both, except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer, shall be furnished to the Senate or the House of Representatives only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(5) Disclosure by whistleblower

Any person who otherwise has or had access to any return or return information under this section may disclose such return or return information to a committee referred to in paragraph (1) or any individual

authorized to receive or inspect information under paragraph (4)(A) if such person believes such return or return information may relate to possible misconduct, maladministration, or taxpayer abuse.

(g) Disclosure to President and certain other persons

(1) In general

Upon written request by the President, signed by him personally, the Secretary shall furnish to the President, or to such employee or employees of the White House Office as the President may designate by name in such request, a return or return information with respect to any taxpayer named in such request. Any such request shall state —

(A) the name and address of the taxpayer whose return or return information is to be disclosed,

(B) the kind of return or return information which is to be disclosed,

(C) the taxable period or periods covered by such return or return information, and

(D) the specific reason why the inspection or disclosure is requested.

(2) Disclosure of return information as to Presidential appointees and certain other Federal Government appointees

The Secretary may disclose to a duly authorized representative of the Executive Office of the President or to the head of any Federal agency, upon written request by the President or head of such agency, or to the Federal Bureau of Investigation on behalf of and upon written request by the President or such head, return information with respect to an individual who is designated as being under consideration for appointment to a position in the executive or judicial branch of the Federal Government. Such return information shall be limited to whether such individual —

(A) has filed returns with respect to the taxes imposed under chapter 1 for not more than the immediately preceding 3 years;

(B) has failed to pay any tax within 10 days after notice and demand, or has been assessed any penalty under this title for negligence, in the current year or immediately preceding 3 years;

(C) has been or is under investigation for possible criminal offenses under the internal revenue laws and the results of any such investigation; or

(D) has been assessed any civil penalty under this title for fraud.

Within 3 days of the receipt of any request for any return information with respect to any individual under this paragraph, the Secretary shall notify such individual in writing that such information has been requested under the provisions of this paragraph.

(3) Restriction on disclosure

The employees to whom returns and return information are disclosed under this subsection shall not disclose such returns and return information to any other person except the President or the head of such agency without the personal written direction of the President or the head of such agency.

(4) Restriction on disclosure to certain employees

Disclosure of returns and return information under this subsection shall not be made to any employee whose annual rate of basic pay is less than the annual rate of basic pay specified for positions subject to section 5316 of title 5, United States Code.

(5) Reporting requirements

Within 30 days after the close of each calendar quarter, the President and the head of any agency requesting returns and return information under this subsection shall each file a report with the Joint Committee on Taxation setting forth the taxpayers with respect to whom such requests were made during such quarter under this subsection, the returns or return information involved, and the reasons for such requests. The President shall not be required to report on any request for returns and return information pertaining to an individual who was an officer or employee of the

executive branch of the Federal Government at the time such request was made. Reports filed pursuant to this paragraph shall not be disclosed unless the Joint Committee on Taxation determines that disclosure thereof (including identifying details) would be in the national interest. Such reports shall be maintained by the Joint Committee on Taxation for a period not exceeding 2 years unless, within such period, the Joint Committee on Taxation determines that a disclosure to the Congress is necessary.

(h) Disclosure to certain Federal officers and employees for purposes of tax administration, etc.

(1) Department of the Treasury

Returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes.

(2) Department of Justice

In a matter involving tax administration, a return or return information shall be open to inspection by or disclosure to officers and employees of the Department of Justice (including United States attorneys) personally and directly engaged in, and solely for their use in, any proceeding before a Federal grand jury or preparation for any proceeding (or investigation which may result in such a proceeding) before a Federal grand jury or any Federal or State court, but only if —

(A) the taxpayer is or may be a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability in respect of any tax imposed under this title;

(B) the treatment of an item reflected on such return is or may be related to the resolution of an issue in the proceeding or investigation; or

(C) such return or return information relates or may relate to a transactional relationship between a person who is or may be a party to the proceeding and the taxpayer which affects, or may affect, the resolution of an issue in such proceeding or investigation.

(3) Form of request

In any case in which the Secretary is authorized to disclose a return or return information to the Department of Justice pursuant to the provisions of this subsection —

(A) if the Secretary has referred the case to the Department of Justice, or if the proceeding is authorized by subchapter B of chapter 76, the Secretary may make such disclosure on his own motion, or

(B) if the Secretary receives a written request from the Attorney General, the Deputy Attorney General, or an Assistant Attorney General for a return of, or return information relating to, a person named in such request and setting forth the need for the disclosure, the Secretary shall disclose return or return the information so requested.

(4) Disclosure in judicial and administrative tax proceedings

A return or return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration, but only —

(A) if the taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability, in respect of any tax imposed under this title;

(B) if the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding;

(C) if such return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding; or

(D) to the extent required by order of a court pursuant to section 3500 of title 18, United States Code, or rule 16 of the Federal Rules of Criminal Procedure, such court being authorized in the issuance of such order to give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title.

However, such return or return information shall not be disclosed as provided in subparagraph (A), (B), or (C) if the Secretary determines that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(5) Withholding of tax from social security benefits

Upon written request of the payor agency, the Secretary may disclose available return information from the master files of the Internal Revenue Service with respect to the address and status of an individual as a nonresident alien or as a citizen or resident of the United States to the Social Security Administration or the Railroad Retirement Board (whichever is appropriate) for purposes of carrying out its responsibilities for withholding tax under section 1441 from social security benefits (as defined in section 86(d)).

(6) Internal Revenue Service Oversight Board

(A) In general

Notwithstanding paragraph (1), and except as provided in subparagraph (B), no return or return information may be disclosed to any member of the Oversight Board described in subparagraph (A) or (D) of section 7802(b)(1) or to any employee or detailee of such Board by reason of their service with the Board. Any request for information not permitted to be disclosed under the preceding sentence, and any contact relating to a specific

taxpayer, made by any such individual to an officer or employee of the Internal Revenue Service shall be reported by such officer or employee to the Secretary, the Treasury Inspector General for Tax Administration, and the Joint Committee on Taxation.

(B) Exception for reports to the Board

If —

(i) the Commissioner or the Treasury Inspector General for Tax Administration prepares any report or other matter for the Oversight Board in order to assist the Board in carrying out its duties; and

(ii) the Commissioner or such Inspector General determines it is necessary to include any return or return information in such report or other matter to enable the Board to carry out such duties, such return or return information (other than information regarding taxpayer identity) may be disclosed to members, employees, or detailees of the Board solely for the purpose of carrying out such duties.

(i) Disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration

(1) Disclosure of returns and return information for use in criminal investigations

(A) In general

Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate judge under subparagraph (B), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal agency who are personally and directly engaged in —

(i) preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is or may be a party, or pertaining to the case of a missing or exploited child,

(ii) any investigation which may result in such a proceeding, or

(iii) any Federal grand jury proceeding pertaining to enforcement of such a criminal statute to which the United States or such agency is or may be a party, or to such a case of a missing or exploited child, solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.

(B) Application for order

The Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, any United States attorney, any special prosecutor appointed under section 593 of title 28, United States Code, or any attorney in charge of a criminal division organized crime strike force established pursuant to section 510 of title 28, United States Code, may authorize an application to a Federal district court judge or magistrate judge for the order referred to in subparagraph (A). Upon such application, such judge or magistrate judge may grant such order if he determines on the basis of the facts submitted by the applicant that —

(i) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed,

(ii) there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act, and

(iii) the return or return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning such act (or any criminal investigation or proceeding, in the case of a matter relating to a missing or exploited child), and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

(C) Disclosure to state and local law enforcement agencies in the case of matters pertaining to a missing or exploited child

(i) In general

In the case of an investigation pertaining to a missing or exploited child, the head of any Federal agency, or his designee, may disclose any return or return information obtained under subparagraph (A) to officers and employees of any State or local law enforcement agency, but only if —

(I) such State or local law enforcement agency is part of a team with the Federal agency in such investigation, and

(II) such information is disclosed only to such officers and employees who are personally and directly engaged in such investigation.

(ii) Limitation on use of information

Information disclosed under this subparagraph shall be solely for the use of such officers and employees in locating the missing child, in a grand jury proceeding, or in any preparation for, or investigation which may result in, a judicial or administrative proceeding.

(iii) Missing child

For purposes of this subparagraph, the term "missing child" shall have the meaning given such term by section 403 of the Missing Children's Assistance Act (42 U.S.C. 5772).[1]

(iv) Exploited child

For purposes of this subparagraph, the term "exploited child" means a minor with respect to whom there is reason to believe that a specified offense against a minor (as defined by section 111(7) of the Sex Offender Registration and Notification Act (42 U.S.C. 16911(7))) 1 has or is occurring.

(2) Disclosure of return information other than taxpayer return information for use in criminal investigations

(A) In general

Except as provided in paragraph (6), upon receipt by the Secretary of a request which meets the requirements of subparagraph (B) from the head of any Federal agency or the Inspector General thereof, or, in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, any United States attorney, any special prosecutor appointed under section 593 of title 28, United States Code, or any attorney in charge of a criminal division organized crime strike force established pursuant to section 510 of title 28, United States Code, the Secretary shall disclose return information (other than taxpayer return information) to officers and employees of such agency who are personally and directly engaged in —

(i) preparation for any judicial or administrative proceeding described in paragraph (1)(A)(i),

(ii) any investigation which may result in such a proceeding, or

(iii) any grand jury proceeding described in paragraph (1)(A)(iii), solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.

(B) Requirements

A request meets the requirements of this subparagraph if the request is in writing and sets forth —

(i) the name and address of the taxpayer with respect to whom the requested return information relates;

(ii) the taxable period or periods to which such return information relates;

(iii) the statutory authority under which the proceeding or investigation described in subparagraph (A) is being conducted; and

(iv) the specific reason or reasons why such disclosure is, or may be, relevant to such proceeding or investigation.

(C) Taxpayer identity

For purposes of this paragraph, a taxpayer's identity shall not be treated as taxpayer return information.

(3) Disclosure of return information to apprise appropriate officials of criminal or terrorist activities or emergency circumstances

(A) Possible violations of Federal criminal law

(i) In general

Except as provided in paragraph (6), the Secretary may disclose in writing return information (other than taxpayer return information) which may constitute evidence of a violation of any Federal criminal law (not involving tax administration) to the extent

necessary to apprise the head of the appropriate Federal agency charged with the responsibility of enforcing such law. The head of such agency may disclose such return information to officers and employees of such agency to the extent necessary to enforce such law.

(ii) Taxpayer identity

If there is return information (other than taxpayer return information) which may constitute evidence of a violation by any taxpayer of any Federal criminal law (not involving tax administration), such taxpayer's identity may also be disclosed under clause (i).

(B) Emergency circumstances

(i) Danger of death or physical injury

Under circumstances involving an imminent danger of death or physical injury to any individual, the Secretary may disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal or State law enforcement agency of such circumstances.

(ii) Flight from Federal prosecution

Under circumstances involving the imminent flight of any individual from Federal prosecution, the Secretary may disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal law enforcement agency of such circumstances.

(C) Terrorist activities, etc.

(i) In general

Except as provided in paragraph (6), the Secretary may disclose in writing return information (other than taxpayer return information) that may be related to a

terrorist incident, threat, or activity to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to such terrorist incident, threat, or activity. The head of the agency may disclose such return information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

(ii) Disclosure to the Department of Justice

Returns and taxpayer return information may also be disclosed to the Attorney General under clause (i) to the extent necessary for, and solely for use in preparing, an application under paragraph (7)(D).

(iii) Taxpayer identity

For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

(4) Use of certain disclosed returns and return information in judicial or administrative proceedings

(A) Returns and taxpayer return information

Except as provided in subparagraph (C), any return or taxpayer return information obtained under paragraph (1) or (7)(C) may be disclosed in any judicial or administrative proceeding pertaining to enforcement of a specifically designated Federal criminal statute or related civil forfeiture (not involving tax administration) to which the United States or a Federal agency is a party —

(i) if the court finds that such return or taxpayer return information is probative of a matter in issue relevant in establishing the commission of a crime or the guilt or liability of a party, or

(ii) to the extent required by order of the court pursuant to section 3500 of title 18, United States Code, or rule 16 of the Federal Rules of Criminal Procedure.

(B) Return information (other than taxpayer return information)

Except as provided in subparagraph (C), any return information (other than taxpayer return information) obtained under paragraph (1), (2), (3)(A) or (C), or (7) may be disclosed in any judicial or administrative proceeding pertaining to enforcement of a specifically designated Federal criminal statute or related civil forfeiture (not involving tax administration) to which the United States or a Federal agency is a party.

(C) Confidential informant; impairment of investigations

No return or return information shall be admitted into evidence under subparagraph (A)(i) or (B) if the Secretary determines and notifies the Attorney General or his delegate or the head of the Federal agency that such admission would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(D) Consideration of confidentiality policy

In ruling upon the admissibility of returns or return information, and in the issuance of an order under subparagraph (A)(ii), the court shall give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title.

(E) Reversible error

The admission into evidence of any return or return information contrary to the provisions of this paragraph shall not, as such, constitute reversible error upon appeal of a judgment in the proceeding.

(5) Disclosure to locate fugitives from justice

(A) In general

Except as provided in paragraph (6), the return of an individual or return information with respect to such individual shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate judge under subparagraph (B), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal agency exclusively for use in locating such individual.

(B) Application for order

Any person described in paragraph (1)(B) may authorize an application to a Federal district court judge or magistrate judge for an order referred to in subparagraph (A). Upon such application, such judge or magistrate judge may grant such order if he determines on the basis of the facts submitted by the applicant that —

(i) a Federal arrest warrant relating to the commission of a Federal felony offense has been issued for an individual who is a fugitive from justice,

(ii) the return of such individual or return information with respect to such individual is sought exclusively for use in locating such individual, and

(iii) there is reasonable cause to believe that such return or return information may be relevant in determining the location of such individual.

(6) Confidential informants; impairment of investigations

The Secretary shall not disclose any return or return information under paragraph (1), (2), (3)(A) or (C), (5), (7), or (8) if the Secretary determines (and, in the case of a request for disclosure pursuant to a court order described in paragraph (1)(B) or (5)(B), certifies

to the court) that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(7) Disclosure upon request of information relating to terrorist activities, etc.

(A) Disclosure to law enforcement agencies

(i) In general

Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (iii), the Secretary may disclose return information (other than taxpayer return information) to officers and employees of any Federal law enforcement agency who are personally and directly engaged in the response to or investigation of any terrorist incident, threat, or activity.

(ii) Disclosure to State and local law enforcement agencies

The head of any Federal law enforcement agency may disclose return information obtained under clause (i) to officers and employees of any State or local law enforcement agency but only if such agency is part of a team with the Federal law enforcement agency in such response or investigation and such information is disclosed only to officers and employees who are personally and directly engaged in such response or investigation.

(iii) Requirements

A request meets the requirements of this clause if —

(I) the request is made by the head of any Federal law enforcement agency (or his delegate) involved in the response to or investigation of any terrorist incident, threat, or activity, and

(II) the request sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

(iv) Limitation on use of information

Information disclosed under this subparagraph shall be solely for the use of the officers and employees to whom such information is disclosed in such response or investigation.

(v) Taxpayer identity

For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

(B) Disclosure to intelligence agencies

(i) In general

Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (ii), the Secretary may disclose return information (other than taxpayer return information) to those officers and employees of the Department of Justice, the Department of the Treasury, and other Federal intelligence agencies who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence information or investigation concerning any terrorist incident, threat, or activity. For purposes of the preceding sentence, the information disclosed under the preceding sentence shall be solely for the use of such officers and employees in such investigation, collection, or analysis.

(ii) Requirements

A request meets the requirements of this subparagraph if the request —

(I) is made by an individual described in clause (iii), and

(II) sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

(iii) Requesting individuals

An individual described in this subparagraph is an individual —

(I) who is an officer or employee of the Department of Justice or the Department of the Treasury who is appointed by the President with the advice and consent of the Senate or who is the Director of the United States Secret Service, and

(II) who is responsible for the collection and analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity.

(iv) Taxpayer identity

For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

(C) Disclosure under ex parte orders

(i) In general

Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under clause (ii), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal law enforcement agency or Federal intelligence agency who are personally and directly engaged in any investigation, response to, or analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity. Return or

return information opened to inspection or disclosure pursuant to the preceding sentence shall be solely for the use of such officers and employees in the investigation, response, or analysis, and in any judicial, administrative, or grand jury proceedings, pertaining to such terrorist incident, threat, or activity.

(ii) Application for order

The Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, or any United States attorney may authorize an application to a Federal district court judge or magistrate for the order referred to in clause (i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that —

(I) there is reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to such terrorist incident, threat, or activity, and

(II) the return or return information is sought exclusively for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

(D) Special rule for ex parte disclosure by the IRS

(i) In general

Except as provided in paragraph (6), the Secretary may authorize an application to a Federal district court judge or magistrate for the order referred to in subparagraph (C)(i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted

by the applicant that the requirements of subparagraph (C)(ii)(I) are met.

(ii) Limitation on use of information

Information disclosed under clause (i) —

(I) may be disclosed only to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity, and

(II) shall be solely for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

The head of such Federal agency may disclose such information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

(8) Comptroller General

(A) Returns available for inspection

Except as provided in subparagraph (C), upon written request by the Comptroller General of the United States, returns and return information shall be open to inspection by, or disclosure to, officers and employees of the Government Accountability Office for the purpose of, and to the extent necessary in, making —

(i) an audit of the Internal Revenue Service, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, or the Tax and Trade Bureau, Department of the Treasury, which may be required by section 713 of title 31, United States Code, or

(ii) any audit authorized by subsection (p)(6), except that no such officer or employee shall, except to the extent authorized by subsection (f) or (p)(6), disclose to any person, other than another officer or employee of such office whose official duties require such disclosure, any return or return information described in section 4424(a) in a form which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer, nor shall such officer or employee disclose any other return or return information, except as otherwise expressly provided by law, to any person other than such other officer or employee of such office in a form which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(B) Audits of other agencies

(i) In general

Nothing in this section shall prohibit any return or return information obtained under this title by any Federal agency (other than an agency referred to in subparagraph (A)) or by a Trustee as defined in the District of Columbia Retirement Protection Act of 1997, for use in any program or activity from being open to inspection by, or disclosure to, officers and employees of the Government Accountability Office if such inspection or disclosure is —

(I) for purposes of, and to the extent necessary in, making an audit authorized by law of such program or activity, and

(II) pursuant to a written request by the Comptroller General of the United States to the head of such Federal agency.

(ii) Information from Secretary

If the Comptroller General of the United States determines that the returns or return information available under clause (i) are not sufficient for purposes of making an audit of any program or activity of a Federal agency (other than an agency referred to in subparagraph (A)), upon written request by the Comptroller General to the Secretary, returns and return information (of the type authorized by subsection (l) or (m) to be made available to the Federal agency for use in such program or activity) shall be open to inspection by, or disclosure to, officers and employees of the Government Accountability Office for the purpose of, and to the extent necessary in, making such audit.

(iii) Requirement of notification upon completion of audit

Within 90 days after the completion of an audit with respect to which returns or return information were opened to inspection or disclosed under clause (i) or (ii), the Comptroller General of the United States shall notify in writing the Joint Committee on Taxation of such completion. Such notice shall include —

(I) a description of the use of the returns and return information by the Federal agency involved,

(II) such recommendations with respect to the use of returns and return information by such Federal agency as the Comptroller General deems appropriate, and

(III) a statement on the impact of any such recommendations on confidentiality of returns and return information and the administration of this title.

(iv) Certain restrictions made applicable

The restrictions contained in subparagraph (A) on the disclosure of any returns or return information open to inspection or disclosed under such subparagraph shall also apply to returns and return information open to inspection or disclosed under this subparagraph.

(C) Disapproval by Joint Committee on Taxation

Returns and return information shall not be open to inspection or disclosed under subparagraph (A) or (B) with respect to an audit —

(i) unless the Comptroller General of the United States notifies in writing the Joint Committee on Taxation of such audit, and

(ii) if the Joint Committee on Taxation disapproves such audit by a vote of at least two-thirds of its members within the 30-day period beginning on the day the Joint Committee on Taxation receives such notice.

(j) Statistical use

(1) Department of Commerce

Upon request in writing by the Secretary of Commerce, the Secretary shall furnish —

(A) such returns, or return information reflected thereon, to officers and employees of the Bureau of the Census, and

(B) such return information reflected on returns of corporations to officers and employees of the Bureau of Economic Analysis, as the Secretary may prescribe by regulation for the purpose of, but only to the extent necessary in, the structuring of censuses and national economic accounts and conducting related statistical activities authorized by law.

(2) Federal Trade Commission

Upon request in writing by the Chairman of the Federal Trade Commission, the Secretary shall furnish such return information reflected on any return of a corporation with respect to the tax imposed by chapter 1 to officers and employees of the Division of Financial Statistics of the Bureau of Economics of such commission as the Secretary may prescribe by regulation for the purpose of, but only to the extent necessary in, administration by such division of legally authorized economic surveys of corporations.

(3) Department of Treasury

Returns and return information shall be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for the purpose of, but only to the extent necessary in, preparing economic or financial forecasts, projections, analyses, and statistical studies and conducting related activities. Such inspection or disclosure shall be permitted only upon written request which sets forth the specific reason or reasons why such inspection or disclosure is necessary and which is signed by the head of the bureau or office of the Department of the Treasury requesting the inspection or disclosure.

(4) Anonymous form

No person who receives a return or return information under this subsection shall disclose such return or return information to any person other than the taxpayer to whom it relates except in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(5) Department of Agriculture

Upon request in writing by the Secretary of Agriculture, the Secretary shall furnish such returns, or return information reflected thereon, as the Secretary may prescribe by regulation to officers and employees of the Department of Agriculture whose official duties require access to such returns or information for the purpose of, but only to the extent necessary in, structuring,

preparing, and conducting the census of agriculture pursuant to the Census of Agriculture Act of 1997 (Public Law 105–113).

(6) Congressional Budget Office

Upon written request by the Director of the Congressional Budget Office, the Secretary shall furnish to officers and employees of the Congressional Budget Office return information for the purpose of, but only to the extent necessary for, long-term models of the social security and medicare programs.

(k) Disclosure of certain returns and return information for tax administration purposes

(1) Disclosure of accepted offers-in-compromise

Return information shall be disclosed to members of the general public to the extent necessary to permit inspection of any accepted offer-in-compromise under section 7122 relating to the liability for a tax imposed by this title.

(2) Disclosure of amount of outstanding lien

If a notice of lien has been filed pursuant to section 6323(f), the amount of the outstanding obligation secured by such lien may be disclosed to any person who furnishes satisfactory written evidence that he has a right in the property subject to such lien or intends to obtain a right in such property.

(3) Disclosure of return information to correct misstatements of fact

The Secretary may, but only following approval by the Joint Committee on Taxation, disclose such return information or any other information with respect to any specific taxpayer to the extent necessary for tax administration purposes to correct a misstatement of fact published or disclosed with respect to such taxpayer’s return or any transaction of the taxpayer with the Internal Revenue Service.

(4) Disclosure to competent authority under tax convention

A return or return information may be disclosed to a competent authority of a foreign government which has an income tax or gift and estate tax convention, or other convention or bilateral agreement relating to the exchange of tax information, with the United States but only to the extent provided in, and subject to the terms and conditions of, such convention or bilateral agreement.

(5) State agencies regulating tax return preparers

Taxpayer identity information with respect to any tax return preparer, and information as to whether or not any penalty has been assessed against such tax return preparer under section 6694, 6695, or 7216, may be furnished to any agency, body, or commission lawfully charged under any State or local law with the licensing, registration, or regulation of tax return preparers. Such information may be furnished only upon written request by the head of such agency, body, or commission designating the officers or employees to whom such information is to be furnished. Information may be furnished and used under this paragraph only for purposes of the licensing, registration, or regulation of tax return preparers.

(6) Disclosure by certain officers and employees for investigative purposes

An internal revenue officer or employee and an officer or employee of the Office of Treasury Inspector General for Tax Administration may, in connection with his official duties relating to any audit, collection activity, or civil or criminal tax investigation or any other offense under the internal revenue laws, disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or the amount to be collected or with respect to the enforcement of any other provision of this title. Such disclosures shall be made only in such situations and under such conditions as the Secretary may prescribe by regulation.

This paragraph shall not apply to any disclosure to an individual providing information relating to any purpose described in paragraph (1) or (2) of section 7623(a) which is made under paragraph (13)(A).

(7) Disclosure of excise tax registration information

To the extent the Secretary determines that disclosure is necessary to permit the effective administration of subtitle D, the Secretary may disclose —

(A) the name, address, and registration number of each person who is registered under any provision of subtitle D (and, in the case of a registered terminal operator, the address of each terminal operated by such operator), and

(B) the registration status of any person.

(8) Levies on certain government payments

(A) Disclosure of return information in levies on Financial Management Service

In serving a notice of levy, or release of such levy, with respect to any applicable government payment, the Secretary may disclose to officers and employees of the Financial Management Service —

(i) return information, including taxpayer identity information,

(ii) the amount of any unpaid liability under this title (including penalties and interest), and

(iii) the type of tax and tax period to which such unpaid liability relates.

(B) Restriction on use of disclosed information

Return information disclosed under subparagraph (A) may be used by officers and employees of the Financial Management Service only for the purpose of, and to the extent necessary in, transferring levied funds in satisfaction of the levy, maintaining appropriate agency records in regard to such levy or the release thereof, notifying the taxpayer and the agency certifying such payment

that the levy has been honored, or in the defense of any litigation ensuing from the honor of such levy.

(C) Applicable government payment

For purposes of this paragraph, the term "applicable government payment" means —

(i) any Federal payment (other than a payment for which eligibility is based on the income or assets (or both) of a payee) certified to the Financial Management Service for disbursement, and

(ii) any other payment which is certified to the Financial Management Service for disbursement and which the Secretary designates by published notice.

(9) Disclosure of information to administer section 6311

The Secretary may disclose returns or return information to financial institutions and others to the extent the Secretary deems necessary for the administration of section 6311. Disclosures of information for purposes other than to accept payments by checks or money orders shall be made only to the extent authorized by written procedures promulgated by the Secretary.

(10) Disclosure of certain returns and return information to certain prison officials

(A) In general

Under such procedures as the Secretary may prescribe, the Secretary may disclose to officers and employees of the Federal Bureau of Prisons and of any State agency charged with the responsibility for administration of prisons any returns or return information with respect to individuals incarcerated in Federal or State prison systems whom the Secretary has determined may have filed or facilitated the filing of a false or fraudulent return to the extent that the Secretary determines that such disclosure is necessary to permit effective Federal tax administration.

(B) Disclosure to contractor-run prisons

Under such procedures as the Secretary may prescribe, the disclosures authorized by subparagraph (A) may be made to contractors responsible for the operation of a Federal or State prison on behalf of such Bureau or agency.

(C) Restrictions on use of disclosed information

Any return or return information received under this paragraph shall be used only for the purposes of and to the extent necessary in taking administrative action to prevent the filing of false and fraudulent returns, including administrative actions to address possible violations of administrative rules and regulations of the prison facility and in administrative and judicial proceedings arising from such administrative actions.

(D) Restrictions on redisclosure and disclosure to legal representatives

Notwithstanding subsection (h) —

(i) Restrictions on redisclosure

Except as provided in clause (ii), any officer, employee, or contractor of the Federal Bureau of Prisons or of any State agency charged with the responsibility for administration of prisons shall not disclose any information obtained under this paragraph to any person other than an officer or employee or contractor of such Bureau or agency personally and directly engaged in the administration of prison facilities on behalf of such Bureau or agency.

(ii) Disclosure to legal representatives

The returns and return information disclosed under this paragraph may be disclosed to the duly authorized legal representative of the Federal Bureau of Prisons, State agency, or contractor charged with the responsibility for administration of prisons, or of the

incarcerated individual accused of filing the false or fraudulent return who is a party to an action or proceeding described in subparagraph (C), solely in preparation for, or for use in, such action or proceeding.

(11) Disclosure of return information to Department of State for purposes of passport revocation under section 7345

(A) In general

The Secretary shall, upon receiving a certification described in section 7345, disclose to the Secretary of State return information with respect to a taxpayer who has a seriously delinquent tax debt described in such section. Such return information shall be limited to —

(i) the taxpayer identity information with respect to such taxpayer, and

(ii) the amount of such seriously delinquent tax debt.

(B) Restriction on disclosure

Return information disclosed under subparagraph (A) may be used by officers and employees of the Department of State for the purposes of, and to the extent necessary in, carrying out the requirements of section 32101 of the FAST Act.

(12) Qualified tax collection contractors

Persons providing services pursuant to a qualified tax collection contract under section 6306 may, if speaking to a person who has identified himself or herself as having the name of the taxpayer to which a tax receivable (within the meaning of such section) relates, identify themselves as contractors of the Internal Revenue Service and disclose the business name of the contractor, and the nature, subject, and reason for the contact. Disclosures under this paragraph shall be made only in such situations and under such conditions as have been approved by the Secretary.

(13) Disclosure to whistleblowers

(A) In general

The Secretary may disclose, to any individual providing information relating to any purpose described in paragraph (1) or (2) of section 7623(a), return information related to the investigation of any taxpayer with respect to whom the individual has provided such information, but only to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax liability for tax, or the amount to be collected with respect to the enforcement of any other provision of this title.

(B) Updates on whistleblower investigations

The Secretary shall disclose to an individual providing information relating to any purpose described in paragraph (1) or (2) of section 7623(a) the following:

(i) Not later than 60 days after a case for which the individual has provided information has been referred for an audit or examination, a notice with respect to such referral.

(ii) Not later than 60 days after a taxpayer with respect to whom the individual has provided information has made a payment of tax with respect to tax liability to which such information relates, a notice with respect to such payment.

(iii) Subject to such requirements and conditions as are prescribed by the Secretary, upon a written request by such individual —

(I) information on the status and stage of any investigation or action related to such information, and

(II) in the case of a determination of the amount of any award under section 7623(b), the reasons for such determination.

Clause (iii) shall not apply to any information if the Secretary determines that disclosure of such information would seriously impair Federal tax administration. Information described in clauses (i), (ii), and (iii) may be disclosed to a designee of the individual providing such information in accordance with guidance provided by the Secretary.

(14) Disclosure of return information for purposes of cybersecurity and the prevention of identity theft tax refund fraud

(A) In general

Under such procedures and subject to such conditions as the Secretary may prescribe, the Secretary may disclose specified return information to specified ISAC participants to the extent that the Secretary determines such disclosure is in furtherance of effective Federal tax administration relating to the detection or prevention of identity theft tax refund fraud, validation of taxpayer identity, authentication of taxpayer returns, or detection or prevention of cybersecurity threats.

(B) Specified ISAC participants

For purposes of this paragraph —

(i) In general

The term "specified ISAC participant" means —

(I) any person designated by the Secretary as having primary responsibility for a function performed with respect to the information sharing and analysis center described in section 2003(a) of the Taxpayer First Act, and

(II) any person subject to the requirements of section 7216 and which is a participant in such information sharing and analysis center.

(ii) Information sharing agreement

Such term shall not include any person unless such person has entered into a written agreement with the Secretary setting forth the terms and conditions for the disclosure of information to such person under this paragraph, including requirements regarding the protection and safeguarding of such information by such person.

(C) Specified return information

For purposes of this paragraph, the term "specified return information" means —

(i) in the case of a return which is in connection with a case of potential identity theft refund fraud —

(I) in the case of such return filed electronically, the internet protocol address, device identification, email domain name, speed of completion, method of authentication, refund method, and such other return information related to the electronic filing characteristics of such return as the Secretary may identify for purposes of this subclause, and

(II) in the case of such return prepared by a tax return preparer, identifying information with respect to such tax return preparer, including the preparer taxpayer identification number and electronic filer identification number of such preparer,

(ii) in the case of a return which is in connection with a case of a identity theft refund fraud which has been confirmed by the Secretary (pursuant to such procedures as the Secretary may provide), the information referred to in subclauses (I) and (II) of clause (i), the name and taxpayer identification number of the taxpayer as it appears on the return, and any bank account

and routing information provided for making a refund in connection with such return, and

(iii) in the case of any cybersecurity threat to the Internal Revenue Service, information similar to the information described in subclauses (I) and (II) of clause (i) with respect to such threat.

(D) Restriction on use of disclosed information

(i) Designated third parties

Any return information received by a person described in subparagraph (B)(i)(I) shall be used only for the purposes of and to the extent necessary in —

(I) performing the function such person is designated to perform under such subparagraph,

(II) facilitating disclosures authorized under subparagraph (A) to persons described in subparagraph (B)(i)(II), and

(III) facilitating disclosures authorized under subsection (d) to participants in such information sharing and analysis center.

(ii) Return preparers

Any return information received by a person described in subparagraph (B)(i)(II) shall be treated for purposes of section 7216 as information furnished to such person for, or in connection with, the preparation of a return of the tax imposed under chapter 1.

(E) Data protection and safeguards

Return information disclosed under this paragraph shall be subject to such protections and safeguards as the Secretary may require in regulations or other guidance or in the written agreement referred to in subparagraph (B)(ii). Such written agreement shall include a requirement that any unauthorized

access to information disclosed under this paragraph, and any breach of any system in which such information is held, be reported to the Treasury Inspector General for Tax Administration.

(15) Disclosures to Social Security Administration to identify tax receivables not eligible for collection pursuant to qualified tax collection contracts

In the case of any individual involved with a tax receivable which the Secretary has identified for possible collection pursuant to a qualified tax collection contract (as defined in section 6306(b)), the Secretary may disclose the taxpayer identity and date of birth of such individual to officers, employees, and contractors of the Social Security Administration to determine if such tax receivable is not eligible for collection pursuant to such a qualified tax collection contract by reason of section 6306(d)(3)(E).

(l) Disclosure of returns and return information for purposes other than tax administration

(1) Disclosure of certain returns and return information to Social Security Administration and Railroad Retirement Board

The Secretary may, upon written request, disclose returns and return information with respect to —

(A) taxes imposed by chapters 2, 21, and 24, to the Social Security Administration for purposes of its administration of the Social Security Act;

(B) a plan to which part I of subchapter D of chapter 1 applies, to the Social Security Administration for purposes of carrying out its responsibility under section 1131 of the Social Security Act, limited, however to return information described in section 6057(d); and

(C) taxes imposed by chapter 22, to the Railroad Retirement Board for purposes of its administration of the Railroad Retirement Act.

(2) Disclosure of returns and return information to the Department of Labor and Pension Benefit Guaranty Corporation

The Secretary may, upon written request, furnish returns and return information to the proper officers and employees of the Department of Labor and the Pension Benefit Guaranty Corporation for purposes of, but only to the extent necessary in, the administration of titles I and IV of the Employee Retirement Income Security Act of 1974.

(3) Disclosure that applicant for Federal loan has tax delinquent account

(A) In general

Upon written request, the Secretary may disclose to the head of the Federal agency administering any included Federal loan program whether or not an applicant for a loan under such program has a tax delinquent account.

(B) Restriction on disclosure

Any disclosure under subparagraph (A) shall be made only for the purpose of, and to the extent necessary in, determining the creditworthiness of the applicant for the loan in question.

(C) Included Federal loan program defined

For purposes of this paragraph, the term "included Federal loan program" means any program under which the United States or a Federal agency makes, guarantees, or insures loans.

(4) Disclosure of returns and return information for use in personnel or claimant representative matters

The Secretary may disclose returns and return information —

(A) upon written request —

(i) to an employee or former employee of the Department of the Treasury, or to the duly authorized legal representative of such employee or former employee, who is or may be a party to any administrative action or proceeding affecting the personnel rights of such employee or former employee; or

(ii) to any person, or to the duly authorized legal representative of such person, whose rights are or may be affected by an administrative action or proceeding under section 330 of title 31, United States Code, solely for use in the action or proceeding, or in preparation for the action or proceeding, but only to the extent that the Secretary determines that such returns or return

information is or may be relevant and material to the action or proceeding; or

(B) to officers and employees of the Department of the Treasury for use in any action or proceeding described in subparagraph (A), or in preparation for such action or proceeding, to the extent necessary to advance or protect the interests of the United States.

(5) Social Security Administration

Upon written request by the Commissioner of Social Security, the Secretary may disclose information returns filed pursuant to part III of subchapter A of chapter 61 of this subtitle for the purpose of —

(A) carrying out, in accordance with an agreement entered into pursuant to section 232 of the Social Security Act, an effective return processing program; or

(B) providing information regarding the mortality status of individuals for epidemiological and similar research in accordance with section 1106(d) of the Social Security Act.

(6) Disclosure of return information to Federal, State, and local child support enforcement agencies

(A) Return information from Internal Revenue Service

The Secretary may, upon written request, disclose to the appropriate Federal, State, or local child support enforcement agency —

(i) available return information from the master files of the Internal Revenue Service relating to the social security account number (or numbers, if the individual involved has more than one such number), address, filing status, amounts and nature of income, and the number of dependents reported on any return filed by, or with respect to, any individual with respect to whom child support obligations are sought to be established or enforced pursuant to the provisions of part D of title

IV of the Social Security Act and with respect to any individual to whom such support obligations are owing, and

(ii) available return information reflected on any return filed by, or with respect to, any individual described in clause (i) relating to the amount of such individual's gross income (as defined in section 61) or consisting of the names and addresses of payors of such income and the names of any dependents reported on such return, but only if such return information is not reasonably available from any other source.

(B) Disclosure to certain agents

The following information disclosed to any child support enforcement agency under subparagraph (A) with respect to any individual with respect to whom child support obligations are sought to be established or enforced may be disclosed by such agency to any agent of such agency which is under contract with such agency to carry out the purposes described in subparagraph (C):

(i) The address and social security account number (or numbers) of such individual.

(ii) The amount of any reduction under section 6402(c) (relating to offset of past-due support against overpayments) in any overpayment otherwise payable to such individual.

(C) Restriction on disclosure

Information may be disclosed under this paragraph only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations.

(7) Disclosure of return information to Federal, State, and local agencies administering certain programs under the Social Security Act, the Food and Nutrition Act of 2008, or title 38, United States Code, or certain housing assistance programs

(A) Return information from Social Security Administration

The Commissioner of Social Security shall, upon written request, disclose return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection, to any Federal, State, or local agency administering a program listed in subparagraph (D).

(B) Return information from Internal Revenue Service

The Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the Internal Revenue Service files to any Federal, State, or local agency administering a program listed in subparagraph (D).

(C) Restriction on disclosure

The Commissioner of Social Security and the Secretary shall disclose return information under subparagraphs (A) and (B) only for purposes of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under a program listed in subparagraph (D).

(D) Programs to which rule applies

The programs to which this paragraph applies are:

(i) a State program funded under part A of title IV of the Social Security Act;

(ii) medical assistance provided under a State plan approved under title XIX of the Social Security Act or subsidies provided under section 1860D–14 of such Act;

(iii) supplemental security income benefits provided under title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66);

(iv) any benefits provided under a State plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

(v) unemployment compensation provided under a State law described in section 3304 of this title;

(vi) assistance provided under the Food and Nutrition Act of 2008;

(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66);

(viii)

(I) any needs-based pension provided under chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

(II) parents' dependency and indemnity compensation provided under section 1315 of title 38, United States Code;

(III) health-care services furnished under sections 1710(a)(2)(G), 1710(a)(3), and 1710(b) of such title; and

(IV) compensation paid under chapter 11 of title 38, United States Code, at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule; and

(ix) any housing assistance program administered by the Department of Housing and Urban Development that involves initial and periodic review of an applicant's or participant's income, except that return information may be disclosed under this clause only on written request by the Secretary of Housing and Urban Development and only for use by officers and employees of the Department of Housing and Urban Development with respect to applicants for and participants in such programs.

Only return information from returns with respect to net earnings from self-employment and wages may be disclosed under this paragraph for use with respect to any program described in clause (viii)(IV).

(8) Disclosure of certain return information by Social Security Administration to Federal, State, and local child support enforcement agencies

(A) In general

Upon written request, the Commissioner of Social Security shall disclose directly to officers and employees of a Federal or State or local child support enforcement agency return information from returns with respect to social security account numbers, net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection.

(B) Restriction on disclosure

The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations. For purposes of the preceding sentence, the term "child support obligations" only includes obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under part D of title IV of such Act.

(C) State or local child support enforcement agency

For purposes of this paragraph, the term "State or local child support enforcement agency" means any agency of a State or political subdivision thereof operating pursuant to a plan described in subparagraph (B).

(9) Disclosure of alcohol fuel producers to administrators of State alcohol laws

Notwithstanding any other provision of this section, the Secretary may disclose —

(A) the name and address of any person who is qualified to produce alcohol for fuel use under section 5181, and

(B) the location of any premises to be used by such person in producing alcohol for fuel, to any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for administration of State alcohol laws solely for use in the administration of such laws.

(10) Disclosure of certain information to agencies requesting a reduction under subsection (c), (d), (e), or (f) of section 6402

(A) Return information from Internal Revenue Service

The Secretary may, upon receiving a written request, disclose to officers and employees of any agency seeking a reduction under subsection (c), (d), (e), or (f) of section 6402, to officers and employees of the Department of Labor for purposes of facilitating the exchange of data in connection with a notice submitted under subsection (f)(5)(C) of section 6402, and to officers and employees of the Department of the Treasury in connection with such reduction —

(i) taxpayer identity information with respect to the taxpayer against whom such a reduction was made or not made and with respect to any other person filing a joint return with such taxpayer,

(ii) the fact that a reduction has been made or has not been made under such subsection with respect to such taxpayer,

(iii) the amount of such reduction,

(iv) whether such taxpayer filed a joint return, and

(v) the fact that a payment was made (and the amount of the payment) to the spouse of the taxpayer on the basis of a joint return.

(B) Restriction on use of disclosed information

(i) Any officers and employees of an agency receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing appropriate agency records, locating any person with respect to whom a reduction under subsection (c), (d), (e), or (f) of section 6402 is sought for purposes of collecting the debt with respect

to which the reduction is sought, or in the defense of any litigation or administrative procedure ensuing from a reduction made under subsection (c), (d), (e), or (f) of section 6402.

(ii) Notwithstanding clause (i), return information disclosed to officers and employees of the Department of Labor may be accessed by agents who maintain and provide technological support to the Department of Labor's Interstate Connection Network (ICON) solely for the purpose of providing such maintenance and support.

(11) Disclosure of return information to carry out Federal Employees' Retirement System

(A) In general

The Commissioner of Social Security shall, on written request, disclose to the Office of Personnel Management return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5).

(B) Restriction on disclosure

The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, the administration of chapters 83 and 84 of title 5, United States Code.

(12) Disclosure of certain taxpayer identity information for verification of employment status of medicare beneficiary and spouse of medicare beneficiary

(A) Return information from Internal Revenue Service

The Secretary shall, upon written request from the Commissioner of Social Security, disclose to the Commissioner available filing status and taxpayer

identity information from the individual master files of the Internal Revenue Service relating to whether any medicare beneficiary identified by the Commissioner was a married individual (as defined in section 7703) for any specified year after 1986, and, if so, the name of the spouse of such individual and such spouse's TIN.

(B) Return information from Social Security Administration

The Commissioner of Social Security shall, upon written request from the Administrator of the Centers for Medicare & Medicaid Services, disclose to the Administrator the following information:

(i) The name and TIN of each medicare beneficiary who is identified as having received wages (as defined in section 3401(a)), above an amount (if any) specified by the Secretary of Health and Human Services, from a qualified employer in a previous year.

(ii) For each medicare beneficiary who was identified as married under subparagraph (A) and whose spouse is identified as having received wages, above an amount (if any) specified by the Secretary of Health and Human Services, from a qualified employer in a previous year —

(I) the name and TIN of the medicare beneficiary, and

(II) the name and TIN of the spouse.

(iii) With respect to each such qualified employer, the name, address, and TIN of the employer and the number of individuals with respect to whom written statements were furnished under section 6051 by the employer with respect to such previous year.

(C) Disclosure by Centers for Medicare & Medicaid Services

With respect to the information disclosed under subparagraph (B), the Administrator of the Centers for Medicare & Medicaid Services may disclose —

(i) to the qualified employer referred to in such subparagraph the name and TIN of each individual identified under such subparagraph as having received wages from the employer (hereinafter in this subparagraph referred to as the "employee") for purposes of determining during what period such employee or the employee's spouse may be (or have been) covered under a group health plan of the employer and what benefits are or were covered under the plan (including the name, address, and identifying number of the plan),

(ii) to any group health plan which provides or provided coverage to such an employee or spouse, the name of such employee and the employee's spouse (if the spouse is a medicare beneficiary) and the name and address of the employer, and, for the purpose of presenting a claim to the plan —

(I) the TIN of such employee if benefits were paid under title XVIII of the Social Security Act with respect to the employee during a period in which the plan was a primary plan (as defined in section 1862(b)(2)(A) of the Social Security Act), and

(II) the TIN of such spouse if benefits were paid under such title with respect to the spouse during such period, and

(iii) to any agent of such Administrator the information referred to in subparagraph (B) for purposes of carrying out clauses (i) and (ii) on behalf of such Administrator.

(D) Special rules

(i) Restrictions on disclosure

Information may be disclosed under this paragraph only for purposes of, and to the extent necessary in, determining the extent to which any medicare beneficiary is covered under any group health plan.

(ii) Timely response to requests

Any request made under subparagraph (A) or (B) shall be complied with as soon as possible but in no event later than 120 days after the date the request was made.

(E) Definitions

For purposes of this paragraph —

(i) Medicare beneficiary

The term "medicare beneficiary" means an individual entitled to benefits under part A, or enrolled under part B, of title XVIII of the Social Security Act, but does not include such an individual enrolled in part A under section 1818.

(ii) Group health plan

The term "group health plan" means any group health plan (as defined in section 5000(b)(1)).

(iii) Qualified employer

The term "qualified employer" means, for a calendar year, an employer which has furnished written statements under section 6051 with respect to at least 20 individuals for wages paid in the year.

(13) Disclosure of return information to carry out the Higher Education Act of 1965

(A) Applications and recertifications for income-contingent or income-based repayment

The Secretary shall, upon written request from the Secretary of Education, disclose to any authorized person, only for the purpose of (and to the extent necessary in) determining eligibility for, or repayment obligations under, income-contingent or income-based repayment plans under title IV of the Higher Education Act of 1965 with respect to loans under part D of such title, the following return information from returns (for any taxable year specified by the Secretary of Education as relevant to such purpose) of an individual certified by the Secretary of Education as having provided approval under section 494(a)(2) of such Act (as in effect on the date of enactment of this paragraph) for such disclosure:

(i) Taxpayer identity information.

(ii) Filing status.

(iii) Adjusted gross income.

(iv) Total number of exemptions claimed, if applicable.

(v) Number of dependents taken into account in determining the credit allowed under section 24.

(vi) If applicable, the fact that there was no return filed.

(B) Discharge of loan based on total and permanent disability

The Secretary shall, upon written request from the Secretary of Education, disclose to any authorized person, only for the purpose of (and to the extent necessary in) monitoring and reinstating loans under title IV of the Higher Education Act of 1965 that were discharged based on a total and permanent disability (within the meaning of section 437(a) of

such Act), the following return information from returns (for any taxable year specified by the Secretary of Education as relevant to such purpose) of an individual certified by the Secretary of Education as having provided approval under section 494(a)(3) of such Act (as in effect on the date of enactment of this paragraph) for such disclosure:

(i) The return information described in clauses (i), (ii), and (vi) of subparagraph (A).

(ii) The return information described in subparagraph (C)(ii).

(C) Federal student financial aid

The Secretary shall, upon written request from the Secretary of Education, disclose to any authorized person, only for the purpose of (and to the extent necessary in) determining eligibility for, and amount of, Federal student financial aid under a program authorized under subpart 1 of part A, part C, or part D of title IV of the Higher Education Act of 1965 the following return information from returns (for the taxable year used for purposes of section 480(a) of such Act) of an individual certified by the Secretary of Education as having provided approval under section 494(a)(1) of such Act (as in effect on the date of enactment of this paragraph) for such disclosure:

(i) Return information described in clauses (i) through (vi) of subparagraph (A).

(ii) The amount of any net earnings from self-employment (as defined in section 1402(a)), wages (as defined in section 3121(a) or 3401(a)), and taxable income from a farming business (as defined in section 236A(e)(4)).

(iii) Amount of total income tax.

(iv) Amount of any credit allowed under section 25A.

(v) Amount of individual retirement account distributions not included in adjusted gross income.

(vi) Amount of individual retirement account contributions and payments to self-employed SEP, Keogh, and other qualified plans which were deducted from income.

(vii) Amount of tax-exempt interest received.

(viii) Amounts from retirement pensions and annuities not included in adjusted gross income.

(ix) If applicable, the fact that any of the following schedules (or equivalent successor schedules) were filed with the return:

(I) Schedule A.

(II) Schedule B.

(III) Schedule D.

(IV) Schedule E.

(V) Schedule F.

(VI) Schedule H.

(x) If applicable, the amount reported on Schedule C (or an equivalent successor schedule) as net profit or loss.

(D) Additional uses of disclosed information

(i) In general

In addition to the purposes for which information is disclosed under subparagraphs (A), (B), and (C), return information so disclosed may be used by an authorized person, with respect to income-contingent or income-based repayment plans, awards of Federal student financial aid under a program authorized under subpart 1 of part A, part C, or part D of title IV of the Higher Education Act of 1965, and discharges of loans based on a total and permanent disability (within the

meaning of section 437(a) of such Act), for purposes of —

(I) reducing the net cost of improper payments under such plans, relating to such awards, or relating to such discharges,

(II) oversight activities by the Office of Inspector General of the Department of Education as authorized by the Inspector General Act of 1978, and

(III) conducting analyses and forecasts for estimating costs related to such plans, awards, or discharges.

(ii) Limitation

The purposes described in clause (i) shall not include the conduct of criminal investigations or prosecutions.

(iii) Redisclosure to institutions of higher education, State higher education agencies, and designated scholarship organizations

Authorized persons may redisclose return information received under subparagraph (C), solely for the use in the application, award, and administration of financial aid awarded by the Federal government or awarded by a person described in subclause (I), (II), or (III), to the following persons:

(I) An institution of higher education participating in a program under subpart 1 of part A, part C, or part D of title IV of the Higher Education Act of 1965.

(II) A State higher education agency.

(III) A scholarship organization which is an entity designated (prior to the date of the enactment of this clause) by the Secretary of Education under section 483(a)(3)(E) of such Act.

This clause shall only apply to the extent that the taxpayer with respect to whom the return information relates provides written consent for such redisclosure to the Secretary of Education. Under such terms and conditions as may be prescribed by the Secretary, after consultation with the Department of Education, an institution of higher education described in subclause (I) or a State higher education agency described in subclause (II) may designate a contractor of such institution or state agency to receive return information on behalf of such institution or state agency to administer aspects of the institution's or state agency's activities for the application, award, and administration of such financial aid.

(iv) Redisclosure to Office of Inspector General, independent auditors, and contractors

Any return information which is redisclosed under clause (iii)-

(I) may be further disclosed by persons described in subclauses (I), (II), or (III) of clause (iii) or persons designated in the last sentence of clause (iii) to the Office of Inspector General of the Department of Education and independent auditors conducting audits of such person's administration of the programs for which the return information was received, and

(II) may be further disclosed by persons described in subclauses (I), (II), or (III) of clause (iii) to contractors of such entities,

but only to the extent necessary in carrying out the purposes described in such clause (iii).

(v) Redisclosure to family members

In addition to the purposes for which information is disclosed and used under subparagraphs (A) and (C), or redisclosed under clause (iii), any return information so disclosed or redisclosed may be further disclosed to any individual certified by the Secretary of Education as having provided approval under paragraph (1) or (2) of section 494(a) of the Higher Education Act of 1965, as the case may be, for disclosure related to the income-contingent or income-based repayment plan under subparagraph (A) or the eligibility for, and amount of, Federal student financial aid described in subparagraph (C).

(vi) Redisclosure of FAFSA information

Return information received under subparagraph (C) may be redisclosed in accordance with subsection (c) of section 494 of the Higher Education Act of 1965 (as in effect on the date of enactment of the COVID-related Tax Relief Act of 2020) to carry out the purposes specified in such subsection.

(E) Authorized person

For purposes of this paragraph, the term "authorized person" means, with respect to information disclosed under subparagraph (A), (B), or (C), any person who —

(i) is an officer, employee, or contractor, of the Department of Education, and

(ii) is specifically authorized and designated by the Secretary of Education for purposes of such subparagraph (applied separately with respect to each such subparagraph).

(F) Joint returns

In the case of a joint return, any disclosure authorized under subparagraph (A), (B), or (C), and any redisclosure authorized under clause (iii), (iv) 2 (v), or (vi) of subparagraph (D), with respect to an individual shall be treated for purposes of this paragraph as applying with respect to the taxpayer.

(14) Disclosure of return information to United States Customs Service

The Secretary may, upon written request from the Commissioner of the United States Customs Service, disclose to officers and employees of the Department of the Treasury such return information with respect to taxes imposed by chapters 1 and 6 as the Secretary may prescribe by regulations, solely for the purpose of, and only to the extent necessary in —

(A) ascertaining the correctness of any entry in audits as provided for in section 509 of the Tariff Act of 1930 (19 U.S.C. 1509), or

(B) other actions to recover any loss of revenue, or to collect duties, taxes, and fees, determined to be due and owing pursuant to such audits.

(15) Disclosure of returns filed under section 6050I

The Secretary may, upon written request, disclose to officers and employees of —

(A) any Federal agency,

(B) any agency of a State or local government, or

(C) any agency of the government of a foreign country, information contained on returns filed under section 6050I. Any such disclosure shall be made on the same basis, and subject to the same conditions, as apply to disclosures of information on reports filed under section 5313 of title 31, United States Code; except that no disclosure under this paragraph shall be made for purposes of the administration of any tax law.

(16) Disclosure of return information for purposes of administering the District of Columbia Retirement Protection Act of 1997

(A) In general

Upon written request available return information (including such information disclosed to the Social Security Administration under paragraph (1) or (5) of this subsection), relating to the amount of wage income (as defined in section 3121(a) or 3401(a)), the name, address, and identifying number assigned under section 6109, of payors of wage income, taxpayer identity (as defined in section 6103(b)(6)), and the occupational status reflected on any return filed by, or with respect to, any individual with respect to whom eligibility for, or the correct amount of, benefits under the District of Columbia Retirement Protection Act of 1997, is sought to be determined, shall be disclosed by the Commissioner of Social Security, or to the extent not available from the Social Security Administration, by the Secretary, to any duly authorized officer or employee of the Department of the Treasury, or a Trustee or any designated officer or employee of a Trustee (as defined in the District of Columbia Retirement Protection Act of 1997), or any actuary engaged by a Trustee under the terms of the District of Columbia Retirement Protection Act of 1997, whose official duties require such disclosure, solely for the purpose of, and to the extent necessary in, determining an individual's eligibility for, or the correct amount of, benefits under the District of Columbia Retirement Protection Act of 1997.

(B) Disclosure for use in judicial or administrative proceedings

Return information disclosed to any person under this paragraph may be disclosed in a judicial or administrative proceeding relating to the determination of an individual's eligibility for, or the correct amount of, benefits under the District of Columbia Retirement Protection Act of 1997.

(17) Disclosure to National Archives and Records Administration

The Secretary shall, upon written request from the Archivist of the United States, disclose or authorize the disclosure of returns and return information to officers and employees of the National Archives and Records Administration for purposes of, and only to the extent necessary in, the appraisal of records for destruction or retention. No such officer or employee shall, except to the extent authorized by subsection (f), (i)(8), or (p), disclose any return or return information disclosed under the preceding sentence to any person other than to the Secretary, or to another officer or employee of the National Archives and Records Administration whose official duties require such disclosure for purposes of such appraisal.

(18) Disclosure of return information for purposes of carrying out a program for advance payment of credit for health insurance costs of eligible individuals

The Secretary may disclose to providers of health insurance for any certified individual (as defined in section 7527(c)) return information with respect to such certified individual only to the extent necessary to carry out the program established by section 7527 (relating to advance payment of credit for health insurance costs of eligible individuals).

(19) Disclosure of return information for purposes of providing transitional assistance under medicare discount card program

(A) In general

The Secretary, upon written request from the Secretary of Health and Human Services pursuant to carrying out section 1860D–31 of the Social Security Act, shall disclose to officers, employees, and contractors of the Department of Health and Human Services with respect to a taxpayer for the applicable year —

(i)

(I) whether the adjusted gross income, as modified in accordance with specifications of the Secretary of Health and Human Services for purposes of carrying out such section, of such taxpayer and, if applicable, such taxpayer's spouse, for the applicable year, exceeds the amounts specified by the Secretary of Health and Human Services in order to apply the 100 and 135 percent of the poverty lines under such section, (II) whether the return was a joint return, and (III) the applicable year, or

(ii) if applicable, the fact that there is no return filed for such taxpayer for the applicable year.

(B) Definition of applicable year

For the purposes of this subsection, the term "applicable year" means the most recent taxable year for which information is available in the Internal Revenue Service's taxpayer data information systems, or, if there is no return filed for such taxpayer for such year, the prior taxable year.

(C) Restriction on use of disclosed information

Return information disclosed under this paragraph may be used only for the purposes of determining eligibility for and administering transitional assistance under section 1860D–31 of the Social Security Act.

(20) Disclosure of return information to carry out Medicare part B premium subsidy adjustment and part D base beneficiary premium increase

(A) In general

The Secretary shall, upon written request from the Commissioner of Social Security, disclose to officers, employees, and contractors of the Social Security Administration return information of a

taxpayer whose premium (according to the records of the Secretary) may be subject to adjustment under section 1839(i) or increase under section 1860D–13(a)(7) of the Social Security Act. Such return information shall be limited to —

(i) taxpayer identity information with respect to such taxpayer,

(ii) the filing status of such taxpayer,

(iii) the adjusted gross income of such taxpayer,

(iv) the amounts excluded from such taxpayer's gross income under sections 135 and 911 to the extent such information is available,

(v) the interest received or accrued during the taxable year which is exempt from the tax imposed by chapter 1 to the extent such information is available,

(vi) the amounts excluded from such taxpayer's gross income by sections 931 and 933 to the extent such information is available,

(vii) such other information relating to the liability of the taxpayer as is prescribed by the Secretary by regulation as might indicate in the case of a taxpayer who is an individual described in subsection (i)(4)(B)(iii) of section 1839 of the Social Security Act that the amount of the premium of the taxpayer under such section may be subject to adjustment under subsection (i) of such section or increase under section 1860D–13(a)(7) of such Act and the amount of such adjustment, and

(viii) the taxable year with respect to which the preceding information relates.

(B) Restriction on use of disclosed information

(i) In general

Return information disclosed under subparagraph (A) may be used by officers,

employees, and contractors of the Social Security Administration only for the purposes of, and to the extent necessary in, establishing the appropriate amount of any premium adjustment under such section 1839(i) or increase under such section 1860D–13(a)(7) or for the purpose of resolving taxpayer appeals with respect to any such premium adjustment or increase.

(ii) Disclosure to other agencies

Officers, employees, and contractors of the Social Security Administration may disclose —

(I) the taxpayer identity information and the amount of the premium subsidy adjustment or premium increase with respect to a taxpayer described in subparagraph (A) to officers, employees, and contractors of the Centers for Medicare and Medicaid Services, to the extent that such disclosure is necessary for the collection of the premium subsidy amount or the increased premium amount,

(II) the taxpayer identity information and the amount of the premium subsidy adjustment or the increased premium amount with respect to a taxpayer described in subparagraph (A) to officers and employees of the Office of Personnel Management and the Railroad Retirement Board, to the extent that such disclosure is necessary for the collection of the premium subsidy amount or the increased premium amount,

(III) return information with respect to a taxpayer described in subparagraph (A) to officers and employees of the Department of Health and Human Services to the extent necessary to resolve administrative appeals of such premium subsidy adjustment or increased premium, and

(IV) return information with respect to a taxpayer described in subparagraph (A) to officers and employees of the Department of Justice for use in judicial proceedings to the extent necessary to carry out the purposes described in clause (i).

(21) Disclosure of return information to carry out eligibility requirements for certain programs

(A) In general

The Secretary, upon written request from the Secretary of Health and Human Services, shall disclose to officers, employees, and contractors of the Department of Health and Human Services return information of any taxpayer whose income is relevant in determining any premium tax credit under section 36B or any cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act or eligibility for participation in a State medicaid program under title XIX of the Social Security Act, a State's children's health insurance program under title XXI of the Social Security Act, or a basic health program under section 1331 of Patient Protection and Affordable Care Act. Such return information shall be limited to —

(i) taxpayer identity information with respect to such taxpayer,

(ii) the filing status of such taxpayer,

(iii) the number of individuals for whom a deduction is allowed under section 151 with respect to the taxpayer (including the taxpayer and the taxpayer's spouse),

(iv) the modified adjusted gross income (as defined in section 36B) of such taxpayer and each of the other individuals included under clause (iii) who are required to file a return of tax imposed by chapter 1 for the taxable year,

(v) such other information as is prescribed by the Secretary by regulation as might indicate whether the taxpayer is eligible for such credit or reduction (and the amount thereof), and

(vi) the taxable year with respect to which the preceding information relates or, if applicable, the fact that such information is not available.

(B) Information to exchange and State agencies

The Secretary of Health and Human Services may disclose to an Exchange established under the Patient Protection and Affordable Care Act or its contractors, or to a State agency administering a State program described in subparagraph (A) or its contractors, any inconsistency between the information provided by the Exchange or State agency to the Secretary and the information provided to the Secretary under subparagraph (A).

(C) Restriction on use of disclosed information

Return information disclosed under subparagraph (A) or (B) may be used by officers, employees, and contractors of the Department of Health and Human Services, an Exchange, or a State agency only for the purposes of, and to the extent necessary in —

(i) establishing eligibility for participation in the Exchange, and verifying the appropriate amount of, any credit or reduction described in subparagraph (A),

(ii) determining eligibility for participation in the State programs described in subparagraph (A).

(22) Disclosure of return information to Department of Health and Human Services for purposes of enhancing Medicare program integrity

(A) In general

The Secretary shall, upon written request from the Secretary of Health and Human Services, disclose to

officers and employees of the Department of Health and Human Services return information with respect to a taxpayer who has applied to enroll, or reenroll, as a provider of services or supplier under the Medicare program under title XVIII of the Social Security Act. Such return information shall be limited to —

(i) the taxpayer identity information with respect to such taxpayer;

(ii) the amount of the delinquent tax debt owed by that taxpayer; and

(iii) the taxable year to which the delinquent tax debt pertains.

(B) Restriction on disclosure

Return information disclosed under subparagraph (A) may be used by officers and employees of the Department of Health and Human Services for the purposes of, and to the extent necessary in, establishing the taxpayer's eligibility for enrollment or reenrollment in the Medicare program, or in any administrative or judicial proceeding relating to, or arising from, a denial of such enrollment or reenrollment, or in determining the level of enhanced oversight to be applied with respect to such taxpayer pursuant to section 1866(j)(3) of the Social Security Act.

(C) Delinquent tax debt

For purposes of this paragraph, the term "delinquent tax debt" means an outstanding debt under this title for which a notice of lien has been filed pursuant to section 6323, but the term does not include a debt that is being paid in a timely manner pursuant to an agreement under section 6159 or 7122, or a debt with respect to which a collection due process hearing under section 6330 is requested, pending, or completed and no payment is required.

(m) Disclosure of taxpayer identity information

(1) Tax refunds

The Secretary may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the Secretary, after reasonable effort and lapse of time, has been unable to locate such persons.

(2) Federal claims

(A) In general

Except as provided in subparagraph (B), the Secretary may, upon written request, disclose the mailing address of a taxpayer for use by officers, employees, or agents of a Federal agency for purposes of locating such taxpayer to collect or compromise a Federal claim against the taxpayer in accordance with sections 3711, 3717, and 3718 of title 31.

(B) Special rule for consumer reporting agency

In the case of an agent of a Federal agency which is a consumer reporting agency (within the meaning of section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))), the mailing address of a taxpayer may be disclosed to such agent under subparagraph (A) only for the purpose of allowing such agent to prepare a commercial credit report on the taxpayer for use by such Federal agency in accordance with sections 3711, 3717, and 3718 of title 31.

(3) National Institute for Occupational Safety and Health

Upon written request, the Secretary may disclose the mailing address of taxpayers to officers and employees of the National Institute for Occupational Safety and Health solely for the purpose of locating individuals who are, or may have been, exposed to occupational hazards in order to determine the status of their health or to inform them of the possible need for medical care and treatment.

(4) Individuals who owe an overpayment of Federal Pell Grants or who have defaulted on student loans administered by the Department of Education

(A) In general

Upon written request by the Secretary of Education, the Secretary may disclose the mailing address of any taxpayer —

(i) who owes an overpayment of a grant awarded to such taxpayer under subpart 1 of part A of title IV of the Higher Education Act of 1965, or

(ii) who has defaulted on a loan —

(I) made under part B, D, or E of title IV of the Higher Education Act of 1965, or

(II) made pursuant to section 3(a)(1) of the Migration and Refugee Assistance Act of 1962 to a student at an institution of higher education, for use only by officers, employees, or agents of the Department of Education for purposes of locating such taxpayer for purposes of collecting such overpayment or loan.

(B) Disclosure to educational institutions, etc.

Any mailing address disclosed under subparagraph (A)(i) may be disclosed by the Secretary of Education to —

(i) any lender, or any State or nonprofit guarantee agency, which is participating under part B or D of title IV of the Higher Education Act of 1965, or

(ii) any educational institution with which the Secretary of Education has an agreement under subpart 1 of part A, or part D or E, of title IV of such Act, for use only by officers, employees, or agents of such lender, guarantee agency, or institution whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under such loan programs for purposes of collecting such loans.

(5) Individuals who have defaulted on student loans administered by the Department of Health and Human Services

(A) In general

Upon written request by the Secretary of Health and Human Services, the Secretary may disclose the mailing address of any taxpayer who has defaulted on a loan made under part C 1 of title VII of the Public Health Service Act or under subpart II of part B of title VIII of such Act, for use only by officers, employees, or agents of the Department of Health and Human Services for purposes of locating such taxpayer for purposes of collecting such loan.

(B) Disclosure to schools and eligible lenders

Any mailing address disclosed under subparagraph (A) may be disclosed by the Secretary of Health and Human Services to —

(i) any school with which the Secretary of Health and Human Services has an agreement under subpart II 1 of part C of title VII of the Public Health Service Act or subpart II 1 of part B of title VIII of such Act, or

(ii) any eligible lender (within the meaning of section 737(4) 1 of such Act) participating under subpart I 1 of part C of title VII of such Act, for use only by officers, employees, or agents of such school or eligible lender whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under such subparts for the purposes of collecting such loans.

(6) Blood Donor Locator Service

(A) In general

Upon written request pursuant to section 1141 of the Social Security Act, the Secretary shall disclose the mailing address of taxpayers to officers and employees of the Blood Donor Locator

Service in the Department of Health and Human Services.

(B) Restriction on disclosure

The Secretary shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, assisting under the Blood Donor Locator Service authorized persons (as defined in section 1141(h)(1) of the Social Security Act) in locating blood donors who, as indicated by donated blood or products derived therefrom or by the history of the subsequent use of such blood or blood products, have or may have the virus for acquired immune deficiency syndrome, in order to inform such donors of the possible need for medical care and treatment.

(C) Safeguards

The Secretary shall destroy all related blood donor records (as defined in section 1141(h)(2) of the Social Security Act) in the possession of the Department of the Treasury upon completion of their use in making the disclosure required under subparagraph (A), so as to make such records undisclosable.

(7) Social security account statement furnished by Social Security Administration

Upon written request by the Commissioner of Social Security, the Secretary may disclose the mailing address of any taxpayer who is entitled to receive a social security account statement pursuant to section 1143(c) of the Social Security Act, for use only by officers, employees or agents of the Social Security Administration for purposes of mailing such statement to such taxpayer.

(n) Certain other persons

Pursuant to regulations prescribed by the Secretary, returns and return information may be disclosed to any person, including any person described in section 7513(a), to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns and return

information, the programming, maintenance, repair, testing, and procurement of equipment, and the providing of other services, for purposes of tax administration.

(o) Disclosure of returns and return information with respect to certain taxes

(1) Taxes imposed by subtitle E

(A) In general

Returns and return information with respect to taxes imposed by subtitle E (relating to taxes on alcohol, tobacco, and firearms) shall be open to inspection by or disclosure to officers and employees of a Federal agency whose official duties require such inspection or disclosure.

(B) Use in certain proceedings

Returns and return information disclosed to a Federal agency under subparagraph (A) may be used in an action or proceeding (or in preparation for such action or proceeding) brought under section 625 of the American Jobs Creation Act of 2004 for the collection of any unpaid assessment or penalty arising under such Act.

(2) Taxes imposed by chapter 35

Returns and return information with respect to taxes imposed by chapter 35 (relating to taxes on wagering) shall, notwithstanding any other provision of this section, be open to inspection by or disclosure only to such person or persons and for such purpose or purposes as are prescribed by section 4424.

(3) Taxes imposed by section 4481

Returns and return information with respect to taxes imposed by section 4481 shall be open to inspection by or disclosure to officers and employees of United States Customs and Border Protection of the Department of Homeland Security whose official duties require such inspection or disclosure for purposes of administering such section.

(p) Procedure and recordkeeping

(1) Manner, time, and place of inspections

Requests for the inspection or disclosure of a return or return information and such inspection or disclosure shall be made in such manner and at such time and place as shall be prescribed by the Secretary.

(2) Procedure

(A) Reproduction of returns

A reproduction or certified reproduction of a return shall, upon written request, be furnished to any person to whom disclosure or inspection of such return is authorized under this section. A reasonable fee may be prescribed for furnishing such reproduction or certified reproduction.

(B) Disclosure of return information

Return information disclosed to any person under the provisions of this title may be provided in the form of written documents, reproductions of such documents, films or photoimpressions, or electronically produced tapes, disks, or records, or by any other mode or means which the Secretary determines necessary or appropriate. A reasonable fee may be prescribed for furnishing such return information.

(C) Use of reproductions

Any reproduction of any return, document, or other matter made in accordance with this paragraph shall have the same legal status as the original, and any such reproduction shall, if properly authenticated, be admissible in evidence in any judicial or administrative proceeding as if it were the original, whether or not the original is in existence.

(3) Records of inspection and disclosure

(A) System of recordkeeping

Except as otherwise provided by this paragraph, the Secretary shall maintain a permanent system of

standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under this section and section 6104(c). Notwithstanding the provisions of section 552a(c) of title 5, United States Code, the Secretary shall not be required to maintain a record or accounting of requests for inspection or disclosure of returns and return information, or of returns and return information inspected or disclosed, under the authority of subsection (c), (e), (f)(5), (h)(1), (3)(A), or (4), (i)(4), or (8)(A)(ii), (k)(1), (2), (6), (8), or (9), (l)(1), (4)(B), (5), (7), (8), (9), (10), (11), (12), (13)(D)(iv), (13)(D)(v), (13)(D)(vi) 2 (14), (15), (16), (17), or (18), (m), or (n). The records or accountings required to be maintained under this paragraph shall be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee. Such record or accounting shall also be available for examination by such person or persons as may be, but only to the extent, authorized to make such examination under section 552a(c)(3) of title 5, United States Code.

(B) Report by the Secretary

The Secretary shall, within 90 days after the close of each calendar year, furnish to the Joint Committee on Taxation a report with respect to, or summary of, the records or accountings described in subparagraph (A) in such form and containing such information as such joint committee or the Chief of Staff of such joint committee may designate. Such report or summary shall not, however, include a record or accounting of any request by the President under subsection (g) for, or the disclosure in response to such request of, any return or return information with respect to any individual who, at the time of such request, was an officer or employee of the executive branch of the Federal Government. Such report or summary, or any part thereof, may be disclosed by such joint

committee to such persons and for such purposes as the joint committee may, by record vote of a majority of the members of the joint committee, determine.

(C) Public report on disclosures

The Secretary shall, within 90 days after the close of each calendar year, furnish to the Joint Committee on Taxation for disclosure to the public a report with respect to the records or accountings described in subparagraph (A) which —

(i) provides with respect to each Federal agency, each agency, body, or commission described in subsection (d), (i)(3)(B)(i) or (7)(A)(ii), or (l)(6), and the Government Accountability Office the number of —

(I) requests for disclosure of returns and return information,

(II) instances in which returns and return information were disclosed pursuant to such requests or otherwise,

(III) taxpayers whose returns, or return information with respect to whom, were disclosed pursuant to such requests, and

(ii) describes the general purposes for which such requests were made.

(4) Safeguards

Any Federal agency described in subsection (h)(2), (h)(5), (i)(1), (2), (3), (5), or (7), (j)(1), (2), or (5), (k)(8), (10), (11), or (15), (l)(1), (2), (3), (5), (10), (11), (13)(A), (13)(B), (13)(C), (13)(D)(i), (14), (17), or (22), (o)(1)(A), or (o)(3), the Government Accountability Office, the Congressional Budget Office, or any agency, body, or commission described in subsection (d), (i)(1)(C), (3)(B)(i), or (7)(A)(ii), or (k)(10), (l)(6), (7), (8), (9), (12), (15), or (16), any appropriate State officer (as defined in section 6104(c)), or any other person described in subsection or (15), subsection (l)(10), (13)(A), (13)(B), (13)(C), (13)(D)(i), (16), (18), (19), or (20), or any entity

described in subsection (l)(21), shall, as a condition for receiving returns or return information —

(A) establish and maintain, to the satisfaction of the Secretary, a permanent system of standardized records with respect to any request, the reason for such request, and the date of such request made by or of it and any disclosure of return or return information made by or to it;

(B) establish and maintain, to the satisfaction of the Secretary, a secure area or place in which such returns or return information shall be stored;

(C) restrict, to the satisfaction of the Secretary, access to the returns or return information only to persons whose duties or responsibilities require access and to whom disclosure may be made under the provisions of this title;

(D) provide such other safeguards which the Secretary determines (and which he prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the returns or return information;

(E) furnish a report to the Secretary, at such time and containing such information as the Secretary may prescribe, which describes the procedures established and utilized by such agency, body, or commission, the Government Accountability Office, or the Congressional Budget Office for ensuring the confidentiality of returns and return information required by this paragraph; and

(F) upon completion of use of such returns or return information —

(i) in the case of an agency, body, or commission described in subsection (d), (i)(3)(B)(i), (k)(10), or (l)(6), (7), (8), (9), or (16), any appropriate State officer (as defined in section 6104(c)), or any other person described in subsection (k)(10) or (15) or subsection (l)(10), (13)(A), (13)(B), (13)(C), (13)(D)(i), (16), (18), (19), or (20) return to the Secretary such returns or return

information (along with any copies made therefrom) or make such returns or return information undisclosable in any manner and furnish a written report to the Secretary describing such manner,

(ii) in the case of an agency described in subsection (h)(2), (h)(5), (i)(1), (2), (3), (5) or (7), (j)(1), (2), or (5), (k)(8), (10), (11), or (15), (l)(1), (2), (3), (5), (10), (11), (12), (13)(A), (13)(B), (13)(C), (13)(D)(i), (14), (15), (17), or (22),,2 (o)(1)(A), or (o)(3) or any entity described in subsection (l)(21), the Government Accountability Office, or the Congressional Budget Office, either —

(I) return to the Secretary such returns or return information (along with any copies made therefrom),

(II) otherwise make such returns or return information undisclosable, or

(III) to the extent not so returned or made undisclosable, ensure that the conditions of subparagraphs (A), (B), (C), (D), and (E) of this paragraph continue to be met with respect to such returns or return information, and

(iii) in the case of the Department of Health and Human Services for purposes of subsection (m)(6), destroy all such return information upon completion of its use in providing the notification for which the information was obtained, so as to make such information undisclosable;

except that the conditions of subparagraphs (A), (B), (C), (D), and (E) shall cease to apply with respect to any return or return information if, and to the extent that, such return or return information is disclosed in the course of any judicial or administrative proceeding and made a part of the public record thereof. If the Secretary

determines that any such agency, body, or commission, including an agency, an appropriate State officer (as defined in section 6104(c)), or any other person described in subsection (k)(10) or (15) or subsection (l)(10), (13)(A), (13)(B), (13)(C), (13)(D)(i), (16), (18), (19), or (20) or any entity described in subsection (l)(21), or the Government Accountability Office or the Congressional Budget Office, has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency, body, or commission, including an agency, an appropriate State officer (as defined in section 6104(c)), or any other person described in subsection (k)(10) or (15) or subsection (l)(10), (13)(A), (13)(B), (13)(C), (13)(D)(i), (16), (18), (19), or (20) or any entity described in subsection (l)(21), or the Government Accountability Office or the Congressional Budget Office, until he determines that such requirements have been or will be met. In the case of any agency which receives any mailing address under paragraph (2), (4), (6), or (7) of subsection (m) and which discloses any such mailing address to any agent or which receives any information under paragraph (6)(A), (10), (12)(B), or (16) of subsection (l) and which discloses any such information to any agent, or any person including an agent described in subsection (l)(10), (13)(A), (13)(B), (13)(C), (13)(D)(i), or (16), this paragraph shall apply to such agency and each such agent or other person (except that, in the case of an agent, or any person including an agent described in subsection (l)(10), (13)(A), (13)(B), (13)(C), (13)(D)(i), or (16), any report to the Secretary or other action with respect to the Secretary shall be made or taken through such agency). For purposes of applying this paragraph in any case to which subsection (m)(6) applies, the term "return information" includes related blood donor records (as defined in section 1141(h)(2) of the Social Security Act).

(5) Report on procedures and safeguards

After the close of each calendar year, the Secretary shall furnish to each committee described in subsection (f)(1) a report which describes the procedures and safeguards established and utilized by such agencies, bodies, or commissions, the Government Accountability Office, and the Congressional Budget Office for ensuring the confidentiality of returns and return information as required by this subsection. Such report shall also describe instances of deficiencies in, and failure to establish or utilize, such procedures.

(6) Audit of procedures and safeguards

(A) Audit by Comptroller General

The Comptroller General may audit the procedures and safeguards established by such agencies, bodies, or commissions and the Congressional Budget Office pursuant to this subsection to determine whether such safeguards and procedures meet the requirements of this subsection and ensure the confidentiality of returns and return information. The Comptroller General shall notify the Secretary before any such audit is conducted.

(B) Records of inspection and reports by the Comptroller General

The Comptroller General shall —

(i) maintain a permanent system of standardized records and accountings of returns and return information inspected by officers and employees of the Government Accountability Office under subsection (i)(8)(A)(ii) and shall, within 90 days after the close of each calendar year, furnish to the Secretary a report with respect to, or summary of, such records or accountings in such form and containing such information as the Secretary may prescribe, and

(ii) furnish an annual report to each committee described in subsection (f) and to the Secretary setting forth his findings with

respect to any audit conducted pursuant to subparagraph (A).

The Secretary may disclose to the Joint Committee any report furnished to him under clause (i).

(7) Administrative review

The Secretary shall by regulations prescribe procedures which provide for administrative review of any determination under paragraph (4) that any agency, body, or commission described in subsection (d) has failed to meet the requirements of such paragraph.

(8) State law requirements

(A) Safeguards

Notwithstanding any other provision of this section, no return or return information shall be disclosed after December 31, 1978, to any officer or employee of any State which requires a taxpayer to attach to, or include in, any State tax return a copy of any portion of his Federal return, or information reflected on such Federal return, unless such State adopts provisions of law which protect the confidentiality of the copy of the Federal return (or portion thereof) attached to, or the Federal return information reflected on, such State tax return.

(B) Disclosure of returns or return information in State returns

Nothing in subparagraph (A) shall be construed to prohibit the disclosure by an officer or employee of any State of any copy of any portion of a Federal return or any information on a Federal return which is required to be attached or included in a State return to another officer or employee of such State (or political subdivision of such State) if such disclosure is specifically authorized by State law.

(q) Regulations

The Secretary is authorized to prescribe such other regulations as are necessary to carry out the provisions of this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 753; Pub. L. 88–563, § 3(c), Sept. 2, 1964, 78 Stat. 844; Pub. L. 89–44, title VI, § 601(a), June 21, 1965, 79 Stat. 153; Pub. L. 89–713, § 4(a), Nov. 2, 1966, 80 Stat. 1109; Pub. L. 93–406, title II, § 1022(h), Sept. 2, 1974, 88 Stat. 941; Pub. L. 94–202, § 8(g), Jan. 2, 1976, 89 Stat. 1139; Pub. L. 94–455, title XII, § 1202(a)(1), Oct. 4, 1976, 90 Stat. 1667; Pub. L. 95–210, § 5, Dec. 13, 1977, 91 Stat. 1491; Pub. L. 95–600, title V, § 503, title VII, § 701(bb)(1)(A), (B), (2)–(5), Nov. 6, 1978, 92 Stat. 2879, 2921–2923; Pub. L. 96–249, title I, § 127(a)(1), (2)(A)–(C), May 26, 1980, 94 Stat. 365, 366, as amended Pub. L. 96–611, § 11(a)(1), Dec. 28, 1980, 94 Stat. 3573, and Pub. L. 98–369, div. A, title IV, § 453(b)(5), July 18, 1984, 98 Stat. 820; Pub. L. 96–265, title IV, § 408(a)–(2)(C), June 9, 1980, 94 Stat. 468, as amended Pub. L. 96–611, § 11(a)(2)(A)–(B)(iii), Dec. 28, 1980, 94 Stat. 3573; Pub. L. 96–499, title III, § 302(a), Dec. 5, 1980, 94 Stat. 2604; Pub. L. 96–589, § 3(c), Dec. 24, 1980, 94 Stat. 3401; Pub. L. 96–598, § 3(a), Dec. 24, 1980, 94 Stat. 3487; Pub. L. 97–34, title VII, § 701(a), Aug. 13, 1981, 95 Stat. 340; Pub. L. 97–248, title III, §§ 356(a), (b)(1), 358(a), (b), Sept. 3, 1982, 96 Stat. 641, 645, 646, 648; Pub. L. 97–258, § 3(f)(4)–(6), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 97–365, §§ 7(a), (b), 8(a)–(c)(1), Oct. 25, 1982, 96 Stat. 1752–1754; Pub. L. 97–452, § 2(c)(4), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–21, title I, § 121(c)(3)(A), (B), Apr. 20, 1983, 97 Stat. 83; Pub. L. 98–369, div. A, title IV, §§ 449(a), 453(a)–(b)(3), (6), div. B, title VI, §§ 2651(k), 2653(b)(3), 2663(j)(5)(E), July 18, 1984, 98 Stat. 818, 820, 1150, 1155, 1171; Pub. L. 98–378, §§ 19(b), 21(f)(1)–(4), Aug. 16, 1984, 98 Stat. 1322, 1325, 1326; Pub. L. 99–92, § 8(h), Aug. 16, 1985, 99 Stat. 399; Pub. L. 99–335, title III, § 310(a), (b), June 6, 1986, 100 Stat. 607, 608; Pub. L. 99–386, title II, § 206(b), Aug. 22, 1986, 100 Stat. 823; Pub. L. 99–514, title XIV, § 1411(b), title XV, § 1568(a), title XVIII, § 1899A(53), Oct. 22, 1986, 100 Stat. 2715, 2764, 2961; Pub. L. 100–485, title VII, § 701(b)(1), (2)(A), (B), Oct. 13, 1988, 102 Stat. 2425, 2426; Pub. L. 100–647, title I, §§ 1012(bb)(3)(A), (B), 1014(e)(4), title VI, § 6251, title VIII, § 8008(c)(1), (2)(A), Nov. 10, 1988, 102 Stat. 3534, 3561, 3752, 3786, 3787; Pub. L. 100–690, title VII, §§ 7601(b)(1), (2), 7602(c), (d)(2), Nov. 18, 1988, 102 Stat. 4504, 4508; Pub. L. 101–239, title VI, § 6202(a)(1)(A), (B), title VII, § 7841(d)(1), Dec. 19, 1989, 103 Stat. 2226, 2227, 2428; Pub. L. 101–508, title IV, § 4203(a)(2), title V, § 5111(b)(1), (2), title VIII, § 8051(a), title XI, §§ 11101(d)(6), 11212(b)(3), 11313(a), Nov. 5, 1990, 104 Stat. 1388–107, 1388–272, 1388–273, 1388–349, 1388–405, 1388–431, 1388–455; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102–568, title VI, § 602(b), Oct. 29, 1992, 106 Stat. 4342; Pub. L. 103–66, title XIII, §§ 13401(a), 13402(a), (b), 13403(a), (b), 13444(a), 13561(a)(2), (e)(2)(B), Aug. 10, 1993, 107 Stat. 563–565, 570, 593, 595; Pub. L. 103–182, title V, § 522(a), (b), Dec. 8, 1993, 107 Stat. 2161; Pub. L. 103–296, title I, § 108(h)(6), title III, § 311(b), Aug. 15, 1994, 108 Stat. 1487, 1525; Pub. L. 104–134, title III, § 31001(g)(2), (i)(2), Apr. 26, 1996, 110 Stat. 1321–363, 1321–364; Pub. L. 104–168, title IV, § 403(a), title IX, § 902(a), title XII, §§ 1206(a)–(b)(4), 1207, July 30, 1996, 110 Stat. 1459, 1466, 1472, 1473; Pub. L. 104–188, title I, § 1704(t)(41), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 104–193, title I, § 110(l)(2), formerly (l)(3),

(l)(4), (5), title III, § 316(g)(4), Aug. 22, 1996, 110 Stat. 2173, 2219, renumbered Pub. L. 105–33, title V, § 5514(a)(2), Aug. 5, 1997, 111 Stat. 620; Pub. L. 105–33, title IV, § 4631(c)(2), title V, § 5514(a)(1), title XI, § 11024(b)(1)–(7), Aug. 5, 1997, 111 Stat. 486, 620, 721, 722; Pub. L. 105–34, title IX, § 976(c), title X, §§ 1023(a), 1026(a), (b)(1), title XII, §§ 1201(b)(2), 1205(c)(1), (3), 1283(a), (b), Aug. 5, 1997, 111 Stat. 899, 923–925, 994, 998, 1038; Pub. L. 105–65, title V, § 542(b), Oct. 27, 1997, 111 Stat. 1412; Pub. L. 105–206, title I, § 1101(b), title III, §§ 3702(a), (b), 3708(a), 3711(b), title VI, §§ 6007(f)(4), 6009(d), 6012(b)(2), (4), 6019(c), 6023(22), July 22, 1998, 112 Stat. 696, 776–778, 781, 810, 812, 819, 823, 826; Pub. L. 105–277, div. J, title I, § 1006, title IV, §§ 4002(a), (h), 4006(a)(1), (2), Oct. 21, 1998, 112 Stat. 2681–900, 2681–906, 2681–907, 2681–912; Pub. L. 106–170, title V, § 521(a)(1), Dec. 17, 1999, 113 Stat. 1925; Pub. L. 106–554, § 1(a)(7) [title III, §§ 304(a), 310(a), 313(c), 319(8)(B),(17)], Dec. 21, 2000, 114 Stat. 2763, 2763A–632, 2763A–638, 2763A–643, 2763A–646, 2763A–647; Pub. L. 107–134, title II, § 201(a)–(c)(8), Jan. 23, 2002, 115 Stat. 2440–2444; Pub. L. 107–147, title IV, § 416(c)(1), Mar. 9, 2002, 116 Stat. 55; Pub. L. 107–210, div. A, title II, § 202(b)(1), (2), Aug. 6, 2002, 116 Stat. 961; Pub. L. 107–296, title XI, § 1112(j), Nov. 25, 2002, 116 Stat. 2277; Pub. L. 107–330, title III, § 306, Dec. 6, 2002, 116 Stat. 2827; Pub. L. 108–89, title II, § 201(a), Oct. 1, 2003, 117 Stat. 1132; Pub. L. 108–173, title I, §§ 101(e)(6), 105(e)(1)–(3), title VIII, § 811(c)(1)–(2)(B), title IX, § 900(e)(3), Dec. 8, 2003, 117 Stat. 2151, 2167, 2368, 2369, 2372; Pub. L. 108–311, title III, §§ 311(a), 317, 320(a), (b), title IV, § 408(a)(24), Oct. 4, 2004, 118 Stat. 1180–1182, 1192; Pub. L. 108–357, title IV, § 413(c)(27), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 108–429, title II, § 2004(a)(22), Dec. 3, 2004, 118 Stat. 2592; Pub. L. 109–135, title III, § 305(a)(1), (b)(1), (c)(1), title IV, §§ 406(a), 412(rr)(3), (4), (yy), Dec. 21, 2005, 119 Stat. 2609, 2634, 2640; Pub. L. 109–280, title XII, § 1224(b)(1)–(3), Aug. 17, 2006, 120 Stat. 1093; Pub. L. 109–432, div. A, title I, § 122(a)(1), (b)(1), (c)(1), title IV, § 421(a), (b), Dec. 20, 2006, 120 Stat. 2944, 2971, 2972; Pub. L. 110–28, title VIII, § 8246(a)(2)(B), May 25, 2007, 121 Stat. 201; Pub. L. 110–142, § 8(c)(1), Dec. 20, 2007, 121 Stat. 1807; Pub. L. 110–172, § 11(a)(34)(A), Dec. 29, 2007, 121 Stat. 2487; Pub. L. 110–234, title IV, § 4002(b)(1)(B), (H), (2)(O), May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110–245, title I, § 108(a), (b), June 17, 2008, 122 Stat. 1631; Pub. L. 110–246, § 4(a), title IV, § 4002(b)(1)(B), (H), (2)(O), June 18, 2008, 122 Stat. 1664, 1857, 1858; Pub. L. 110–328, § 3(b), Sept. 30, 2008, 122 Stat. 3572; Pub. L. 110–343, div. C, title IV, § 402(a), (b), Oct. 3, 2008, 122 Stat. 3875, 3876; Pub. L. 110–428, § 2(a), (b), Oct. 15, 2008, 122 Stat. 4839; Pub. L. 111–3, title VII, § 702(f)(1), (2), Feb. 4, 2009, 123 Stat. 110; Pub. L. 111–148, title I, § 1414(a)(1), (b), (c), title III, § 3308(b)(2), Mar. 23, 2010, 124 Stat. 236, 237, 474; Pub. L. 111–152, title I, § 1004(a)(1)(B), Mar. 30, 2010, 124 Stat. 1034; Pub. L. 111–192, title I, § 103(a), June 25, 2010, 124 Stat. 1282; Pub. L. 111–198, § 4(a)–(d), July 2, 2010, 124 Stat. 1356, 1357; Pub. L. 112–240, title II, § 209(a)–(b)(2), Jan. 2, 2013, 126 Stat. 2324, 2325; Pub. L. 114–94, div. C, title XXXII, §§ 32101(c), 32102(d), Dec. 4, 2015, 129 Stat. 1731, 1734; Pub. L. 114–113, div. Q, title IV, § 403(a), Dec. 18, 2015, 129 Stat. 3117; Pub. L. 114–184, § 2(a)–(b)(2)(B), June 30, 2016, 130 Stat. 536, 537; Pub. L. 115–141, div. U, title IV, § 401(a)(267)–(275), Mar. 23, 2018, 132 Stat. 1197; Pub. L. 116–25, title I, § 1405(a)(1), (2)(A), (C), title II, §§ 2003(c)(1), (2)(A), 2004(a), (b), 2202(a), (b), July 1, 2019, 133 Stat. 997, 998, 1001, 1003, 1004, 1012; Pub. L. 116–91, § 3(a)–(c), Dec. 19, 2019, 133 Stat. 1189, 1192; Pub. L. 116–94, div. O, title IV, § 404, Dec. 20, 2019, 133 Stat. 3180; Pub. L. 116–136, div. A, title III, § 3516(a), Mar. 27, 2020, 134 Stat. 407.)

Footnotes

[1] See References in Text note below.

[2] So in original. Probably should be followed by a comma.

[3] So in original.

Editorial Notes
References in Text

The Federal Rules of Criminal Procedure, referred to in subsecs. (h)(4)(D) and (i)(4)(A)(ii), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

Section 403 of the Missing Children's Assistance Act, referred to in subsec. (i)(1)(C)(iii), is section 403 of title IV of Pub. L. 93–415, which was formerly classified to section 5772 of Title 42, The Public Health and Welfare, prior to editorial reclassification as section 11292 of Title 34, Crime Control and Law Enforcement.

Section 111 of the Sex Offender Registration and Notification Act, referred to in subsec. (i)(1)(C)(iv), is section 111 of title I of Pub. L. 109–248, which was classified to section 16911 of Title 42, The Public Health and Welfare, prior to editorial reclassification as section 20911 of Title 34, Crime Control and Law Enforcement.

The District of Columbia Retirement Protection Act of 1997, referred to in subsecs. (i)(7)(B)(i) and (l)(16), is subtitle A (§§11001–11087) of title XI of Pub. L. 105–33, Aug. 5, 1997, 111 Stat. 715 , which amended this section and section 7213 of this title and enacted provisions set out as a note below. For complete classification of this Act to the Code, see Tables.

The Census of Agriculture Act of 1997, referred to in subsec. (j)(5), is Pub. L. 105–113, Nov. 21, 1997, 111 Stat. 2274 , which enacted section 2204g of Title 7, Agriculture, amended sections 1991 and 2276 of Title 7 and section 9 of Title 13, Census, repealed section 142 of Title 13, and enacted provisions set out as a note under section 1991 of Title 7. For complete classification of this Act to the Code, see Short Title of 1997 Amendment note set out under section 2201 of Title 7 and Tables.

Section 32101 of the FAST Act, referred to in subsec. (k)(11)(B), is section 32101 of Pub. L. 114–94, which enacted section 7345 of this title and section 2714a of Title 22, Foreign Relations and Intercourse, and amended this section and sections 6320, 6331, and 7508 of this title.

Section 2003(a) of the Taxpayer First Act, referred to in subsec. (k)(14)(B)(i)(I), is section 2003(a) of Pub. L. 116–25, which is set out in a note under section 7529 of this title.

The Social Security Act, referred to in subsecs. (l)(1)(A), (B), (5), (6)(A)(i), (7), (8)(B), (12)(C)(ii)(I), (E)(i), (19)(A), (C), (20)(A), (B)(i), (21)(A), (22)(A), (B), (m)(6), (7), and (p)(4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620 , which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Parts A and D of title IV and parts A and B of title XVIII of the Act are classified generally to parts A (§601 et seq.) and D (§651 et seq.) of subchapter IV and parts A (§1395c et seq.) and B (§1395j et seq.) of subchapter XVIII, respectively, of chapter

7 of Title 42. Titles I, X, XIV, XVI, XVIII, XIX, and XXI of the Act are classified generally to subchapters I (§301 et seq.), X (§1201 et seq.), XIV (§1351 et seq.), XVI (§1381 et seq.), XVIII (§1395 et seq.), XIX (§1396 et seq.), and XXI (§1397aa et seq.), respectively, of chapter 7 of Title 42. Sections 232, 454, 1106, 1131, 1141, 1143, 1616, 1818, 1839, 1860D–13, 1860D–14, 1860D–31, 1862, and 1866 of the Act are classified to sections 432, 654, 1306, 1320b–1, 1320b–11, 1320b–13, 1382e, 1395i–2, 1395r, 1395w–113, 1395w–114, 1395w–141, 1395y, and 1395cc, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act, referred to in subsec. (l)(1)(C), probably means the Railroad Retirement Act of 1974, which is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305 , and is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (l)(2), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829 . Titles I and IV of the Employee Retirement Income Security Act of 1974 are classified generally to subchapters I (§1001 et seq.) and IV (§1301 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Section 212(a) of Pub. L. 93–66, referred to in subsec. (l)(7)(D)(iii), (vii), is set out as a note under section 1382 of Title 42, The Public Health and Welfare.

The Food and Nutrition Act of 2008, referred to in subsec. (l)(7)(D)(vi), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703 , which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Higher Education Act of 1965, referred to in subsecs. (l)(13)(A)–(D) and (m)(4)(A)(i), (ii)(I), (B)(i), (ii), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219 . Subpart 1 of part A of title IV of the Act is classified generally to subpart 1 (§1070a et seq.) of part A of subchapter IV of chapter 28 of Title 20, Education. Parts B, C, D, and E of title IV of the Act are classified to parts B (§1071 et seq.), C (§1087–51 et seq.), D (§1087a et seq.), and E (§1087aa et seq.), respectively, of subchapter IV of chapter 28 of Title 20. Sections 437, 480, 483, and 494 of the Act are classified to sections 1087, 1087vv, 1090, and 1098h, respectively, of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The date of enactment of this paragraph, referred to in subsec. (l)(13)(A)–(C), and the date of the enactment of this clause, referred to in subsec. (l)(13)(D)(iii)(III), is the date of the enactment of Pub. L. 116–91, which was approved Dec. 19, 2019.

The Inspector General Act of 1978, referred to in subsec. (l)(13)(D)(i)(II), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101 , which was set out in the Appendix to Title 5, Government Organization and Employees, and was substantially repealed and restated in chapter 4 (§401 et

seq.) of Title 5 by Pub. L. 117–286, §§3(b), 7, Dec. 27, 2022, 136 Stat. 4206 , 4361. For disposition of sections of the Act into chapter 4 of Title 5, see Disposition Table preceding section 101 of Title 5.

The date of enactment of the COVID-related Tax Relief Act of 2020, referred to in subsec. (l)(13)(D)(vi), means the date of enactment of subtitle B (§271 et seq.) of title II of div. N of Pub. L. 116–260, which was approved Dec. 27, 2020.

The Patient Protection and Affordable Care Act, referred to in subsec. (l)(21)(A), (B), is Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 119 . Sections 1331 and 1402 of the Act are classified to sections 18051 and 18071, respectively, of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 18001 of Title 42 and Tables.

Section 3(a)(1) of the Migration and Refugee Assistance Act of 1962, referred to in subsec. (m)(4)(A)(ii)(II), is classified to section 2602(a)(1) of Title 22, Foreign Relations and Intercourse.

The Public Health Service Act, referred to in subsec. (m)(5), is act July 1, 1944, ch. 373, 58 Stat. 682 . Part C and subparts I and II of part C of title VII of the Act were classified generally to part C (§294 et seq.) and subparts I (§294 et seq.) and II (§294m et seq.), respectively, of part C of subchapter V of chapter 6A of Title 42, The Public Health and Welfare, and were omitted in the general revision of subchapter V of chapter 6A by Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 1994 . Pub. L. 102–408 enacted a new part C, relating to training in primary health care, which is classified to part C (§293j et seq.) of subchapter V of chapter 6A of Title 42. See subparts I (§292 et seq.) and II (§292q et seq.), respectively, of part A of revised subchapter V of chapter 6A of Title 42. Subpart II of part B of title VIII of such Act was redesignated part E of title VIII of such Act by Pub. L. 105–392, title I, §123(2), Nov. 13, 1998, 112 Stat. 3562 , and is classified generally to part E (§297a et seq.) of subchapter VI of chapter 6A of Title 42. Section 737 of the Act was classified to section 294j of Title 42 and was omitted in the general revision of subchapter V by Pub. L. 102–408. Pub. L. 102–408 enacted a new section 737 of act July 1, 1944, relating to scholarships, which is classified to section 293a of Title 42. See section 292o(2) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The American Jobs Creation Act of 2004, referred to in subsec. (o)(1)(B), is Pub. L. 108–357, Oct. 22, 2004, 118 Stat. 1418 . Section 625 of the Act is classified to section 518d of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title of 2004 Amendments note set out under section 1 of this title and Tables.

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Section 1224(b)(1) to (3) of Pub. L. 109–280, which directed the amendment of section 6103 without specifying the act to be amended, was executed to this section, which is section 6103

of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

Amendments

2020 - Subsec. (a)(3). Pub. L. 116–260, div. N, §284(a)(3)(A), and div. FF, §103(a)(3)(A), amended par. (3) identically, substituting "(13) (other than subparagraphs (D)(v) and (D)(vi) thereof)," for "(13)(A), (13)(B), (13)(C), (13)(D)(i),".

Pub. L. 116–260, div. N, §283(b)(2)(A), and div. FF, §102(b)(2)(A), amended par. (3) identically, substituting "(14), or (15)" for "or (14)".

Pub. L. 116–136, §3516(a)(1), substituted "(13)(A), (13)(B), (13)(C), (13)(D)(i), (16)" for "(13), (16)".

Subsec. (k)(15). Pub. L. 116–260, div. N, §283(b)(1), and div. FF, §102(b)(1), amended subsec. (k) identically, adding par. (15).

Subsec. (l)(13)(C)(ii). Pub. L. 116–136, §3516(a)(5), substituted "section 263A(e)(4)" for "section 236A(e)(4)".

Subsec. (l)(13)(D)(iii). Pub. L. 116–260, div. N, §284(a)(1)(A), and div. FF, §103(a)(1)(A), amended cl. (iii) identically, inserting at end "Under such terms and conditions as may be prescribed by the Secretary, after consultation with the Department of Education, an institution of higher education described in subclause (I) or a State higher education agency described in subclause (II) may designate a contractor of such institution or state agency to receive return information on behalf of such institution or state agency to administer aspects of the institution's or state agency's activities for the application, award, and administration of such financial aid."

Subsec. (l)(13)(D)(iv) to (vi). Pub. L. 116–260, div. N, §284(a)(1)(B), and div. FF, §103(a)(1)(B), made substantially identical amendments, adding cls. (iv) to (vi). Text is based on amendment by div. N, §284(a)(1)(B).

Subsec. (l)(13)(F). Pub. L. 116–260, div. N, §284(a)(2), and div. FF, §103(a)(2), amended subpar. (F) identically, inserting ", and any redisclosure authorized under clause (iii), (iv) (v), or (vi) of subparagraph (D)," after "or (C)".

Subsec. (p)(3)(A). Pub. L. 116–260, div. N, §284(a)(3)(B), and div. FF, §103(a)(3)(B), amended subpar. (A) identically, substituting "(13)(D)(iv), (13)(D)(v), (13)(D)(vi)" for "(13)(A), (13)(B), (13)(C), (13)(D)(i),".

Pub. L. 116–136, §3516(a)(2), substituted "(12), (13)(A), (13)(B), (13)(C), (13)(D)(i)" for "(12),".

Subsec. (p)(4). Pub. L. 116–260, div. N, §283(b)(2)(B), and div. FF, §102(b)(2)(B), amended par. (4) identically, substituting "(k)(8), (10), (11), or (15)" for "(k)(8), (10), or (11)" in two places and "any other person described in subsection (k)(10) or (15)" for "any other person described in subsection (k)(10)" wherever appearing.

Pub. L. 116–136, §3516(a)(4), substituted "(13)(A), (13)(B), (13)(C), (13)(D)(i)" for "(13)" wherever appearing.

Pub. L. 116–136, §3516(a)(3), substituted "(13), or (16)" for "(13) or (16)" in two places in concluding provisions.

2019 - Subsec. (a)(3). Pub. L. 116–91, §3(b), inserted ", (13)" after "(12)".

Pub. L. 116–25, §2202(b), inserted "subsection (c)," after "return information under".

Pub. L. 116–25, §2003(c)(2)(A), substituted ", (13), or (14)" for "or (13)".

Pub. L. 116–25, §1405(a)(2)(A), substituted "paragraph (10) or (13) of subsection (k)" for "subsection (k)(10)".

Subsec. (c). Pub. L. 116–25, §2202(a), inserted at end "Persons designated by the taxpayer under this subsection to receive return information shall not use the information for any purpose other than the express purpose for which consent was granted and shall not disclose return information to any other person without the express permission of, or request by, the taxpayer."

Subsec. (k)(6). Pub. L. 116–25, §1405(a)(2)(C), inserted at end "This paragraph shall not apply to any disclosure to an individual providing information relating to any purpose described in paragraph (1) or (2) of section 7623(a) which is made under paragraph (13)(A)."

Subsec. (k)(13). Pub. L. 116–25, §1405(a)(1), added par. (13).

Subsec. (k)(14). Pub. L. 116–25, §2003(c)(1), added par. (14).

Subsec. (l)(13). Pub. L. 116–91, §3(a), amended par. (13) generally. Prior to amendment, par. (13) related to disclosure of return information to carry out income contingent repayment of student loans.

Subsec. (o)(3). Pub. L. 116–94, §404(a), added par. (3).

Subsec. (p)(3)(A). Pub. L. 116–91, §3(c)(1), struck out "(13)" after "(12),".

Subsec. (p)(4). Pub. L. 116–94, §404(b), substituted ", (o)(1)(A), or (o)(3)" for "or (o)(1)(A)" in introductory provisions of par. (4) and subpar. (F)(ii).

Pub. L. 116–91, §3(c)(2), inserted ", (13)" after "(l)(10)" wherever appearing.

Subsec. (p)(8)(B). Pub. L. 116–25, §2004(b), inserted "or paragraph (9)" after "subparagraph (A)".

Subsec. (p)(9). Pub. L. 116–25, §2004(a), added par. (9).

2018 - Subsec. (l)(7). Pub. L. 115–141, §401(a)(267), struck out "of 1977" after "of 2008" in heading.

Subsec. (l)(10)(A). Pub. L. 115–141, §401(a)(268), substituted "notice submitted under subsection (f)(5)(C)" for "request made under subsection (f)(5)" in introductory provisions.

Subsec. (l)(10)(B). Pub. L. 115–141, §401(a)(269), struck out cl. (i) designation after "(B)" in heading and inserted it before "Any" in text.

Subsec. (l)(16)(A). Pub. L. 115–141, §401(a)(270), substituted "section 6103(b)(6)" for "subsection 6103(b)(6)".

Subsec. (p)(3)(A). Pub. L. 115–141, §401(a)(271), substituted "subsection (c)" for "subsections (c)".

Subsec. (p)(3)(C)(ii). Pub. L. 115–141, §401(a)(272), substituted "made." for "made,".

Subsec. (p)(4). Pub. L. 115–141, §401(a)(275), substituted "subsection (l)(21)," for "subsection (l)(21),," in two places in concluding provisions.

Pub. L. 115–141, §401(a)(273), substituted "(7)(A)(ii)" for "7(A)(ii)" in introductory provisions.

Subsec. (p)(4)(F)(ii). Pub. L. 115–141, §401(a)(274), substituted "subsection (h)(2)" for "subsections (h)(2)" and "subsection (l)(21)," for "subsection (l)(21),,," in introductory provisions.

2016 - Subsec. (a)(2). Pub. L. 114–184, §2(b)(2)(A), substituted "subsection (i)(1)(C) or (7)(A)" for "subsection (i)(7)(A)".

Subsec. (i)(1)(A)(i). Pub. L. 114–184, §2(a)(1), inserted "or pertaining to the case of a missing or exploited child," after "may be a party,".

Subsec. (i)(1)(A)(iii). Pub. L. 114–184, §2(a)(2), inserted "or to such a case of a missing or exploited child," after "may be a party,".

Subsec. (i)(1)(B)(iii). Pub. L. 114–184, §2(a)(3), inserted "(or any criminal investigation or proceeding, in the case of a matter relating to a missing or exploited child)" after "concerning such act".

Subsec. (i)(1)(C). Pub. L. 114–184, §2(b)(1), added subpar. (C).

Subsec. (p)(4). Pub. L. 114–184, §2(b)(2)(B), substituted "(i)(1)(C), (3)(B)(i)," for "(i)(3)(B)(i)" in introductory provisions.

2015 - Subsec. (e)(11). Pub. L. 114–113 added par. (11).

Subsec. (k)(11). Pub. L. 114–94, §32101(c)(1), added par. (11).

Subsec. (k)(12). Pub. L. 114–94, §32102(d), added par. (12).

Subsec. (p)(4). Pub. L. 114–94, §32101(c)(2), substituted ", (10), or (11)" for "or (10)" in introductory provisions and in subpar. (F)(ii).

2013 - Subsec. (a)(3). Pub. L. 112–240, §209(b)(1), inserted "subsection (k)(10)," after "subsection (e)(1)(D)(iii),".

Subsec. (k)(10). Pub. L. 112–240, §209(a), amended par. (10) generally. Prior to amendment, par. (10) related to disclosure of certain return information to certain prison officials.

Subsec. (p)(4). Pub. L. 112–240, §209(b)(2)(A), (C), inserted "subsection (k)(10)," before "subsection (l)(10)," in introductory provisions and "subsection (k)(10) or" before "subsection (l)(10)," in two places in concluding provisions.

Subsec. (p)(4)(F)(i). Pub. L. 112–240, §209(b)(2)(B), inserted "subsection (k)(10) or" before "subsection (l)(10),".

2010 - Subsec. (a)(3). Pub. L. 111–148, §1414(b), substituted "(20), or (21)" for "or (20)".

Subsec. (k)(10). Pub. L. 111–198, §4(d), substituted "to certain prison officials" for "of prisoners to Federal Bureau of Prisons" in heading.

Subsec. (k)(10)(A). Pub. L. 111–198, §4(a), inserted "and the head of any State agency charged with the responsibility for administration of prisons" after "the head of the Federal Bureau of Prisons" and substituted "Federal or State prison" for "Federal prison".

Subsec. (k)(10)(B). Pub. L. 111–198, §4(b), inserted "and the head of any State agency charged with the responsibility for administration of prisons" after "the head of the Federal Bureau of Prisons" and "or agency" after "such Bureau".

Subsec. (l)(20). Pub. L. 111–148, §3308(b)(2)(A), inserted "and part D base beneficiary premium increase" after "part B premium subsidy adjustment" in heading.

Subsec. (l)(20)(A). Pub. L. 111–148, §3308(b)(2)(B)(i), inserted "or increase under section 1860D–13(a)(7)" after "section 1839(i)" in introductory provisions.

Subsec. (l)(20)(A)(vii). Pub. L. 111–148, §3308(b)(2)(B)(ii), inserted "or increase under section 1860D–13(a)(7) of such Act" after "subsection (i) of such section".

Subsec. (l)(20)(B). Pub. L. 111–148, §3308(b)(2)(C), designated existing provisions as cl. (i) and inserted heading, inserted "or increase under such section 1860D–13(a)(7) or for the purpose of resolving taxpayer appeals with respect to any such premium adjustment or increase" before period at end, and added cl. (ii).

Subsec. (l)(21). Pub. L. 111–148, §1414(a)(1), added par. (21).

Subsec. (l)(21)(A)(iv). Pub. L. 111–152, §1004(a)(1)(B), substituted "modified adjusted gross" for "modified gross".

Subsec. (l)(22). Pub. L. 111–192, §103(a)(1), added par. (22).

Subsec. (p)(4). Pub. L. 111–198, §4(c), inserted "(k)(10)," before "(l)(6)" in introductory provisions.

Pub. L. 111–192, §103(a)(2), substituted "(17), or (22)" for "or (17)" in introductory provisions.

Pub. L. 111–148, §1414(c)(1), (3), inserted ", or any entity described in subsection (l)(21)," after "or (20)" in introductory provisions and "or any entity described in subsection (l)(21)," after "or (20)" in two places in concluding provisions.

Subsec. (p)(4)(F)(ii). Pub. L. 111–192, §103(a)(2), substituted "(17), or (22)" for "or (17)" in introductory provisions.

Pub. L. 111–148, §1414(c)(2), inserted "or any entity described in subsection (l)(21)," after "or (o)(1)(A)" in introductory provisions.

2009 - Subsec. (o)(1). Pub. L. 111–3, §702(f)(1), designated existing provisions as subpar. (A), inserted heading, realigned margins, and added subpar. (B).

Subsec. (p)(4). Pub. L. 111–3, §702(f)(2), substituted "(o)(1)(A)" for "(o)(1)" in introductory provisions.

Subsec. (p)(4)(F)(ii). Pub. L. 111–3, §702(f)(2), substituted "(o)(1)(A)" for "(o)(1)" in introductory provisions.

2008 - Subsec. (a)(3). Pub. L. 110–328, §3(b)(1), inserted "(10)," after "(6),".

Subsec. (i)(3)(C)(iv). Pub. L. 110–343, §402(a), struck out cl. (iv). Text read as follows: "No disclosure may be made under this subparagraph after December 31, 2007."

Subsec. (i)(7)(E). Pub. L. 110–343, §402(b), struck out subpar. (E). Text read as follows: "No disclosure may be made under this paragraph after December 31, 2007."

Subsec. (k)(10). Pub. L. 110–428, §2(a), added par. (10).

Subsec. (l)(7). Pub. L. 110–246, §4002(b)(1)(H), (2)(O), substituted "Food and Nutrition Act of 2008" for "Food Stamp Act" in heading.

Pub. L. 110–245, §108(a), struck out "Clause (viii) shall not apply after September 30, 2008." at end of concluding provisions.

Subsec. (l)(7)(D)(vi). Pub. L. 110–246, §4002(b)(1)(B), (2)(O), substituted "Food and Nutrition Act of 2008" for "Food Stamp Act of 1977".

Subsec. (l)(7)(D)(viii)(III). Pub. L. 110–245, §108(b), substituted "sections 1710(a)(2)(G), 1710(a)(3), and 1710(b)" for "sections 1710(a)(1)(I), 1710(a)(2), 1710(b), and 1712(a)(2)(B)".

Subsec. (l)(10). Pub. L. 110–328, §3(b)(2)(A), substituted "(c), (d), (e), or (f)" for "(c), (d), or (e)" in heading.

Subsec. (l)(10)(A). Pub. L. 110–328, §3(b)(2)(A), (B), in introductory provisions, substituted "(c), (d), (e), or (f)" for "(c), (d), or (e)" and inserted ", to officers and employees of the Department of Labor for purposes of facilitating the exchange of data in connection with a request made under subsection (f)(5) of section 6402," after "section 6402".

Subsec. (l)(10)(B). Pub. L. 110–328, §3(b)(2)(C), inserted cl. (i) designation after "(B)" and added cl. (ii).

Pub. L. 110–328, §3(b)(2)(A), substituted "(c), (d), (e), or (f)" for "(c), (d), or (e)" in two places.

Subsec. (p)(4). Pub. L. 110–428, §2(b), substituted "(k)(8) or (10)" for "(k)(8)" in introductory provisions.

Pub. L. 110–328, §3(b)(3)(A), (C), in introductory provisions, substituted "(l)(10), (16)," for "(l)(16)," and, in concluding provisions, substituted "(l)(10), (16)," for "(l)(16)," the first two places appearing, inserted "(10)," after "paragraph (6)(A),", and substituted "(l)(10) or (16)" for "(l)(16)" the last two places appearing.

Subsec. (p)(4)(F)(i). Pub. L. 110–328, §3(b)(3)(B), substituted "(l)(10), (16)," for "(l)(16),".

Subsec. (p)(4)(F)(ii). Pub. L. 110–428, §2(b), substituted "(k)(8) or (10)" for "(k)(8)".

2007 - Subsec. (b)(5)(A)(i). Pub. L. 110–172 struck out "the Canal Zone," after "the Virgin Islands,".

Subsec. (e)(10). Pub. L. 110–142 added par. (10).

Subsec. (k)(5). Pub. L. 110–28 substituted "tax return preparer" for "income tax return preparer" in two places and "tax return preparers" for "income tax return preparers" in two places.

2006 - Subsec. (a)(2). Pub. L. 109–280, §1224(b)(1), inserted "or section 6104(c)" after "this section". See Codification note above.

Subsec. (b)(5). Pub. L. 109–432, §421(a), reenacted heading without change and amended text of par. (5) generally. Prior to amendment, text read as follows:

> "The term 'State' means-
>
> > "(A) any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and
> >
> > "(B) for purposes of subsections (a)(2), (b)(4), (d)(1), (h)(4), and (p) any municipality-
> >
> > > "(i) with a population in excess of 250,000 (as determined under the most recent decennial United States census data available),
> > >
> > > "(ii) which imposes a tax on income or wages, and

"(iii) with which the Secretary (in his sole discretion) has entered into an agreement regarding disclosure."

Subsec. (d)(5)(B). Pub. L. 109–432, §122(a)(1), substituted "2007" for "2006".

Subsec. (d)(6). Pub. L. 109–432, §421(b), added par. (6).

Subsec. (i)(3)(C)(iv), (7)(E). Pub. L. 109–432, §122(b)(1), substituted "2007" for "2006".

Subsec. (l)(13)(D). Pub. L. 109–432, §122(c)(1), substituted "2007" for "2006".

Subsec. (p)(3)(A). Pub. L. 109–280, §1224(b)(2), inserted "and section 6104(c)" after "this section" in first sentence. See Codification note above.

Subsec. (p)(4). Pub. L. 109–280, §1224(b)(3)(A), (C), inserted ", any appropriate State officer (as defined in section 6104(c))," before "or any other person" in introductory provisions and ", an appropriate State officer (as defined in section 6104(c))," after "including an agency" in two places in concluding provisions. See Codification note above.

Subsec. (p)(4)(F)(i). Pub. L. 109–280, §1224(b)(3)(B), inserted "any appropriate State officer (as defined in section 6104(c))," before "or any other person". See Codification note above.

2005 - Subsec. (d)(5)(B). Pub. L. 109–135, §305(a)(1), substituted "December 31, 2006" for "December 31, 2005".

Subsec. (i)(3)(C)(iv). Pub. L. 109–135, §305(b)(1), substituted "December 31, 2006" for "December 31, 2005".

Subsec. (i)(7)(E). Pub. L. 109–135, §305(b)(1), substituted "December 31, 2006" for "December 31, 2005".

Subsec. (i)(8)(A), (B)(i), (ii). Pub. L. 109–135, §412(rr)(3), substituted "Government Accountability Office" for "General Accounting Office".

Subsec. (l)(13)(D). Pub. L. 109–135, §305(c)(1), substituted "December 31, 2006" for "December 31, 2005".

Subsec. (l)(17). Pub. L. 109–135, §406(a), substituted "subsection (f), (i)(8), or (p)" for "subsection (f), (i)(7), or (p)".

Subsec. (p)(3)(C)(i). Pub. L. 109–135, §412(rr)(4), substituted "Government Accountability Office" for "General Accounting Office" in introductory provisions.

Subsec. (p)(4). Pub. L. 109–135, §412(yy)(3), in concluding provisions, substituted "If the Secretary determines that any such agency, body, or commission, including an agency or any other person described in subsection (l)(16), (18), (19), or (20), or the Government Accountability Office or the Congressional Budget Office, has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency, body, or commission, including an agency or any other

person described in subsection (l)(16), (18), (19), or (20), or the Government Accountability Office or the Congressional Budget Office, until he determines that such requirements have been or will be met." for "If the Secretary determines that any such agency, body, or commission, including an agency or any other person described in subsection (l)(16), (17), (19), or (20), or the Government Accountability Office or the Congressional Budget Office has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency, body, or commission, including an agency or any other person described in subsection (l)(16), (17), (19), or (20), or the Government Accountability Office or the Congressional Budget Office until he determines that such requirements have been or will be met." after "public record thereof."

Pub. L. 109–135, §412(yy)(1), reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: "Any Federal agency described in subsection (h)(2), (h)(5), (i)(1), (2), (3), (5), or (7), (j)(1), (2), or (5), (k)(8), (l)(1), (2), (3), (5), (10), (11), (13), (14), or (17), or (o)(1), the Government Accountability Office, the Congressional Budget Office, or any agency, body, or commission described in subsection (d), (i)(3)(B)(i) or (7)(A)(ii), or (l)(6), (7), (8), (9), (12), (15), or (16) or any other person described in subsection (l)(16), (17), (19), or (20) shall, as a condition for receiving returns or return information-".

Pub. L. 109–135, §412(rr)(4), substituted "Government Accountability Office" for "General Accounting Office" wherever appearing.

Subsec. (p)(4)(F)(i). Pub. L. 109–135, §412(yy)(2), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "in the case of an agency, body, or commission described in subsection (d), (i)(3)(B)(i), or (l)(6), (7), (8), (9), or (16), or any other person described in subsection (l)(16), (17), (19), or (20) return to the Secretary such returns or return information (along with any copies made therefrom) or make such returns or return information undisclosable in any manner and furnish a written report to the Secretary describing such manner,".

Subsec. (p)(5), (6)(B)(i). Pub. L. 109–135, §412(rr)(4), substituted "Government Accountability Office" for "General Accounting Office".

2004 - Subsec. (d)(5). Pub. L. 108–311, §311(a), amended heading and text generally. Prior to amendment, text read as follows: "The Secretary shall disclose taxpayer identities and signatures for purposes of the demonstration project described in section 976 of the Taxpayer Relief Act of 1997. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect to disclosures or inspections made pursuant to this paragraph."

Subsec. (e)(1)(D)(iv) to (vi). Pub. L. 108–357, §413(c)(27), redesignated cls. (v) and (vi) as (iv) and (v), respectively, and struck out former cl. (iv) which read as follows: "if the corporation was a foreign personal holding company, as defined by section 552, any person who was a shareholder during any part of a period covered by such return if with respect to that period, or any part thereof, such shareholder was required under section 551 to include in his gross income undistributed foreign personal holding company income of such company,".

Subsec. (i)(3)(C)(iv). Pub. L. 108–311, §320(a), substituted "December 31, 2005" for "December 31, 2003".

Subsec. (i)(7)(A)(v). Pub. L. 108–311, §320(b), added cl. (v).

Subsec. (i)(7)(E). Pub. L. 108–311, §320(a), substituted "December 31, 2005" for "December 31, 2003".

Subsec. (l)(13)(D). Pub. L. 108–311, §317, substituted "December 31, 2005" for "December 31, 2004".

Subsec. (p)(4). Pub. L. 108–429, which directed the substitution of "or (18)" for "or (17)" after "any other person described in subsection (l)(16)" wherever appearing, could not be executed because the phrase "or (17)" did not appear subsequent to amendment by Pub. L. 108–173. See 2003 Amendment notes below.

Pub. L. 108–311, §408(a)(24), which directed substitution of "subsection (l)(16) or (18)" for "subsection (l)(16) or (17)" wherever appearing, could not be executed because "subsection (l)(16) or (17)" did not appear subsequent to amendment by Pub. L. 108–173. See 2003 Amendment note below.

2003 - Subsec. (a)(3). Pub. L. 108–173, §811(c)(2)(A), substituted "(19), or (20)" for "or (19)".

Pub. L. 108–173, §105(e)(2), substituted "(16), or (19)" for "or (16)".

Subsec. (l)(7)(D)(ii). Pub. L. 108–173, §101(e)(6), inserted "or subsidies provided under section 1860D–14 of such Act" after "Social Security Act".

Subsec. (l)(12)(B). Pub. L. 108–173, §900(e)(3)(A), substituted "Centers for Medicare & Medicaid Services" for "Health Care Financing Administration" in introductory provisions.

Subsec. (l)(12)(C). Pub. L. 108–173, §900(e)(3)(B), substituted "Centers for Medicare & Medicaid Services" for "Health Care Financing Administration" in heading and introductory provisions.

Subsec. (l)(13)(D). Pub. L. 108–89 substituted "December 31, 2004" for "September 30, 2003".

Subsec. (l)(19). Pub. L. 108–173, §105(e)(1), added par. (19).

Subsec. (l)(20). Pub. L. 108–173, §811(c)(1), added par. (20).

Subsec. (p)(4). Pub. L. 108–173, §811(c)(2)(B), substituted "(l)(16), (17), (19), or (20)" for "(l)(16), (17), or (19)" wherever appearing.

Pub. L. 108–173, §105(e)(3), substituted "(l)(16), (17), or (19)" for "(l)(16) or (17)" wherever appearing.

2002 - Subsec. (a)(2). Pub. L. 107–134, §201(c)(1), inserted "any local law enforcement agency receiving information under subsection (i)(7)(A)," after "State,".

Subsec. (b)(11). Pub. L. 107–134, §201(c)(2), added par. (11).

Subsec. (i)(3). Pub. L. 107–134, §201(c)(3), inserted "or terrorist" after "criminal" in heading.

Subsec. (i)(3)(C). Pub. L. 107–134, §201(a), added subpar. (C).

Subsec. (i)(4)(A). Pub. L. 107–134, §201(c)(4)(A), inserted "or (7)(C)" after "paragraph (1)" in introductory provisions.

Subsec. (i)(4)(B). Pub. L. 107–134, §201(c)(4)(B), substituted "(3)(A) or (C), or (7)" for "or (3)(A)".

Subsec. (i)(6). Pub. L. 107–134, §201(c)(5), substituted "(3)(A) or (C)" for "(3)(A)" and "(7), or (8)" for "or (7)".

Subsec. (i)(7). Pub. L. 107–134, §201(b), added par. (7). Former par. (7) redesignated (8).

Subsec. (i)(8). Pub. L. 107–134, §201(b), redesignated par. (7) as (8).

Subsec. (i)(8)(A)(i). Pub. L. 107–296 substituted ", the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, or the Tax and Trade Bureau, Department of the Treasury," for "or the Bureau of Alcohol, Tobacco and Firearms".

Subsec. (l)(7)(D). Pub. L. 107–330 substituted "September 30, 2008" for "September 30, 2003" in second sentence of concluding provisions.

Subsec. (l)(8). Pub. L. 107–147, §416(c)(1)(A), substituted "Federal, State, and local" for "State and local" in heading.

Subsec. (l)(8)(A). Pub. L. 107–147, §416(c)(1)(B), inserted "Federal or" before "State or local".

Subsec. (l)(18). Pub. L. 107–210, §202(b)(1), added par. (18).

Subsec. (p)(3)(A). Pub. L. 107–210, §202(b)(2)(A), substituted "(17), or (18)" for "or (17)".

Pub. L. 107–134, §201(c)(6)(A), substituted "(8)(A)(ii)" for "(7)(A)(ii)".

Subsec. (p)(3)(C)(i). Pub. L. 107–134, §201(c)(6)(B), substituted "(i)(3)(B)(i) or (7)(A)(ii)" for "(i)(3)(B)(i)" in introductory provisions.

Subsec. (p)(4). Pub. L. 107–210, §202(b)(2)(B), inserted "or (17)" after "any other person described in subsection (l)(16)" wherever appearing.

Pub. L. 107–134, §201(c)(7)(A), in introductory provisions, substituted "(i)(1), (2), (3), (5), or (7)," for "(i)(1), (2), (3), or (5)," and "(i)(3)(B)(i) or (7)(A)(ii)," for "(i)(3)(B)(i),".

Subsec. (p)(4)(F)(ii). Pub. L. 107–134, §201(c)(7)(B), substituted "(i)(1), (2), (3), (5) or (7)," for "(i)(1), (2), (3), or (5)," in introductory provisions.

Subsec. (p)(6)(B)(i). Pub. L. 107–134, §201(c)(8), substituted "(i)(8)(A)(ii)" for "(i)(7)(A)(ii)".

2000 - Subsec. (b)(2)(D). Pub. L. 106–554, §1(a)(7) [title III, §304(a)], added subpar. (D).

Subsec. (e)(1)(D)(v). Pub. L. 106–554, §1(a)(7) [title III, §319(8)(B)], amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: "if the corporation was an electing small business corporation under subchapter S of chapter 1, any person who was a shareholder during any part of the period covered by such return during which an election was in effect, or".

Subsec. (j)(6). Pub. L. 106–554, §1(a)(7) [title III, §310(a)(1)], added par. (6).

Subsec. (k)(6). Pub. L. 106–554, §1(a)(7) [title III, §313(c)], substituted "certain" for "internal revenue" in heading and inserted "and an officer or employee of the Office of Treasury Inspector General for Tax Administration" after "internal revenue officer or employee" in text.

Subsec. (p)(4). Pub. L. 106–554, §1(a)(7) [title III, §§310(a)(2)(A)(i), (iv), 319(17)(A)], in introductory provisions, inserted "the Congressional Budget Office," after "General Accounting Office,", struck out second comma after "(13)", and substituted "(7), (8), (9), (12), (15), or (16) or any other person described in subsection (l)(16) shall, as a condition" for "(7), (8), (9), (12), or (15) shall, as a condition", and in concluding provisions, inserted "or the Congressional Budget Office" after "General Accounting Office" in two places.

Subsec. (p)(4)(E). Pub. L. 106–554, §1(a)(7) [title III, §310(a)(2)(A)(ii)], substituted "commission, the General Accounting Office, or the Congressional Budget Office" for "commission or the General Accounting Office".

Subsec. (p)(4)(F)(ii). Pub. L. 106–554, §1(a)(7) [title III, §§310(a)(2)(A)(iii), 319(17)(B)], struck out second comma after "(14)" and substituted "the General Accounting Office, or the Congressional Budget Office," for "or the General Accounting Office,".

Subsec. (p)(5). Pub. L. 106–554, §1(a)(7) [title III, §310(a)(2)(B)], substituted "commissions, the General Accounting Office, and the Congressional Budget Office" for "commissions and the General Accounting Office".

Subsec. (p)(6)(A). Pub. L. 106–554, §1(a)(7) [title III, §310(a)(2)(C)], inserted "and the Congressional Budget Office" after "commissions".

1999 - Subsec. (b)(2)(C). Pub. L. 106–170 added subpar. (C).

1998 - Subsec. (d)(5). Pub. L. 105–206, §6009(d), substituted "section 976 of the Taxpayer Relief Act of 1997. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect to disclosures or inspections made pursuant to this paragraph." for "section 967 of the Taxpayer Relief Act of 1997."

Subsec. (e)(1)(A)(ii) to (iv). Pub. L. 105–206, §6007(f)(4), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which read as follows: "if property transferred by that individual to a trust is sold or exchanged in a transaction described in section 644, the trustee or trustees, jointly or separately, of such trust to the extent necessary to ascertain any amount of tax imposed upon the trust by section 644,".

Subsec. (e)(6). Pub. L. 105–206, §6019(c), substituted "(5), (8), or (9)" for "or (5)".

Subsec. (f)(5). Pub. L. 105–206, §3708(a), added par. (5).

Subsec. (h)(4)(A). Pub. L. 105–206, §6023(22), inserted "if" before "the taxpayer is a party to".

Subsec. (h)(5). Pub. L. 105–277, §4002(a), redesignated par. (5), relating to Internal Revenue Service Oversight Board, as (6).

Pub. L. 105–206, §1101(b), added par. (5), relating to Internal Revenue Service Oversight Board.

Subsec. (h)(6). Pub. L. 105–277, §4002(a), redesignated par. (5), relating to Internal Revenue Service Oversight Board, as (6).

Subsec. (j)(5). Pub. L. 105–277, §4006(a)(1), added par. (5).

Subsec. (k)(8), (9). Pub. L. 105–206, §6012(b)(2), redesignated par. (8), relating to disclosure of information to administer section 6311, as (9).

Subsec. (l)(10). Pub. L. 105–206, §3711(b), in heading substituted "subsection (c), (d), or (e) of section 6402" for "section 6402(c) or 6402(d)" and in text substituted "(c), (d), or (e)" for "(c) or (d)" wherever appearing.

Subsec. (l)(13)(D). Pub. L. 105–277, §1006, substituted "September 30, 2003" for "September 30, 1998".

Subsec. (l)(17). Pub. L. 105–206, §3702(a), added par. (17).

Subsec. (p)(3)(A). Pub. L. 105–277, §4002(h), inserted "(f)(5)," after "(c), (e),".

Pub. L. 105–206, §6012(b)(4), provided that section 1205(c)(3) of Pub. L. 105–34 shall be applied as if it struck "or (8)" and inserted "(8), or (9)". See 1997 Amendment note below.

Pub. L. 105–206, §3702(b)(1), substituted "(16), or (17)" for "or (16)".

Subsec. (p)(4). Pub. L. 105–277, §4006(a)(2), substituted "(j)(1), (2), or (5)" for "(j)(1) or (2)" in introductory provisions.

Pub. L. 105–206, §3702(b)(2), substituted ", (14), or (17)" for "or (14)" in introductory provisions.

Subsec. (p)(4)(F)(ii). Pub. L. 105–277, §4006(a)(2), substituted "(j)(1), (2), or (5)" for "(j)(1) or (2)".

Pub. L. 105–206, §3702(b)(3), substituted ", (15), or (17)" for "or (15)".

1997 - Subsec. (a)(3). Pub. L. 105–33, §11024(b)(2), substituted "(6), (12), or (16)" for "(6) or (12)".

Subsec. (d)(5). Pub. L. 105–34, §976(c), added par. (5).

Subsec. (e)(1)(A)(iv). Pub. L. 105–34, §1201(b)(2), struck out "or 59(j)" after "section 1(g)".

Subsec. (h)(5), (6). Pub. L. 105–34, §1283(a), redesignated par. (6) as (5) and struck out heading and text of former par. (5). Text read as follows: "In connection with any judicial proceeding described in paragraph (4) to which the United States is a party, the Secretary shall respond to a written inquiry from an attorney of the Department of Justice (including a United States attorney) involved in such proceeding or any person (or his legal representative) who is a party to such proceeding as to whether an individual who is a prospective juror in such proceeding has or has not been the subject of any audit or other tax investigation by the Internal Revenue Service. The Secretary shall limit such response to an affirmative or negative reply to such inquiry."

Subsec. (i)(7)(B)(i). Pub. L. 105–33, §11024(b)(3), inserted "or by a Trustee as defined in the District of Columbia Retirement Protection Act of 1997," after "(other than an agency referred to in subparagraph (A))".

Subsec. (k)(8). Pub. L. 105–34, §1205(c)(1), added par. (8) relating to disclosure of information to administer section 6311.

Pub. L. 105–34, §1026(a), added par. (8) relating to levies on certain government payments.

Subsec. (l)(7)(D). Pub. L. 105–65 struck out at end "Clause (ix) shall not apply after September 30, 1998."

Pub. L. 105–34, §1023(a), which directed amendment of subsec. (l)(7)(D)(viii) by striking "1998" and inserting "2003", was executed by substituting "2003" for "1998" after "Clause (viii) shall not apply after September 30," in concluding provisions to reflect the probable intent of Congress. The word "1998" did not appear in subsec. (l)(7)(D)(viii).

Subsec. (l)(10). Pub. L. 105–33, §5514(a)(1), repealed Pub. L. 104–193, §110(l)(4). See 1996 Amendment notes below.

Subsec. (l)(12)(F). Pub. L. 105–33, §4631(c)(2), struck out heading and text of subpar. (F). Text read as follows:

"Subparagraphs (A) and (B) shall not apply to-

"(i) any request made after September 30, 1998, and

"(ii) any request made before such date for information relating to-

"(I) 1997 or thereafter in the case of subparagraph (A), or

"(II) 1998 or thereafter in the case of subparagraph (B)."

Subsec. (l)(16). Pub. L. 105–33, §11024(b)(1), added par. (16).

Subsec. (p)(3)(A). Pub. L. 105–34, §1205(c)(3), which directed the substitution of "(6), or (8)" for "or (6)" was executed by substituting "(8), or (9)" for "or (8)". See 1998 Amendment note above.

Pub. L. 105–34, §1026(b)(1)(A), substituted "(6), or (8)" for "or (6)".

Pub. L. 105–33, §11024(b)(4), substituted "(15), or (16)" for "or (15)".

Subsec. (p)(4). Pub. L. 105–34, §1283(b), substituted "(h)(5)" for "(h)(6)" in introductory provisions and in subpar. (F)(ii).

Pub. L. 105–34, §1026(b)(1)(B), inserted "(k)(8)," after "(j)(1) or (2)," in introductory provisions and in subpar. (F)(ii).

Pub. L. 105–33, §11024(b)(7)(B)–(F), substituted "to such agency, body, or commission, including an agency or any other person described in subsection (l)(16)," for "to such agency, body, or commission", and ", (12)(B), or (16)" for "or (12)(B)", and inserted "or any person including an agent described in subsection (l)(16)," before "this paragraph shall", "or other person" before "(except that", and "or any person including an agent described in subsection (l)(16)," before "any report". Amendments were executed to provisions following subpar. (F)(iii) to reflect the probable intent of Congress, notwithstanding directory language directing amendment of "section 6103(p)(4)(F) in the matter following clause (iii)".

Pub. L. 105–33, §11024(b)(7)(A), which directed amendment of "section 6103(p)(4)(F) in the matter following clause (iii)" by inserting after "any such agency, body or commission" and before the words "for the General Accounting Office" the words ", including an agency or any other person described in subsection (l)(16)," was executed by making the insertion after "any such agency, body, or commission" and before "or the General Accounting Office" in concluding provisions following subpar. (F)(iii) to reflect the probable intent of Congress.

Pub. L. 105–33, §11024(b)(5), which directed substitution of "(12), or (16), or any other person described in subsection (l)(16)" for "or (12)" in introductory provisions, could not be executed because the words "or (12)" did not appear subsequent to amendment by Pub. L. 104–168, §1206(b)(3)(C). See 1996 Amendments note below.

Pub. L. 105–33, §5514(a)(1), repealed Pub. L. 104–193, §110(l)(5). See 1996 Amendments note below.

Subsec. (p)(4)(F)(i). Pub. L. 105–33, §11024(b)(6), substituted "(9), or (16), or any other person described in subsection (l)(16)" for "or (9),".

1996 - Subsec. (a)(3). Pub. L. 104–193, §316(g)(4)(B)(i), substituted "paragraph (6) or (12) of subsection (l)" for "(l)(12)".

Subsec. (c). Pub. L. 104–168, §1207, substituted "request for or consent to such disclosure" for "written request for or consent to such disclosure".

Subsec. (e)(1)(A)(iv). Pub. L. 104–188, §1704(t)(41), substituted "section 1(g) or 59(j)" for "section 1(i) or 59(j)".

Subsec. (e)(8). Pub. L. 104–168, §403(a), added par. (8).

Subsec. (e)(9). Pub. L. 104–168, §902(a), added par. (9).

Subsec. (i)(8). Pub. L. 104–168, §1206(b)(1), struck out par. (8) which read as follows:

"(8) Disclosure of returns filed under section 6050i. – The Secretary may, upon written request, disclose returns filed under section 6050I to officers and employees of any Federal agency whose official duties require such disclosure for the administration of Federal criminal statutes not related to tax administration."

Subsec. (l)(3)(C). Pub. L. 104–134, §31001(i)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of this paragraph, the term 'included Federal loan program' means any program-

"(i) under which the United States or a Federal agency makes, guarantees, or insures loans, and

"(ii) with respect to which there is in effect a determination by the Director of the Office of Management and Budget (which has been published in the Federal Register) that the application of this paragraph to such program will substantially prevent or reduce future delinquencies under such program."

Subsec. (l)(6)(B). Pub. L. 104–193, §316(g)(4)(A), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (l)(6)(C). Pub. L. 104–193, §316(g)(4)(B)(ii), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The Secretary shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations."

Pub. L. 104–193, §316(g)(4)(A), redesignated subpar. (B) as (C).

Subsec. (l)(7)(D)(i). Pub. L. 104–193, §110(l)(2), formerly §110(l)(3), as renumbered by Pub. L. 105–33, §5514(a)(2), substituted "a State program funded" for "aid to families with dependent children provided under a State plan approved".

Subsec. (l)(10). Pub. L. 104–193, §110(l)(4)(A), which directed substitution of "(c), (d), or (e)" for "(c) or (d)" wherever appearing, was repealed by Pub. L. 105–33, §5514(a)(1).

Subsec. (l)(10)(A). Pub. L. 104–134, §31001(g)(2), inserted "and to officers and employees of the Department of the Treasury in connection with such reduction" after "6402" in introductory provisions.

Subsec. (l)(10)(B). Pub. L. 104–193, §110(l)(4)(B), which directed insertion, at end, of "Any return information disclosed with respect to section 6402(e) shall only be disclosed to officers and employees of the State agency requesting such information.", was repealed by Pub. L. 105–33, §5514(a)(1).

Subsec. (l)(15). Pub. L. 104–168, §1206(a), added par. (15).

Subsec. (p)(3)(A). Pub. L. 104–168, §1206(b)(2), substituted "or (7)(A)(ii)" for "(7)(A)(ii), or (8)" and "(14), or (15)" for "or (14)".

Subsec. (p)(4). Pub. L. 104–193, §316(g)(4)(B)(iii), substituted "paragraph (6)(A) or (12)(B) of subsection (l)" for "subsection (l)(12)(B)" in provisions following subpar. (F)(iii).

Pub. L. 104–193, §110(l)(5), which directed substitution, in introductory provisions, of "(9), (10), or (12)" for "(9), or (12)" and "(5)" for "(5), (10)", was repealed by Pub. L. 105–33, §5514(a)(1).

Pub. L. 104–168, §1206(b)(3)(B), which directed amendment of introductory provisions of par. (4) by substituting "(i)(3)(B)(i)," for "(i)(3)(B)(i), or (8)", was executed by making the substitution for "(i)(3)(B)(i) or (8)" to reflect the probable intent of Congress.

Pub. L. 104–168, §1206(b)(3)(A), (C), substituted "or (5)" for "(5), or (8)" and "(9), (12), or (15)" for "(9), or (12)" in introductory provisions.

Subsec. (p)(4)(F)(ii). Pub. L. 104–168, §1206(b)(4), substituted "or (5)" for "(5), or (8)" and "(14), or (15)" for "or (14)".

1994 - Subsec. (l)(5). Pub. L. 103–296, §311(b), substituted "for the purpose of-" for "for the purpose of", inserted subpar. (A) designation, substituted "program; or" for "program.", and added subpar. (B).

Pub. L. 103–296, §108(h)(6), substituted "Social Security Administration" for "Department of Health and Human Services" in heading and "Commissioner of Social Security" for "Secretary of Health and Human Services" in text.

1993 - Subsec. (d)(4). Pub. L. 103–66, §13444(a), added par. (4).

Subsec. (l)(7). Pub. L. 103–66, §13403(b), inserted ", or certain housing assistance programs" after "Code" in heading.

Subsec. (l)(7)(D). Pub. L. 103–66, §§13401(a), 13403(a)(4), in closing provisions, substituted "September 30, 1998" for "September 30, 1997" in second sentence and inserted at end "Clause (ix) shall not apply after September 30, 1998."

Subsec. (l)(7)(D)(ix). Pub. L. 103–66, §13403(a)(1)–(3), added cl. (ix).

Subsec. (l)(12)(B)(i). Pub. L. 103–66, §13561(a)(2)(A), inserted ", above an amount (if any) specified by the Secretary of Health and Human Services," after "section 3401(a))".

Subsec. (l)(12)(B)(ii). Pub. L. 103–66, §13561(a)(2)(B), inserted ", above an amount (if any) specified by the Secretary of Health and Human Services," after "wages".

Subsec. (l)(12)(E)(ii). Pub. L. 103–66, §13561(e)(2)(B), amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: "The term 'group health plan' means-

"(I) any group health plan (as defined in section 5000(b)(1)), and

"(II) any large group health plan (as defined in section 5000(b)(2))."

Subsec. (l)(12)(F)(i). Pub. L. 103–66, §13561(a)(2)(C)(i), substituted "1998" for "1995".

Subsec. (l)(12)(F)(ii)(I). Pub. L. 103–66, §13561(a)(2)(C)(ii), substituted "1997" for "1994".

Subsec. (l)(12)(F)(ii)(II). Pub. L. 103–66, §13561(a)(2)(C)(iii), substituted "1998" for "1995".

Subsec. (l)(13). Pub. L. 103–66, §13402(a), added par. (13).

Subsec. (l)(14). Pub. L. 103–182, §522(a), added par. (14).

Subsec. (m)(4). Pub. L. 103–66, §13402(b)(1), amended par. heading generally, substituting "Individuals who owe an overpayment of Federal Pell grants or who have defaulted on student loans administered by the Department of Education" for "Individuals who have defaulted on student loans administered by the Department of Education".

Subsec. (m)(4)(A). Pub. L. 103–66, §13402(b)(1), amended heading and text subpar. (A) generally. Prior to amendment, text read as follows:

> "Upon written request by the Secretary of Education, the Secretary may disclose the mailing address of any taxpayer who has defaulted on a loan-
>
> > "(i) made under part B or E of title IV of the Higher Education Act of 1965, or
> >
> > "(ii) made pursuant to section 3(a)(1) of the Migration and Refugee Assistance Act of 1962 to a student at an institution of higher education,
>
> for use only by officers, employees, or agents of the Department of Education for purposes of locating such taxpayer for purposes of collecting such loan."

Subsec. (m)(4)(B)(i). Pub. L. 103–66, §13402(b)(2)(A), substituted "under part B or D" for "under part B".

Subsec. (m)(4)(B)(ii). Pub. L. 103–66, §13402(b)(2)(B), substituted "under subpart 1 of part A, or part D or E, of title IV" for "under part E of title IV".

Subsec. (p)(3)(A). Pub. L. 103–182, §522(b), substituted "(13), or (14)" for "or (13)".

Pub. L. 103–66, §13402(b)(3)(A), substituted "(11), (12), or (13), (m)" for "(11), or (12), (m)".

Subsec. (p)(4). Pub. L. 103–182, §522(b), substituted "(13), or (14)" for "or (13)" in introductory provisions.

Pub. L. 103–66, §13402(b)(3)(B)(i), substituted "(10), (11), or (13)," for "(10), or (11)," in introductory provisions.

Subsec. (p)(4)(F)(ii). Pub. L. 103–182, §522(b), substituted "(13), or (14)" for "or (13)".

Pub. L. 103–66, §13402(b)(3)(B)(ii), substituted "(11), (12), or (13)," for "(11), or (12),".

1992 - Subsec. (l)(7)(D). Pub. L. 102–568, §602(b)(1), substituted "September 30, 1997" for "September 30, 1992" in concluding provisions.

Subsec. (l)(7)(D)(viii)(II), (III). Pub. L. 102–568, §602(b)(2), substituted "1315" for "415" in subcl. (II) and "sections 1710(a)(1)(I), 1710(a)(2), 1710(b), and 1712(a)(2)(B)" for "section 610(a)(1)(I), 610(a)(2), 610(b), and 612(a)(2)(B)" in subcl. (III).

1990 - Subsec. (e)(1)(A)(iv). Pub. L. 101–508, §11101(d)(6), which directed the substitution of "section 1(g)" for "section 1(j)", could not be executed because "section 1(j)" did not appear in text after amendment by Pub. L. 100–647, §1014(e)(4). See 1988 Amendment note below.

Subsec. (k)(7). Pub. L. 101–508, §11212(b)(3), added par. (7).

Subsec. (l)(7). Pub. L. 101–508, §8051(a), substituted ", the Food Stamp Act of 1977, or title 38, United States Code" for "or the Food Stamp Act of 1977" in heading and added cl. (viii) and concluding provisions at end of subpar. (D).

Subsec. (l)(12)(F). Pub. L. 101–508, §4203(a)(2), substituted "September 30, 1995" for "September 30, 1991" in cl. (i), "1994" for "1990" in cl. (ii)(I), and "1995" for "1991" in cl. (ii)(II).

Subsec. (m)(7). Pub. L. 101–508, §5111(b)(1), added par. (7).

Subsec. (n). Pub. L. 101–508, §11313(a), substituted "the programming" for "and the programming" and inserted "and the providing of other services,".

Subsec. (p)(4). Pub. L. 101–508, §5111(b)(2), which directed the substitution of "paragraph (2), (4), (6), or (7) of subsection (m)" for "subsection (m)(2), (4), or (6)" in the provisions of par. (4) "following subparagraph (f)(iii)", was executed by making the substitution in the provisions following subpar. (F)(iii), to reflect the probable intent of Congress.

1989 - Subsec. (a)(3). Pub. L. 101–239, §6202(a)(1)(B)(i), inserted "(l)(12)," after "subsection (e)(1)(D)(iii),".

Subsec. (d)(1). Pub. L. 101–239, §7841(d)(1), struck out "45," after "32, 44,".

Subsec. (l)(12). Pub. L. 101–239, §6202(a)(1)(A), added par. (12).

Subsec. (p)(3)(A). Pub. L. 101–239, §6202(a)(1)(B)(ii), substituted "(11), or (12)" for "or (11)".

Subsec. (p)(4). Pub. L. 101–239, §6202(a)(1)(B)(v), inserted "or which receives any information under subsection (l)(12)(B) and which discloses any such information to any agent" after "address to any agency" in penultimate sentence.

Pub. L. 101–239, §6202(a)(1)(B)(iii), substituted "(9), or (12) shall" for "or (9) shall" in introductory provisions.

Subsec. (p)(4)(F)(ii). Pub. L. 101–239, §6202(a)(1)(B)(iv), substituted "(11), or (12)" for "or (11)".

1988 - Subsec. (b)(5)(A). Pub. L. 100–647, §1012(bb)(3)(B), substituted "and the Commonwealth of the Northern Mariana Islands" for "the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau".

Subsec. (b)(5)(B)(i). Pub. L. 100–647, §6251, substituted "250,000" for "2,000,000".

Subsec. (d). Pub. L. 100–690, §7602(d)(2), amended subsec. (d) heading generally, inserting "and State and local law enforcement agencies" after "officials".

Subsec. (d)(3). Pub. L. 100–690, §7602(c), added par. (3).

Subsec. (e)(1)(A)(iv). Pub. L. 100–647, §1014(e)(4), substituted "section 1(i) or 59(j)" for "section 1(j)".

Subsec. (i)(8). Pub. L. 100–690, §7601(b)(1), added par. (8).

Subsec. (k)(4). Pub. L. 100–647, §1012(bb)(3)(A), substituted "or other convention or bilateral agreement" and "such convention or bilateral agreement" for "or other convention" and "such convention", respectively.

Subsec. (l)(10). Pub. L. 100–485, §701(b)(1), amended par. (10) generally. Prior to amendment, par. (10) read as follows:

> "(A) Return information from internal revenue service. – The Secretary may, upon receiving a written request, disclose to officers and employees of an agency seeking a reduction under section 6402(c) or 6402(d) -
>
> > "(i) the fact that a reduction has been made or has not been made under such subsection with respect to any person;
> >
> > "(ii) the amount of such reduction; and
> >
> > "(iii) taxpayer identifying information of the person against whom a reduction was made or not made.

> "(B) Restriction on use of disclosed information. – Any officers and employees of an agency receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing appropriate agency records or in the defense of any litigation or administrative procedure ensuing from reduction made under section 6402(c) or section 6402(d)."

Subsec. (l)(11), (12). Pub. L. 100–485, §701(b)(2)(A), redesignated former par. (12) as (11) and struck out former par. (11) which related to disclosure of certain information to State agencies seeking a reduction under section 6402(c) and restricted use of that information.

Subsec. (m)(6). Pub. L. 100–647, §8008(c)(1), added par. (6).

Subsec. (p)(3)(A). Pub. L. 100–690, §7601(b)(2)(A), substituted ", (7)(A)(ii), or (8)" for "or (7)(A)(ii)".

Pub. L. 100–485, §701(b)(2)(B), substituted "(10), or (11)" for "(10), (11), or (12)".

Subsec. (p)(4). Pub. L. 100–690, §7601(b)(2)(B), in introductory provisions substituted "(5), or (8)" for "or (5)" and "(i)(3)(B)(i) or (8)" for "(i)(3)(B)(i),".

Pub. L. 100–647, §8008(c)(2)(A)(ii), (iii), in concluding provisions substituted "(m)(2), (4), or (6)" for "(m)(2) or (4)" and inserted at end "For purposes of applying this paragraph in any case to which subsection (m)(6) applies, the term 'return information' includes related blood donor records (as defined in section 1141(h)(2) of the Social Security Act)."

Pub. L. 100–485, §701(b)(2)(B), substituted "(10), or (11)" for "(10), (11), or (12)" in introductory provisions.

Subsec. (p)(4)(F)(i). Pub. L. 100–647, §8008(c)(2)(A)(i)(I), substituted "manner," for "manner; and".

Subsec. (p)(4)(F)(ii). Pub. L. 100–690, §7601(b)(2)(C), substituted "(5), or (8)" for "or (5)".

Pub. L. 100–485, §701(b)(2)(B), substituted "(10), or (11)" for "(10), (11), or (12)".

Subsec. (p)(4)(F)(iii). Pub. L. 100–647, §8008(c)(2)(A)(i), added cl. (iii).

1986 - Subsec. (b)(5). Pub. L. 99–514, §1568(a)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "The term 'State' means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands."

Subsec. (b)(10). Pub. L. 99–514, §1568(a)(2), added par. (10).

Subsec. (e)(1)(A)(iv). Pub. L. 99–514, §1411(b), added cl. (iv).

Subsec. (l)(7)(D)(v). Pub. L. 99–514, §1899A(53), substituted "this title" for "this Code".

Subsec. (l)(12). Pub. L. 99–335, §310(a), added par. (12).

Subsec. (p)(3)(A). Pub. L. 99–335, §310(b)(1), substituted "(10), (11), or (12)" for "(10), or (11)".

Subsec. (p)(4). Pub. L. 99–335, §310(b)(2), substituted "(10), (11), or (12)" for "(10), or (11)" in provisions preceding subpar. (A) and in subpar. (F)(ii).

Subsec. (p)(5). Pub. L. 99–386 substituted "year" for "quarter".

1985 - Subsec. (m)(4). Pub. L. 99–92, §8(h)(1), inserted "administered by the Department of Education" in heading.

Subsec. (m)(5). Pub. L. 99–92, §8(h)(2), added par. (5).

1984 - Subsec. (a)(2). Pub. L. 98–369, §2651(k)(2), substituted ", any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D)" for "or of any local child support enforcement agency".

Subsec. (d)(1). Pub. L. 98–369, §449(a), substituted "44, 45, 51" for "44, 51".

Subsec. (l)(5). Pub. L. 98–369, §2663(j)(5)(E), substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare" in heading and text.

Subsec. (l)(6)(A)(i). Pub. L. 98–378, §19(b)(1), inserted "social security account number (or numbers, if the individual involved has more than one such number),".

Subsec. (l)(7). Pub. L. 98–369, §2651(k)(1), substituted provisions relating to information disclosure to Federal, State and local agencies administering programs under the Social Security Act or the Food Stamp Act of 1977 for former provisions which related to information disclosure by the Social Security Administration to the Department of Agriculture and State food stamp agencies.

Pub. L. 98–369, §453(b)(5), amended directory language of Pub. L. 96–249, §127(a)(1). See 1980 Amendment note below.

Subsec. (l)(8). Pub. L. 98–369, §453(b)(6), directed that the par. (7) added by Pub. L. 96–265 be redesignated as par. (8). See 1980 Amendment note below.

Subsec. (l)(8)(A). Pub. L. 98–378, §19(b)(2), substituted "social security account numbers, net earnings" for "net earnings".

Subsec. (l)(9). Pub. L. 98–369, §453(a), added par. (9).

Subsec. (l)(10). Pub. L. 98–369, §2653(b)(3)(A), added par. (10).

Subsec. (l)(11). Pub. L. 98–378, §21(f)(1), added par. (11).

Subsec. (p)(3)(A). Pub. L. 98–378, §21(f)(2), substituted "(10), or (11)" for "or (10)".

Pub. L. 98–369, §2653(b)(3)(B)(i), substituted "(9), or (10)" for "or (9)".

Pub. L. 98–369, §453(b)(1), which directed that "(5), (7), (8), or (9)" be substituted for "(5), or (7)", was executed by substituting "(5), (7), (8), or (9)" for "(5), (7), or (8)" to reflect the probable intent of Congress.

Subsec. (p)(4). Pub. L. 98–378, §21(f)(3), substituted "(10), or (11)" for "or (10)" in provisions preceding subpar. (A).

Pub. L. 98–369, §2653(b)(3)(B)(ii), substituted "(l)(1), (2), (3), (5), or (10)" for "(l)(1), (2), (3), or (5)" in provisions preceding subpar. (A).

Pub. L. 98–369, §453(b)(2), which directed that "(7), (8), or (9)" be substituted for "or (7)" in provisions preceding subpar. (A), was executed by substituting "(7), (8), or (9)" for "(7), or (8)" to reflect the probable intent of Congress.

Subsec. (p)(4)(F)(i). Pub. L. 98–369, §453(b)(3), which directed that "(l)(6), (7), (8), or (9)" be substituted for "(l)(6) or (7)", was executed by substituting "(l)(6), (7), (8), or (9)" for "(l)(6), (7), or (8)" to reflect the probable intent of Congress.

Subsec. (p)(4)(F)(ii). Pub. L. 98–378, §21(f)(4), substituted "(10), or (11)" for "or (10)".

Pub. L. 98–369, §2653(b)(3)(B)(iii), substituted "(l)(1), (2), (3), (5), or (10)" for "(l)(1), (2), (3), or (5)".

1983 - Subsec. (h)(6). Pub. L. 98–21, §121(c)(3)(A), added par. (6).

Subsec. (m)(2). Pub. L. 97–452 substituted "sections 3711, 3717, and 3718 of title 31" for "section 3 of the Federal Claims Collection Act of 1966 (31 U.S.C. 952)", wherever appearing.

Subsec. (p)(4). Pub. L. 98–21, §121(c)(3)(B), inserted "(h)(6)," after "(h)(2)," in introductory provisions.

Subsec. (p)(4)(F)(ii). Pub. L. 98–21, §121(c)(3)(B), inserted "(h)(6)," after "(h)(2),".

1982 - Subsec. (a)(3). Pub. L. 97–365, §8(c)(1), substituted "paragraph (2) or (4)(B) of subsection (m)" for "subsection (m)(4)(B)".

Subsec. (i)(1) to (5). Pub. L. 97–248, §356(a), added pars. (1) to (5). Former pars. (1) to (5) were struck out.

Subsec. (i)(6). Pub. L. 97–248, §356(a), added par. (6). Former par. (6) redesignated (7).

Subsec. (i)(7). Pub. L. 97–258, §3(f)(4), substituted "section 713 of title 31, United States Code" for "section 117 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 67)" in subpar. (A)(i). Notwithstanding the directory language that amendment be made to subsec. (i)(6), the amendment was executed to subsec. (i)(7) to reflect the probable intent of Congress and the intervening redesignation of subsec. (i)(6) as (i)(7) by Pub. L. 97–248.

Pub. L. 97–248, §§356(a), 358(a), (b), redesignated former par. (6) as (7) and, in par. (7) as so redesignated, substituted "subparagraph (C)" for "subparagraph (B)" in subpar. (A), added

subpar. (B), redesignated former subpar. (B) as (C), and in subpar. (C) as so redesignated substituted "subparagraph (A) or (B)" for "subparagraph (A)".

Subsec. (l)(3). Pub. L. 97–365, §7(a), substituted provisions relating to the disclosure to heads of Federal agencies administering Federal loan programs whether or not an applicant for a loan under such program has a tax delinquent account, for provisions which related to disclosure of returns and return information to Privacy Protection Study Commission.

Subsec. (l)(4)(A)(ii). Pub. L. 97–258, §3(f)(5), substituted "section 330 of title 31, United States Code" for "section 3 of the Act of July 7, 1884 (23 Stat. 258 ; 31 U.S.C. 1026)".

Subsec. (m)(2). Pub. L. 97–365, §8(a), designated existing provisions as subpar. (A), inserted reference to exception provided by subpar. (B) and substituted "disclose the mailing address of a taxpayer for use by officers, employees, or agents of a Federal agency for purposes of locating such taxpayer" for "disclose the mailing address of a taxpayer to officers and employees of an agency personally and directly engaged in, and solely for their use in, preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding)", and added subpar. (B).

Pub. L. 97–258, §3(f)(6), substituted "section 3711 of title 31, United States Code" for "section 3 of the Federal Claims Collection Act of 1966".

Subsec. (p)(3)(A). Pub. L. 97–248, §356(b)(1)(A), substituted "(7)(A)(ii)" for "(6)(A)(ii)".

Subsec. (p)(3)(C)(i). Pub. L. 97–365, §7(b)(1), substituted "(l)(6)" for "(l)(3) or (6)".

Pub. L. 97–248, §356(b)(1)(B), inserted ", (i)(3)(B)(i)," after "described in subsection (d)".

Subsec. (p)(3)(C)(i)(II). Pub. L. 97–248, §356(b)(1)(C), inserted "or otherwise" after "such requests".

Subsec. (p)(4). Pub. L. 97–365, §7(b)(2), substituted "(l)(1), (2), (3)," for "(l)(1), (2)," and "(l)(6)," for "(l)(3), (6)," in introductory provisions, and in subpar. (F)(ii) substituted "(l)(1), (2), (3), or (5), or (o)(1)," for "(l)(1), (2), or (5), or (o)(1), the commission described in subsection (l)(3)".

Pub. L. 97–365, §8(b), inserted last sentence providing that in the case of any agency which receives any mailing address under subsection (m)(2) or (4) and which discloses any such mailing address to any agent, this paragraph shall apply to such agency and each such agent (except that, in the case of an agent, any report to the Secretary or other action with respect to the Secretary shall be made or taken through such agency).

Pub. L. 97–248, §356(b)(1)(D), (E), substituted "(i)(1), (2), (3), or (5)" for "(i)(1), (2), or (5)" wherever appearing, and inserted ", (i)(3)(B)(i)," after "(d)" wherever appearing.

Subsec. (p)(6)(B)(i). Pub. L. 97–248, §356(b)(1)(F), substituted "subsection (i)(7)(A)(ii)" for "subsection (i)(6)(A)(ii)".

1981 - Subsec. (b)(2). Pub. L. 97–34 inserted prohibition against disclosure of methods for selection of tax returns for audit.

1980 - Subsec. (d). Pub. L. 96–598 designated existing provision as par. (1), inserted heading "In general" and in text substituted "to receive the returns" for "to receive the return", and added par. (2).

Subsec. (e)(4). Pub. L. 96–589, §3(c)(1), added par. (4). Former par. (4), relating to public inspection of returns of persons whose property was in the hands of a trustee in bankruptcy or receiver, was struck out.

Subsec. (e)(5). Pub. L. 96–589, §3(c)(1), added par. (5). Former par. (5) redesignated (6).

Subsec. (e)(6). Pub. L. 96–589, §3(c)(1), (2), redesignated former par. (5) as (6), and in par. (6) as so redesignated, inserted reference to par. (5). Former par. (6) redesignated (7).

Subsec. (e)(7). Pub. L. 96–589, §3(c)(1), redesignated former par. (6) as (7).

Subsec. (l)(7). Pub. L. 96–249, §127(a)(1), as amended by Pub. L. 96–611, §11(a)(1), and Pub. L. 98–369, §453(b)(5), added par. (7). Paragraph as originally enacted by Pub. L. 96–249 was designated subsec. (i)(7), but was redesignated subsec. (l)(7) through amendment by Pub. L. 96–611 and Pub. L. 98–369.

Subsec. (l)(8). Pub. L. 96–265, §408(a)(1), as amended by Pub. L. 96–611, §11(a)(2)(A), added par. (8). Paragraph as originally enacted by Pub. L. 96–265 was designated (7), but was redesignated (8) through the amendment by Pub. L. 96–611.

Subsec. (m)(4)(A). Pub. L. 96–499 substituted references to Secretary of Education for references to Commissioner of Education, designated existing provisions in part as cl. (i) and, as so designated, inserted reference to part B of title IV of the Higher Education Act of 1965, added cl. (ii), and provided that such disclosures were for use only by officers, employees, or agents of the Department of Education.

Subsec. (m)(4)(B). Pub. L. 96–499 substituted references to Secretary of Education for references to Commissioner of Education, designated existing provisions in part as cl. (ii), and added cl. (i).

Subsec. (p)(3)(A). Pub. L. 96–265, §408(a)(2)(A), as amended by Pub. L. 96–611, §11(a)(2)(B)(i), substituted "(l)(1), (4)(B), (5), (7), or (8)" for "(l)(1), (4)(B), (5), or (7)". Section 408(a)(2)(A) of Pub. L. 96–265 was amended by Pub. L. 96–611 to reflect the redesignations of subsec. (l)(7) and (8) by Pub. L. 96–611.

Pub. L. 96–249, §127(a)(2)(A), substituted "(l)(1), (4)(B), (5), or (7)" for "(l)(1) or (4)(B) or (5)".

Subsec. (p)(4). Pub. L. 96–265, §408(a)(2)(B), as amended by Pub. L. 96–611, §11(a)(2)(B)(ii), substituted "(l)(3), (6), (7), or (8)" for "(l)(3), (6), or (7)" in introductory provisions. Section 408(a)(2)(B) of Pub. L. 96–265 was amended by Pub. L. 96–611 to reflect the redesignations of subsec. (l)(7) and (8) by Pub. L. 96–611.

Pub. L. 96–249, §127(a)(2)(B), substituted "(l)(3), (6), or (7)" for "(l)(3) or (6)" in provisions preceding subpar. (A).

Subsec. (p)(4)(F)(i). Pub. L. 96–265, §408(a)(2)(C), as amended by Pub. L. 96–611, §11(a)(2)(B)(iii), substituted "(l)(6), (7), or (8)" for "(l)(6) or (7)". Section 408(a)(2)(C) of Pub. L. 96–265 was amended by Pub. L. 96–611 to reflect the redesignations of subsec. (l)(7) and (8) by Pub. L. 96–611.

Pub. L. 96–249, 127(a)(2)(C), substituted "(l)(6) or (7)" for "(l)(6)".

1978 - Subsec. (a)(3). Pub. L. 95–600, §701(bb)(1)(B), inserted ", subsection (m)(4)(B)," after "subsection (e)(1)(D)(iii)".

Subsec. (d). Pub. L. 95–600, §701(bb)(2), inserted "31," after "21, 23, 24,".

Subsec. (h)(2). Pub. L. 95–600, §503(a), substituted "In a matter involving tax administration, a" for "A", "officers and employees" for "attorneys" after "open to inspection by or disclosure to", inserted "any proceeding before a Federal grand jury or" after "for their use in", and struck out "in a matter involving tax administration" after "or any Federal or State court".

Subsec. (h)(2)(A). Pub. L. 95–600, §503(b)(1), substituted "the proceeding" for "such proceeding" and inserted "or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability in respect of any tax imposed under this title".

Subsec. (h)(4)(A). Pub. L. 95–600, §503(b)(2), substituted "the taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability, in respect of any tax imposed under this title" for "if the taxpayer is a party to such proceeding".

Subsec. (i)(2), (3). Pub. L. 95–600, §701(bb)(3), (4), inserted provisions relating to name and address of taxpayer not being treated as return information.

Subsec. (k)(4). Pub. L. 95–600, §701(bb)(5), struck out reference to income tax in heading and inserted provisions relating to gift and estate tax and exchange of tax information.

Subsec. (m). Pub. L. 95–600, §701(bb)(1)(A), reenacted pars. (1) to (3) without change and added par. (4).

1977 - Subsec. (m). Pub. L. 95–210 changed the statement in the existing provisions describing the Secretary's authority by substituting provisions that the Secretary "may disclose" for provisions under which the Secretary was "authorized to disclose", inserted headings at beginning of existing pars. (1) and (2), and added par. (3).

1976 - Pub. L. 94–455 among other changes, substituted provisions treating income tax returns as public records and allowing inspection only under regulation approved by the President except in certain enumerated situations for provisions treating return information as confidential and not subject to disclosure except in limited situations and inserted provisions defining "return" and "return information" and provisions prohibiting tax information from being furnished by the

Internal Revenue Service to another agency unless the other agency establishes procedures for safeguarding the information it receives.

Subsec. (g). Pub. L. 94–202 added subsec. (g) relating to disclosure of information to Secretary of Health, Education, and Welfare.

1974 - Subsec. (g). Pub. L. 93–406 added subsec. (g) relating to disclosure of information with respect to deferred compensation plans.

1966 - Pub. L. 89–713 substituted "disclosure of information as to persons filing income tax returns" for "lists of taxpayers" in section catchline and, in subsec. (f), substituted provisions authorizing the furnishing to an inquirer of the information as to whether or not a person has filed an income tax return in a designated internal revenue district for a particular taxable year for provisions directing the preparation of lists containing the name and post-office address of each person making an income tax return in an internal revenue district to be made available for public inspection in the office of the principal internal revenue officer for the internal revenue district in which the return was filed.

1965 - Subsec. (a)(2). Pub. L. 89–44 substituted "B and C" for "B, C, and D".

1964 - Subsec. (a)(2). Pub. L. 88–563 inserted reference to chapter 41.

Statutory Notes and Related Subsidiaries
Change of Name

Words "magistrate judge" substituted for "magistrate" wherever appearing in subsec. (i) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 2020 Amendment

Pub. L. 116–260, div. N, title II, §283(c), Dec. 27, 2020, 134 Stat. 1985 , provided that:

> "The amendments made by this section [amending this section, section 7213 of this title, and section 1306 of Title 42, The Public Health and Welfare] shall apply to disclosures made on or after the date of the enactment of this Act [Dec. 27, 2020]."

Pub. L. 116–260, div. N, title II, §284(a)(4), Dec. 27, 2020, 134 Stat. 1986 , provided that:

> "The amendments made by this subsection [amending this section] shall apply to disclosures made after the date of the enactment of the FUTURE Act (Public Law 116–91) [Dec. 19, 2019]."

Pub. L. 116–260, div. FF, title I, §102(c), Dec. 27, 2020, 134 Stat. 3084 , provided that:

> "The amendments made by this section [amending this section, section 7213 of this title, and section 1306 of Title 42, The Public Health and Welfare] shall apply to disclosures made on or after the date of the enactment of this Act [Dec. 27, 2020]."

Pub. L. 116–260, div. FF, title I, §103(a)(4), Dec. 27, 2020, 134 Stat. 3086 , provided that:

> "The amendments made by this subsection [amending this section] shall apply to disclosures made after the date of the enactment of the FUTURE Act (Public Law 116–91) [Dec. 19, 2019]."

Pub. L. 116–136, div. A, title III, §3516(b), Mar. 27, 2020, 134 Stat. 407 , provided that:

> "The amendments made by this section [amending this section] shall apply as if included in the enactment of the FUTURE Act (Public Law 116–91)."

Effective Date of 2019 Amendment

Pub. L. 116–91, §3(d), Dec. 19, 2019, 133 Stat. 1192 , provided that:

> "The amendments made by this section [amending this section] shall apply to disclosures after the date of the enactment of this Act [Dec. 19, 2019]."

Pub. L. 116–25, title I, §1405(c)(1), July 1, 2019, 133 Stat. 1000 , provided that:

> "The amendments made by subsection (a) [amending this section and section 7213 of this title] shall apply to disclosures made after the date of the enactment of this Act [July 1, 2019]."

Pub. L. 116–25, title II, §2004(c), July 1, 2019, 133 Stat. 1004 , provided that:

> "The amendments made by this section [amending this section] shall apply to disclosures made after December 31, 2022."

Pub. L. 116–25, title II, §2202(c), July 1, 2019, 133 Stat. 1012 , provided that:

> "The amendments made by this section [amending this section] shall apply to disclosures made after the date which is 180 days after the date of the enactment of this Act [July 1, 2019]."

Effective Date of 2016 Amendment

Pub. L. 114–184, §2(c), June 30, 2016, 130 Stat. 537 , provided that:

> "The amendments made by this section [amending this section and section 7213 of this title] shall apply to disclosures made after the date of the enactment of this Act [June 30, 2016]."

Effective Date of 2015 Amendment

Pub. L. 114–113, div. Q, title IV, §403(b), Dec. 18, 2015, 129 Stat. 3118 , provided that:

> "The amendment made by this section [amending this section] shall apply to disclosures made on or after the date of the enactment of this Act [Dec. 18, 2015]."

Pub. L. 114–94, div. C, title XXXII, §32102(g)(3), Dec. 4, 2015, 129 Stat. 1736 , provided that:

> "The amendment made by subsection (d) [amending this section] shall apply to disclosures made after the date of the enactment of this Act [Dec. 4, 2015]."

Effective Date of 2013 Amendment

Pub. L. 112–240, title II, §209(c), Jan. 2, 2013, 126 Stat. 2326 , provided that:

> "The amendments made by this section [amending this section and section 7213 of this title] shall take effect on the date of the enactment of this Act [Jan. 2, 2013]."

Effective Date of 2010 Amendment

Pub. L. 111–198, §4(e), July 2, 2010, 124 Stat. 1357 , provided that:

> "The amendments made by this section [amending this section] shall apply to disclosures made after the date of the enactment of this Act [July 2, 2010]."

Effective Date of 2009 Amendment

Except as otherwise provided, amendment by Pub. L. 111–3 effective Apr. 1, 2009, see section 3 of Pub. L. 111–3, set out as an Effective Date note under section 1396 of Title 42, The Public Health and Welfare.

Pub. L. 111–3, title VII, §702(f)(3), Feb. 4, 2009, 123 Stat. 111 , provided that:

> "The amendments made by this subsection [amending this section] shall apply on or after the date of the enactment of this Act [Feb 4, 2009]."

Effective Date of 2008 Amendment

Pub. L. 110–428, §2(d), Oct. 15, 2008, 122 Stat. 4840 , provided that:

> "The amendments made by this section [amending this section and section 7803 of this title] shall apply to disclosures made after December 31, 2008."

Pub. L. 110–343, div. C, title IV, §402(c), Oct. 3, 2008, 122 Stat. 3876 , provided that:

> "The amendments made by this section [amending this section] shall apply to disclosures after the date of the enactment of this Act [Oct. 3, 2008]."

Amendment by Pub. L. 110–328 applicable to refunds payable under section 6402 of this title on or after Sept. 30, 2008, see section 3(e) of Pub. L. 110–328, set out as a note under section 3304 of this title.

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(B), (H), (2)(O) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

Pub. L. 110–245, title I, §108(c), June 17, 2008, 122 Stat. 1631 , provided that:

> "The amendment made by subsection (a) [amending this section] shall apply to requests made after September 30, 2008."

Effective Date of 2007 Amendment

Pub. L. 110–142, §8(c)(2), Dec. 20, 2007, 121 Stat. 1807 , provided that:

> "The amendment made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Dec. 20, 2007]."

Amendment by Pub. L. 110–28 applicable to returns prepared after May 25, 2007, see section 8246(c) of Pub. L. 110–28, set out as a note under section 6060 of this title.

Effective Date of 2006 Amendment

Pub. L. 109–432, div. A, title I, §122(a)(2), Dec. 20, 2006, 120 Stat. 2944 , provided that:

> "The amendment made by paragraph (1) [amending this section] shall apply to disclosures after December 31, 2006."

Pub. L. 109–432, div. A, title I, §122(b)(2), Dec. 20, 2006, 120 Stat. 2944 , provided that:

> "The amendments made by paragraph (1) [amending this section] shall apply to disclosures after December 31, 2006."

Pub. L. 109–432, div. A, title I, §122(c)(2), Dec. 20, 2006, 120 Stat. 2944 , provided that:

> "The amendment made by paragraph (1) [amending this section] shall apply to requests made after December 31, 2006."

Pub. L. 109–432, div. A, title IV, §421(c), Dec. 20, 2006, 120 Stat. 2972 , provided that:

> "The amendments made by this section [amending this section] shall apply to disclosures made after December 31, 2006."

Pub. L. 109–280, title XII, §1224(c), Aug. 17, 2006, 120 Stat. 1093 , provided that:

> "The amendments made by this section [amending this section and sections 6104, 7213, 7213A, and 7431 of this title] shall take effect on the date of the enactment of this Act [Aug. 17, 2006] but shall not apply to requests made before such date."

Effective Date of 2005 Amendment

Pub. L. 109–135, title III, §305(a)(2), Dec. 21, 2005, 119 Stat. 2609 , provided that:

> "The amendment made by paragraph (1) [amending this section] shall apply to disclosures after December 31, 2005."

Pub. L. 109–135, title III, §305(b)(2), Dec. 21, 2005, 119 Stat. 2609 , provided that:

> "The amendments made by paragraph (1) [amending this section] shall apply to disclosures after December 31, 2005."

Pub. L. 109–135, title III, §305(c)(2), Dec. 21, 2005, 119 Stat. 2609 , provided that:

> "The amendment made by paragraph (1) [amending this section] shall apply to requests made after December 31, 2005."

Pub. L. 109–135, title IV, §406(b), Dec. 21, 2005, 119 Stat. 2634 , provided that:

> "The amendment made by this section [amending this section] shall take effect as if included in section 201 of the Victims of Terrorism Tax Relief Act of 2001 [Pub. L. 107–134]."

Effective Date of 2004 Amendments

Amendment by Pub. L. 108–357 applicable to disclosures of return or return information with respect to taxable years beginning after Dec. 31, 2004, see section 413(d)(2) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–311, title III, §311(b), Oct. 4, 2004, 118 Stat. 1181 , provided that:

> "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 4, 2004]."

Pub. L. 108–311, title III, §320(c), Oct. 4, 2004, 118 Stat. 1182 , provided that:

> "(1) In general. – The amendments made by subsection (a) [amending this section] shall apply to disclosures on or after the date of the enactment of this Act [Oct. 4, 2004].
>
> "(2) Subsection (b). – The amendment made by subsection (b) [amending this section] shall take effect as if included in section 201 of the Victims of Terrorism Tax Relief Act of 2001 [Pub. L. 107–134]."

Effective Date of 2003 Amendment

Pub. L. 108–89, title II, §201(b), Oct. 1, 2003, 117 Stat. 1132 , provided that:

> "The amendment made by subsection (a) [amending this section] shall apply to requests made after September 30, 2003."

Effective Date of 2002 Amendments

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Pub. L. 107–147, title IV, §416(c)(2), Mar. 9, 2002, 116 Stat. 55 , provided that:

> "The amendments made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Mar. 9, 2002]."

Pub. L. 107–134, title II, §201(d), Jan. 23, 2002, 115 Stat. 2444 , provided that:

> "The amendments made by this section [amending this section and sections 6105 and 7213 of this title] shall apply to disclosures made on or after the date of the enactment of this Act [Jan. 23, 2002]."

Effective Date of 2000 Amendment

Amendment by section 1(a)(7) [title III, §304(a)] of Pub. L. 106–554 effective Dec. 21, 2000, see section 1(a)(7) [title III, §304(d)] of Pub. L. 106–554, set out as a note under section 6110 of this title.

Amendment by section 1(a)(7) [title III, §313(c)] of Pub. L. 106–554 effective as if included in the provisions of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, to which such amendment relates, see section 1(a)(7) [title III, §313(f)] of Pub. L. 106–554, set out as a note under section 6015 of this title.

Effective Date of 1999 Amendment

Pub. L. 106–170, title V, §521(a)(3), Dec. 17, 1999, 113 Stat. 1925 , provided that:

> "The amendments made by this subsection [amending this section and section 6110 of this title] shall take effect on the date of the enactment of this Act [Dec. 17, 1999]."

Effective Date of 1998 Amendments

Amendment by section 4002(a), (h) of Pub. L. 105–277 effective as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, to which such amendment relates, see section 4002(k) of Pub. L. 105–277, set out as a note under section 1 of this title.

Pub. L. 105–277, div. J, title IV, §4006(a)(3), Oct. 21, 1998, 112 Stat. 2681–912 , provided that:

> "The amendments made by this subsection [amending this section] shall apply to requests made on or after the date of the enactment of this Act [Oct. 21, 1998]."

Amendment by section 1101(b) of Pub. L. 105–206 effective July 22, 1998, see section 1101(d) of Pub. L. 105–206, set out as a note under section 7802 of this title.

Pub. L. 105–206, title III, §3702(c), July 22, 1998, 112 Stat. 777 , provided that:

> "The amendments made by this section [amending this section] shall apply to requests made by the Archivist of the United States after the date of the enactment of this Act [July 22, 1998]."

Pub. L. 105–206, title III, §3708(b), July 22, 1998, 112 Stat. 779 , provided that:

> "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 22, 1998]."

Pub. L. 105–206, title III, §3711(d), July 22, 1998, 112 Stat. 781 , provided that:

> "The amendments made by this section [amending this section and section 6402 of this title] (other than subsection (d)) shall apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1999."

Pub. L. 105–206, title VI, §6019(d), July 22, 1998, 112 Stat. 823 , provided that:

> "The amendments made by this section [amending this section and section 6104 of this title] shall take effect on the date of the enactment of this Act [July 22, 1998]."

Amendment by section 6023(22) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by sections 6007(f)(4), 6009(d), and 6012(b)(2), (4) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Effective Date of 1997 Amendments

Pub. L. 105–34, title X, §1023(b), Aug. 5, 1997, 111 Stat. 923 , provided that:

> "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title X, §1026(c), Aug. 5, 1997, 111 Stat. 925 , provided that:

> "The amendments made by this section [amending this section and section 552a of Title 5, Government Organization and Employees] shall apply to levies issued after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1201(b)(2) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 1201(c) of Pub. L. 105–34, set out as a note under section 59 of this title.

Pub. L. 105–34, title XII, §1205(d), Aug. 5, 1997, 111 Stat. 998 , provided that:

> "The amendments made by this section [amending this section and sections 6311 and 7431 of this title] shall take effect on the day 9 months after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XII, §1283(c), Aug. 5, 1997, 111 Stat. 1038 , provided that:

> "The amendments made by this section [amending this section] shall apply to judicial proceedings commenced after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 5514(a)(1), (2) of Pub. L. 105–33 effective as if included in section 110 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 110 became law, see section 5518(c) of Pub. L. 105–33, set out as a note under section 51 of this title.

Amendment by section 11024(b)(1)–(7) of Pub. L. 105–33 effective Oct. 1, 1997, except as otherwise provided in title XI of Pub. L. 105–33, see section 11721 of Pub. L. 105–33, set out as a note under section 4246 of Title 18, Crimes and Criminal Procedure.

Effective Date of 1996 Amendments

Amendment by section 110(l)(2), (4), (5) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

For effective date of amendment by section 316(g)(4) of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of Title 42.

Pub. L. 104–168, title IV, §403(b), July 30, 1996, 110 Stat. 1460 , provided that:

> "The amendment made by this section [amending this section] shall apply to requests made after the date of the enactment of this Act [July 30, 1996]."

Pub. L. 104–168, title IX, §902(b), July 30, 1996, 110 Stat. 1466 , provided that:

> "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 30, 1996]."

Pub. L. 104–168, title XII, §1206(c), July 30, 1996, 110 Stat. 1473 , provided that:

> "The amendments made by this section [amending this section and section 7213 of this title] shall take effect on the date of the enactment of this Act [July 30, 1996]."

Effective Date of 1994 Amendment

Amendment by section 108(h)(6) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

Pub. L. 103–296, title III, §311(c), Aug. 15, 1994, 108 Stat. 1526 , provided that:

> "The amendments made by this section [amending this section and section 1306 of Title 42, The Public Health and Welfare] shall apply with respect to requests for information made after the date of the enactment of this Act [Aug. 15, 1994]."

Effective Date of 1993 Amendments

Pub. L. 103–182, title V, §522(c)(1), Dec. 8, 1993, 107 Stat. 2161 , which provided that the amendments made by section 522 of Pub. L. 103–182 took effect on the date the North American Free Trade Agreement entered into force with respect to the United States (Jan. 1, 1994), was repealed by Pub. L. 116–113, title VI, §601, Jan. 29, 2020, 134 Stat. 78 , effective on the date the USMCA entered into force (July 1, 2020).

Pub. L. 103–66, title XIII, §13401(b), Aug. 10, 1993, 107 Stat. 563 , provided that:

> "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 1993]."

Pub. L. 103–66, title XIII, §13402(c), Aug. 10, 1993, 107 Stat. 565 , provided that:

> "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 1993]."

Pub. L. 103–66, title XIII, §13403(c), Aug. 10, 1993, 107 Stat. 565 , provided that:

> "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 1993]."

Pub. L. 103–66, title XIII, §13444(b), Aug. 10, 1993, 107 Stat. 570 , provided that:

> "(1) In general. – Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall take effect on the date one year after the date of the enactment of this Act [Aug. 10, 1993].
>
> "(2) Special rule. – The amendment made by subsection (a) shall take effect on the date 2 years after the date of the enactment of this Act in the case of any State if it is established to the satisfaction of the Secretary of the Treasury that-

> "(A) under the law of such State as in effect on the date of the enactment of this Act, it is impossible for such State to enter into an agreement meeting the requirements of section 6103(d)(4)(B) of the Internal Revenue Code of 1986 (as added by subsection (a)), and
>
> "(B) it is likely that such State will enter into such an agreement during the extension period under this paragraph."

Effective Date of 1990 Amendment

Pub. L. 101–508, title IV, §4203(d), Nov. 5, 1990, 104 Stat. 1388–108 , as amended by Pub. L. 103–432, title I, §151(c)(8), Oct. 31, 1994, 108 Stat. 4436 , provided that: "The amendments made [by] this section [amending this section and section 1395y of Title 42, The Public Health and Welfare] shall take effect on the date of the enactment of this Act [Nov. 5, 1990] and the amendment made by subsection (a)(2)(B) [amending this section] shall apply to requests made on or after such date."

[Pub. L. 103–432, title I, §151(c)(8), Oct. 31, 1994, 108 Stat. 4436 , provided that the amendment made by that section to section 4203(d) of Pub. L. 101–508, set out above, is effective as if included in the enactment of Pub. L. 101–508.]

Amendment by section 11101(d)(6) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Amendment by section 11212(b)(3) of Pub. L. 101–508 effective Dec. 1, 1990, see section 11212(f)(2) of Pub. L. 101–508, set out as a note under section 4081 of this title.

Pub. L. 101–508, title XI, §11313(b), Nov. 5, 1990, 104 Stat. 1388–455 , provided that:

> "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990]."

Effective Date of 1989 Amendment

Pub. L. 101–239, title VI, §6202(a)(1)(D), Dec. 19, 1989, 103 Stat. 2228 , provided that:

> "The amendments made by this paragraph [amending this section and section 7213 of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989]."

Effective Date of 1988 Amendments

Pub. L. 100–690, title VII, §7601(b)(3), Nov. 18, 1988, 102 Stat. 4504 , as amended by Pub. L. 101–647, title XXXIII, §3302(a), Nov. 29, 1990, 104 Stat. 4917 , provided that:

> "The amendments made by this subsection [amending this section] shall apply to requests made on or after the date of the enactment of this Act [Nov. 18, 1988], but disclosures may be made pursuant to such amendments only during the 4-year period beginning on such date."

Pub. L. 100–690, title VII, §7602(e), Nov. 18, 1988, 102 Stat. 4508 , provided that:

> "The amendments made by this section [enacting section 7624 of this title and amending this section and section 7809 of this title] shall apply to information first provided more than 90 days after the date of the enactment of this Act [Nov. 18, 1988]."

Pub. L. 100–647, title I, §1012(bb)(3)(C), Nov. 10, 1988, 102 Stat. 3534 , provided that:

> "The amendments made by this paragraph [amending this section] shall take effect on the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986]."

Amendment by section 1014(e)(4) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–485, title VII, §701(b)(3), Oct. 13, 1988, 102 Stat. 2426 , provided that:

> "(A) In general. – The amendments made by this subsection [amending this section and section 7213 of this title] shall take effect on the date of the enactment of this Act [Oct. 13, 1988].
>
> "(B) Special rule. – Nothing in section 2653(c) of the Deficit Reduction Act of 1984 [Pub. L. 98–369, 26 U.S.C. 6402 note] shall be construed to limit the application of paragraph (10) of section 6103(l) of the Internal Revenue Code of 1986 (as amended by this subsection)."

Effective Date of 1986 Amendment

Amendment by section 1411(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1411(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Pub. L. 99–514, title XV, §1568(b), Oct. 22, 1986, 100 Stat. 2764 , provided that:

> "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 1986]."

Effective Date of 1985 Amendment

Amendment by Pub. L. 99–92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as a note under section 296k of Title 42, The Public Health and Welfare.

Effective Date of 1984 Amendments

Pub. L. 98–378, §21(g), Aug. 16, 1984, 98 Stat. 1326 , as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095 , provided that:

> "The amendments made by this section [amending this section, sections 6402 and 7213 of this title, and sections 654 and 664 of Title 42, The Public Health and Welfare] shall apply with respect to refunds payable under section 6402 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after December 31, 1985."

Pub. L. 98–369, div. A, title IV, §449(b), July 18, 1984, 98 Stat. 818 , provided that:

> "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 453(a)–(b)(3), (6) of Pub. L. 98–369 effective on first day of first calendar month which begins more than 90 days after July 18, 1984, see section 456(a) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

Amendment by section 2651(k) of Pub. L. 98–369 effective July 18, 1984, see section 2651(l)(1) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of Title 42, The Public Health and Welfare.

Amendment by section 2653(b)(3) of Pub. L. 98–369 applicable to refunds payable under section 6402 of this title after Dec. 31, 1985, see section 2653(c) of Pub. L. 98–369, as amended, set out as a note under section 6402 of this title.

Amendment by section 2663(j)(5)(E) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

Effective Date of 1983 Amendment

Amendment by Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of this title.

Effective Date of 1982 Amendments

Pub. L. 97–365, §7(c), Oct. 25, 1982, 96 Stat. 1753, provided that:

> "The amendments made by this section [amending this section] shall apply in the case of loan applications made after September 30, 1982."

Pub. L. 97–365, §8(d), Oct. 25, 1982, 96 Stat. 1754 , provided that:

> "The amendments made by this section [amending this section and section 7213 of this title] shall take effect on the date of the enactment of this Act [Oct. 25, 1982]."

Pub. L. 97–248, title III, §356(c), Sept. 3, 1982, 96 Stat. 645, provided that:

> "The amendments made by this section [amending this section and section 7213 of this title] shall take effect on the day after the date of the enactment of this Act [Sept. 3, 1982]."

Pub. L. 97–248, title III, §358(c), Sept. 3, 1982, 96 Stat. 648, provided that:

> "The amendments made by this section [amending this section] shall take effect on the day after the date of the enactment of this Act [Sept. 3, 1982]."

Effective Date of 1981 Amendment

Pub. L. 97–34, title VII, §701(b), Aug. 13, 1981, 95 Stat. 340 , provided that:

> "The amendment made by subsection (a) [amending this section] shall apply to disclosures after July 19, 1981."

Effective Date of 1980 Amendments

Pub. L. 96–611, §11(a)(3), Dec. 28, 1980, 94 Stat. 3574 , provided that:

> "The amendment made by paragraph (1) [amending section 127(a)(1) of Pub. L. 96–249, which amended this section] shall take effect on May 26, 1980 and the amendments made by paragraph (2) [amending section 408(a)(1), (2) of Pub. L. 96–265, which amended this section and section 7213 of this title] shall take effect on June 9, 1980."

Pub. L. 96–598, §3(b), Dec. 24, 1980, 94 Stat. 3488 , provided that:

> "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 24, 1980]."

Amendment by Pub. L. 96–589 applicable to bankruptcy cases commencing more than 90 days after Dec. 24, 1980, see section 7(b) of Pub. L. 96–589, set out as a note under section 108 of this title.

Pub. L. 96–499, title III, §302(c), Dec. 5, 1980, 94 Stat. 2604 , provided that:

> "The amendments made by subsections (a) and (b) of this section [amending this section and section 7213 of this title] shall take effect on the date of the enactment of this Act [Dec. 5, 1980]."

Pub. L. 96–265, title IV, §408(a)(3), June 9, 1980, 94 Stat. 468 , provided that:

> "The amendments made by this subsection [amending this section and section 7213 of this title] shall take effect on the date of the enactment of this Act [June 9, 1980]."

Pub. L. 96–249, title I, §127(a)(3), May 26, 1980, 94 Stat. 366 , provided that:

> "The amendments made by this subsection [amending this section and section 7213 of this title] shall take effect on the date of the enactment of this Act [May 26, 1980]."

Effective Date of 1978 Amendment

Pub. L. 95–600, title VII, §701(bb)(8), Nov. 6, 1978, 92 Stat. 2923 , provided that:

> "(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and sections 7213 and 7217 of this title] shall take effect January 1, 1977.
>
> "(B) The amendments made by paragraph (7) [amending section 7217 of this title] shall apply with respect to disclosures made after the date of the enactment of this Act [Nov. 6, 1978]."

Effective Date of 1976 Amendment

Pub. L. 94–455, title XII, §1202(i), Oct. 4, 1976, 90 Stat. 1688 , provided that:

> "The amendments made by this section [enacting section 7217 of this title, amending this section and sections 4102, 4924, 6108, 6323, 7213, 7513, 7809, and 7852 of this title, and repealing sections 6106 and 7515 of this title] take effect January 1, 1977."

Effective Date of 1974 Amendment

Pub. L. 93–406, title II, §1022(h), Sept. 2, 1974, 88 Stat. 941 , provided that the amendment made by that section is effective Sept. 2, 1974.

Effective Date of 1966 Amendment

Amendment by Pub. L. 89–713 effective Nov. 2, 1966, see section 6 of Pub. L. 89–713, set out as a note under section 6091 of this title.

Effective Date of 1965 Amendment

Pub. L. 89–44, title VII, §701(e), June 21, 1965, 79 Stat. 157 , provided that:

> "Each amendment made by title VI [repealing section 7275 of this title and amending this section and sections 6415, 6416, 6802, 6806, 6808, 7012, 7272, and 7326 of this title], to the extent that it relates to any tax provision changed by this Act shall take effect in a manner consistent with the effective date for such changed tax provision."

Regulations

Pub. L. 106–170, title V, §521(c), Dec. 17, 1999, 113 Stat. 1927 , provided that:

> "The Secretary of the Treasury or the Secretary's delegate shall prescribe such regulations as may be necessary or appropriate to carry out the

> purposes of section 6103(b)(2)(C), and the last sentence of section 6110(b)(1), of the Internal Revenue Code of 1986, as added by this section."

Pub. L. 105–33, title XI, §11024(c), Aug. 5, 1997, 111 Stat. 722 , provided that:

> "The Secretary may issue regulations governing the confidentiality of the information obtained pursuant to subsection (a) [111 Stat. 721] and the provisions of law amended by subsection (b) [amending this section and section 7213 of this title]."

Pub. L. 103–182, title V, §522(c)(2), Dec. 8, 1993, 107 Stat. 2161 , which required temporary regulations to carry out subsec. (l)(14) of this section to be issued no later than 90 days after Dec. 8, 1993, was repealed by Pub. L. 116–113, title VI, §601, Jan. 29, 2020, 134 Stat. 78 , effective on the date the USMCA entered into force (July 1, 2020).

Construction of 2002 Amendment

Nothing in amendment by Pub. L. 107–210, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107–210, set out as a Construction note under section 35 of this title.

Transfer of Functions

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107–296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114–125, and section 802(b) of Pub. L. 114–125, set out as a note under section 211 of Title 6.

Requirement To Designate the Inspector General of the Department of Education as an Authorized Person

Pub. L. 116–91, §3(e), Dec. 19, 2019, 133 Stat. 1192 , provided that:

> "The Secretary of Education shall authorize and designate the Inspector General of the Department of Education as an authorized person under

subparagraph (E)(ii) of section 6103(l)(13) of the Internal Revenue Code of 1986 for purposes of subparagraphs (A), (B), and (C) of such section."

Report to Treasury

Pub. L. 116–91, §3(f), Dec. 19, 2019, 133 Stat. 1192 , provided that:

"The Secretary of Education shall annually submit a written report to the Secretary of the Treasury-

"(1) regarding redisclosures of return information under subparagraph (D)(iii) of section 6103(l)(13) of the Internal Revenue Code of 1986, including the number of such redisclosures; and

"(2) regarding any unauthorized use, access, or disclosure of return information disclosed under such section."

Report to Congress

Pub. L. 116–91, §3(g), Dec. 19, 2019, 133 Stat. 1192 , provided that:

"The Secretary of the Treasury (or the Secretary's designee) shall annually submit a written report to Congress regarding disclosures under section 6103(l)(13) of the Internal Revenue Code of 1986, including information provided to the Secretary under subsection (f)."

Disclosure of Taxpayer Information for Third-Party Income Verification

Pub. L. 116–25, title II, §2201, July 1, 2019, 133 Stat. 1011 , provided that:

"(a) In General. – Not later than 1 year after the close of the 2-year period described in subsection (d)(1), the Secretary of the Treasury or the Secretary's delegate (hereafter referred to in this section as the 'Secretary') shall implement a program to ensure that any qualified disclosure-

"(1) is fully automated and accomplished through the internet; and

"(2) is accomplished in as close to real-time as is practicable.

"(b) Qualified Disclosure. – For purposes of this section, the term 'qualified disclosure' means a disclosure under section 6103(c) of the Internal Revenue Code of 1986 of returns or return information by the Secretary to a person seeking to verify the income or creditworthiness of a taxpayer who is a borrower in the process of a loan application.

"(c) Application of Security Standards. – The Secretary shall ensure that the program described in subsection (a) complies with applicable security standards and guidelines.

"(d) User Fee. –

"(1) In general. – During the 2-year period beginning on the first day of the sixth calendar month beginning after the date of the enactment of this Act [July 1, 2019], the Secretary shall assess and collect a fee for qualified disclosures (in addition to any other fee assessed and collected for such disclosures) at such rates as the Secretary determines are sufficient to cover the costs related to implementing the program described in subsection (a), including the costs of any necessary infrastructure or technology.

"(2) Deposit of collections. – Amounts received from fees assessed and collected under paragraph (1) shall be deposited in, and credited to, an account solely for the purpose of carrying out the activities described in subsection (a). Such amounts shall be available to carry out such activities without need of further appropriation and without fiscal year limitation."

Annual Report Regarding Advance Pricing Agreements

Pub. L. 106–170, title V, §521(b), Dec. 17, 1999, 113 Stat. 1925 , provided that:

"(1) In general. – Not later than 90 days after the end of each calendar year, the Secretary of the Treasury shall prepare and publish a report regarding advance pricing agreements.

"(2) Contents of report. – The report shall include the following for the calendar year to which such report relates:

"(A) Information about the structure, composition, and operation of the advance pricing agreement program office.

"(B) A copy of each model advance pricing agreement.

"(C) The number of-

"(i) applications filed during such calendar year for advance pricing agreements;

"(ii) advance pricing agreements executed cumulatively to date and during such calendar year;

"(iii) renewals of advance pricing agreements issued;

"(iv) pending requests for advance pricing agreements;

"(v) pending renewals of advance pricing agreements;

"(vi) for each of the items in clauses (ii) through (v), the number that are unilateral, bilateral, and multilateral, respectively;

"(vii) advance pricing agreements revoked or canceled, and the number of withdrawals from the advance pricing agreement program; and

"(viii) advance pricing agreements finalized or renewed by industry.

"(D) General descriptions of-

"(i) the nature of the relationships between the related organizations, trades, or businesses covered by advance pricing agreements;

"(ii) the covered transactions and the business functions performed and risks assumed by such organizations, trades, or businesses;

"(iii) the related organizations, trades, or businesses whose prices or results are tested to determine compliance with transfer pricing methodologies prescribed in advance pricing agreements;

"(iv) methodologies used to evaluate tested parties and transactions and the circumstances leading to the use of those methodologies;

"(v) critical assumptions made and sources of comparables used;

"(vi) comparable selection criteria and the rationale used in determining such criteria;

"(vii) the nature of adjustments to comparables or tested parties;

"(viii) the nature of any ranges agreed to, including information regarding when no range was used and why, when interquartile ranges were used, and when there was a statistical narrowing of the comparables;

"(ix) adjustment mechanisms provided to rectify results that fall outside of the agreed upon advance pricing agreement range;

"(x) the various term lengths for advance pricing agreements, including rollback years, and the number of advance pricing agreements with each such term length;

"(xi) the nature of documentation required; and

"(xii) approaches for sharing of currency or other risks.

"(E) Statistics regarding the amount of time taken to complete new and renewal advance pricing agreements.

"(F) A detailed description of the Secretary of the Treasury's efforts to ensure compliance with existing advance pricing agreements.

"(3) Confidentiality. – The reports required by this subsection shall be treated as authorized by the Internal Revenue Code of 1986 for purposes of section 6103 of such Code, but the reports shall not include information-

"(A) which would not be permitted to be disclosed under section 6110(c) of such Code if such report were a written determination as defined in section 6110 of such Code; or

"(B) which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

"(4) First report. – The report for calendar year 1999 shall include prior calendar years after 1990."

Procedures for Authorizing Disclosure Electronically

Pub. L. 105–206, title II, §2003(e), July 22, 1998, 112 Stat. 725 , provided that:

"The Secretary shall establish procedures for any taxpayer to authorize, on an electronically filed return, the Secretary to disclose information under section 6103(c) of the Internal Revenue Code of 1986 to the preparer of the return."

Electronic Access to Account Information

Pub. L. 105–206, title II, §2005, July 22, 1998, 112 Stat. 726 , provided that:

"(a) In General. – Not later than December 31, 2006, the Secretary of the Treasury or the Secretary's delegate shall develop procedures under which a taxpayer filing returns electronically (and their designees under section 6103(c) of the Internal Revenue Code of 1986) would be able to review the taxpayer's account electronically, but only if all necessary safeguards to ensure the privacy of such account information are in place.

"(b) Report. – Not later than December 31, 2003, the Secretary of the Treasury shall report on the progress the Secretary is making on the development of procedures under subsection (a) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate."

Confidentiality of Tax Return Information

Pub. L. 105–206, title III, §3802, July 22, 1998, 112 Stat. 782 , provided that:

"The Joint Committee on Taxation and the Secretary of the Treasury shall each conduct a separate study of the scope and use of provisions regarding taxpayer confidentiality, and shall report the findings of such study, together with such recommendations as the Committee or the Secretary deems

appropriate, to the Congress not later than 18 months after the date of the enactment of this Act [July 22, 1998]. Such study shall examine -

"(1) the present protections for taxpayer privacy;

"(2) any need for third parties to use tax return information;

"(3) whether greater levels of voluntary compliance may be achieved by allowing the public to know who is legally required to file tax returns, but does not file tax returns;

"(4) the interrelationship of the taxpayer confidentiality provisions in the Internal Revenue Code of 1986 with such provisions in other Federal law, including section 552a of title 5, United States Code (commonly known as the 'Freedom of Information Act') [probably should be a reference to the Privacy Act];

"(5) the impact on taxpayer privacy of the sharing of income tax return information for purposes of enforcement of State and local tax laws other than income tax laws, and including the impact on the taxpayer privacy intended to be protected at the Federal, State, and local levels under Public Law 105–35, the Taxpayer Browsing Protection Act of 1997 [see Tables for classification]; and

"(6) whether the public interest would be served by greater disclosure of information relating to tax exempt organizations described in section 501 of the Internal Revenue Code of 1986."

Combined Employment Tax Reporting Demonstration Project

Pub. L. 105–34, title IX, §976(a), (b), Aug. 5, 1997, 111 Stat. 898, provided that:

"(a) In General. – The Secretary of the Treasury shall provide for a demonstration project to assess the feasibility and desirability of expanding combined Federal and State tax reporting.

"(b) Description of Demonstration Project. – The demonstration project under subsection (a) shall be-

"(1) carried out between the Internal Revenue Service and the State of Montana for a period ending with the date which is 5 years after the date of the enactment of this Act [Aug. 5, 1997],

"(2) limited to the reporting of employment taxes, and

"(3) limited to the disclosure of the taxpayer identity (as defined in section 6103(b)(6) of such Code) and the signature of the taxpayer."

Procedures and Policies To Safeguard Confidentiality of Taxpayer Information

Pub. L. 109–115, div. A, title II, §203, Nov. 30, 2005, 119 Stat. 2438 , which provided that the Internal Revenue Service was to institute and enforce policies and procedures that would safeguard the confidentiality of taxpayer information, was from the Department of the Treasury Appropriations Act, 2006 and was repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were also contained in the following prior appropriations acts:

Pub. L. 108–447, div. H, title II, §203, Dec. 8, 2004, 118 Stat. 3240 .

Pub. L. 108–199, div. F, title II, §203, Jan. 23, 2004, 118 Stat. 318 .

Pub. L. 108–7, div. J, title I, §103, Feb. 20, 2003, 117 Stat. 437 .

Pub. L. 107–67, title I, §103, Nov. 12, 2001, 115 Stat. 523 .

Pub. L. 106–554, §1(a)(3) [title I, §103], Dec. 21, 2000, 114 Stat. 2763 , 2763A-132.

Pub. L. 106–58, title I, §103, Sept. 29, 1999, 113 Stat. 437 .

Pub. L. 105–277, div. A, §101(h) [title I, §105], Oct. 21, 1998, 112 Stat. 2681–480 , 2681-488.

Pub. L. 105–61, title I, §105, Oct. 10, 1997, 111 Stat. 1282 .

Pub. L. 104–208, div. A, title I, §101(f) [title I, §114], Sept. 30, 1996, 110 Stat. 3009–314 , 3009-325.

Pub. L. 104–52, title I, §105, Nov. 19, 1995, 109 Stat. 476 .

Pub. L. 103–329, title I, §108, Sept. 30, 1994, 108 Stat. 2390 .

Pub. L. 103–123, title I, §107, Oct. 28, 1993, 107 Stat. 1234 .

Confidentiality of Tax Return Information

Pub. L. 101–647, title XXXIII, §3304, Nov. 29, 1990, 104 Stat. 4918 , provided that:

> "(a) In General. – Notwithstanding any other provision of this Act [see Tables for classification], no commission established by this Act shall have access to any return or return information, except to the extent authorized by section 6103 of the Internal Revenue Code of 1986.
>
> "(b) Definitions. – For purposes of this section, the terms 'return' and 'return information' have the respective meanings given such terms by section 6103(b) of the Internal Revenue Code of 1986."

Clarification of Congressional Intent as to Scope of Amendments by Section 2653 of Pub. L. 98–369

For provisions that nothing in amendments by section 2653 of Pub. L. 98–369 be construed as exempting debts of corporations or any other category of persons from application of such amendments, with such amendments to extend to all Federal agencies (as defined in such amendments), see section 9402(b) of Pub. L. 100–203, set out as a note under section 6402 of this title.

Plan Amendments Not Required Until January 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

Reimbursement of Costs of Supplying Information Necessary for Administration of Federal Retirement Systems

Pub. L. 99–335, title III, §310(c), June 6, 1986, 100 Stat. 608 , as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095 , provided that:

> "The Office of Personnel Management shall reimburse the costs (as determined by the Secretary of Health and Human Services) of supplying-
>
> > "(1) information under section 6103(l)(12) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]; and
> >
> > "(2) such other information agreed upon by the Director of the Office of Personnel Management and the Secretary of Health and Human Services, which is required in the administration of chapters 83 and 84 of title 5, United States Code.
>
> Section 1106(b) and (c) of the Social Security Act [42 U.S.C. 1306(b), (c)] shall apply to any reimbursement under this subsection."

Taxpayer Identifying Number; Persons Applying For Loans Under Federal Loan Programs Required To Furnish

Pub. L. 97–365, §4, Oct. 25, 1982, 96 Stat. 1751 , which required that each Federal agency administering an included Federal loan program require persons applying for loans to furnish their taxpayer identifying numbers, was repealed and restated in section 7701 of Title 31, Money and Finance, by Pub. L. 103–272, §§4(f)(1)(Y)(i), 7(b), July 5, 1994, 108 Stat. 1363 , 1379.

Individuals Exposed to Occupational Hazards During Military Service; Procedures Applicable for Locating

Pub. L. 96–128, title V, §502, Nov. 28, 1979, 93 Stat. 987 , as amended by Pub. L. 96–466, title VII, §702, Oct. 17, 1980, 94 Stat. 2215 ; Pub. L. 102–54, §14(g)(3), June 13, 1991, 105 Stat. 288 ; Pub. L. 102–83, §6(e), Aug. 6, 1991, 105 Stat. 407 , provided that: "In order to effectuate more fully the policy underlying the enactment of section 6103(m)(3) of the Internal Revenue Code of 1986 regarding the location, for certain purposes, of individuals who are, or may have been, exposed to occupational hazards, the Director of the National Institute of Occupational Safety and Health, upon request by the Secretary of Veterans Affairs (or the head of any other Federal department, agency, or instrumentality), shall (1) pursuant to such section 6103(m)(3), request the mailing addresses of individuals who such Secretary (or such department, agency, or instrumentality head) certifies may have been exposed to occupational hazards during active military, naval, or air service (as defined in section 101(24) of title 38, United States Code), and (2) provide such addresses to such Secretary (or such department, agency, or instrumentality head) to be used solely for the purpose of locating such individuals as part of an activity being carried out by or on behalf of the Department of Veterans Affairs (or such other department, agency, or instrumentality) to determine the status of their health or to inform them of the possible need for medical care and treatment and of benefits to which they may be entitled based on disability resulting from exposure to such occupational hazards. Disclosures of information made under this section shall for all purposes be deemed to be disclosures authorized in the Internal Revenue Code of 1986."

Pub. L. 96–466, title VIII, §802(g)(2), Oct. 17, 1980, 94 Stat. 2218 , provided that:

> "The amendment made by section 702 [amending section 502 of Pub. L. 96–128, set out above] shall take effect as of November 28, 1979."

Executive Documents
Inspection of Tax Returns

The Executive orders listed below authorized inspection of returns for certain specified purposes:

Ex. Ord. No.	Date	Federal Register
10699	Feb. 19, 1957	22 F.R. 1059
10701	Mar. 14, 1957	22 F.R. 1629
10703	Mar. 17, 1957	22 F.R. 1797
10706	Apr. 25, 1957	22 F.R. 3027
10712	May 17, 1957	22 F.R. 3499
10738	Nov. 15, 1957	22 F.R. 9205
10801	Jan. 21, 1959	24 F.R. 521
10806	Mar. 10, 1959	24 F.R. 1823
10808	Mar. 19, 1959	24 F.R. 2221
10815	Apr. 29, 1959	24 F.R. 3474

10818	May 8, 1959	24 F.R. 3799
10846	Oct. 13, 1959	24 F.R. 8318
10855	Nov. 27, 1959	24 F.R. 9565
10871	Mar. 15, 1960	25 F.R. 2251
10876	Apr. 22, 1960	25 F.R. 3569
10906	Jan. 18, 1961	26 F.R. 508
10916	Jan. 25, 1961	26 F.R. 781
10935	Apr. 22, 1961	26 F.R. 3507
10947	June 12, 1961	26 F.R. 5283
10954	July 26, 1961	26 F.R. 6759
10962	Aug. 23, 1961	26 F.R. 8001
10966	Oct. 11, 1961	26 F.R. 9667
10981	Dec. 28, 1961	26 F.R. 12749
11020	May 8, 1962	27 F.R. 4407
11055	Oct. 9, 1962	27 F.R. 9981
11065	Nov. 21, 1962	27 F.R. 11581
11080	Jan. 29, 1963	28 F.R. 903
11082	Feb. 4, 1963	28 F.R. 1131
11083	Feb. 6, 1963	28 F.R. 1245
11099	Mar. 14, 1963	28 F.R. 2619
11102	Apr. 4, 1963	28 F.R. 3373
11109	May 28, 1963	28 F.R. 5351
11133	Dec. 17, 1963	28 F.R. 13835
11153	Apr. 17, 1964	29 F.R. 5335
11176	Sept. 3, 1964	29 F.R. 12607
11192	Jan. 13, 1965	30 F.R. 521
11194	Jan. 26, 1965	30 F.R. 877
11201	Mar. 4, 1965	30 F.R. 2921
11204	Mar. 12, 1965	30 F.R. 3417
11206	Mar. 18, 1965	30 F.R. 3741
11213	Apr. 2, 1965	30 F.R. 4389
11217	Apr. 24, 1965	30 F.R. 5819
11235	July 21, 1965	30 F.R. 9199
11332	Mar. 7, 1967	32 F.R. 3877
11337	Mar. 25, 1967	32 F.R. 5245
11358	June 6, 1967	32 F.R. 8227
11370	Aug. 30, 1967	32 F.R. 12665
11383	Nov. 30, 1967	32 F.R. 17421
11454	Feb. 7, 1969	34 F.R. 1935
11457	Mar. 4, 1969	34 F.R. 3793
11461	Mar. 27, 1969	34 F.R. 5901
11465	Apr. 10, 1969	34 F.R. 6415
11483	Sept. 23, 1969	34 F.R. 14757
11505	Jan. 21, 1970	35 F.R. 939
11535	June 12, 1970	35 F.R. 9809
11584	Mar. 3, 1971	36 F.R. 4365

11611	July 26, 1971	36 F.R. 13889
11624	Oct. 12, 1971	36 F.R. 19965
11631	Nov. 9, 1971	36 F.R. 21575
11650	Feb. 16, 1972	37 F.R. 3739
11655	Mar. 14, 1972	37 F.R. 5477
11656	Mar. 14, 1972	37 F.R. 5479
11682	Aug. 29, 1972	37 F.R. 17701
11697	Jan. 17, 1973	38 F.R. 1723
11706	Mar. 8, 1973	38 F.R. 6663
11709	Mar. 27, 1973	38 F.R. 8131
11711	Apr. 13, 1973	38 F.R. 9483
11719	May 17, 1973	38 F.R. 13315
11720	May 17, 1973	38 F.R. 13317
11722	June 9, 1973	38 F.R. 15437
11786	June 7, 1974	39 F.R. 20473
11859	May 7, 1975	40 F.R. 20265
11900	Jan. 22, 1976	41 F.R. 3461

Executive Orders 10738, 10906, 10954, 10962, 11102, 11206, 11213, 11650, and 11706, listed above, were revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

Executive Order No. 11805

Ex. Ord. No. 11805, Sept. 20, 1974, 39 F.R. 34261, which related to inspection of tax returns by the President and certain designated employees of the White House Office, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 28 JUDICIARY AND JUDICIAL PROCEDURE

PART: I ORGANIZATION OF COURTS

CHAPTER: 5 DISTRICT COURTS

SECTIONS: §89 through §144

NOTE: Pertinent Parts Only!!!

28 USC §89 | FLORIDA

Florida is divided into three judicial districts to be known as the Northern, Middle, and Southern Districts of Florida.

Northern District

(a) The Northern District comprises the counties of Alachua, Bay, Calhoun, Dixie, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington.

Court for the Northern District shall be held at Gainesville, Marianna, Panama City, Pensacola, and Tallahassee.

Middle District

(b) The Middle District comprises the counties of Baker, Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Columbia, De Soto, Duval, Flagler, Glades, Hamilton, Hardee, Hendry, Hernando, Hillsborough, Lake, Lee, Manatee, Marion, Nassau, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, St. Johns, Sarasota, Seminole, Sumter, Suwannee, Union, and Volusia.

Court for the Middle District shall be held at Fernandina, Fort Myers, Jacksonville, Live Oak, Ocala, Orlando, Saint Petersburg, and Tampa.

Southern District

(c) The Southern District comprises the counties of Broward, Dade, Highlands, Indian River, Martin, Monroe, Okeechobee, Palm Beach, and St. Lucie.

Court for the Southern District shall be held at Fort Lauderdale, Fort Pierce, Key West, Miami, and West Palm Beach.

(June 25, 1948, ch. 646, 62 Stat. 876; July 17, 1952, ch. 929, 66 Stat. 757; Pub. L. 87–36, § 3(f), May 19, 1961, 75 Stat. 83; Pub. L. 87–562, § 1, July 30, 1962, 76 Stat. 247; Pub. L. 91–272, § 10, June 2, 1970, 84 Stat. 298; Pub. L. 95–408, § 4(a), Oct. 2, 1978, 92 Stat. 884; Pub. L. 100–702, title X, § 1021(a), Nov. 19, 1988, 102 Stat. 4672.)

28 USC §143 | VACANT JUDGESHIP AS AFFECTING PROCEEDINGS

When the office of a district judge becomes vacant, all pending process, pleadings and proceedings shall, when necessary, be continued by the clerk until a judge is appointed or designated to hold such court.

(June 25, 1948, ch. 646, 62 Stat. 898)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §26 (Mar. 3, 1911, ch. 231, §22, 36 Stat. 1090).

The last clause of section 26 of title 28, U.S.C., 1940, ed., prescribing the powers of a designated judge was omitted as covered by section 296 of this title.

Minor changes were made in phraseology.

28 USC §144 | BIAS OR PREJUDICE OF JUDGE

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

(June 25, 1948, ch. 646, 62 Stat. 898 ; May 24, 1949, ch. 139, §65, 63 Stat. 99.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §25 (Mar. 3, 1911, ch. 231, §21, 36 Stat. 1090).

The provision that the same procedure shall be had when the presiding judge disqualifies himself was omitted as unnecessary. (See section 291 et seq. and section 455 of this title.)

Words, "at which the proceeding is to be heard," were added to clarify the meaning of words, "before the beginning of the term." (See *U.S. v. Costea, D.C.Mich. 1943*, 52 F.Supp. 3.)

Changes were made in phraseology and arrangement.

1949 Act

This amendment clarifies the intent in section 144 of title 28, U.S.C., to conform to the law as it existed at the time of the enactment of the revision limiting the filing of affidavits of prejudice to one such affidavit in any case.

Editorial Notes

Amendments

1949-Act May. 24, 1949, substituted "in any case" for "as to any judge" in second sentence of second par.

Statutory Notes and Related Subsidiaries

Abolition of Terms

For abolition of formal terms of the court and replacement by sessions, see sections 138 and 139 of this title.

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 28 JUDICIARY AND JUDICIAL PROCEDURE

PART: I ORGANIZATION OF COURTS

CHAPTER: 21 GENERAL PROVISIONS APPLICABLE TO COURTS AND JUDGES

SECTIONS: §451 through §455

NOTE: Pertinent Parts Only!!!

28 USC §451 | DEFINITIONS

As used in this title:

The term "court of the United States" includes the Supreme Court of the United States, courts of appeals, district courts constituted by chapter 5 of this title, including the Court of International Trade and any court created by Act of Congress the judges of which are entitled to hold office during good behavior.

The terms "district court" and "district court of the United States" mean the courts constituted by chapter 5 of this title.

The term "judge of the United States" includes judges of the courts of appeals, district courts, Court of International Trade and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior.

The term "justice of the United States" includes the Chief Justice of the United States and the associate justices of the Supreme Court.

The terms "district" and "judicial district" means the districts enumerated in Chapter 5 of this title.

The term "department" means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government.

The term "agency" includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense.

(June 25, 1948, ch. 646, 62 Stat. 907 ; Pub. L. 86–3, §10, Mar. 18, 1959, 73 Stat. 9 ; Pub. L. 89–571, §3, Sept. 12, 1966, 80 Stat. 764 ; Pub. L. 95–598, title II, §213, Nov. 6, 1978, 92 Stat. 2661 ; Pub. L. 96–417, title V, §501(10), Oct. 10, 1980, 94 Stat. 1742 ; Pub. L. 97–164, title I, §114, Apr. 2, 1982, 96 Stat. 29 .)

Historical and Revision Notes

This section was inserted to make possible a greater simplification in consolidation of the provisions incorporated in this title.

The definitions of agency and department conform with such definitions in section 6 of revised title 18, U.S.C. (H.R. 3190, 80th Cong.).

Senate Revision Amendment

Those provisions of this section which related to the Tax Court were eliminated by Senate amendment. See 80th Congress Senate Report No. 1559.

Editorial Notes
References in Text

Section 1 of Title 5, referred to in text, is section 1 of former Title 5, Executive Departments and Government Officers and Employees, the provisions of which are covered by section 101 of Title 5, Government Organization and Employees.

Amendments

1982-Pub. L. 97–164 struck out references to the Court of Claims and to the Court of Customs and Patent Appeals in the definitions of "court of the United States" and "judge of the United States".

1980-Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

1978-Pub. L. 95–598 directed the amendment of section by inserting references to bankruptcy courts and bankruptcy judges, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1966-Pub. L. 89–571 removed the United States District Court for the District of Puerto Rico from the definition of "court of the United States".

1959-Pub. L. 86–3 substituted "including the United States District for the District of Puerto Rico" for "including the district courts of the United States for the districts of Hawaii and Puerto Rico" in provisions defining "court of the United States".

Editorial Notes
Effective Date of 1982 Amendment

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of this title.

Effective Date of 1980 Amendment

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

Effective Date of 1959 Amendment

Pub. L. 86–3, §10, Mar. 18, 1959, 73 Stat. 9 , provided that the amendment made by section 10 of Pub. L. 86–3 shall be effective on admission of the State of Hawaii into the Union. Admission of Hawaii into the Union was accomplished Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 25 F.R. 6868, 73 Stat. c74, as required by sections 1 and 7(c) of Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4 , set out as notes preceding 491 of Title 48, Territories and Insular Possessions.

"Circuit Court of Appeals;" "Senior Circuit Judge," Etc. Defined

Act June 25, 1948, ch. 646, §32, 62 Stat. 991 , as amended by act May 24, 1949, ch. 139, §127, 63 Stat. 107 , provided that:

> "(a) All laws of the United States in force on September 1, 1948, in which reference is made to a 'circuit court of appeals'; 'senior circuit judge'; 'senior district judge'; 'presiding judge'; 'chief justice', except when reference to the Chief Justice of the United States is intended; or 'justice', except when used with respect to a justice of the Supreme Court of the United States in his capacity as such or as a circuit justice, are hereby amended by substituting 'court of appeals' for 'circuit court of appeals'; 'chief judge of the circuit' for 'senior circuit judge'; 'chief judge of the district court' for 'senior district judge'; 'chief judge' for 'presiding judge'; 'chief judge' for 'chief justice', except when reference to the Chief Justice of the United States is intended; and 'judge' for 'justice', except when the latter term is used with respect to a justice of the Supreme Court of the United States in his capacity as such or as a circuit justice.
>
> "(b) All laws of the United States in force on September 1, 1948, in which reference is made to the Supreme Court of the District of Columbia or to the District Court of the United States for the District of Columbia are amended by substituting 'United States District Court for the District of Columbia' for such designations.
>
> "(c) All laws of the United States in force on September 1, 1948, in which reference is made to the 'Conference of Senior Circuit Judges,' or to the 'Judicial Conference of Senior Circuit Judges' are amended by substituting 'Judicial Conference of the United States' for such designations.
>
> "(d) This section shall not be construed to amend historical references to courts or judicial offices which have no present or future application to such courts or offices."

Judges of the United States

Act June 25, 1948, ch. 646, §2(a), 62 Stat. 985 , as amended by act Sept. 3, 1954, ch. 1263, §51(a), 68 Stat. 1245 , provided that: "The Chief Justices of the United States Court of Appeals for the District of Columbia, the District Court of the United States for the District of Columbia, and the Court of Claims [now United States Court of Federal Claims], and the presiding judge of the Court of Customs and Patent Appeals [now United States Court of Appeals for the Federal Circuit], in office on the effective date of this Act shall be the chief judges of their respective courts. The Chief Justice of the United States Court of Appeals for the District of Columbia and

the Associate Justices thereof, the Chief Justice of the District Court of the United States for the District of Columbia (formerly named the Supreme Court of the District of Columbia) and the Associate Justices thereof, the Chief Justice of the Court of Claims [now United States Court of Federal Claims], and the presiding judge of the Court of Customs and Patent Appeals [now United States Court of Appeals for the Federal Circuit], in office on the effective date of this Act, shall be judges of the United States within the meaning of Section 451 of Title 28, Judiciary and Judicial Procedure, of the United States Code, set out in Section 1 of this Act. The Chief Justice of the United States Court of Appeals for the District of Columbia and the Associate Justices thereof, in office on the effective date of this Act, shall be circuit judges of the District of Columbia Circuit and vested with all the rights, powers, and duties thereof, and the said Chief Justice of the United States Court of Appeals for the District of Columbia shall be Chief Judge of said Circuit. The Chief Justice of the District Court of the United States for the District of Columbia (formerly named the Supreme Court of the District of Columbia) and the Associate Justices thereof, in office on the effective date of this Act, shall be district judges for the District of Columbia and vested with all the rights, powers, and duties thereof."

Act Sept. 3, 1954, ch. 1263, §51(b), 68 Stat. 1246, provided that this amendment should take effect as of Sept. 1, 1948.

28 USC §453 | OATHS OF JUSTICES AND JUDGES

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office:

> "I, _____ XXX, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God."

(June 25, 1948, ch. 646, 62 Stat. 907 ; Pub. L. 101–650, title IV, §404, Dec. 1, 1990, 104 Stat. 5124 .)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §§241, 372, and District of Columbia Code, 1940 ed., §§11–203, 11–303 (R.S.D.C., §752, 18 Stat. pt. II, 90; Feb. 9, 1893, ch. 74, §3, 27 Stat. 435 ; Mar. 3, 1901, ch. 854, §223, 31 Stat. 1224 ; Mar. 3, 1911, ch. 231, §§136, 137, 257, 36 Stat. 1135 , 1161; Feb. 25, 1919, ch. 29, §4, 40 Stat. 1157).

This section consolidates sections 11–203 and 11–303 of District of Columbia Code, 1940 ed., and section 372 of title 28, U.S.C., 1940 ed., with that portion of section 241 of said title 28 providing that judges of the Court of Claims shall take an oath of office. The remainder of said section 241 comprises sections 171 and 173 of this title.

The phrase "justice or judge of the United States" was substituted for "justices of the Supreme Court, the circuit judges, and the district judges" appearing in said section 372, in order to extend the provisions of this section to judges of the Court of Claims, Customs Court, and Court of Customs and Patent Appeals and to all judges of any court which may be created by enactment of Congress. See definition in section 451 of this title.

The Attorney General has ruled that the expression "any judge of any court of the United States" applied to the Chief Justice and all judges of the Court of Claims. (21 Op. Atty. Gen. 449.)

Editorial Notes

Amendments

1990-Pub. L. 101–650 substituted "under the Constitution" for "according to the best of my abilities and understanding, agreeably to the Constitution".

Statutory Notes and Related Subsidiaries

Effective Date of 1990 Amendment

Amendment by Pub. L. 101–650 effective 90 days after Dec. 1, 1990, see section 407 of Pub. L. 101–650, set out as a note under section 332 of this title.

28 USC §455 | DISQUALIFICATION OF JUSTICE, JUDGE, OR MAGISTRATE JUDGE

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge’s knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(June 25, 1948, ch. 646, 62 Stat. 908; Pub. L. 93–512, § 1, Dec. 5, 1974, 88 Stat. 1609; Pub. L. 95–598, title II, § 214(a), (b), Nov. 6, 1978, 92 Stat. 2661; Pub. L. 100–702, title X, § 1007, Nov. 19, 1988, 102 Stat. 4667; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 28 JUDICIARY AND JUDICIAL PROCEDURE

PART: III COURT OFFICERS AND EMPLOYEES

CHAPTER: 43 UNITED STATES MAGISTRATE JUDGES

SECTIONS: §631 through §639

NOTE: **Entire Chapter**

28 USC §631 | APPOINTMENT AND TENURE

(a) The judges of each United States district court and the district courts of the Virgin Islands, Guam, and the Northern Mariana Islands shall appoint United States magistrate judges in such numbers and to serve at such locations within the judicial districts as the Judicial Conference may determine under this chapter. In the case of a magistrate judge appointed by the district court of the Virgin Islands, Guam, or the Northern Mariana Islands, this chapter shall apply as though the court appointing such a magistrate judge were a United States district court. Where there is more than one judge of a district court, the appointment, whether an original appointment or a reappointment, shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge. Where the conference deems it desirable, a magistrate judge may be designated to serve in one or more districts adjoining the district for which he is appointed. Such a designation shall be made by the concurrence of a majority of the judges of each of the district courts involved and shall specify the duties to be performed by the magistrate judge in the adjoining district or districts.

(b) No individual may be appointed or re-appointed to serve as a magistrate judge under this chapter unless:

(1) He has been for at least five years a member in good standing of the bar of the highest court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, except that an individual who does not meet the bar membership requirements of this paragraph may be appointed and serve as a part-time magistrate judge if the appointing court or courts and the conference find that no qualified individual who is a member of the bar is available to serve at a specific location;

(2) He is determined by the appointing district court or courts to be competent to perform the duties of the office;

(3) In the case of an individual appointed to serve in a national park, he resides within the exterior boundaries of that park, or at some place reasonably adjacent thereto;

(4) He is not related by blood or marriage to a judge of the appointing court or courts at the time of his initial appointment; and

(5) He is selected pursuant to standards and procedures promulgated by the Judicial Conference of the United States. Such standards and procedures shall contain provision for public notice of all vacancies in magistrate judge positions and for the establishment by the district courts of merit selection panels, composed of residents of the individual judicial districts, to assist the courts in identifying and recommending persons who are best qualified to fill such positions.

(c) A magistrate judge may hold no other civil or military office or employment under the United States: Provided, however, That, with the approval of the conference, a part-time referee in bankruptcy or a clerk or deputy clerk of a court of the United States may be appointed and serve as a part-time United States magistrate judge, but the conference shall fix the aggregate amount of compensation to be received for performing the duties of part-time magistrate judge and part-time referee in bankruptcy, clerk or deputy clerk: And provided further, That retired officers and retired enlisted personnel of the Regular and Reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, members of the Reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, and members of the Army National Guard of the United States, the Air National Guard of the United States, and the Naval Militia and of the National Guard of a State, territory, or the District of Columbia, except the National Guard disbursing officers who are on a full-time salary basis, may be appointed and serve as United States magistrate judges.

(d) Except as otherwise provided in sections 375 and 636(h) of this title, no individual may serve under this chapter after having attained the age of seventy years: Provided, however, That upon a majority vote of all the judges of the appointing court or courts, which is taken upon the magistrate judge’s attaining age seventy and upon each subsequent

anniversary thereof, a magistrate judge who has attained the age of seventy years may continue to serve and may be reappointed under this chapter.

(e) The appointment of any individual as a full-time magistrate judge shall be for a term of eight years, and the appointment of any individuals as a part-time magistrate judge shall be for a term of four years, except that the term of a full-time or part-time magistrate judge appointed under subsection (k) [1] shall expire upon —

(1) the expiration of the absent magistrate judge's term,

(2) the reinstatement of the absent magistrate judge in regular service in office as a magistrate judge,

(3) the failure of the absent magistrate judge to make timely application under subsection (j) 1 of this section for reinstatement in regular service in office as a magistrate judge after discharge or release from military service,

(4) the death or resignation of the absent magistrate judge, or

(5) the removal from office of the absent magistrate judge pursuant to subsection (i) of this section,

whichever may first occur.

(f) Upon the expiration of his term, a magistrate judge may, by a majority vote of the judges of the appointing district court or courts and with the approval of the judicial council of the circuit, continue to perform the duties of his office until his successor is appointed, or for 180 days after the date of the expiration of the magistrate judge's term, whichever is earlier.

(g) Each individual appointed as a magistrate judge under this section shall take the oath or affirmation prescribed by section 453 of this title before performing the duties of his office.

(h) Each appointment made by a judge or judges of a district court shall be entered of record in such court, and notice of such appointment shall be given at once by the clerk of that court to the Director.

(i) Removal of a magistrate judge during the term for which he is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability, but a magistrate judge's office shall be terminated if the conference determines that the services performed by his office are no longer needed. Removal shall be by the judges of the district court for the judicial district in which the magistrate judge serves; where there is more than one judge of a district court, removal shall not occur unless a majority of all the judges of such court concur in the order of removal; and when there is a tie vote of the judges of the district court on the question of the removal or retention in office of a magistrate judge, then removal shall be only by a concurrence of a majority of all the judges of the council. In the case of a magistrate judge appointed under the third sentence of subsection (a) of this section, removal shall not occur unless a majority of all the judges of the appointing district courts concur in the order of removal; and where there is a tie vote on the question of the removal or retention in office of a magistrate judge, then removal shall be only by a concurrence of a majority of all the judges of the council or councils. Before any order or removal shall be entered, a full specification of the charges shall be furnished to the magistrate judge, and he shall be accorded by the judge or judges of the removing court, courts, council, or councils an opportunity to be heard on the charges.

(j) Upon the grant by the appropriate district court or courts of a leave of absence to a magistrate judge entitled to such relief under chapter 43 of title 38, such court or courts may proceed to appoint, in the manner specified in subsection (a) of this section, another magistrate judge, qualified for appointment and service under subsections (b), (c), and (d) of this section, who shall serve for the period specified in subsection (e) of this section.

(k) A United States magistrate judge appointed under this chapter shall be exempt from the provisions of subchapter I of chapter 63 of title 5.

(June 25, 1948, ch. 646, 62 Stat. 915; May 24, 1949, ch. 139, § 73, 63 Stat. 100; July 9, 1952, ch. 609, § 1, 66 Stat. 509; July 25, 1956, ch. 722, 70 Stat. 642; Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1108; Pub. L. 94–520, § 2, Oct. 17, 1976, 90 Stat. 2458; Pub. L. 95–598, title II, § 231, Nov. 6, 1978, 92 Stat. 2665; Pub. L. 96–82, § 3(a)–(d), Oct. 10, 1979, 93 Stat. 644, 645; Pub. L. 97–230, Aug. 6, 1982, 96 Stat. 255; Pub. L. 99–651, title II, § 201(a)(1), Nov. 14, 1986, 100 Stat. 3646; Pub. L. 100–659, § 5, Nov. 15, 1988, 102 Stat. 3918; Pub. L. 100–702, title X, § 1003(a)(2), Nov. 19, 1988, 102 Stat. 4665; Pub. L. 101–45, title II, § 104, June 30, 1989, 103 Stat. 122; Pub. L. 101–650, title III, §§ 308(b), 321, Dec. 1, 1990, 104 Stat. 5112, 5117; Pub. L. 103–353, § 2(c), Oct. 13, 1994, 108 Stat. 3169; Pub. L. 106–518, title II, § 201, Nov. 13, 2000, 114 Stat. 2412; Pub. L. 110–177, title V, § 504, Jan. 7, 2008, 121 Stat. 2542; Pub. L. 111–174, § 2, May 27, 2010, 124 Stat. 1216.)

28 USC §632 | CHARACTER OF SERVICE

(a) Full-time United States magistrate judges may not engage in the practice of law, and may not engage in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of their duties as judicial officers.

(b) Part-time United States magistrate judges shall render such service as judicial officers as is required by law. While so serving they may engage in the practice of law, but may not serve as counsel in any criminal action in any court of the United States, nor act in any capacity that is, under such regulations as the conference may establish, inconsistent with the proper discharge of their office. Within such restrictions, they may engage in any other business, occupation, or employment which is not inconsistent with the expeditious, proper, and impartial performance of their duties as judicial officers.

(June 25, 1948, ch. 646, 62 Stat. 916; Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1110; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

28 USC §633 | DETERMINATION OF NUMBER, LOCATIONS, AND SALARIES MAGISTRATE JUDGES

(a) Surveys by the Director. —

(1) The Director shall, within one year immediately following the date of the enactment of the Federal Magistrates Act, make a careful survey of conditions in judicial districts to determine (A) the number of appointments of full-time magistrates and part-time magistrates required to be made under this chapter to provide for the expeditious and effective administration of justice, (B) the locations at which such officers shall serve, and (C) their respective salaries under section 634 of this title. Thereafter, the Director shall, from time to time, make such surveys, general or local, as the conference shall deem expedient.

(2) In the course of any survey, the Director shall take into account local conditions in each judicial district, including the areas and the populations to be served, the transportation and communications facilities available, the amount and distribution of business of the type expected to arise before officers appointed under this chapter (including such matters as may be assigned under section 636(b) of this chapter), and any other material factors. The Director shall give consideration to suggestions from any interested parties, including district judges, United States magistrate judges or officers appointed under this chapter, United States attorneys, bar associations, and other parties having relevant experience or information.

(3) The surveys shall be made with a view toward creating and maintaining a system of full-time United States magistrate judges. However, should the Director find, as a result of any such surveys, areas in which the employment of a full-time magistrate judge would not be feasible or desirable, he shall recommend the appointment of part-time United States magistrate judges in such numbers and at such locations as may be required to permit prompt and efficient issuance of process and to permit individuals charged with criminal offenses against the United States to be brought before a judicial officer of the United States promptly after arrest.

(b) Determination by the Conference. —

Upon the completion of the initial surveys required by subsection (a) of this section, the Director shall report to the district courts, the councils, and the conference his recommendations concerning the number of full-time magistrates and part-time magistrates, their respective locations, and the amount of their respective salaries under section 634 of this title. The district courts shall advise their respective councils, stating their recommendations and the reasons therefor; the councils shall advise the conference, stating their recommendations and the reasons therefor, and shall also report to the conference the recommendations of the district courts. The conference shall determine, in the light of the recommendations of the Director, the district courts, and the councils, the number of full-time United States magistrates and part-time United States magistrates, the locations at which they shall serve, and their respective salaries. Such determinations shall take effect in each judicial district at such time as the district court for such judicial district shall determine, but in no event later than one year after they are promulgated.

(c) Changes in Number, Locations, and Salaries. —

Except as otherwise provided in this chapter, the conference may, from time to time, in the light of the recommendations of the Director, the district courts, and the councils, change the number, locations, and salaries of full-time and part-time magistrate judges, as the expeditious administration of justice may require.

(June 25, 1948, ch. 646, 62 Stat. 916; Aug. 13, 1954, ch. 728, § 1(a), (b), 68 Stat. 704; Pub. L. 85–276, §§ 1, 2, Sept. 2, 1957, 71 Stat. 600; Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1111; Pub. L. 96–82, § 4, Oct. 10, 1979, 93 Stat. 645; Pub. L. 99–651, title II, § 202(d), Nov. 14, 1986, 100 Stat. 3648; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

28 USC §634 | COMPENSATION

(a) Officers appointed under this chapter shall receive, as full compensation for their services, salaries to be fixed by the conference pursuant to section 633, at rates for full-time United States magistrate judges up to an annual rate equal to 92 percent of the salary of a judge of the district court of the United States, as determined pursuant to section 135, and at rates for part-time magistrate judges of not less than an annual salary of $100, nor more than one-half the maximum salary payable to a full-time magistrate judge. In fixing the amount of salary to be paid to any officer appointed under this chapter, consideration shall be given to the average number and the nature of matters that have arisen during the immediately preceding period of five years, and that may be expected thereafter to arise, over which such officer would have jurisdiction and to such other factors as may be material. Disbursement of salaries shall be made by or pursuant to the order of the Director.

(b) Except as provided by section 8344, title 5, relating to reductions of the salaries of reemployed annuitants under subchapter III of chapter 83 of such title and unless the office has been terminated as provided in this chapter, the salary of a full-time United States magistrate judge shall not be reduced, during the term in which he is serving, below the salary fixed for him at the beginning of that term.

(c) All United States magistrate judges, effective upon their taking the oath or affirmation of office, and all necessary legal, clerical, and secretarial assistants employed in the offices of full-time United States magistrate judges shall be deemed to be officers and employees in the judicial branch of the United States Government within the meaning of subchapter III (relating to civil service retirement) of chapter 83, chapter 87 (relating to Federal employees' group life insurance), and chapter 89 (relating to Federal employees' health benefits program) of title 5. Part-time magistrate judges shall not be excluded from coverage under these chapters solely for lack of a prearranged regular tour of duty. A legal assistant appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1112; Pub. L. 92–428, Sept. 21, 1972, 86 Stat. 721; Pub. L. 94–520, § 1, Oct. 17, 1976, 90 Stat. 2458; Pub. L. 95–598, title II, § 232, Nov. 6, 1978, 92 Stat. 2665; Pub. L. 96–82, § 8(b), Oct. 10, 1979, 93 Stat. 647; Pub. L. 98–353, title I, § 108(a), title II, § 210, July 10, 1984, 98 Stat. 342, 351; Pub. L. 100–202, § 101(a) [title IV, § 408(b)], Dec. 22, 1987, 101 Stat. 1329, 1329–27; Pub. L. 100–702, title X, § 1003(a)(4), Nov. 19, 1988, 102 Stat. 4665; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

28 USC §635 | EXPENSES

(a) Full-time United States magistrate judges serving under this chapter shall be allowed their actual and necessary expenses incurred in the performance of their duties, including the compensation of such legal assistants as the Judicial Conference, on the basis of the recommendations of the judicial councils of the circuits, considers necessary, and the compensation of necessary clerical and secretarial assistance. Such expenses and compensation shall be determined and paid by the Director under such regulations as the Director shall prescribe with the approval of the conference. The Administrator of General Services shall provide such magistrate judges with necessary courtrooms, office space, furniture and facilities within United States courthouses or office buildings owned or occupied by departments or agencies of the United States, or should suitable courtroom and office space not be available within any such courthouse or office building, the Administrator of General Services, at the request of the Director, shall procure and pay for suitable courtroom and office space, furniture and facilities for such magistrate judge in another building, but only if such request has been approved as necessary by the judicial council of the appropriate circuit.

(b) Under such regulations as the Director shall prescribe with the approval of the conference, the Director shall reimburse part-time magistrate judges for actual expenses necessarily incurred by them in the performance of their duties under this chapter. Such reimbursement may be made, at rates not exceeding those prescribed by such regulations, for expenses incurred by such part-time magistrate judges for clerical and secretarial assistance, stationery, telephone and other communications services, travel, and such other expenses as may be determined to be necessary for the proper performance of the duties of such officers: Provided, however, That no reimbursement shall be made for all or any portion of the expense incurred by such part-time magistrate judges for the procurement of office space.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1112; Pub. L. 96–82, § 8(a), Oct. 10, 1979, 93 Stat. 646; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

28 USC §636 | JURISDICTION, POWERS, AND TEMPORARY ASSIGNMENT

(a) Each United States magistrate judge serving under this chapter shall have within the district in which sessions are held by the court that appointed the magistrate judge, at other places where that court may function, and elsewhere as authorized by law —

(1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;

(2) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgements, affidavits, and depositions;

(3) the power to conduct trials under section 3401, title 18, United States Code, in conformity with and subject to the limitations of that section;

(4) the power to enter a sentence for a petty offense; and

(5) the power to enter a sentence for a class A misdemeanor in a case in which the parties have consented.

(b)

(1) Notwithstanding any provision of law to the contrary —

(A) a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has

been shown that the magistrate judge's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial[1] relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

(2) A judge may designate a magistrate judge to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate judge to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule 53(b) of the Federal Rules of Civil Procedure for the United States district courts.

(3) A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

(4) Each district court shall establish rules pursuant to which the magistrate judges shall discharge their duties.

(c) Notwithstanding any provision of law to the contrary —

(1) Upon the consent of the parties, a full-time United States magistrate judge or a part-time United States magistrate judge who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate judge may exercise such jurisdiction, if such magistrate judge meets the bar membership requirements set forth in section 631(b)(1) and the chief judge of the district court certifies that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

(2) If a magistrate judge is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate judge to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate judge may again advise the parties of the availability of the magistrate judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrate judges shall include procedures to protect the voluntariness of the parties' consent.

(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate judge in the same manner as an appeal from any other judgment of a district court. The consent of the parties allows a magistrate judge designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

(4) The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate judge under this subsection.

(5) The magistrate judge shall, subject to guidelines of the Judicial Conference, determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.

(d) The practice and procedure for the trial of cases before officers serving under this chapter shall conform to rules promulgated by the Supreme Court pursuant to section 2072 of this title.

(e) Contempt Authority. —

(1) In general. —

A United States magistrate judge serving under this chapter shall have within the territorial jurisdiction prescribed by the appointment of such magistrate judge the power to exercise contempt authority as set forth in this subsection.

(2) Summary criminal contempt authority. —

A magistrate judge shall have the power to punish summarily by fine or imprisonment, or both, such contempt of the authority of such magistrate judge constituting misbehavior of any person in the magistrate judge's presence so as to obstruct the administration of justice. The order of contempt shall be issued under the Federal Rules of Criminal Procedure.

(3) Additional criminal contempt authority in civil consent and misdemeanor cases. —

In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge shall have the power to punish, by fine or imprisonment, or both, criminal contempt constituting disobedience or resistance to the magistrate judge's lawful writ, process, order, rule, decree, or command. Disposition of such contempt shall be conducted upon notice and hearing under the Federal Rules of Criminal Procedure.

(4) Civil contempt authority in civil consent and misdemeanor cases. —

In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge may exercise the civil contempt authority of the district court. This paragraph shall not be construed to limit the authority of a magistrate judge to order sanctions under any other statute, the Federal Rules of Civil Procedure, or the Federal Rules of Criminal Procedure.

(5) Criminal contempt penalties. —

The sentence imposed by a magistrate judge for any criminal contempt provided for in paragraphs (2) and (3) shall not exceed the penalties for a Class C misdemeanor as set forth in sections 3581(b)(8) and 3571(b)(6) of title 18.

(6) Certification of other contempts to the district court. — Upon the commission of any such act —

(A) in any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, or in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, that may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection, or

(B) in any other case or proceeding under subsection (a) or (b) of this section, or any other statute, where —

(i) the act committed in the magistrate judge's presence may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection,

(ii) the act that constitutes a criminal contempt occurs outside the presence of the magistrate judge, or

(iii) the act constitutes a civil contempt,

the magistrate judge shall forthwith certify the facts to a district judge and may serve or cause to be served, upon any person whose behavior is brought into question under this paragraph, an order requiring such person to appear before a district judge upon a day certain to show cause why that person should not be adjudged in contempt by reason of the facts so certified. The district judge shall thereupon hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a district judge.

(7) Appeals of magistrate judge contempt orders. —

The appeal of an order of contempt under this subsection shall be made to the court of appeals in cases proceeding under subsection (c) of this section. The appeal of any other order of contempt issued under this section shall be made to the district court.

(f) In an emergency and upon the concurrence of the chief judges of the districts involved, a United States magistrate judge may be temporarily assigned to perform any of the duties specified in subsection (a), (b), or (c) of this section in a judicial district other than the judicial district for which he has been appointed. No magistrate judge shall perform any of such duties in a district to which he has been temporarily assigned until an order has been issued by the chief judge of such district specifying (1) the emergency by reason of which he has been transferred, (2) the duration of his assignment, and (3) the duties which he is authorized to perform. A magistrate judge so assigned shall not be entitled to additional compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties in accordance with section 635.

(g) A United States magistrate judge may perform the verification function required by section 4107 of title 18, United States Code. A magistrate judge may be assigned by a judge of any United States district court to perform the verification required by section 4108 and the appointment of counsel authorized by section 4109 of title 18, United States Code, and may perform such functions beyond the territorial limits of the United States. A magistrate judge assigned such functions shall have no authority to perform any other function within the territory of a foreign country.

(h) A United States magistrate judge who has retired may, upon the consent of the chief judge of the district involved, be recalled to serve as a magistrate judge in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a magistrate judge may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference, subject to the restrictions on the payment of an annuity set forth in section 377 of this title or in subchapter III of chapter 83, and chapter 84, of title 5 which are applicable to such magistrate judge. The requirements set forth in subsections (a), (b)(3), and (d) of section 631, and paragraph (1) of subsection (b) of such section to the extent such paragraph requires membership of the bar of the location in which an individual is to serve as a magistrate judge, shall not apply to the recall of a retired magistrate judge under this subsection or section 375 of this title. Any other requirement set forth in section 631(b) shall apply to the recall of a retired magistrate judge under this subsection or section 375 of this title unless such retired magistrate judge met such requirement upon appointment or reappointment as a magistrate judge under section 631.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1113; Pub. L. 92–239, §§ 1, 2, Mar. 1, 1972, 86 Stat. 47; Pub. L. 94–577, § 1, Oct. 21, 1976, 90 Stat. 2729; Pub. L. 95–144, § 2, Oct. 28, 1977, 91 Stat. 1220; Pub. L. 96–82, § 2, Oct. 10, 1979, 93 Stat. 643; Pub. L. 98–473, title II, § 208, Oct. 12, 1984, 98 Stat. 1986; Pub. L. 98–620, title IV, § 402(29)(B), Nov. 8, 1984, 98 Stat. 3359; Pub. L. 99–651, title II, § 201(a)(2), Nov. 14, 1986, 100 Stat. 3647; Pub. L. 100–659, § 4(c), Nov. 15, 1988, 102 Stat. 3918; Pub. L. 100–690, title VII, § 7322, Nov. 18, 1988, 102 Stat. 4467; Pub. L. 100–702, title IV, § 404(b)(1), title X, § 1014, Nov. 19, 1988, 102 Stat. 4651, 4669; Pub. L. 101–650, title III, §§ 308(a), 321, Dec. 1, 1990, 104 Stat. 5112, 5117; Pub. L. 104–317, title II, §§ 201, 202(b), 207, Oct. 19, 1996, 110 Stat. 3848–3850; Pub. L. 106–518, title II, §§ 202, 203(b), Nov. 13, 2000, 114 Stat. 2412, 2414; Pub. L. 107–273, div. B, title III, § 3002(b), Nov. 2, 2002, 116 Stat. 1805; Pub. L. 109–63, § 2(d), Sept. 9, 2005, 119 Stat. 1995; Pub. L. 111–16, § 6(1), May 7, 2009, 123 Stat. 1608.)

28 USC §651 | AUTHORITIZATION OF ALTERNATIVE DISPUTE RESOLUTION

(a) Definition. For purposes of this chapter, an alternative dispute resolution process includes any process or procedure, other than an adjudication by a presiding judge, in which a neutral third party participates to assist in the resolution of issues in controversy, through processes such as early neutral evaluation,

mediation, minitrial, and arbitration as provided in sections 654 through 658.

(b) Authority. Each United States district court shall authorize, by local rule adopted under section 2071(a), the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, in accordance with this chapter, except that the use of arbitration may be authorized only as provided in section 654. Each United States district court shall devise and implement its own alternative dispute resolution program, by local rule adopted under section 2071(a), to encourage and promote the use of alternative dispute resolution in its district.

(c) Existing Alternative Dispute Resolution Programs. In those courts where an alternative dispute resolution program is in place on the date of the enactment of the Alternative Dispute Resolution Act of 1998, the court shall examine the effectiveness of that program and adopt such improvements to the program as are consistent with the provisions and purposes of this chapter.

(d) Administration of Alternative Dispute Resolution Programs. Each United States district court shall designate an employee, or a judicial officer, who is knowledgeable in alternative dispute resolution practices and processes to implement, administer, oversee, and evaluate the court's alternative dispute resolution program. Such person may also be responsible for recruiting, screening, and training attorneys to serve as neutrals and arbitrators in the court's alternative dispute resolution program.

(e) Title 9 Not Affected. This chapter shall not affect title 9, United States Code.

(f) Program Support. The Federal Judicial Center and the Administrative Office of the United States Courts are authorized to assist the district courts in the establishment and improvement of alternative dispute resolution programs by identifying particular practices employed in successful programs and providing additional assistance as needed and appropriate.

(Added Pub. L. 100–702, title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4659; amended Pub. L. 105–315, § 3, Oct. 30, 1998, 112 Stat. 2993.)

28 USC §637 | TRAINING

The Federal Judicial Center shall conduct periodic training programs and seminars for both full-time and part-time United States magistrate judges, including an introductory training program for new magistrate judges, to be held within one year after initial appointment.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1114; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

28 USC §638 | DOCKETS AND FORMS; UNITED STATES CODE; SEALS

(a) The Director shall furnish to United States magistrate judges adequate docket books and forms prescribed by the Director. The Director shall also furnish to each such officer a copy of the current edition of the United States Code.

(b) All property furnished to any such officer shall remain the property of the United States and, upon the termination of his term of office, shall be transmitted to his successor in office or otherwise disposed of as the Director orders.

(c) The Director shall furnish to each United States magistrate judge appointed under this chapter an official impression seal in a form prescribed by the conference. Each such officer shall affix his seal to every jurat or certificate of his official acts without fee.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1114; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

28 USC §639 | DEFINITIONS

As used in this chapter —

(1) "Conference" shall mean the Judicial Conference of the United States;

(2) "Council" shall mean the Judicial Council of the Circuit;

(3) "Director" shall mean the Director of the Administrative Office of the United States Courts;

(4) "Full-time magistrate judge" shall mean a full-time United States magistrate judge;

(5) "Part-time magistrate judge" shall mean a part-time United States magistrate judge; and

(6) "United States magistrate judge" and "magistrate judge" shall mean both full-time and part-time United States magistrate judges.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1114; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 28 JUDICIARY AND JUDICIAL PROCEDURE

PART: III COURT OFFICERS AND EMPLOYEES

CHAPTER: 44 ALTERNATIVE DISPUTE RESOLUTION

SECTIONS: §651 through §658

NOTE: **Entire Chapter**

28 USC §651 | AUTHORITIZATION OF ALTERNATIVE DISPUTE RESOLUTION

(a) Definition. For purposes of this chapter, an alternative dispute resolution process includes any process or procedure, other than an adjudication by a presiding judge, in which a neutral third party participates to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration as provided in sections 654 through 658.

(b) Authority. Each United States district court shall authorize, by local rule adopted under section 2071(a), the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, in accordance with this chapter, except that the use of arbitration may be authorized only as provided in section 654. Each United States district court shall devise and implement its own alternative dispute resolution program, by local rule adopted under section 2071(a), to encourage and promote the use of alternative dispute resolution in its district.

(c) Existing Alternative Dispute Resolution Programs. In those courts where an alternative dispute resolution program is in place on the date of the enactment of the Alternative Dispute Resolution Act of 1998, the court shall examine the effectiveness of that program and adopt such improvements to the program as are consistent with the provisions and purposes of this chapter.

(d) Administration of Alternative Dispute Resolution Programs. Each United States district court shall designate an employee, or a judicial officer, who is knowledgeable in alternative dispute resolution practices and processes to implement, administer, oversee, and evaluate the court's alternative dispute resolution program. Such person may also be responsible for recruiting, screening, and training attorneys to serve as neutrals and arbitrators in the court's alternative dispute resolution program.

(e) Title 9 Not Affected. This chapter shall not affect title 9, United States Code.

(f) Program Support. The Federal Judicial Center and the Administrative Office of the United States Courts are authorized to assist the district courts in the establishment and improvement of alternative dispute resolution programs by identifying particular practices employed in successful programs and providing additional assistance as needed and appropriate.

(Added Pub. L. 100–702, title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4659; amended Pub. L. 105–315, § 3, Oct. 30, 1998, 112 Stat. 2993.)

28 USC §652 | JURISDICTION

(a) Consideration of Alternative Dispute Resolution in Appropriate Cases. Notwithstanding any provision of law to the contrary and except as provided in subsections (b) and (c), each district court shall, by local rule adopted under section 2071(a), require that litigants in all civil cases consider the use of an alternative dispute resolution process at an appropriate stage in the litigation. Each district court shall provide litigants in all civil cases with at least one alternative dispute resolution process, including, but not limited to, mediation, early neutral evaluation, minitrial, and arbitration as authorized in sections 654 through 658. Any district court that elects to require the use of alternative dispute resolution in certain cases may do so only with respect to mediation, early neutral evaluation, and, if the parties consent, arbitration.

(b) Actions Exempted From Consideration of Alternative Dispute Resolution. Each district court may exempt from the requirements of this section specific cases or categories of cases in which use of alternative dispute resolution would not be appropriate. In defining these exemptions, each district court shall consult with members of the bar, including the United States Attorney for that district.

(c) Authority of the Attorney General. Nothing in this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, with the authority of any Federal agency authorized to conduct litigation in the United States courts, or with any delegation of litigation authority by the Attorney General.

(d) Confidentiality Provisions. Until such time as rules are adopted under chapter 131 of this title providing for the confidentiality of alternative dispute resolution processes under this chapter, each district court shall, by local rule adopted under section 2071(a), provide for the confidentiality of the alternative dispute resolution processes and to prohibit disclosure of confidential dispute resolution communications.

(Added Pub. L. 100–702, title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4659; amended Pub. L. 105–315, § 4, Oct. 30, 1998, 112 Stat. 2994.)

28 USC §653 | NEUTRALS

(a) Panel of Neutrals. Each district court that authorizes the use of alternative dispute resolution processes shall adopt appropriate processes for making neutrals available for use by the parties for each category of process offered. Each district court shall promulgate its own procedures and criteria for the selection of neutrals on its panels.

(b) Qualifications and Training. Each person serving as a neutral in an alternative dispute resolution process should be qualified and trained to serve as a neutral in the appropriate alternative dispute resolution process. For this purpose, the district court may use, among others, magistrate judges who have been trained to serve as neutrals in alternative dispute resolution processes, professional neutrals from the private sector, and persons who have been trained to serve as neutrals in alternative dispute resolution processes. Until such time as rules are adopted under chapter 131 of this title relating to the disqualification of neutrals, each district court shall issue rules under section 2071(a) relating to the disqualification of neutrals (including, where appropriate, disqualification under section 455 of this title, other applicable law, and professional responsibility standards).

(Added Pub. L. 100–702, title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4660; amended Pub. L. 105–315, § 5, Oct. 30, 1998, 112 Stat. 2995.)

28 USC §654 | ARBITRATION

(a) Referral of Actions to Arbitration. Notwithstanding any provision of law to the contrary and except as provided in subsections (a), (b), and (c) of section 652 and subsection (d) of this section, a district court may allow the referral to arbitration of any civil action (including any adversary proceeding in bankruptcy) pending before it when the parties consent, except that referral to arbitration may not be made where—

> **(1)** the action is based on an alleged violation of a right secured by the Constitution of the United States;
>
> **(2)** jurisdiction is based in whole or in part on section 1343 of this title; or
>
> **(3)** the relief sought consists of money damages in an amount greater than $150,000.

(b) Safeguards in Consent Cases. Until such time as rules are adopted under chapter 131 of this title relating to procedures described in this subsection, the district court shall, by local rule adopted under section 2071(a), establish procedures to ensure that any civil action in which arbitration by consent is allowed under subsection (a)—

> **(1)** consent to arbitration is freely and knowingly obtained; and
>
> **(2)** no party or attorney is prejudiced for refusing to participate in arbitration.

(c) Presumptions. For purposes of subsection (a)(3), a district court may presume damages are not in excess of $150,000 unless counsel certifies that damages exceed such amount.

(d) Existing Programs. Nothing in this chapter is deemed to affect any program in which arbitration is conducted pursuant to section[1] title IX of the Judicial Improvements and Access to Justice Act (Public Law 100–702), as amended by section 1 of Public Law 105–53.

(Added Pub. L. 100–702, title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4660; amended Pub. L. 105–315, § 6, Oct. 30, 1998, 112 Stat. 2995.)

28 USC §655 | ARBITRATORS

(a) Powers of Arbitrators. An arbitrator to whom an action is referred under section 654 shall have the power, within the judicial district of the district court which referred the action to arbitration—

(1) to conduct arbitration hearings;

(2) to administer oaths and affirmations; and

(3) to make awards.

(b) Standards for Certification. Each district court that authorizes arbitration shall establish standards for the certification of arbitrators and shall certify arbitrators to perform services in accordance with such standards and this chapter. The standards shall include provisions requiring that any arbitrator—

(1) shall take the oath or affirmation described in section 453; and

(2) shall be subject to the disqualification rules under section 455.

(c) Immunity. All individuals serving as arbitrators in an alternative dispute resolution program under this chapter are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.

(Added Pub. L. 100–702, title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4661; amended Pub. L. 105–315, § 7, Oct. 30, 1998, 112 Stat. 2996.)

28 USC §656 | SUBPOENAS

Rule 45 of the Federal Rules of Civil Procedure (relating to subpoenas) applies to subpoenas for the attendance of witnesses and the production of documentary evidence at an arbitration hearing under this chapter.

(Added Pub. L. 100–702, title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4662; amended Pub. L. 105–315, § 8, Oct. 30, 1998, 112 Stat. 2996.)

28 USC §657 | ARBITRATION AWARD AND JUDGMENT

(a) Filing and Effect of Arbitration Award. An arbitration award made by an arbitrator under this chapter, along with proof of service of such award on the other party by the prevailing party or by the plaintiff, shall be filed promptly after the arbitration hearing is concluded with the clerk of the district court that referred the case to arbitration. Such award shall be entered as the judgment of the court after the time has expired for requesting a trial de novo. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

(b) Sealing of Arbitration Award. The district court shall provide, by local rule adopted under section 2071(a), that the contents of any arbitration award made under this chapter shall not be made known to any judge who might be assigned to the case until the district court has entered final judgment in the action or the action has otherwise terminated.

(c) Trial de Novo of Arbitration Awards.

(1) Time for filing demand. Within 30 days after the filing of an arbitration award with a district court under subsection (a), any party may file a written demand for a trial de novo in the district court.

(2) Action restored to court docket. Upon a demand for a trial de novo, the action shall be restored to the docket of the court and treated for all purposes as if it had not been referred to arbitration.

(3) Exclusion of evidence of arbitration. The court shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless —

(A) the evidence would otherwise be admissible in the court under the Federal Rules of Evidence; or

(B) the parties have otherwise stipulated.

(Added Pub. L. 100–702, title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4662; amended Pub. L. 105–315, § 9, Oct. 30, 1998, 112 Stat. 2997.)

28 USC §658 | COMPENSATION OF ARBITRATORS AND NEUTRALS

(a) Compensation. The district court shall, subject to regulations approved by the Judicial Conference of the United States, establish the amount of compensation, if any, that each arbitrator or neutral shall receive for services rendered in each case under this chapter.

(b) Transportation Allowances. Under regulations prescribed by the Director of the Administrative Office of the United States Courts, a district court may reimburse arbitrators and other neutrals for actual transportation expenses necessarily incurred in the performance of duties under this chapter.

(Added Pub. L. 100–702, title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4662; amended Pub. L. 105–315, § 10, Oct. 30, 1998, 112 Stat. 2997.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 28 JUDICIARY AND JUDICIAL PROCEDURE

PART: IV JURISDICTION AND VENUE

CHAPTER: 81 SUPREME COURT

SECTIONS: §1251 through §1260

NOTE: Entire Chapter

28 USC §1251 | ORIGINAL JURISDICTION

(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

(1) All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties;

(2) All controversies between the United States and a State;

(3) All actions or proceedings by a State against the citizens of another State or against aliens.

(June 25, 1948, ch. 646, 62 Stat. 927; Pub. L. 95–393, §8(b), Sept. 30, 1978, 92 Stat. 810 .)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §§341, 371(7), (8) (Mar. 3, 1911, ch. 231, §§233, 256, 36 Stat. 1156 , 1160; Oct. 6, 1917, ch. 97, §2, 40 Stat. 395 ; June 10, 1922, ch. 216, §2, 42 Stat. 635).

This section reconciles provisions of sections 341 and 371(7), (8) of title 28, U.S.C., 1940 ed., with Article 3, section 2 and Amendment 11 of the Constitution.

Sections 341 and 371 of title 28, U.S.C., 1940 ed., were not wholly consistent with such constitutional provisions. Said section 341 provided that the Supreme Court should have original jurisdiction of controversies between a State and citizens of other States or aliens, whereas the 11th Amendment prohibits an action in any Federal Court against a State by citizens of another State or aliens.

The original jurisdiction conferred on the Supreme Court by Article 3, section 2, of the Constitution is not exclusive by virtue of that provision alone. Congress may provide for or deny exclusiveness. Ames v. Kansas, 1884, 4 S.Ct. 437, 111 U.S. 449, 28 L.Ed. 442; U.S. v. 4,450.72 Acres of Land, Clearwater County, State of Minnesota, D.C. Minn., 1939, 27 F.Supp. 167, affirmed 125 F.2d 636.

Sections 341 and 371 of title 28, U.S.C., 1940 ed., did not confer expressly exclusive jurisdiction on the Supreme Court in civil cases between States, Louisiana v. Texas, 1899, 20 S.Ct. 251, 176 U.S. 1, 44 L.Ed. 347, as has been provided in subsection (a)(1) of the revised section. The language at the beginning of said section 341, for which said subsection has been substituted, was ambiguous and made it appear that an action by a State against the United States would be within the exclusive jurisdiction of the Supreme Court. However, in U.S. v. Louisiana, 1887, 8

S.Ct. 17, 123 U.S. 32, 31 L.Ed. 69, the Supreme Court, in a case appealed from the Court of Claims, held to the contrary.

So, also, in actions by the United States to condemn lands of a State or to enforce penalties for violation of a Federal statute against a State-owned utility, the United States district courts have jurisdiction. See United States v. State of Utah, 1931, 51 S.Ct. 438, 283 U.S. 64, 75 L.Ed. 844; United States v. 4,450.72 Acres of Land, Clearwater County, State of Minnesota, D.C.Minn. 1939, 27 F.Supp. 167, affirmed 125 F.2d 636; United States v. State of California, 1936, 56 S.Ct. 421, 297 U.S. 175, 80 L.Ed. 567.

The intent of section 371(7), (8) of title 28, U.S.C., 1940 ed., that the jurisdiction of the courts of the United States should be exclusive of the courts of the States in controversies to which a State is a party, and suits against ambassadors, public ministers, consuls and vice consuls, is preserved and clarified by this section and section 1351 of this title.

The revised section preserves existing law with reference to foreign ambassadors, other public ministers and consuls. Under subsection (a)(2) the Supreme Court has exclusive jurisdiction of actions or proceedings against the ambassadors or public ministers of other nations.

Under subsection (b)(1) the Supreme Court has original but not exclusive jurisdiction of actions or proceedings brought by such ambassadors or other public ministers or to which consuls or vice consuls of other nations are parties.

Section 1351 of this title gives to United States district courts, exclusive of the courts of the States, jurisdiction of civil actions against such consuls and vice consuls.

This section and said section 1351 of this title have no application to ambassadors, public ministers, consuls or vice consuls representing the United States. See Milward v. McSaul, D.C.S.D.N.Y. 1846, 17 Fed.Cas.No. 9,623 and State of Ohio ex rel. Popovici v. Alger, 1930, 50 S.Ct. 154, 280 U.S. 379, 74 L.Ed. 489.

Changes were made in phraseology.

Editorial Notes

Amendments

1978-Subsec. (a). Pub. L. 95–393, §8(b)(1), designated introductory provision of subsec. (a) and (a)(1) as (a), and struck out "(2) All actions or proceedings against ambassadors or other public ministers of foreign states or their domestics or domestic servants, not inconsistent with the law of nations".

Subsec. (b)(1). Pub. L. 95–393, §8(b)(2), substituted "to which ambassadors, other public ministers, consuls, or" for "brought by ambassadors or other public ministers of foreign states or to which consuls or".

Statutory Notes and Related Subsidiaries

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–393 effective at the end of the ninety-day period beginning on Sept. 30, 1978, see section 9 of Pub. L. 95–393, set out as an Effective Date note under section 254a of Title 22, Foreign Relations and Intercourse.

Statutes Governing Writs of Error To Apply to Appeals

Act Jan. 31, 1928, ch. 14, §2, 45 Stat. 54 , amended Apr. 26, 1928, ch. 440, 45 Stat. 466 ; June 25, 1948, ch. 646, §23, 62 Stat. 990 , provided that "All Acts of Congress referring to writs of error shall be construed as amended to the extent necessary to substitute appeal for writ of error." See also, notes preceding section 1 of this title.

28 USC §1252 | REPEALED

(Pub. L. 100–352, §1, June 27, 1988, 102 Stat. 662)

Statutory Notes and Related Subsidiaries

Effective Date of Repeal

Repeal effective ninety days after June 27, 1988, except that such repeal not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered into before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

28 USC §1253 | DIRECT APPEALS FROM DECISIONS OF THREE-JUDGE COURTS

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

(June 25, 1948, ch. 646, 62 Stat. 928.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §§47, 47a, 380 and 380a (Mar. 3, 1911, ch. 231, §§210, 266, 36 Stat. 1150 , 1162; Mar. 4, 1913, ch. 160, 37 Stat. 1013 ; Oct. 22, 1913, ch. 32, 38, Stat. 220; Feb. 13, 1925, ch. 229, §1, 43 Stat. 938 ; Aug. 24, 1937, ch. 754, §3, 50 Stat. 752).

This section consolidates the provisions of sections 47, 47a, 380, and 380a of title 28, U.S.C., 1940 ed., relating to direct appeals from decisions of three-judge courts involving orders of the Interstate Commerce Commission or holding State or Federal laws repugnant to the Constitution of the United States.

For distribution of other provisions of the sections on which this revised section is based, see Distribution Table.

The language in section 380 of title 28, U.S.C., 1940 ed., referring to restraining the enforcement or execution of an order made by an administrative board or a State officer was omitted as covered by this revised section and section 2281 of this title.

Words in section 380a of title 28, U.S.C., 1940 ed., "This section shall not be construed to be in derogation of any right of direct appeal to the Supreme Court of the United States under existing provisions of law," were omitted as unnecessary.

Section 217 of title 7, U.S.C., 1940 ed., Agriculture, provides for a three-judge court in proceedings to suspend or restrain the enforcement of orders of the Secretary of Agriculture under the Packers and Stockyards Act of 1921.

The final proviso of section 502 of title 33, U.S.C., 1940 ed., Navigation and Navigable Waters, for direct appeal in certain criminal cases for failure to alter bridges obstructing navigation, is recommended for express repeal in view of its implied repeal by section 345 of title 28, U.S.C., 1940 ed. (See U.S. v. Belt, 1943, 63 S.Ct. 1278, 319 U.S. 521, 87 L.Ed. 1559. See reviser's note under section 1252 of this title.)

Section 28 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 44 of title 49, U.S.C., 1940 ed., Transportation, are identical and provide for convening of a three-judge court to hear and determine civil cases arising under the Sherman anti-trust law and the Interstate

Commerce Act, respectively, wherein the United States is plaintiff and when the Attorney General deems such cases of general public importance.

Section 401(d) of title 47, U.S.C., 1940 ed., Telegraphs, Telephones, and Radiotelegraphs, made the provisions of sections 28 and 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, sections 44 and 45 of title 49, U.S.C., 1940 ed., Transportation, and section 345(1) of title 28, U.S.C., 1940 ed., relating to three-judge courts and direct appeals, applicable to orders of the Federal Communications Commission enforcing the Communications Act of 1934.

28 USC §1254 | COURTS OF APPEALS; CERTIORARI; CERTIFIED QUESTIONS

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

(June 25, 1948, ch. 646, 62 Stat. 928 ; Pub. L. 100–352, §2(a), (b), June 27, 1988, 102 Stat. 662.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §§346 and 347 (Mar. 3, 1911, ch. 231, §§239, 240, 36 Stat. 1157 ; Feb. 13, 1925, ch. 229, §1, 43 Stat. 938 ; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54 ; June 7, 1934, ch. 426, 48 Stat. 926).

Section consolidates sections 346 and 347 of title 28, U.S.C., 1940 ed.

Words "or in the United States Court of Appeals for the District of Columbia" and "or of the United States Court of Appeals for the District of Columbia" in sections 346 and 347 of title 28, U.S.C., 1940 ed., were omitted. (See section 41 of this title.)

The prefatory words of this section preceding paragraph (1) were substituted for subsection (c) of said section 347.

The revised section omits the words of section 347 of title 28, U.S.C., 1940 ed., "and with like effect as if the case had been brought there with unrestricted appeal", and the words of section 346 of such title "in the same manner as if it had been brought there by appeal". The effect of subsections (1) and (3) of the revised section is to preserve existing law and retain the power of unrestricted review of cases certified or brought up on certiorari. Only in subsection (2) is review restricted.

Changes were made in phraseology and arrangement.

Editorial Notes

Amendments

1988-Pub. L. 100–352, §2(b), struck out "appeal;" after "certiorari;" in section catchline.

Pars. (2), (3). Pub. L. 100–352, §2(a), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;".

Statutory Notes and Related Subsidiaries

Effective Date of 1988 Amendment

Pub. L. 100–352, §7, June 27, 1988, 102 Stat. 664 , provided that: "The amendments made by this Act [amending sections 1254, 1257, 1258, 2101, 2104, and 2350 of this title, section 136w of Title 7, Agriculture, section 1631e of Title 22, Foreign Relations and Intercourse, section 652 of Title 25, Indians, section 988 of Title 33, Navigation and Navigable Waters, section 1652 of Title 43, Public Lands, sections 719, 743, and 1105 of Title 45, Railroads, and section 30110 of Title 52, Voting and Elections, and repealing sections 1252 and 2103 of this title] shall take effect ninety days after the date of the enactment of this Act [June 27, 1988], except that such amendments shall not apply to cases pending in the Supreme Court on the effective date of such amendments or affect the right to review or the manner of reviewing the judgment or decree of a court which was entered before such effective date."

28 USC §1255 | REPEALED

Section 1255, act June 25, 1948, ch. 646, 62 Stat. 928, authorized Supreme Court to review cases in Court of Claims by writ of certiorari and by certification of questions of law.

(Pub. L. 97–164, title I, §123, Apr. 2, 1982, 96 Stat. 36)

Statutory Notes and Related Subsidiaries

Effective Date of Repeal

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

28 USC §1256 | REPEALED

Section 1256, act June 25, 1948, ch. 646, 62 Stat. 928, authorized Supreme Court to review cases in Court of Customs and Patent Appeals by writ of certiorari.

(Pub. L. 97–164, title I, §123, Apr. 2, 1982, 96 Stat. 36)

Statutory Notes and Related Subsidiaries

Effective Date of Repeal

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

28 USC §1257 | STATE COURTS; CERTIORARI

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

(June 25, 1948, ch. 646, 62 Stat. 929; Pub. L. 91–358, title I, §172(a)(1), July 29, 1970, 84 Stat. 590 ; Pub. L. 100–352, §3, June 27, 1988, 102 Stat. 662.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §344 (Mar. 3, 1911, ch. 231, §§236, 237, 36 Stat. 1156 ; Dec. 23, 1914, ch. 2, 38 Stat. 790 ; Sept. 6, 1916, ch. 448, §2, 39 Stat. 726 ; Feb. 17, 1922, ch. 54, 42 Stat. 366 ; Feb. 13, 1925, ch. 229, §1, 43 Stat. 937 ; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54).

Provisions of section 344 of title 28, U.S.C., 1940 ed., relating to procedure for review of decisions of State courts are incorporated in section 2103 of this title. Other provisions of such section 344 of title 28, U.S.C., 1940 ed., are incorporated in section 2106 of this title.

The revised section applies in both civil and criminal cases. In Twitchell v. Philadelphia, 1868, 7 Wall. 321, 19 L.Ed. 223, it was expressly held that the provisions of section 25 of the Judiciary Act of 1789, 1 Stat. 85, on which title 28, U.S.C., 1940 ed., §344, is based, applied to criminal cases, and many other Supreme Court decisions impliedly involve the same holding inasmuch as the Court has taken jurisdiction of criminal cases on appeal from State courts. See, for example, Herndon v. Georgia, 1935, 55 S.Ct. 794, 295 U.S. 441, 79 L.Ed. 1530 and Ashcraft v. Tennessee, 1944, 64 S.Ct. 921, 322 U.S. 143, 88 L.Ed. 1192.

Provision, in section 344(b) of title 28, U.S.C., 1940 ed., for review and determination on certiorari "with the same power and authority and with like effect as if brought up by appeal" was omitted as unnecessary. The scope of review under this section is unrestricted.

Words "and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied," in said section 344(b), were omitted as surplusage.

The last sentence in said section 344(b) relating to the right to relief under both subsections of said section 344, was omitted as unnecessary.

Changes were made in phraseology.

Editorial Notes

Amendments

1988-Pub. L. 100–352 struck out "appeal;" before "certiorari" in section catchline and amended text generally. Prior to amendment, text read as follows: "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

> "(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.
>
> "(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
>
> "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.
>
> "For the purposes of this section, the term 'highest court of a State' includes the District of Columbia Court of Appeals."

1970-Pub. L. 91–358 provided that for the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

Statutory Notes and Related Subsidiaries

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

Effective Date of 1970 Amendment

Pub. L. 91–358, title I, §199(a), July 29, 1970, 84 Stat. 597 , provided that: "The effective date of this title (and the amendments made by this title) [enacting sections 1363, 1451, and 2113 of this title and amending this section, sections 292 and 1869 of this title, section 5102 of Title 5, Government Organization and Employees, and section 260a of Title 42, The Public Health and Welfare] shall be the first day of the seventh calendar month which begins after the date of the enactment of this Act [July 29, 1970]."

28 USC §1258 | SUPREME COURT OF PUERTO RICO; CERTIORARI

Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(Added Pub. L. 87–189, §1, Aug. 30, 1961, 75 Stat. 417; amended Pub. L. 100–352, §4, June 27, 1988, 102 Stat. 662.)

Editorial Notes

Amendments

1988-Pub. L. 100–352 struck out "appeal;" before "certiorari" in section catchline and amended text generally. Prior to amendment, text read as follows: "Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows:

> "(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.
>
> "(2) By appeal, where is drawn in question the validity of a statute of the Commonwealth of Puerto Rico on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity.
>
> "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States."

Statutory Notes and Related Subsidiaries

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

28 USC §1259 | COURT OF APPEALS FOR THE ARMED FORCES; CERTIORARI

Decisions of the United States Court of Appeals for the Armed Forces may be reviewed by the Supreme Court by writ of certiorari in the following cases:

(1) Cases reviewed by the Court of Appeals for the Armed Forces under section 867(a)(1) of title 10.

(2) Cases certified to the Court of Appeals for the Armed Forces by the Judge Advocate General under section 867(a)(2) of title 10.

(3) Cases in which the Court of Appeals for the Armed Forces granted a petition for review under section 867(a)(3) of title 10.

(4) Cases, other than those described in paragraphs (1), (2), and (3) of this subsection, in which the Court of Appeals for the Armed Forces granted relief.

(Added Pub. L. 98–209, §10(a)(1), Dec. 6, 1983, 97 Stat. 1405; amended Pub. L. 101–189, div. A, title XIII, §1304(b)(3), Nov. 29, 1989, 103 Stat. 1577; Pub. L. 103–337, div. A, title IX, §924(d)(1)(C), (2)(A), Oct. 5, 1994, 108 Stat. 2832.)

Editorial Notes

Amendments

1994-Pub. L. 103–337 substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals" in section catchline and wherever appearing in text.

1989-Pub. L. 101–189 substituted "section 867(a)(1)" for "section 867(b)(1)" in par. (1), "section 867(a)(2)" for "section 867(b)(2)" in par. (2), and "section 867(a)(3)" for "section 867(b)(3)" in par. (3).

Statutory Notes and Related Subsidiaries

Effective Date

Section effective on the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as an Effective Date of 1983 Amendment note under section 801 of Title 10, Armed Forces.

28 USC §1260 | SUPREME COURT OF THE VIRGIN ISLANDS; CERTIORARI

Final judgments or decrees rendered by the Supreme Court of the Virgin Islands may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Virgin Islands is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(Added Pub. L. 112–226, §2(a), Dec. 28, 2012, 126 Stat. 1606.)

Statutory Notes and Related Subsidiaries

Effective Date

Pub. L. 112–226, §3, Dec. 28, 2012, 126 Stat. 1607, provided that: "The amendments made by this Act [enacting this section and amending section 1613 of Title 48, Territories and Insular Possessions] apply to cases commenced on or after the date of the enactment of this Act [Dec. 28, 2012]."

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 28 JUDICIARY AND JUDICIAL PROCEDURE

PART: IV JURISDICTION AND VENUE

CHAPTER: 83 COURTS OF APPEAL

SECTIONS: §1291 through §1296

NOTE: Entire Chapter

28 USC §1291 | FINAL DECISIONS OF DISTRICT COURTS

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

(June 25, 1948, ch. 646, 62 Stat. 929; Oct. 31, 1951, ch. 655, § 48, 65 Stat. 726; Pub. L. 85–508, § 12(e), July 7, 1958, 72 Stat. 348; Pub. L. 97–164, title I, § 124, Apr. 2, 1982, 96 Stat. 36.)

28 USC §1292 | INTERLOCUTORY DECISIONS

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

(2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction —

(1) of an appeal from an interlocutory order or decree described in subsection (a) or (b) of this section in any case over which the court would have jurisdiction of an appeal under section 1295 of this title; and

(2) of an appeal from a judgment in a civil action for patent infringement which would otherwise be appealable to the United States Court of Appeals for the Federal Circuit and is final except for an accounting.

(d)

(1) When the chief judge of the Court of International Trade issues an order under the provisions of section 256(b) of this title, or when any judge of the Court of International Trade, in issuing any other interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(2) When the chief judge of the United States Court of Federal Claims issues an order under section 798(b) of this title, or when any judge of the United States Court of Federal Claims, in issuing an interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(3) Neither the application for nor the granting of an appeal under this subsection shall stay proceedings in the Court of International Trade or in the Court of Federal Claims, as the case may be, unless a stay is ordered by a judge of the Court of International Trade or of the Court of Federal Claims or by the United States

Court of Appeals for the Federal Circuit or a judge of that court.

(4)

(A) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of an appeal from an interlocutory order of a district court of the United States, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, granting or denying, in whole or in part, a motion to transfer an action to the United States Court of Federal Claims under section 1631 of this title.

(B) When a motion to transfer an action to the Court of Federal Claims is filed in a district court, no further proceedings shall be taken in the district court until 60 days after the court has ruled upon the motion. If an appeal is taken from the district court's grant or denial of the motion, proceedings shall be further stayed until the appeal has been decided by the Court of Appeals for the Federal Circuit. The stay of proceedings in the district court shall not bar the granting of preliminary or injunctive relief, where appropriate and where expedition is reasonably necessary. However, during the period in which proceedings are stayed as provided in this subparagraph, no transfer to the Court of Federal Claims pursuant to the motion shall be carried out.

(e) The Supreme Court may prescribe rules, in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under subsection (a), (b), (c), or (d).

(June 25, 1948, ch. 646, 62 Stat. 929; Oct. 31, 1951, ch. 655, § 49, 65 Stat. 726; Pub. L. 85–508, § 12(e), July 7, 1958, 72 Stat. 348; Pub. L. 85–919, Sept. 2, 1958, 72 Stat. 1770; Pub. L. 97–164, § 125, Apr. 2, 1982, 96 Stat. 36; Pub. L. 98–620, title IV, § 412, Nov. 8, 1984, 98 Stat. 3362; Pub. L. 100–702, title V, § 501, Nov. 19, 1988, 102 Stat. 4652; Pub. L. 102–572, title I, § 101, title IX, §§ 902(b), 906(c), Oct. 29, 1992, 106 Stat. 4506, 4516, 4518.)

28 USC §1293 | [REPEALED]

(Pub. L. 87–189, § 3, Aug. 30, 1961, 75 Stat. 417)

Historical and Revision Notes

Section, acts June 25, 1948, ch. 646, 62 Stat. 929 ; Mar. 18, 1959, Pub. L. 86–3, §14(b), 73 Stat. 10 , provided for appeal from supreme court of Puerto Rico to court of appeals for first circuit. See section 1258 of this title.

A subsequent section 1293, added Pub. L. 95–598, title II, §236(a), Nov. 6, 1978, 92 Stat. 2667 , which related to bankruptcy appeals, did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

28 USC §1294 | CIRCUITS IN WHICH DECISIONS REVIEWABLE

Except as provided in sections 1292(c), 1292(d), and 1295 of this title, appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows:

(1) From a district court of the United States to the court of appeals for the circuit embracing the district;

(2) From the United States District Court for the District of the Canal Zone, to the Court of Appeals for the Fifth Circuit;

(3) From the District Court of the Virgin Islands, to the Court of Appeals for the Third Circuit;

(4) From the District Court of Guam, to the Court of Appeals for the Ninth Circuit.

(June 25, 1948, ch. 646, 62 Stat. 930; Oct. 31, 1951, ch. 655, § 50(a), 65 Stat. 727; Pub. L. 85–508, § 12(g), July 7, 1958, 72 Stat. 348; Pub. L. 86–3, § 14(c), Mar. 18, 1959, 73 Stat. 10; Pub. L. 87–189, § 5, Aug. 30, 1961, 75 Stat. 417; Pub. L. 95–598, title II, § 237, Nov. 6, 1978, 92 Stat. 2667; Pub. L. 97–164, title I, § 126, Apr. 2, 1982, 96 Stat. 37.)

28 USC §1295 | JURISDICTION OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

(a) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction —

(1) of an appeal from a final decision of a district court of the United States, the District Court of Guam, the District Court of the Virgin Islands, or the District Court of the Northern Mariana Islands, in any civil action arising under, or in any civil action in which a party has asserted a compulsory counterclaim arising under, any Act of Congress relating to patents or plant variety protection;

(2) of an appeal from a final decision of a district court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, if the jurisdiction of that court was based, in whole or in part, on section 1346 of this title, except that jurisdiction of an appeal in a case brought in a district court under section 1346(a)(1), 1346(b), 1346(e), or 1346(f) of this title or under section 1346(a)(2) when the claim is founded upon an Act of Congress or a regulation of an executive department providing for internal revenue shall be governed by sections 1291, 1292, and 1294 of this title;

(3) of an appeal from a final decision of the United States Court of Federal Claims;

(4) of an appeal from a decision of —

(A) the Patent Trial and Appeal Board of the United States Patent and Trademark Office with respect to a patent application, derivation proceeding, reexamination, post-grant review, or inter partes review under title 35, at the instance of a party who exercised that party's right to participate in the applicable proceeding before or appeal to the Board, except that an applicant or a party to a derivation proceeding may also have remedy by civil action pursuant to section 145 or 146 of title 35; an appeal under this subparagraph of a decision of

the Board with respect to an application or derivation proceeding shall waive the right of such applicant or party to proceed under section 145 or 146 of title 35;

(B) the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office or the Trademark Trial and Appeal Board with respect to applications for registration of marks and other proceedings as provided in section 21 of the Trademark Act of 1946 (15 U.S.C. 1071); or

(C) a district court to which a case was directed pursuant to section 145, 146, or 154(b) of title 35;

(5) of an appeal from a final decision of the United States Court of International Trade;

(6) to review the final determinations of the United States International Trade Commission relating to unfair practices in import trade, made under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337);

(7) to review, by appeal on questions of law only, findings of the Secretary of Commerce under U.S. note 6 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States (relating to importation of instruments or apparatus);

(8) of an appeal under section 71 of the Plant Variety Protection Act (7 U.S.C. 2461);

(9) of an appeal from a final order or final decision of the Merit Systems Protection Board, pursuant to sections 7703(b)(1) and 7703(d) of title 5;

(10) of an appeal from a final decision of an agency board of contract appeals pursuant to section 7107(a)(1) of title 41;

(11) of an appeal under section 211 of the Economic Stabilization Act of 1970;

(12) of an appeal under section 5 of the Emergency Petroleum Allocation Act of 1973;

(13) of an appeal under section 506(c) of the Natural Gas Policy Act of 1978; and

(14) of an appeal under section 523 of the Energy Policy and Conservation Act.

(b) The head of any executive department or agency may, with the approval of the Attorney General, refer to the Court of Appeals for the Federal Circuit for judicial review any final decision rendered by a board of contract appeals pursuant to the terms of any contract with the United States awarded by that department or agency which the head of such department or agency has concluded is not entitled to finality pursuant to the review standards specified in section 7107(b) of title 41. The head of each executive department or agency shall make any referral under this section within one hundred and twenty days after the receipt of a copy of the final appeal decision.

(c) The Court of Appeals for the Federal Circuit shall review the matter referred in accordance with the standards specified in section 7107(b) of title 41. The court shall proceed with judicial review on the administrative record made before the board of contract appeals on matters so referred as in other cases pending in such court, shall determine the issue of finality of the appeal decision, and shall, if appropriate, render judgment thereon, or remand the matter to any administrative or executive body or official with such direction as it may deem proper and just.

(Added Pub. L. 97–164, title I, § 127(a), Apr. 2, 1982, 96 Stat. 37; amended Pub. L. 98–622, title II, § 205(a), Nov. 8, 1984, 98 Stat. 3388; Pub. L. 100–418, title I, § 1214(a)(3), Aug. 23, 1988, 102 Stat. 1156; Pub. L. 100–702, title X, § 1020(a)(3), Nov. 19, 1988, 102 Stat. 4671; Pub. L. 102–572, title I, § 102(c), title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4507, 4516; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, §§ 4402(b)(2), 4732(b)(14)], Nov. 29, 1999, 113 Stat. 1536, 1501A–560, 1501A–584; Pub. L. 111–350, § 5(g)(5), Jan. 4, 2011, 124 Stat. 3848; Pub. L. 112–29, §§ 7(c)(2), 19(b), Sept. 16, 2011, 125 Stat. 314, 331.)

28 USC §1296 | REVIEW OF CERTAIN AGENCY ACTIONS

(a) Jurisdiction. - Subject to the provisions of chapter 179, the United States Court of Appeals for the Federal Circuit shall have jurisdiction over a petition for review of a final decision under chapter 5 of title 3 of -

(1) an appropriate agency (as determined under section 454 of title 3);

(2) the Federal Labor Relations Authority made under part D of subchapter II of chapter 5 of title 3, notwithstanding section 7123 of title 5; or

(3) the Secretary of Labor or the Occupational Safety and Health Review Commission, made under part C of subchapter II of chapter 5 of title 3.

(b) Filing of Petition. - Any petition for review under this section must be filed within 30 days after the date the petitioner receives notice of the final decision.

(Added Pub. L. 104–331, §3(a)(1), Oct. 26, 1996, 110 Stat. 4068)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 28 JUDICIARY AND JUDICIAL PROCEDURE

PART: IV JURISDICTION AND VENUE

CHAPTER: 85 DISTRICT COURTS; JURISDICTION

SECTIONS: §1330 through §1449

NOTE: Pertinent Parts Only!!!

28 USC §1330 | ACTIONS AGAINST FOREIGN STATES

(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605–1607 of this title or under any applicable international agreement.

(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

(c) For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605–1607 of this title.

(Added Pub. L. 94–583, § 2(a), Oct. 21, 1976, 90 Stat. 2891.)

28 USC §1331 | FEDERAL QUESTION

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

(June 25, 1948, ch. 646, 62 Stat. 930; Pub. L. 85–554, § 1, July 25, 1958, 72 Stat. 415; Pub. L. 94–574, § 2, Oct. 21, 1976, 90 Stat. 2721; Pub. L. 96–486, § 2(a), Dec. 1, 1980, 94 Stat. 2369.)

28 USC §1332 | DIVERSITY OF CITIZENSHIP; AMOUNT IN CONTROVERSY; COSTS

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title—

(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of—

(A) every State and foreign state of which the insured is a citizen;

(B) every State and foreign state by which the insurer has been incorporated; and

(C) the State or foreign state where the insurer has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

(d)

(1) In this subsection—

(A) the term "class" means all of the class members in a class action;

(B) the term "class action" means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action;

(C) the term "class certification order" means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and

(D) the term "class members" means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which—

(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

(3) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of—

(A) whether the claims asserted involve matters of national or interstate interest;

(B) whether the claims asserted will be governed by laws of the State in which the action was originally filed or by the laws of other States;

(C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;

(D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;

(E) whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States; and

(F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

(4) A district court shall decline to exercise jurisdiction under paragraph (2)—

(A)

(i) over a class action in which—

(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

(II) at least 1 defendant is a defendant—

(aa) from whom significant relief is sought by members of the plaintiff class;

(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

(cc) who is a citizen of the State in which the action was originally filed; and

(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and

(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or

(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.

(5) Paragraphs (2) through (4) shall not apply to any class action in which—

(A) the primary defendants are States, State officials, or other governmental entities against

whom the district court may be foreclosed from ordering relief; or

(B) the number of members of all proposed plaintiff classes in the aggregate is less than 100.

(6) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.

(7) Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of paragraphs (2) through (6) as of the date of filing of the complaint or amended complaint, or, if the case stated by the initial pleading is not subject to Federal jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or other paper, indicating the existence of Federal jurisdiction.

(8) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

(9) Paragraph (2) shall not apply to any class action that solely involves a claim—

(A) concerning a covered security as defined under 16(f)(3)[1] of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)[2]) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

(B) that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

(C) that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

(10) For purposes of this subsection and section 1453, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

(11)

(A) For purposes of this subsection and section 1453, a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

(B)

(i) As used in subparagraph (A), the term "mass action" means any civil action (except a civil action within the scope of section 1711(2)) in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

(ii) As used in subparagraph (A), the term "mass action" shall not include any civil action in which—

(I) all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;

(II) the claims are joined upon motion of a defendant;

(III) all of the claims in the action are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such action; or

(IV) the claims have been consolidated or coordinated solely for pretrial proceedings.

(C)

(i) Any action(s) removed to Federal court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407, or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407.

(ii) This subparagraph will not apply—

(I) to cases certified pursuant to rule 23 of the Federal Rules of Civil Procedure; or

(II) if plaintiffs propose that the action proceed as a class action pursuant to rule 23 of the Federal Rules of Civil Procedure.

(D) The limitations periods on any claims asserted in a mass action that is removed to Federal court pursuant to this subsection shall be deemed tolled during the period that the action is pending in Federal court.

(e) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

(June 25, 1948, ch. 646, 62 Stat. 930; July 26, 1956, ch. 740, 70 Stat. 658; Pub. L. 85–554, § 2, July 25, 1958, 72 Stat. 415; Pub. L. 88–439, § 1, Aug. 14, 1964, 78 Stat. 445; Pub. L. 94–583, § 3, Oct. 21, 1976, 90 Stat. 2891; Pub. L. 100–702, title II, §§ 201(a), 202(a), 203(a), Nov. 19, 1988, 102 Stat. 4646; Pub. L. 104–317, title II, § 205(a), Oct. 19, 1996, 110 Stat. 3850; Pub. L. 109–2, § 4(a), Feb. 18, 2005, 119 Stat. 9; Pub. L. 112–63, title I, §§ 101, 102, Dec. 7, 2011, 125 Stat. 758.)

28 USC §1343 | CIVIL RIGHTS AND ELECTIVE FRANCHISE

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section—

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(June 25, 1948, ch. 646, 62 Stat. 932; Sept. 3, 1954, ch. 1263, § 42, 68 Stat. 1241; Pub. L. 85–315, part III, § 121, Sept. 9, 1957, 71 Stat. 637; Pub. L. 96–170, § 2, Dec. 29, 1979, 93 Stat. 1284.)

28 USC §1346 | UNITED STATES AS DEFENDANT

(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 7104(b)(1) and 7107(a)(1) of title 41. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(b)

(1) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his

office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(2) No person convicted of a felony who is incarcerated while awaiting sentencing or while serving a sentence may bring a civil action against the United States or an agency, officer, or employee of the Government, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act (as defined in section 2246 of title 18).

(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

(d) The district courts shall not have jurisdiction under this section of any civil action or claim for a pension.

(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 6226, 6228(a), 7426, or 7428 (in the case of the United States district court for the District of Columbia) or section 7429 of the Internal Revenue Code of 1986.

(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

(g) Subject to the provisions of chapter 179, the district courts of the United States shall have exclusive jurisdiction over any civil action commenced under section 453(2) of title 3, by a covered employee under chapter 5 of such title.

(June 25, 1948, ch. 646, 62 Stat. 933; Apr. 25, 1949, ch. 92, § 2(a), 63 Stat. 62; May 24, 1949, ch. 139, § 80(a), (b), 63 Stat. 101; Oct. 31, 1951, ch. 655, § 50(b), 65 Stat. 727; July 30, 1954, ch. 648, § 1, 68 Stat. 589; Pub. L. 85–508, § 12(e), July 7, 1958, 72 Stat. 348; Pub. L. 88–519, Aug. 30, 1964, 78 Stat. 699; Pub. L. 89–719, title II, § 202(a), Nov. 2, 1966, 80 Stat. 1148; Pub. L. 91–350, § 1(a), July 23, 1970, 84 Stat. 449; Pub. L. 92–562, § 1, Oct. 25, 1972, 86 Stat. 1176; Pub. L. 94–455, title XII, § 1204(c)(1), title XIII, § 1306(b)(7), Oct. 4, 1976, 90 Stat. 1697, 1719; Pub. L. 95–563, § 14(a), Nov. 1, 1978, 92 Stat. 2389; Pub. L. 97–164, title I, § 129, Apr. 2, 1982, 96 Stat. 39;

Pub. L. 97–248, title IV, § 402(c)(17), Sept. 3, 1982, 96 Stat. 669; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 806], Apr. 26, 1996, 110 Stat. 1321, 1321–75; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–331, § 3(b)(1), Oct. 26, 1996, 110 Stat. 4069; Pub. L. 111–350, § 5(g)(6), Jan. 4, 2011, 124 Stat. 3848; Pub. L. 113–4, title XI, § 1101(b), Mar. 7, 2013, 127 Stat. 134.)

28 USC §1367 | SUPPLEMENTAL JURISDICTION

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

> (1) the claim raises a novel or complex issue of State law,
>
> (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
>
> (3) the district court has dismissed all claims over which it has original jurisdiction, or
>
> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(Added Pub. L. 101–650, title III, § 310(a), Dec. 1, 1990, 104 Stat. 5113.)

28 USC §1391 | VENUE GENERALLY

(a) Applicability of Section. — Except as otherwise provided by law —

(1) this section shall govern the venue of all civil actions brought in district courts of the United States; and

(2) the proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature.

(b) Venue in General. — A civil action may be brought in —

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;

(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

(c) Residency. — For all venue purposes —

(1) a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled;

(2) an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question and, if a plaintiff, only in the judicial district in which it maintains its principal place of business; and

(3) a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where

the action may be brought with respect to other defendants.

(d) Residency of Corporations in States With Multiple Districts. —

For purposes of venue under this chapter, in a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.

(e) Actions Where Defendant Is Officer or Employee of the United States. —

(1) In general. —

A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

(2) Service. —

The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the

territorial limits of the district in which the action is brought.

(f) Civil Actions Against a Foreign State. — A civil action against a foreign state as defined in section 1603(a) of this title may be brought —

(1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

(2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;

(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or

(4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.

(g) Multiparty, Multiforum Litigation. —

A civil action in which jurisdiction of the district court is based upon section 1369 of this title may be brought in any district in which any defendant resides or in which a substantial part of the accident giving rise to the action took place.

(June 25, 1948, ch. 646, 62 Stat. 935; Pub. L. 87–748, § 2, Oct. 5, 1962, 76 Stat. 744; Pub. L. 88–234, Dec. 23, 1963, 77 Stat. 473; Pub. L. 89–714, §§ 1, 2, Nov. 2, 1966, 80 Stat. 1111; Pub. L. 94–574, § 3, Oct. 21, 1976, 90 Stat. 2721; Pub. L. 94–583, § 5, Oct. 21, 1976, 90 Stat. 2897; Pub. L. 100–702, title X, § 1013(a), Nov. 19, 1988, 102 Stat. 4669; Pub. L. 101–650, title III, § 311, Dec. 1, 1990, 104 Stat. 5114; Pub. L. 102–198, § 3, Dec. 9, 1991, 105 Stat. 1623; Pub. L. 102–572, title V, § 504, Oct. 29, 1992, 106 Stat. 4513; Pub. L. 104–34, § 1, Oct. 3, 1995, 109 Stat. 293; Pub. L. 107–273, div. C, title I, § 11020(b)(2), Nov. 2, 2002, 116 Stat. 1827; Pub. L. 112–63, title II, § 202, Dec. 7, 2011, 125 Stat. 763.)

28 USC §1404 | CHANGE OF VENUE

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.

(b) Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which pending to any other division in the same district. Transfer of proceedings in rem brought by or on behalf of the United States may be transferred under this section without the consent of the United States where all other parties request transfer.

(c) A district court may order any civil action to be tried at any place within the division in which it is pending.

(d) Transfers from a district court of the United States to the District Court of Guam, the District Court for the Northern Mariana Islands, or the District Court of the Virgin Islands shall not be permitted under this section. As otherwise used in this section, the term "district court" includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term "district" includes the territorial jurisdiction of each such court.

(June 25, 1948, ch. 646, 62 Stat. 937; Pub. L. 87–845, § 9, Oct. 18, 1962, 76A Stat. 699; Pub. L. 104–317, title VI, § 610(a), Oct. 19, 1996, 110 Stat. 3860; Pub. L. 112–63, title II, § 204, Dec. 7, 2011, 125 Stat. 764.)

28 USC §1406 | CURE OR WAIVER OF DEFECTS

(a) The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

(b) Nothing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue.

(c) As used in this section, the term "district court" includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term "district" includes the territorial jurisdiction of each such court.

(June 25, 1948, ch. 646, 62 Stat. 937; May 24, 1949, ch. 139, § 81, 63 Stat. 101; Pub. L. 86–770, § 1, Sept. 13, 1960, 74 Stat. 912; Pub. L. 87–845, § 10, Oct. 18, 1962, 76A Stat. 699; Pub. L. 97–164, title I, § 132, Apr. 2, 1982, 96 Stat. 39; Pub. L. 104–317, title VI, § 610(b), Oct. 19, 1996, 110 Stat. 3860.)

28 USC §1407 | MULTIDISTRICT LITIGATION

(a) When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions. Each action so transferred shall be remanded by the panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated: Provided, however, That the panel may separate any claim, cross-claim, counter-claim, or third-party claim and remand any of such claims before the remainder of the action is remanded.

(b) Such coordinated or consolidated pretrial proceedings shall be conducted by a judge or judges to whom such actions are assigned by the judicial panel on multidistrict litigation. For this purpose, upon request of the panel, a circuit judge or a district judge may be designated and assigned temporarily for service in the transferee district by the Chief Justice of the United States or the chief judge of the circuit, as may be required, in accordance with the provisions of chapter 13 of this title. With the consent of the transferee district court, such actions may be assigned by the panel to a judge or judges of such district. The judge or judges to whom such actions are assigned, the members of the judicial panel on multidistrict litigation, and other circuit and district judges designated when needed by the panel may exercise the powers of a district judge in any district for the purpose of conducting pretrial depositions in such coordinated or consolidated pretrial proceedings.

(c) Proceedings for the transfer of an action under this section may be initiated by —

(i) the judicial panel on multidistrict litigation upon its own initiative, or

(ii) motion filed with the panel by a party in any action in which transfer for coordinated or consolidated pretrial proceedings under this section may be appropriate. A copy of such motion shall be filed in the district court in which the moving party's action is pending.

The panel shall give notice to the parties in all actions in which transfers for coordinated or consolidated pretrial proceedings are contemplated, and such notice shall specify the time and place of any hearing to determine whether such transfer shall be made. Orders of the panel to set a hearing and other orders of the panel issued prior to the order either directing or denying transfer shall be filed in the office of the clerk of the district court in which a transfer hearing is to be or has been held. The panel's order of transfer shall be based upon a record of such hearing at which material evidence may be offered by any party to an action pending in any district that would be affected by the proceedings under this section, and shall be supported by findings of fact and conclusions of law based upon such record. Orders of transfer and such other orders as the panel may make thereafter shall be filed in the office of the clerk of the district court of the transferee district and shall be effective when thus filed. The clerk of the transferee district court shall forthwith transmit a certified copy of the panel's order to transfer to the clerk of the district court from which the action is being transferred. An order denying transfer shall be filed in each district wherein there is a case pending in which the motion for transfer has been made.

(d) The judicial panel on multidistrict litigation shall consist of seven circuit and district judges designated from time to time by the Chief Justice of the United States, no two of whom shall be from the same circuit. The concurrence of four members shall be necessary to any action by the panel.

(e) No proceedings for review of any order of the panel may be permitted except by extraordinary writ pursuant to the provisions of title 28, section 1651, United States Code. Petitions for an extraordinary writ to review an order of the panel to set a transfer hearing and other orders of the panel issued prior to the order either directing or denying transfer shall be filed only in the court of appeals having jurisdiction over the district in which a hearing is to be or

has been held. Petitions for an extraordinary writ to review an order to transfer or orders subsequent to transfer shall be filed only in the court of appeals having jurisdiction over the transferee district. There shall be no appeal or review of an order of the panel denying a motion to transfer for consolidated or coordinated proceedings.

(f) The panel may prescribe rules for the conduct of its business not inconsistent with Acts of Congress and the Federal Rules of Civil Procedure.

(g) Nothing in this section shall apply to any action in which the United States or a State is a complainant arising under the antitrust laws. "Antitrust laws" as used herein include those acts referred to in the Act of October 15, 1914, as amended (38 Stat. 730; 15 U.S.C. 12), and also include the Act of June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13, 13a, and 13b) and the Act of September 26, 1914, as added March 21, 1938 (52 Stat. 116, 117; 15 U.S.C. 56).

(Added Pub. L. 90–296, § 1, Apr. 29, 1968, 82 Stat. 109; amended Pub. L. 94–435, title III, § 303, Sept. 30, 1976, 90 Stat. 1396.; Pub. L. 117–328, div. GG, title III, §301, Dec. 29, 2022, 136 Stat. 5970.)

Editorial Notes
References in Text

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to this title.

Amendments

2022 - Subsec. (g). Pub. L. 117–328, §301(1), inserted "or a State" after "United States" and struck out "; but shall not include section 4A of the Act of October 15, 1914, as added July 7, 1955 (69 Stat. 282 ; 15 U.S.C. 15a)" before period at end.

Subsec. (h). Pub. L. 117–328, §301(2), struck out subsec. (h) which read as follows:

> "Notwithstanding the provisions of section 1404 or subsection (f) of this section, the judicial panel on multidistrict litigation may consolidate and transfer with or without the consent of the parties, for both pretrial purposes and for trial, any action brought under section 4C of the Clayton Act."

1976 - Pub. L. 94–435 added subsec. (h).

28 USC §1441 | REMOVAL OF CIVIL ACTIONS

(a) Generally. —

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(b) Removal Based on Diversity of Citizenship. —

(1) In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.

(2) A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Joinder of Federal Law Claims and State Law Claims. —

(1) If a civil action includes —

(A) a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), and

(B) a claim not within the original or supplemental jurisdiction of the district court or a claim that has been made nonremovable by statute, the entire action may be removed if the action would be removable without the inclusion of the claim described in subparagraph (B).

(2) Upon removal of an action described in paragraph (1), the district court shall sever from the action all claims described in paragraph (1)(B) and shall remand the severed claims to the State court from which the action was removed. Only defendants against whom a claim described in paragraph (1)(A) has been asserted are required to join in or consent to the removal under paragraph (1).

(d) Actions Against Foreign States. —

Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e) Multiparty, Multiforum Jurisdiction. —

(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if —

(A) the action could have been brought in a United States district court under section 1369 of this title; or

(B) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.

The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.

(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407(j) [1] has made a liability determination requiring further proceedings as

to damages, the district court shall remand the action to the State court from which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.

(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination shall not be subject to further review by appeal or otherwise.

(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

(5) An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1369 of this title for purposes of this section and sections 1407, 1697, and 1785 of this title.

(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.

(f) Derivative Removal Jurisdiction. —

The court to which a civil action is removed under this section is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

(June 25, 1948, ch. 646, 62 Stat. 937; Pub. L. 94–583, § 6, Oct. 21, 1976, 90 Stat. 2898; Pub. L. 99–336, § 3(a), June 19, 1986, 100 Stat. 637; Pub. L. 100–702, title X, § 1016(a), Nov. 19, 1988,

102 Stat. 4669; Pub. L. 101–650, title III, § 312, Dec. 1, 1990, 104 Stat. 5114; Pub. L. 102–198, § 4, Dec. 9, 1991, 105 Stat. 1623; Pub. L. 107–273, div. C, title I, § 11020(b)(3), Nov. 2, 2002, 116 Stat. 1827; Pub. L. 112–63, title I, § 103(a), Dec. 7, 2011, 125 Stat. 759.)

28 USC §1442 | FEDERAL OFFICERS OR AGENCIES SUED OR PROSECUTED

(a) A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

(2) A property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States.

(3) Any officer of the courts of the United States, for or relating to any act under color of office or in the performance of his duties;

(4) Any officer of either House of Congress, for or relating to any act in the discharge of his official duty under an order of such House.

(b) A personal action commenced in any State court by an alien against any citizen of a State who is, or at the time the alleged action accrued was, a civil officer of the United States and is a nonresident of such State, wherein jurisdiction is obtained by the State court by personal service of process, may be removed by the defendant to the district court of the United States for the district and division in which the defendant was served with process.

(c) Solely for purposes of determining the propriety of removal under subsection (a), a law enforcement officer, who is the defendant in a criminal prosecution, shall be deemed to have been acting under the color of his office if the officer —

(1) protected an individual in the presence of the officer from a crime of violence;

(2) provided immediate assistance to an individual who suffered, or who was threatened with, bodily harm; or

(3) prevented the escape of any individual who the officer reasonably believed to have committed, or was about to commit, in the presence of the officer, a crime of violence that resulted in, or was likely to result in, death or serious bodily injury.

(d) In this section, the following definitions apply:

(1) The terms "civil action" and "criminal prosecution" include any proceeding (whether or not ancillary to another proceeding) to the extent that in such proceeding a judicial order, including a subpoena for testimony or documents, is sought or issued. If removal is sought for a proceeding described in the previous sentence, and there is no other basis for removal, only that proceeding may be removed to the district court.

(2) The term "crime of violence" has the meaning given that term in section 16 of title 18.

(3) The term "law enforcement officer" means any employee described in subparagraph (A), (B), or (C) of section 8401(17) of title 5 and any special agent in the Diplomatic Security Service of the Department of State.

(4) The term "serious bodily injury" has the meaning given that term in section 1365 of title 18.

(5) The term "State" includes the District of Columbia, United States territories and insular possessions, and Indian country (as defined in section 1151 of title 18).

(6) The term "State court" includes the Superior Court of the District of Columbia, a court of a United States territory or insular possession, and a tribal court.

(June 25, 1948, ch. 646, 62 Stat. 938; Pub. L. 104–317, title II, § 206(a), Oct. 19, 1996, 110 Stat. 3850; Pub. L. 112–51, § 2(a), (b), Nov. 9, 2011, 125 Stat. 545; Pub. L. 112–239, div. A, title X, § 1087, Jan. 2, 2013, 126 Stat. 1969.)

28 USC §1443 | CIVIL RIGHTS CASES

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

(June 25, 1948, ch. 646, 62 Stat. 938.)

28 USC §1446 | PROCEDURE FOR REMOVAL OF CIVIL ACTIONS

(a) Generally. - A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) Requirements; Generally. –

(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

(2)

(A) When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.

(B) Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.

(C) If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.

(3) Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a

copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

(c) Requirements; Removal Based on Diversity of Citizenship. –

(1) A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

(2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that –

(A) the notice of removal may assert the amount in controversy if the initial pleading seeks -

(i) nonmonetary relief; or

(ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and

(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

(3)

(A) If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an "other paper" under subsection (b)(3).

(B) If the notice of removal is filed more than 1 year after commencement of the action and the district court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1).

(d) Notice to Adverse Parties and State Court. - Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(e) Counterclaim in 337 Proceeding. - With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.

(g) 1 Where the civil action or criminal prosecution that is removable under section 1442(a) is a proceeding in which a judicial order for testimony or documents is sought or issued or sought to be enforced, the 30-day requirement of subsection (b) of this section and paragraph (1) of section 1455(b) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than 30 days after receiving, through service, notice of any such proceeding.

(June 25, 1948, ch. 646, 62 Stat. 939 ; May 24, 1949, ch. 139, §83, 63 Stat. 101 ; Pub. L. 89–215, Sept. 29, 1965, 79 Stat. 887 ; Pub. L. 95–78, §3, July 30, 1977, 91 Stat. 321 ; Pub. L. 100–702, title X, §1016(b), Nov. 19, 1988, 102 Stat. 4669 ; Pub. L. 102–198, §10(a), Dec. 9, 1991, 105 Stat. 1626 ; Pub. L. 103–465, title III, §321(b)(2), Dec. 8, 1994, 108 Stat. 4946 ; Pub. L. 104–317, title VI, §603, Oct. 19, 1996, 110 Stat. 3857 ; Pub. L. 112–51, §2(c), Nov. 9, 2011, 125 Stat. 545 ; Pub. L. 112–63, title I, §§103(b), 104, Dec. 7, 2011, 125 Stat. 760 , 762.)

Historical and Revision Notes

1948 Act

Based on title 28, U.S.C., 1940 ed., §§72, 74, 75, 76 (May 3, 1911, ch. 231, §§29, 31, 32, 33, 36 Stat. 1095, 1097; Aug. 23, 1916, ch. 399, 39 Stat. 532; July 30, 1977, Pub. L. 95–78, §3, 91 Stat. 321.)

Section consolidates portions of sections 74, 75, and 76 with section 72 of title 28, U.S.C., 1940 ed., with important changes of substance and phraseology.

Subsection (a), providing for the filing of the removal petition in the district court, is substituted for the requirement of sections 72 and 74 of title 28, U.S.C., 1940 ed., that the petition be filed in the State court. This conforms to the method prescribed by section 76 of title 28, U.S.C., 1940 ed., and to the recommendation of United States District Judges Calvin W. Chesnut and T. Waties Warring approved by the **Committee of the Judicial Conference** on the Revision of the Judicial Code.

Subsection (b) makes uniform the time for filing petitions to remove all civil actions within twenty days after commencement of action or service of process whichever is later, instead of "at any time before the defendant is required by the laws of the State or the rule of the State court in which such suit is brought to answer or plead" as required by section 72 of title 28, U.S.C., 1940 ed. As thus revised, the section will give adequate time and operate uniformly throughout the Federal jurisdiction. The provisions of sections 74 and 76 of title 28, U.S.C., 1940 ed., for filing at any time "before trial or final hearing" in civil rights cases and cases involving revenue officers, court officers and officers of either House of Congress were omitted.

Subsection (c) embodies the provisions of sections 74 and 76 of title 28, U.S.C., 1940 ed., for filing the removal petition before trial and makes them applicable to all criminal prosecutions but not to civil actions. This provision was retained to protect Federal officers enforcing revenue or criminal laws from being rushed to trial in State courts before petition for removal could be filed. Words "or final hearing" following the words "before trial," were omitted for purposes of clarity and simplification of procedure.

The provision of said section 76 of title 28, U.S.C., 1940 ed., for certificate of counsel that he has examined the proceedings and carefully inquired into all matters set forth in the petition and believes them to be true, was omitted as unnecessary and inconsistent with Rule 11 of the **Federal Rules of Civil Procedure**.

Subsection (d) is derived from sections 72 and 74 of title 28, U.S.C., 1940 ed., but the requirement for cost bond is limited to civil actions in conformity with the more enlightened trend of modern procedure to remove all unnecessary impediments to the administration of criminal justice. Provisions of said section 72 as to the conditions of the bond were rewritten because inappropriate when the petition for removal is filed in the Federal court.

Subsection (e) provides for notice to the adverse parties and for the filing in the State court of a copy of the petition for removal in substitution for the requirements of sections 72 and 74 of

title 28, U.S.C., 1940 ed., for the filing of the removal petition in the State court. The last sentence of subsection (e) is derived from sections 72, 74 and 76 of title 28, U.S.C., 1940 ed.

Subsection (f) is derived from sections 75 and 76 of title 28, U.S.C., 1940 ed.

Since the procedure in removal cases is now governed by the **Federal Rules of Civil Procedure** [Rule 81(c)] and Federal Rules of Criminal Procedure [Rule 54(b)], the detailed directions of the various sections with respect to such procedure were omitted as unnecessary.

Thus the provision of section 72 of title 28, U.S.C., 1940 ed., with respect to appearance, special bail and filing the record were omitted as covered by the **Federal Rules of Civil Procedure**, Rules 64, 81(c).

The provisions of section 74 of title 28, U.S.C., 1940 ed., as to the effect of security and other proceedings and remedies in the State court were omitted as covered by section 1450 of this title.

The requirements of section 74 of title 28, U.S.C., 1940 ed., that the clerk of the State court shall furnish copies of pleadings and proceedings to the petitioner and that the petitioner shall file the same in the district court are covered by section 1447 of this title.

The provisions of section 74 of title 28, U.S.C., 1940 ed., requiring the adverse parties to plead anew in the district court were omitted as unnecessary in view of **Federal Rules of Civil Procedure**, Rule 81(c). The last sentence of such section was omitted as covered by section 1447(d) of this title.

1949 Act

Subsection (b) of section 1446 of title 28, U.S.C., as revised, has been found to create difficulty in those States, such as New York, where suit is commenced by the service of a summons and the plaintiff's initial pleading is not required to be served or filed until later.

The first paragraph of the amendment to subsection (b) corrects this situation by providing that the petition for removal need not be filed until 20 days after the defendant has received a copy of the plaintiff's initial pleading.

This provision, however, without more, would create further difficulty in those States, such as Kentucky, where suit is commenced by the filing of the plaintiff's initial pleading and the issuance and service of a summons without any requirement that a copy of the pleading be served upon or otherwise furnished to the defendant. Accordingly the first paragraph of the amendment provides that in such cases the petition for removal shall be filed within 20 days after the service of the summons.

The first paragraph of the amendment conforms to the amendment of rule 81(c) of the **Federal Rules of Civil Procedure**, relating to removed actions, adopted by the Supreme Court on December 29, 1948, and reported by the Court to the present session of Congress.

The second paragraph of the amendment to subsection (b) is intended to make clear that the right of removal may be exercised at a later stage of the case if the initial pleading does not

state a removable case but its removability is subsequently disclosed. This is declaratory of the existing rule laid down by the decisions. (See for example, Powers v. Chesapeake etc., Ry. Co., 169 U.S. 92.)

In addition, this amendment clarifies the intent of section 1446(e) of title 28, U.S.C., to indicate that notice need not be given simultaneously with the filing, but may be given promptly thereafter.

Editorial Notes

References in Text

The **Federal Rules of Civil Procedure**, referred to in subsecs. (a) and (e), are set out in the Appendix to this title.

Section 337 of the Tariff Act of 1930, referred to in subsec. (e), is classified to section 1337 of Title 19, Customs Duties.

Amendments

2011 - Pub. L. 112–63, §103(b)(1), amended section catchline generally, substituting "Procedure for removal of civil actions" for "Procedure for removal".

Subsec. (a). Pub. L. 112–63, §103(b)(2), inserted heading and struck out "or criminal prosecution" after "civil action" in text.

Subsec. (b). Pub. L. 112–63, §103(b)(3)(A), (B), inserted heading, designated first par. as par. (1), added pars. (2) and (3), and struck out second par. which read as follows: "If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action."

Subsec. (b)(1). Pub. L. 112–63, §103(b)(4)(B), substituted "30 days" for "thirty days" in two places.

Subsec. (c). Pub. L. 112–63, §103(b)(3)(C), added subsec. (c) and struck out former subsec. (c) which related to notice of removal of a criminal prosecution.

Subsec. (d). Pub. L. 112–63, §103(b)(4)(A), inserted heading.

Subsecs. (e), (f). Pub. L. 112–63, §103(b)(4)(C), (D), redesignated subsec. (f) as (e), inserted heading, and struck out former subsec. (e) which read as follows: "If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such State court."

Subsec. (g). Pub. L. 112–63, §104, substituted "subsection (b) of this section and paragraph (1) of section 1455(b)" for "subsections (b) and (c)".

Pub. L. 112–51 added subsec. (g).

1996 - Subsec. (c)(1). Pub. L. 104–317 substituted "defendant or defendants" for "petitioner".

1994 - Subsec. (f). Pub. L. 103–465 added subsec. (f).

1991 - Subsec. (c)(1). Pub. L. 102–198, §10(a)(1), (4), substituted "notice of" for "petition for" and "the notice" for "the petition".

Subsec. (c)(2). Pub. L. 102–198, §10(a)(1), (4), substituted "notice of" for "petition for" and substituted "notice" for "petition" in three places.

Subsec. (c)(3). Pub. L. 102–198, §10(a)(1), (2), substituted "notice of" for "petition for" and "prosecution is first remanded" for "petition is first denied".

Subsec. (c)(4), (5). Pub. L. 102–198, §10(a)(3), added pars. (4) and (5) and struck out former pars. (4) and (5) which read as follows:

> "(4) The United States district court to which such petition is directed shall examine the petition promptly. If it clearly appears on the face of the petition and any exhibits annexed thereto that the petition for removal should not be granted, the court shall make an order for its summary dismissal.
>
> "(5) If the United States district court does not order the summary dismissal of such petition, it shall order an evidentiary hearing to be held promptly and after such hearing shall make such disposition of the petition as justice shall require. If the United States district court determines that such petition shall be granted, it shall so notify the State court in which prosecution is pending, which shall proceed no further."

Subsec. (d). Pub. L. 102–198, §10(a)(1), (4), (5), substituted "notice of removal" for "petition for the removal", struck out "and bond" after "civil action", and substituted "notice with" for "petition with".

1988 - Subsec. (a). Pub. L. 100–702, §1016(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action."

Subsec. (b). Pub. L. 100–702, §1016(b)(2), substituted "notice of removal" for "petition for removal" in two places and inserted before period at end of second par. ", except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action".

Subsecs. (d) to (f). Pub. L. 100–702, §1016(b)(3), redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out former subsec. (d) which read as follows: "Each petition for removal of a civil action or proceeding, except a petition in behalf of the United States, shall be accompanied by a bond with good and sufficient surety conditioned that the defendant or defendants will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed."

1977 - Subsec. (c). Pub. L. 95–78, §3(a), designated existing provisions as par. (1), set a period of 30 days as the maximum allowable time prior to commencement of trial and following arraignment during which time a petition for removal can be filed, provided for the grant of additional time for good cause shown, and added pars. (2) to (5).

Subsec. (e). Pub. L. 95–78, §3(b), inserted "for the removal of a civil action" after "filing of such petition".

1965 - Subsec. (b). Pub. L. 89–215 substituted "thirty days" for "twenty days" wherever appearing.

1949 - Subsec. (b). Act May 24, 1949, §83(a), provided that the petition for removal need not be filed until 20 days after the defendant has received a copy of the plaintiff's initial pleading, and provided that the petition for removal shall be filed within 20 days after the service of summons.

Subsec. (e). Act May 24, 1949, §83(b), indicated that notice need not be given simultaneously with the filing, but may be made promptly thereafter.

Statutory Notes and Related Subsidiaries

Effective Date of 2011 Amendment

Amendment by Pub. L. 112–63 effective upon the expiration of the 30-day period beginning on Dec. 7, 2011, and applicable to any action or prosecution commenced on or after such effective date, with provisions for treatment of cases removed to Federal court, see section 105 of Pub. L. 112–63, set out as a note under section 1332 of this title.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–465 applicable with respect to complaints filed under section 1337 of Title 19, Customs Duties, on or after the date on which the World Trade Organization Agreement enters into force with respect to the United States [Jan. 1, 1995], or in cases under section 1337 of Title 19 in which no complaint is filed, with respect to investigations initiated under such section on or after such date, see section 322 of Pub. L. 103–465, set out as a note under section 1337 of Title 19.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95–78 effective Oct. 1, 1977, see section 4 of Pub. L. 95–78, set out as an Effective Date of Pub. L. 95–78 note under section 2074 of this title.

[1] So in original. Section does not contain a subsec. (f).

28 USC §1447 | PROCEDURE AFTER REMOVAL GENERALLY

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.

(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

(June 25, 1948, ch. 646, 62 Stat. 939 ; May 24, 1949, ch. 139, §84, 63 Stat. 102 ; Pub. L. 88–352, title IX, §901, July 2, 1964, 78 Stat. 266 ; Pub. L. 100–702, title X, §1016(c), Nov. 19, 1988, 102 Stat. 4670 ; Pub. L. 102–198, §10(b), Dec. 9, 1991, 105 Stat. 1626 ; Pub. L. 104–219, §1, Oct. 1, 1996, 110 Stat. 3022 ; Pub. L. 112–51, §2(d), Nov. 9, 2011, 125 Stat. 546 .)

Historical and Revision Notes

1948 Act

Based on title 28, U.S.C., 1940 ed., §§71, 72, 74, 76, 80, 81 and 83 (Mar. 3, 1911, ch. 231, §§28, 29, 31, 33, 37 and 38, 36 Stat. 1094–1098 ; Jan. 20, 1914, ch. 11, 39 Stat. 278 ; Aug. 23, 1916, ch. 399, 39 Stat. 532 ; Apr. 16, 1920, ch. 146, 41 Stat. 554 ; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54).

Section consolidates procedural provisions of sections 71, 72, 74, 76, 80, 81 and 83 of title 28, U.S.C., 1940 ed., with important changes in substance and phraseology.

Subsection (a) is derived from sections 72, 76, 81 and 83 of title 28, U.S.C., 1940 ed. The remaining provisions of said section 83 are the basis of section 1448 of this title.

Subsection (b) is derived from sections 72, 74, 76 and 83 of title 28, U.S.C., 1940 ed., which have been rewritten to provide the utmost simplicity and flexibility of procedure in bringing the State court record to the district court.

[*Editorial Note*.-Subsecs. (c), (d) and (e) as originally revised and incorporated in this section read as follows:

> "(c) It may order the pleadings recast and the parties realigned according to their real interest.
>
> "(d) If any party fails to comply with its lawful orders, the district court may enter such further orders and judgments as justice requires.
>
> "(e) If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case."]

Subsections (c) and (d) are substituted for unnecessary and inconsistent procedural provisions.

Subsection (e) [now subsec. (c)] is derived from sections 71 and 80 of title 28, U.S.C., 1940 ed. Such subsection is rewritten to eliminate the cumbersome procedure of remand. Under this chapter as revised, the petition for removal under section 1446 of this chapter will be filed in the Federal court in the first instance and the right of removal determined in that court before the petition is granted.

The provisions in section 80 of title 28, U.S.C., 1940 ed., relating to actions commenced in district courts, as distinguished from actions removed thereto, are incorporated in section 1359 of this title. Other provisions of said section 80 appear in section 1919 of this title.

1949 Act

This section strikes out subsections (c) and (d) of section 1447 of title 28, U.S.C., as covered by the Federal Rules of Civil Procedure, and adds a new subsection to such section 1447 to remove any doubt that the former law as to the finality of an order of remand to a State court is continued. This section also amends renumbered subsection (c) to remove any doubt that the former law authorizing the district court upon remand to order payment of costs is continued.

Editorial Notes

Amendments

2011 - Subsec. (d). Pub. L. 112–51 inserted "1442 or" before "1443".

1996 - Subsec. (c). Pub. L. 104–219 substituted "any defect other than lack of subject matter jurisdiction" for "any defect in removal procedure" in first sentence.

1991 - Subsec. (b). Pub. L. 102–198 substituted "removing party" for "petitioner".

1988 - Subsec. (c). Pub. L. 100–702, §1016(c)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case."

Subsec. (e). Pub. L. 100–702, §1016(c)(2), added subsec. (e).

1964 - Subsec. (d). Pub. L. 88–352, inserted exception provision.

1949 - Subsec. (c). Act May 24, 1949, §84(a), struck out former subsecs. (c) and (d), renumbered former subsec. (e) to be subsec. (c) and inserted at end of first sentence of new subsec. (c) "and may order the payment of just costs".

Subsec. (d). Act May 24, 1949, §84(b), added subsec. (d).

Statutory Notes and Related Subsidiaries

Exception to Subsection (d)

Act Aug. 4, 1947, ch. 458, §3(c), 61 Stat. 732 , provides in part that the United States shall have the right to appeal from any order of remand entered in any case removed to a United States district court pursuant to the provisions of act Apr. 12, 1926, ch. 115, 44 Stat. 239 . These acts referred to herein relate to restrictions on land of the Five Civilized Tribes of Oklahoma and are set out as notes under section 355 of Title 25, Indians.

28 USC §1448 | PROCESS AFTER REMOVAL

In all cases removed from any State court to any district court of the United States in which any one or more of the defendants has not been served with process or in which the service has not been perfected prior to removal, or in which process served proves to be defective, such process or service may be completed or new process issued in the same manner as in cases originally filed in such district court.

This section shall not deprive any defendant upon whom process is served after removal of his right to move to remand the case.

(June 25, 1948, ch. 646, 62 Stat. 940.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §83 (Apr. 16, 1920, ch. 146, 41 Stat. 554).

Words "district court of the United States" were substituted for "United States Court," because only the district courts now possess jurisdiction over removed civil and criminal cases.

Changes were made in phraseology.

28 USC §1449 | STATE COURT RECORD SUPPLIED

Where a party is entitled to copies of the records and proceedings in any suit or prosecution in a State court, to be used in any district court of the United States, and the clerk of such State court, upon demand, and the payment or tender of the legal fees, fails to deliver certified copies, the district court may, on affidavit reciting such facts, direct such record to be supplied by affidavit or otherwise. Thereupon such proceedings, trial, and judgment may be had in such district court, and all such process awarded, as if certified copies had been filed in the district court.

(June 25, 1948, ch. 646, 62 Stat. 940 ; May 24, 1949, ch. 139, §85, 63 Stat. 102.)

Historical and Revision Notes

1948 Act

Based on title 28, U.S.C., 1940 ed., §78 (Mar. 3, 1911, ch. 231, §35, 36 Stat. 1098).

Changes were made in phraseology.

1949 Act

This section corrects a typographical error by eliminating from section 1449 of title 28, U.S.C., the words "any attachment or sequestration of the", which had been inadvertently included, and inserting in lieu thereof the words, "and the clerk of such State court, upon".

Editorial Notes

Amendments

1949 - Act May 24, 1949, substituted "and the clerk of such State court, upon" for "any attachment or sequestration of the".

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 28 JUDICIARY AND JUDICIAL PROCEDURE

PART: V PROCEDURE

CHAPTER: 111 GENERAL PROVISIONS

SECTIONS: §1651 through §1659

NOTE: **Entire Chapter**

28 USC §1651 | WRITS

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

(June 25, 1948, ch. 646, 62 Stat. 944; May 24, 1949, ch. 139, §90, 63 Stat. 102.)

Historical and Revision Notes

1948 Act

Based on title 28, U.S.C., 1940 ed., §§342, 376, 377 (Mar. 3, 1911, ch. 231, §§234, 261, 262, 36 Stat. 1156, 1162).

Section consolidates sections 342, 376, and 377 of title 28, U.S.C., 1940 ed., with necessary changes in phraseology.

Such section 342 provided:

> "The Supreme Court shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a State, or an ambassador, or other public minister, or a consul, or vice consul is a party."

Such section 376 provided:

> "Writs of ne exeat may be granted by any justice of the Supreme Court, in cases where they might be granted by the Supreme Court; and by any district judge, in cases where they might be granted by the district court of which he is a judge. But no writ of ne exeat shall be granted unless a suit in equity is commenced, and satisfactory proof is made to the court or judge granting the same that the defendant designs quickly to depart from the United States."

Such section 377 provided:

> "The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be

necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

The special provisions of section 342 of title 28, U.S.C., 1940 ed., with reference to writs of prohibition and mandamus, admiralty courts and other courts and officers of the United States were omitted as unnecessary in view of the revised section.

The revised section extends the power to issue writs in aid of jurisdiction, to all courts established by Act of Congress, thus making explicit the right to exercise powers implied from the creation of such courts.

The provisions of section 376 of title 28, U.S.C., 1940 ed., with respect to the powers of a justice or judge in issuing writs of ne exeat were changed and made the basis of subsection (b) of the revised section but the conditions and limitations on the writ of ne exeat were omitted as merely confirmatory of well-settled principles of law.

The provision in section 377 of title 28, U.S.C., 1940 ed., authorizing issuance of writs of scire facias, was omitted in view of rule 81(b) of the Federal Rules of Civil Procedure abolishing such writ. The revised section is expressive of the construction recently placed upon such section by the Supreme Court in U.S. Alkali Export Assn. v. U.S., 65 S.Ct. 1120, 325 U.S. 196, 89 L.Ed. 1554, and De Beers Consol. Mines v. U.S., 65 S.Ct. 1130, 325 U.S. 212, 89 L.Ed. 1566.

1949 Act

This section corrects a grammatical error in subsection (a) of section 1651 of title 28, U.S.C.

Editorial Notes

Amendments

1949-Subsec. (a). Act May 24, 1949, inserted "and" after "jurisdictions".

Statutory Notes and Related Subsidiaries

Writ of Error

Act Jan. 31, 1928, ch. 14, §2, 45 Stat. 54 , as amended Apr. 26, 1928, ch. 440, 45 Stat. 466 ; June 25, 1948, ch. 646, §23, 62 Stat. 990 , provided that: "All Acts of Congress referring to writs of error shall be construed as amended to the extent necessary to substitute appeal for writ of error."

28 USC §1652 | STATE LAWS AS RULES OF DECISION

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

(June 25, 1948, ch. 646, 62 Stat. 944.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §725 (R.S. §721).

"Civil actions" was substituted for "trials at common law" to clarify the meaning of the Rules of Decision Act in the light of the Federal Rules of Civil Procedure. Such Act has been held to apply to suits in equity.

Changes were made in phraseology.

28 USC §1653 | AMENDMENT OF PLEADINGS TO SHOW JURISDICTION

Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.

(June 25, 1948, ch. 646, 62 Stat. 944.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §399 (Mar. 3, 1911, ch. 231, §274c, as added Mar. 3, 1915, ch. 90, 38 Stat. 956).

Section was extended to permit amendment of all jurisdictional allegations instead of merely allegations of diversity of citizenship as provided by section 399 of title 28, U.S.C., 1940 ed.

Changes were made in phraseology.

28 USC §1654 | APPEARANCE PERSONALLY OR BY COUNSEL

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

(June 25, 1948, ch. 646, 62 Stat. 944; May 24, 1949, ch. 139, §91, 63 Stat. 103.)

Historical and Revision Notes

1948 Act

Based on title 28, U.S.C., 1940 ed., §394 (Mar. 3, 1911, ch. 231, §272, 36 Stat. 1164).

Words "as, by the rules of the said courts respectively, are permitted to manage and conduct causes therein," after "counsel," were omitted as surplusage. The revised section and section 2071 of this title effect no change in the procedure of the Tax Court before which certain accountants may be admitted as counsel for litigants under Rule 2 of the Tax Court.

Changes were made in phraseology.

1949 Act

This section restores in section 1654 of title 28, U.S.C., language of the original law.

Editorial Notes

Amendments

1949-Act May 24, 1949, inserted "as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein".

28 USC §1655 | LIEN ENFORCEMENT; ABSENT DEFENDANTS

In an action in a district court to enforce any lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to, real or personal property within the district, where any defendant cannot be served within the State, or does not voluntarily appear, the court may order the absent defendant to appear or plead by a day certain.

Such order shall be served on the absent defendant personally if practicable, wherever found, and also upon the person or persons in possession or charge of such property, if any. Where personal service is not practicable, the order shall be published as the court may direct, not less than once a week for six consecutive weeks.

If an absent defendant does not appear or plead within the time allowed, the court may proceed as if the absent defendant had been served with process within the State, but any adjudication shall, as regards the absent defendant without appearance, affect only the property which is the subject of the action. When a part of the property is within another district, but within the same state, such action may be brought in either district.

Any defendant not so personally notified may, at any time within one year after final judgment, enter his appearance, and thereupon the court shall set aside the judgment and permit such defendant to plead on payment of such costs as the court deems just.

(June 25, 1948, ch. 646, 62 Stat. 944.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §118 (Mar. 3, 1911, ch. 231, §57, 36 Stat. 1102).

Word "action" was substituted for "suit," in view of Rule 2 of the Federal Rules of Civil Procedure.

In view of Rule 4(f) of the Federal Rules of Civil Procedure permitting service of process anywhere within the territorial limits of the States, the word "State" was substituted for "district" in the first and third paragraphs.

Changes were made in phraseology.

28 USC §1656 | CREATION OF NEW DISTRICT OR DIVISION OR TRANSFER OF TERRITORY; LIEN ENFORCEMENT

The creation of a new district or division or the transfer of any territory to another district or division shall not affect or divest any lien theretofore acquired in a district court upon property within such district, division or territory.

To enforce such lien, the clerk of the court in which the same is acquired, upon the request and at the cost of the party desiring the same, shall make a certified copy of the record thereof, which, when filed in the proper court of the district or division in which such property is situated after such creation or transfer shall be evidence in all courts and places equally with the original thereof; and, thereafter like proceedings shall be had thereon, and with the same effect, as though the case or proceeding had been originally instituted in such court.

(June 25, 1948, ch. 646, 62 Stat. 944; Pub. L. 95–598, title II, §242, Nov. 6, 1978, 92 Stat. 2671.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §122 (Mar. 3, 1911, ch. 231, §60, 36 Stat. 1103).

A provision as to creation of a new district or division or transfer of territory before March 3, 1911, was omitted as obsolete.

Words descriptive of the lien were omitted as unnecessary.

Changes were made in phraseology.

Editorial Notes

Amendments

1978-Pub. L. 95–598 directed the amendment of section by inserting "or in a bankruptcy court" after "a district court", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

28 USC §1657 | PRIORITY OF CIVIL ACTIONS

(a) Notwithstanding any other provision of law, each court of the United States shall determine the order in which civil actions are heard and determined, except that the court shall expedite the consideration of any action brought under chapter 153 or section 1826 of this title, any action for temporary or preliminary injunctive relief, or any other action if good cause therefor is shown. For purposes of this subsection, "good cause" is shown if a right under the Constitution of the United States or a Federal Statute (including rights under section 552 of title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit.

(b) The Judicial Conference of the United States may modify the rules adopted by the courts to determine the order in which civil actions are heard and determined, in order to establish consistency among the judicial circuits.

(Added Pub. L. 98–620, title IV, §401(a), Nov. 8, 1984, 98 Stat. 3356.)

Statutory Notes and Related Subsidiaries

Effective Date

Pub. L. 98–620, title IV, §403, Nov. 8, 1984, 98 Stat. 3361 , provided that: "The amendments made by this subtitle [subtitle A (§§401–403) of title IV of Pub. L. 98–620, enacting this section, amending sections 596, 636, 1364, 2284, and 2349 of this title, section 687 of Title 2, The Congress, section 552 of Title 5, Government Organization and Employees, sections 8, 136d, 136h, 136n, 136w, 194, 1366, 1600, and 1601 of Title 7, Agriculture, section 1464 of Title 12, Banks and Banking, sections 18a, 21, 45, 57a–1, 78k–1, 687a, 687c, 719h, 1415, 2003, and 2622 of Title 15, Commerce and Trade, sections 1463a, 1910, 3117, and 3168 of Title 16, Conservation, sections 1964 and 1966 of Title 18, Crimes and Criminal Procedure, sections 346a and 348 of Title 21, Food and Drugs, section 618 of Title 22, Foreign Relations and Intercourse, section 640d–3 of Title 25, Indians, sections 3310, 6110, 6363, 7609, 9010, and 9011 of Title 26, Internal Revenue Code, sections 110, 160, 660, and 1303 of Title 29, Labor, section 816 of Title 30, Mineral Lands and Mining, section 2022 [now 4302] of Title 38, Veterans' Benefits, section 3628 of Title 39, Postal Service, sections 300j–9, 504, 6508, and 8514 of Title 42, The Public Health and Welfare, sections 1062, 1349, 1652, and 2011 of Title 43, Public Lands, sections 355, 745, 1018, and 1205 of Title 45, Railroads, section 402 of Title 47, Telecommunications, section 2305 of former Title 49, Transportation, sections 792a and 3811 of Title 50, War and National Defense, section 1984 of the former Appendix to Title 50, and sections 30109 and 30110 of Title 52, Voting and Elections, repealing sections 1296 and 2647 of this title, section 28 of Title 15, and section 3614 of Title 42, and amending provisions set out as a note under section 2304 of Title 10, Armed Forces] shall not apply to cases pending on the date of the enactment of this subtitle [Nov. 8, 1984]."

28 USC §1658 | TIME LIMITATIONS ON THE COMMENCEMENT OF CIVIL ACTIONS ARISING UNDER ACTS OF CONGRESS

(a) Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.

(b) Notwithstanding subsection (a), a private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), may be brought not later than the earlier of -

(1) 2 years after the discovery of the facts constituting the violation; or

(2) 5 years after such violation.

(Added Pub. L. 101–650, title III, §313(a), Dec. 1, 1990, 104 Stat. 5114; amended Pub. L. 107–204, title VIII, §804(a), July 30, 2002, 116 Stat. 801.)

Editorial Notes

References in Text

The date of the enactment of this section, referred to in subsec. (a), is the date of enactment of Pub. L. 101–650, which was approved Dec. 1, 1990.

Amendments

2002-Pub. L. 107–204 designated existing provisions as subsec. (a) and added subsec. (b).

Statutory Notes and Related Subsidiaries

Effective Date of 2002 Amendment

Pub. L. 107–204, title VIII, §804(b), July 30, 2002, 116 Stat. 801 , provided that: "The limitations period provided by section 1658(b) of title 28, United States Code, as added by this section, shall apply to all proceedings addressed by this section that are commenced on or after the date of enactment of this Act [July 30, 2002]."

Effective Date

Pub. L. 101–650, title III, §313(c), Dec. 1, 1990, 104 Stat. 5115, provided that: "The amendments made by this section [enacting this section] shall apply with respect to causes of action accruing on or after the date of the enactment of this Act [Dec. 1, 1990]."

No Creation of Actions

Pub. L. 107–204, title VIII, §804(c), July 30, 2002, 116 Stat. 801, provided that: "Nothing in this section [amending this section and enacting provisions set out as a note under this section] shall create a new, private right of action."

28 USC §1659 | STAY OF CERTAIN ACTIONS PENDING DISPOSITION OF RELATED PROCEEDINGS BEFORE THE UNITED STATES INTERNATIONAL TRADE COMMISSION

(a) Stay.-In a civil action involving parties that are also parties to a proceeding before the United States International Trade Commission under section 337 of the Tariff Act of 1930, at the request of a party to the civil action that is also a respondent in the proceeding before the Commission, the district court shall stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission, but only if such request is made within-

(1) 30 days after the party is named as a respondent in the proceeding before the Commission, or

(2) 30 days after the district court action is filed,

whichever is later.

(b) Use of Commission Record.-Notwithstanding section 337(n)(1) of the Tariff Act of 1930, after dissolution of a stay under subsection (a), the record of the proceeding before the United States International Trade Commission shall be transmitted to the district court and shall be admissible in the civil action, subject to such protective order as the district court determines necessary, to the extent permitted under the Federal Rules of Evidence and the Federal Rules of Civil Procedure.

(Added Pub. L. 103–465, title III, §321(b)(1)(A), Dec. 8, 1994, 108 Stat. 4945.)

Editorial Notes

References in Text

Section 337 of the Tariff Act of 1930, referred to in text, is classified to section 1337 of Title 19, Customs Duties.

The Federal Rules of Evidence and the Federal Rules of Civil Procedure, referred to in subsec. (b), are set out in the Appendix to this title.

Statutory Notes and Related Subsidiaries

Effective Date

Section applicable with respect to complaints filed under section 1337 of Title 19, Customs Duties, on or after the date on which the World Trade Organization Agreement enters into force with respect to the United States [Jan. 1, 1995], or in cases under section 1337 of Title 19 in which no complaint is filed, with respect to investigations initiated under such section on or after such date, see section 322 of Pub. L. 103–465, set out as an Effective Date of 1994 Amendment note under section 1337 of Title 19.

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 28 JUDICIARY AND JUDICIAL PROCEDURE

PART: V PROCEDURE

CHAPTER: 115 EVIDENCE; DOCUMENTARY

SECTIONS: §1738 and §1746

NOTE: Pertinent Parts Only!!!

28 USC §1738 | STATE AND TERRITORIAL STATUTES AND JUDICIAL PROCEEDINGS; FULL FAITH AND CREDIT

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

(June 25, 1948, ch. 646, 62 Stat. 947.)

28 USC §1746 | UNSWORN DECLARATIONS UNDER PENALTY OF PERJURY

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

> (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
>
> (Signature)".
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
>
> (Signature)".

(Added Pub. L. 94–550, § 1(a), Oct. 18, 1976, 90 Stat. 2534.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 28 JUDICIARY AND JUDICIAL PROCEDURE

PART: V PROCEDURE

CHAPTER: 121 JURIES; TRIAL BY JURY

SECTIONS: §1870 only

NOTE: Pertinent Parts Only!!!

28 USC §1870 | CHALLENGES

In civil cases, each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly.

All challenges for cause or favor, whether to the array or panel or to individual jurors, shall be determined by the court.

(June 25, 1948, ch. 646, 62 Stat. 953; Pub. L. 86–282, Sept. 16, 1959, 73 Stat. 565.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §424 (Mar. 3, 1911, ch. 231, §287, 36 Stat. 1166).

Provisions of section 424 of title 28, U.S.C., 1940 ed., relating to the number of peremptory challenges in criminal cases were deleted as superseded by Rule 24 of the Federal Rules of Criminal Procedure.

The last sentence of the first paragraph was added to permit the same flexibility in the matter of challenges in civil cases as is permitted in criminal cases by said Rule 24.

Words "without aid of triers" at end of section 424 of title 28, U.S.C., 1940 ed., were omitted as surplusage.

Changes were made in phraseology.

Editorial Notes

Amendments

1959-Pub. L. 86–282 substituted "may" for "shall" after "several plaintiffs", and ", or the court may allow" for ". If there is more than one defendant the court may allow the defendants".

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 28 JUDICIARY AND JUDICIAL PROCEDURE

PART V PROCEDURE

CHAPTERS: 123 FEES AND COSTS

SECTIONS: §1913-§1915, §1917, §1921, §1927

NOTE: Pertinent Parts Only!!!

28 USC §1913 | COURTS OF APPEALS

The fees and costs to be charged and collected in each court of appeals shall be prescribed from time to time by the Judicial Conference of the United States. Such fees and costs shall be reasonable and uniform in all the circuits.

(June 25, 1948, ch. 646, 62 Stat. 954.)

28 USC §1914 | DISTRICT COURT; FILING AND MISCELLANEOUS FEES; RULES OF COURT

(a) The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of $350, except that on application for a writ of habeas corpus the filing fee shall be $5.

(b) The clerk shall collect from the parties such additional fees only as are prescribed by the Judicial Conference of the United States.

(c) Each district court by rule or standing order may require advance payment of fees.

(June 25, 1948, ch. 646, 62 Stat. 954 ; Pub. L. 95–598, title II, §244, Nov. 6, 1978, 92 Stat. 2671 ; Pub. L. 99–336, §4(a), June 19, 1986, 100 Stat. 637 ; Pub. L. 99–500, §101(b) [title IV, §407(a)], Oct. 18, 1986, 100 Stat. 1783–39 , 1783-64, and Pub. L. 99–591, §101(b) [title IV, §407(a)], Oct. 30, 1986, 100 Stat. 3341–39 , 3341-64; Pub. L. 104–317, title IV, §401(a), Oct. 19, 1996, 110 Stat. 3853 ; Pub. L. 108–447, div. B, title III, §307(a), Dec. 8, 2004, 118 Stat. 2895 ; Pub. L. 109–171, title X, §10001(a), Feb. 8, 2006, 120 Stat. 183 .)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §§549, 553 and 555 (R.S. §828; June 28, 1902, ch. 1301, §1, 32 Stat. 476 ; Feb. 11, 1925, ch. 204, §§2, 6, 8, 43 Stat. 857 , 858; Jan. 22, 1927, ch. 50, §2, 44 Stat. 1023 ; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54 ; Mar. 3, 1942, ch. 124, §2, 56 Stat. 122 ; Sept. 27, 1944, ch. 414, §§1, 4, 5, 58 Stat. 743 , 744).

Section consolidates sections 549, 553, and 555 of title 28, U.S.C., 1940 ed., as amended with necessary changes of phraseology.

The phrase "filing fee" was substituted for the inconsistent and misleading words of sections 549 and 553 of title 28, U.S.C., 1940 ed., "as full payment for all services to be rendered by the clerk" etc. thus removing the necessity for including exceptions and referring to other sections containing provisions for additional fees.

The provision in section 549 of title 28, U.S.C., 1940 ed., for payment of fees by the parties instituting criminal proceedings by indictment or information, was omitted. Such proceedings are instituted only by the United States from which costs cannot be exacted.

The provision in section 549 of title 28, U.S.C., 1940 ed., for taxation of fees as costs, was omitted as covered by section 1920 of this title.

Words "or appeal from a deportation order of a United States Commissioner" in section 553 of title 28, U.S.C., 1940 ed., were omitted as obsolete since repeal of the Chinese Exclusion Act by act Dec. 17, 1943, ch. 344, §1, 57 Stat. 600 . Appeal was formerly conferred by section 282 of title 8, U.S.C., 1940 ed., Aliens and Nationality.

Subsection (d) excepting the District of Columbia, was added to preserve the existing schedule of fees prescribed by section 11–1509 of the District of Columbia Code, 1940 ed.

Codification

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Amendments

2006-Subsec. (a). Pub. L. 109–171 substituted "$350" for "$250".

2004-Subsec. (a). Pub. L. 108–447 substituted "$250" for "$150".

1996-Subsec. (a). Pub. L. 104–317 substituted "$150" for "$120".

1986-Subsec. (a). Pub. L. 99–500 and Pub. L. 99–591 substituted "$120" for "$60".

Subsec. (d). Pub. L. 99–336 struck out subsec. (d) which provided that section was not applicable to District of Columbia.

1978-Subsec. (a). Pub. L. 95–598 substituted "$60" for "$15".

Effective Date of 2006 Amendment

Pub. L. 109–171, title X, §10001(d), Feb. 8, 2006, 120 Stat. 184 , provided that: "This section [amending this section and enacting provisions set out as notes under sections 1913 and 1931 of this title] and the amendment made by this section shall take effect 60 days after the date of the enactment of this Act [Feb. 8, 2006]."

Effective Date of 2004 Amendment

Pub. L. 108–447, div. B, title III, §307(c), Dec. 8, 2004, 118 Stat. 2895 , provided that: "This section [amending this section and section 1931 of this title] shall take effect 60 days after the date of the enactment of this Act [Dec. 8, 2004]."

Effective Date of 1996 Amendment

Pub. L. 104–317, title IV, §401(c), Oct. 19, 1996, 110 Stat. 3854 , provided that: "This section [amending this section and section 1931 of this title] shall take effect 60 days after the date of the enactment of this Act [Oct. 19, 1996]."

Effective Date of 1986 Amendment

Pub. L. 99–336, §4(c), June 19, 1986, 100 Stat. 638 , provided that: "The amendments made by this section [amending this section] shall apply with respect to any civil action, suit, or proceeding instituted on or after the date of the enactment of this Act [June 19, 1986]."

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Court Fees for Electronic Access to Information

Judicial Conference to prescribe reasonable fees for collection by courts under this section for access to information available through automatic data processing equipment and fees to be deposited in Judiciary Automation Fund, see section 303 of Pub. L. 102–140, set out as a note under section 1913 of this title.

28 USC §1915 | PROCEEDINGS IN FORMA PAUPERIS

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

> (2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.
>
> (3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of-

> (A) the average monthly deposits to the prisoner's account; or
>
> (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that-

(A) the allegation of poverty is untrue; or

(B) the action or appeal-

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(June 25, 1948, ch. 646, 62 Stat. 954 ; May 24, 1949, ch. 139, §98, 63 Stat. 104 ; Oct. 31, 1951, ch. 655, §51(b), (c), 65 Stat. 727 ; Pub. L. 86–320, Sept. 21, 1959, 73 Stat. 590 ; Pub. L. 96–82, §6, Oct. 10, 1979, 93 Stat. 645 ; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117 ; Pub. L. 104–134, title I, §101[(a)] [title VIII, §804(a), (c)–(e)], Apr. 26, 1996, 110 Stat. 1321 , 1321-73 to 1321-75; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327)

Historical and Revision Notes

1948 Act

Based on title 28, U.S.C., 1940 ed., §§9a(c)(e), 832, 833, 834, 835, and 836 (July 20, 1892, ch. 209, §§1–5, 27 Stat. 252 ; June 25, 1910, ch. 435, 36 Stat. 866 ; Mar. 3, 1911, ch. 231, §5a, as added Jan. 20, 1944, ch. 3, §1, 58 Stat. 5 ; June 27, 1922, ch. 246, 42 Stat. 666 ; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54).

Section consolidates a part of section 9a(c)(e) with sections 832–836 of title 28, U.S.C., 1940 ed.

For distribution of other provisions of section 9a of title 28, U.S.C., 1940 ed., see Distribution Table.

Section 832 of title 28, U.S.C., 1940 ed., was completely rewritten, and constitutes subsections (a) and (b).

Words "and willful false swearing in any affidavit provided for in this section or section 832 of this title, shall be punishable as perjury as in other cases," in section 833 of title 28, U.S.C., 1940 ed., were omitted as covered by the general perjury statute, title 18, U.S.C., 1940 ed., §231 (H.R. 1600, 80th Cong., sec. 1621).

A proviso in section 836 of title 28, U.S.C., 1940 ed., that the United States should not be liable for costs was deleted as covered by section 2412 of this title.

The provision in section 9a(e) of title 28, U.S.C., 1940 ed., respecting stenographic transcripts furnished on appeals in civil cases is extended by subsection (b) of the revised section to include criminal cases. Obviously it would be inconsistent to furnish the same to a poor person in a civil case involving money only and to deny it in a criminal proceeding where life and liberty are in jeopardy.

The provision of section 832 of title 28, U.S.C., 1940 ed., for payment when authorized by the Attorney General was revised to substitute the Director of the Administrative Office of the United States Courts who now disburses such items.

Changes in phraseology were made.

1949 Act

This amendment clarifies the meaning of subsection (b) of section 1915 of title 28, U.S.C., and supplies, in subsection (e) of section 1915, an inadvertent omission to make possible the recovery of public funds expended in printing the record for persons successfully suing in forma pauperis.

Amendments

1996-Subsec. (a). Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(1)], designated first paragraph as par. (1), substituted "Subject to subsection (b), any" for "Any", struck out "and costs" after "of fees", substituted "submits an affidavit that includes a statement of all assets such prisoner possesses" for "makes affidavit", substituted "such fees" for "such costs", substituted "the person" for "he" in two places, added par. (2), and designated last paragraph as par. (3).

Subsec. (b). Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(3)], added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(2), (4)], redesignated subsec. (b) as (c) and substituted "subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b)" for "subsection (a) of this section". Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(2)], redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(5)], amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious."

Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(2)], redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(2), (c)], redesignated subsec. (e) as (f), designated existing provisions as par. (1) and substituted "proceedings" for "cases", and added par. (2).

Subsec. (g). Pub. L. 104–134, §101[(a)] [title VIII, §804(d)], added subsec. (g).

Subsec. (h). Pub. L. 104–134, §101[(a)] [title VIII, §804(e)], added subsec. (h).

1979-Subsec. (b). Pub. L. 96–82 substituted "Upon the filing of an affidavit in accordance with subsection (a) of this section, the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title" and "Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts" for "In any civil or criminal case the court may, upon the filing of a like affidavit, direct that the expense of printing the record on appeal, if such printing is required by the appellate court, be paid by the United States, and the same shall be paid when authorized by the Director of the Administrative Office of the United States Courts".

1959-Subsec. (a). Pub. L. 86–320 substituted "person" for "citizen".

1951-Subsec. (b). Act Oct. 31, 1951, struck out "furnishing a stenographic transcript and" after "expense of".

Subsec. (e). Act Oct. 31, 1951, inserted provision that the United States shall not be liable for any of the costs incurred.

1949-Subsec. (b). Act May 24, 1949, §98(a), inserted "such printing is" between "if" and "required".

Subsec. (e). Act May 24, 1949, §98(b), inserted "or printed record" after "stenographic transcript".

Change of Name

"United States magistrate judge" substituted for "United States magistrate" in subsec. (c) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

28 USC §1917 | DISTRICT COURTS; FEE ON FILING NOTICE OF OR PETITION FOR APPEAL

Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or of a writ of certiorari $5 shall be paid to the clerk of the district court, by the appellant or petitioner.

(June 25, 1948, ch. 646, 62 Stat. 955.)

28 USC §1921 | UNITED STATES MARSHAL'S FEES

(a)

(1) The United States marshals or deputy marshals shall routinely collect, and a court may tax as costs, fees for the following:

(A) Serving a writ of possession, partition, execution, attachment in rem, or libel in admiralty, warrant, attachment, summons, complaints, or any other writ, order or process in any case or proceeding.

(B) Serving a subpoena or summons for a witness or appraiser.

(C) Forwarding any writ, order, or process to another judicial district for service.

(D) The preparation of any notice of sale, proclamation in admiralty, or other public notice or bill of sale.

(E) The keeping of attached property (including boats, vessels, or other property attached or libeled), actual expenses incurred, such as storage, moving, boat hire, or other special transportation, watchmen's or keepers' fees, insurance, and an hourly rate, including overtime, for each deputy marshal required for special services, such as guarding, inventorying, and moving.

(F) Copies of writs or other papers furnished at the request of any party.

(G) Necessary travel in serving or endeavoring to serve any process, writ, or order, except in the District of Columbia, with mileage to be computed from the place where service is returnable to the place of service or endeavor.

(H) Overtime expenses incurred by deputy marshals in the course of serving or executing civil process.

(2) The marshals shall collect, in advance, a deposit to cover the initial expenses for special services required under paragraph (1)(E), and periodically thereafter such amounts as may be necessary to pay such expenses until the litigation is concluded. This paragraph applies to all private litigants, including seamen proceeding pursuant to section 1916 of this title.

(3) For purposes of paragraph (1)(G), if two or more services or endeavors, or if an endeavor and a service, are made in behalf of the same party in the same case on the same trip, mileage shall be computed to the place of service or endeavor which is most remote from the place where service is returnable, adding thereto any additional mileage traveled in serving or endeavoring to serve in behalf of the party. If two or more writs of any kind, required to be served in behalf of the same party on the same person in the same case or proceeding, may be served at the same time, mileage on only one such writ shall be collected.

(b) The Attorney General shall from time to time prescribe by regulation the fees to be taxed and collected under subsection (a). Such fees shall, to the extent practicable, reflect the actual and reasonable cost of the service provided.

(c)

(1) The United States Marshals Service shall collect a commission of 3 percent of the first $1,000 collected and 1½ percent on the excess of any sum over $1,000, for seizing or levying on property (including seizures in admiralty), disposing of such property by sale, setoff, or otherwise, and receiving and paying over money, except that the amount of commission shall be within the range set by the Attorney General. If [1] the property is not disposed of by marshal's sale, the commission shall be in such amount, within the range set by the Attorney General, as may be allowed by the court. In any case in which the vessel or other property is sold by a public auctioneer, or by some party other than a marshal or deputy marshal, the commission authorized under this subsection shall be reduced by the amount paid to such auctioneer or other party. This subsection applies to any judicially ordered sale or execution sale, without regard to whether the judicial order of sale constitutes

a seizure or levy within the meaning of State law. This subsection shall not apply to any seizure, forfeiture, sale, or other disposition of property pursuant to the applicable provisions of law amended by the Comprehensive Forfeiture Act of 1984 (98 Stat. 2040).

(2) The Attorney General shall prescribe from time to time regulations which establish a minimum and maximum amount for the commission collected under paragraph (1).

(d) The United States marshals may require a deposit to cover the fees and expenses prescribed under this section.

(e) Notwithstanding section 3302 of title 31, the United States Marshals Service is authorized, to the extent provided in advance in appropriations Acts-

(1) to credit to such Service's appropriation all fees, commissions, and expenses collected by such Service for-

(A) the service of civil process, including complaints, summonses, subpoenas, and similar process; and

(B) seizures, levies, and sales associated with judicial orders of execution; and

(2) to use such credited amounts for the purpose of carrying out such activities.

(June 25, 1948, ch. 646, 62 Stat. 955 ; Sept. 9, 1950, ch. 937, 64 Stat. 824 ; Pub. L. 87–621, §1, Aug. 31, 1962, 76 Stat. 417 ; Pub. L. 99–646, §39(a), Nov. 10, 1986, 100 Stat. 3600 ; Pub. L. 100–690, title VII, §7608(c), Nov. 18, 1988, 102 Stat. 4515 ; Pub. L. 101–647, title XII, §1212, Nov. 29, 1990, 104 Stat. 4833 .)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §574 (R.S. §§823, 829; May 28, 1896, ch. 252, §6, 29 Stat. 179 ; May 29, 1930, ch. 356, 46 Stat. 486 ; Aug. 3, 1935, ch. 431, §2, 49 Stat. 513).

Provisions for serving venires and summoning grand and petit jurors were omitted as useless since marshal's fees are now covered into the Treasury and there is no basis for apportioning the cost of summoning jurors for a term of court and taxing the same to individual cases.

The marshal's fee "for holding a court of inquiry or other proceedings before a jury, including summoning a jury, $5" is omitted as obsolete in the Federal practice. See, Black's Law Dictionary "Court of Inquiry." See, also, Webster's International Dictionary.

A fee of 50 cents "for each bail bond" is omitted as covered by the general provision for taxation of marshal's fees in criminal cases.

The provisions for a fee of $5 for drawing and executing a deed and $1 for executing a deed prepared by a party or his attorney are omitted as unnecessary. It is the marshal's duty to execute conveyances of property which he sells on execution and his salary compensates him therefor. There is no occasion for him to draw such a deed and no beneficial purpose in taxing the parties a fee for his signature.

The 2 per centum fee for disbursing moneys is omitted as an unnecessary burden upon funds belonging to litigants.

The provision that a folio consists of "100 words or major fraction thereof" is inserted to conform with section 607 of title 28, U.S.C., 1940 ed., which is transferred to title 44, U.S.C., 1940 ed., Public Printing and Documents, along with section 606 of said title 28, to which said section 607 also relates.

The provision for a lump sum to be determined by the court and taxed in criminal cases was added. It fixes a maximum of $25 in misdemeanor cases and $100 in felony cases. It may be questioned whether costs as such should ever be taxed against the convicted defendant in a criminal case. The acquitted defendant is not permitted to tax costs against the United States. Indeed the allowance of costs in criminal cases is not a matter of right but rests completely within the discretion of the court. Morris v. United States, 1911, 185 Fed. 73, 107 C.C.A. 293.

In Alberty v. U.S., C.C.A.9, 1937, 91 F.2d 461, the defendant was fined $100 on each of 11 accounts of an indictment under the 1906 Food and Drug Act (title 21, §§2, 10, U.S.C., 1934 ed., as amended). Costs of prosecution were taxed in the sum of $1,499.80. Yet the court in its discretion might have reached substantially the same result by imposing a fine of $200 on each count without any taxation of costs.

Changes were made in phraseology.

References in Text

The Comprehensive Forfeiture Act of 1984, referred to in subsec. (c)(1), is chapter III of title II of Pub. L. 98–473, Oct. 12, 1984, 98 Stat. 2040 , as amended. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 1961 of Title 18, Crimes and Criminal Procedure, and Tables.

Amendments

1990-Subsec. (c)(1). Pub. L. 101–647 substituted "if the property is not disposed of by marshal's sale" for "If the property is to be disposed of by marshal's sale".

1988-Pub. L. 100–690 added subsecs. (a) to (d), struck out former subsecs. (a) and (b), and redesignated former subsec. (c) as (e).

1986-Pub. L. 99–646 designated existing provisions as subsec. (a) with pars. (1) to (9) and subsec. (b) with pars. (1) and (2), substituted a period for the semicolon at end of each par., and added subsec. (c).

1962-Pub. L. 87–621 increased fees for serving an attachment in rem, or libel in admiralty, warrant, attachment, summons, capias, or any other writ from $2 to $3, for serving a subpoena or summons for a witness or appraiser from 50 cents to $2, for preparation of a proclamation in admiralty from 30 cents to $3, and for copies of writs or other papers furnished at the request of any party from 10 to 30 cents per folio of 100 words or fraction thereof, and mileage for necessary travel from 10 cents a mile to 12 cents per mile, or fraction thereof, inserted provisions authorizing a fee of $1, in addition to the prescribed fee, for forwarding any writ, order, or process to another judicial district for service, and $3 for preparation of any notice of sale or other public notice or bill of sale, permitting payment of travel expenses where there is an endeavor to serve any process, writ, or order, prohibiting collection of mileage fees for services or endeavors to serve in the District of Columbia, and empowering marshals to require a deposit to cover all fees and expenses, and substituted provisions authorizing a fee of $3 for serving a writ of possession, partition, execution, order or process, and commissions of 3 per centum on the first $1,000 collected and 1½ per centum on amounts over $1,000 for seizing and levying on property (including seizures in admiralty), disposing of the same and receiving and paying over the money for provisions which permitted a marshal serving such a writ or process, and seizing and levying on property, advertising and disposing of the same and receiving and paying over the money, to receive the same fees and poundage as allowed for similar services to the sheriffs of the States in which the service is rendered, and 2½ per centum on any sum under $500, and 1½ per centum on amounts over $500 for sale of vessels or other property under process in admiralty, or under the order of a court of admiralty, and provisions permitting collection of actual expenses incurred, and $3 per hour for each deputy marshal required, for the keeping of property attached, and directing the marshal to collect, in advance, a deposit to cover initial expenses and periodically thereafter such amounts as necessary to pay expenses until litigation is concluded, for provisions which allowed only such compensation as the court, on petition, might allow.

1950-Act Sept. 9, 1950, increased mileage fees from 6 to 10 cents a mile.

Effective Date of 1986 Amendment

Pub. L. 99–646, §39(b), Nov. 10, 1986, 100 Stat. 3600 , provided that: "The amendments made by this section [amending this section] shall take effect 30 days after the date of enactment of this Act [Nov. 10, 1986]."

Effective Date of 1962 Amendment

Pub. L. 87–621, §3, Aug. 31, 1962, 76 Stat. 418 , provided that: "This Act [amending this section] shall become effective ninety days after enactment [Aug. 31, 1962]."

Collection and Disposition of Fees and Expenses for Services

Pub. L. 101–162, title II, Nov. 21, 1989, 103 Stat. 997 , provided in part: "That notwithstanding the provisions of title 31 U.S.C. 3302, for fiscal year 1990 and hereafter the Director of the United States Marshals Service may collect fees and expenses for the services authorized by 28 U.S.C. 1921 as amended by Public Law 100–690, and credit such fees to this appropriation to be used for salaries and other expenses incurred in providing these services".

[1] Not capitalized in the original. Capitalized here.

28 USC §1927 | COUNSEL'S LIABILITY FOR EXCESSIVE COSTS

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

(June 25, 1948, ch. 646, 62 Stat. 957 ; Pub. L. 96–349, §3, Sept. 12, 1980, 94 Stat. 1156 .)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §829 (R.S. §982).

Word "personally" was inserted upon authority of Motion Picture Patents Co. v. Steiner et al., 1912, 201 F. 63, 119 C.C.A. 401. Reference to "proctor" was omitted as covered by the revised section.

See definition of "court of the United States" in section 451 of this title.

Changes were made in phraseology.

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 28 JUDICIARY AND JUDICIAL PROCEDURE

PART: V PROCEDURE

CHAPTER: 131 RULES OF COURT

SECTIONS: §2071 through §2077

NOTE: **Entire Chapter**

28 USC §2071 | RULEMAKING POWER GENERALLY

(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

(b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order.

(c)

(1) A rule of a district court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.

(2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.

(d) Copies of rules prescribed under subsection (a) by a district court shall be furnished to the judicial council, and copies of all rules prescribed by a court other than the Supreme Court under subsection (a) shall be furnished to the Director of the Administrative Office of the United States Courts and made available to the public.

(e) If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment.

(f) No rule may be prescribed by a district court other than under this section.

(June 25, 1948, ch. 646, 62 Stat. 961; May 24, 1949, ch. 139, § 102, 63 Stat. 104; Pub. L. 100–702, title IV, § 403(a)(1), Nov. 19, 1988, 102 Stat. 4650.)

Historical and Revision Notes
1948 Act

Based on title 28, U.S.C., 1940 ed., §§219, 263, 296, 307, 723, 731, and 761, and section 1111 of title 26, U.S.C., 1940 ed., Internal Revenue Code (R.S. §§913, 918; Mar. 3, 1887, ch. 359, §4, 24 Stat. 506 ; Mar. 3, 1911, ch. 231, §§122, 157, 194, 291, 297, 36 Stat. 1132 , 1139, 1145, 1167, 1168; Mar. 3, 1911, ch. 231, §187(a), as added Oct. 10, 1940, ch. 843, §1, 54 Stat. 1101 ; Feb. 13, 1925, ch. 229, §13, 43 Stat. 941 ; Mar. 2, 1929, ch. 488, §1, 45 Stat. 1475 ; Feb. 10, 1939, ch. 2, §1111, 53 Stat. 160 ; Oct. 21, 1942, ch. 619, title V, §504(a), (c), 56 Stat. 957).

Sections 219, 263, 296, 307, 723, and 731 of title 28, U.S.C., 1940 ed., gave specified courts, other than the Supreme Court, power to make rules. Section 761 of such title related to rules established in the district courts and Court of Claims. Section 1111 of title 26, U.S.C., 1940 ed., related to Tax Court. This section consolidates all such provisions. For other provisions of such sections, see Distribution Table.

Recognition by Congress of the broad rule-making power of the courts will make it possible for the courts to prescribe complete and uniform modes of procedure, and alleviate, at least in part, the necessity of searching in two places, namely in the Acts of Congress and in the rules of the courts, for procedural requisites.

Former Attorney General Cummings recently said: "Legislative bodies have neither the time to inquire objectively into the details of judicial procedure nor the opportunity to determine the necessity for amendment or change. Frequently such legislation has been enacted for the purpose of meeting particular problems or supposed difficulties, but the results have usually been confusing or otherwise unsatisfactory. Comprehensive action has been lacking for the obvious reason that the professional nature of the task would leave the legislature little time for matters of substance and statesmanship. It often happened that an admitted need for change, even in limited areas, could not be secured."-The New Criminal Rules-Another Triumph of the Democratic Process. American Bar Association Journal, May 1945.

Provisions of sections 263 and 296 of title 28, U.S.C., 1940 ed., authorizing the Court of Claims and Customs Court to punish for contempt, were omitted as covered by H. R. 1600, §401, 80th Congress, for revision of the Criminal Code.

Provisions of section 1111 of title 26, U.S.C., 1940 ed., making applicable to Tax Court Proceedings "the rules of evidence applicable in the courts of the District of Columbia in the type of proceeding which, prior to Sept. 16, 1938, were within the jurisdiction of the courts of equity of said District," were omitted as unnecessary and inconsistent with other provisions of law relating to the Federal courts. The rules of evidence in Tax Court proceedings are the same as those which apply to civil procedure in other courts. See Dempster Mill. Mfg. Co. v. Burnet, 1931, 46 F.2d 604, 60 App.D.C. 23.

For rule-making power of the Supreme Court in copyright infringement actions, see section 25(e) of title 17, U.S.C., 1940 ed., Copyrights. See, also, section 205(a) of title 11, U.S.C., 1940 ed., Bankruptcy, authorizing the Supreme Court to promulgate rules relating to service of process in railroad reorganization proceedings.

Senate Revision Amendment

By Senate amendment, all provisions relating to the Tax Court were eliminated. Therefore, section 1111 of Title 26, U.S.C., Internal Revenue Code, was not one of the sources of this section as finally enacted. However, no change in the text of this section was necessary. See 80th Congress Senate Report No. 1559.

1949 Act

This amendment clarifies section 2071 of title 28, U.S.C., by giving express recognition to the power of the Supreme Court to prescribe its own rules and by giving a better description of its procedural rules.

Editorial Notes
Amendments

1988 - Pub. L. 100–702 designated existing provisions as subsec. (a), substituted "under section 2072 of this title" for "by the Supreme Court", and added subsecs. (b) to (f).

1949 - Act May 24, 1949, expressed recognition to the Supreme Court's power to prescribe its own rules and give a better description of its procedural rules.

Statutory Notes and Related Subsidiaries
Effective Date of 1988 Amendment

Pub. L. 100–702, title IV, §407, Nov. 19, 1988, 102 Stat. 4652 , provided that: "This title [enacting sections 2072 to 2074 of this title, amending this section, sections 331, 332, 372, 604, 636, and 2077 of this title, section 460n–8 of Title 16, Conservation, and section 3402 of Title 18, Crimes and Criminal Procedure, repealing former section 2072 and section 2076 of this title and sections 3771 and 3772 of Title 18, and enacting provisions set out as notes under this section] shall take effect on December 1, 1988."

Effective Date of 1983 Amendment

Pub. L. 97–462, §4, Jan. 12, 1983, 96 Stat. 2530 , provided that: "The amendments made by this Act [enacting provisions set out as notes below, amending Rule 4 of the Federal Rules of Civil Procedure, set out in the Appendix to this title, adding Form 18–A in the Appendix of Forms, and amending section 951 of Title 18, Crimes and Criminal Procedure] shall take effect 45 days after the enactment of this Act [Jan. 12, 1983]."

Short Title of 1983 Amendment

Pub. L. 97–462, §1, Jan. 12, 1983, 96 Stat. 2527 , provided: "That this Act [enacting provisions set out as notes below, amending Rule 4 of the Federal Rules of Civil Procedure, set out in the Appendix to this title, adding Form 18–A in the Appendix of Forms, and amending section 951 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Federal Rules of Civil Procedure Amendments Act of 1982'."

Savings Provision

Pub. L. 100–702, title IV, §406, Nov. 19, 1988, 102 Stat. 4652 , provided that: "The rules prescribed in accordance with law before the effective date of this title [Dec. 1, 1988] and in effect on the date of such effective date shall remain in force until changed pursuant to the law as amended by this title [see Effective Date of 1988 Amendment note above]."

Rulemaking Authority of Supreme Court and Judicial Conference

Pub. L. 109–2, §8, Feb. 18, 2005, 119 Stat. 14 , provided that: "Nothing in this Act [see Short Title of 2005 Amendments note set out under section 1 of this title] shall restrict in any way the authority of the Judicial Conference and the Supreme Court to propose and prescribe general rules of practice and procedure under chapter 131 of title 28, United States Code."

Tax Court Rulemaking Not Affected

Pub. L. 100–702, title IV, §405, Nov. 19, 1988, 102 Stat. 4652 , provided that: "The amendments made by this title [see Effective Date of 1988 Amendment note above] shall not affect the authority of the Tax Court to prescribe rules under section 7453 of the Internal Revenue Code of 1986 [26 U.S.C. 7453]."

Court Rules

Admiralty Rules

The Rules of Practice in Admiralty and Maritime Cases, promulgated by the Supreme Court on Dec. 20, 1920, effective Mar. 7, 1921, as revised, amended, and supplemented, were rescinded, effective July 1, 1966, in accordance with the general unification of civil and admiralty procedure which became effective July 1, 1966. Provision for certain distinctly maritime remedies were preserved however in the Supplemental Rules for Certain Admiralty and Maritime Claims, rules A to F, Federal Rules of Civil Procedure, Appendix to this title. The Supplemental Rules for Certain Admiralty and Maritime Claims were subsequently renamed the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

28 USC §2072 | RULES OF PROCEDURE AND EVIDENCE; POWER TO PRESCRIBE

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4648; amended Pub. L. 101–650, title III, §§ 315, 321, Dec. 1, 1990, 104 Stat. 5115, 5117.)

Editorial Notes
Prior Provisions

A prior section 2072, acts June 25, 1948, ch. 646, 62 Stat. 961 ; May 24, 1949, ch. 139, §103, 63 Stat. 104 ; July 18, 1949, ch. 343, §2, 63 Stat. 446 ; May 10, 1950, ch. 174, §2, 64 Stat. 158 ; July 7, 1958, Pub. L. 85–508, §12(m), 72 Stat. 348 ; Nov. 6, 1966, Pub. L. 89–773, §1, 80 Stat. 1323 , authorized the Supreme Court to prescribe rules of civil procedure, prior to repeal by Pub. L. 100–702, §§401(a), 407, effective Dec. 1, 1988.

Amendments

1990 - Subsec. (c). Pub. L. 101–650 added subsec. (c).

Statutory Notes and Related Subsidiaries
Change of Name

Words "magistrate judges" substituted for "magistrates" in subsec. (a) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

Effective Date

Section effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as an Effective Date of 1988 Amendment note under section 2071 of this title.

Applicability to Virgin Islands

Rules of civil procedure promulgated under this section as applicable to the District Court of the Virgin Islands, see section 1615 of Title 48, Territories and Insular Possessions.

Court Rules
Admiralty Rules

The Rules of Practice in Admiralty and Maritime Cases, promulgated by the Supreme Court on Dec. 20, 1920, effective Mar. 7, 1921, as revised, amended, and supplemented, were rescinded, effective July 1, 1966, in accordance with the general unification of civil and admiralty procedure which became effective July 1, 1966. Provision for certain distinctly maritime remedies were preserved however, in the Supplemental Rules for Certain Admiralty and Maritime Claims, Rules A to F, Federal Rules of Civil Procedure, Appendix to this title. The Supplemental Rules for Certain Admiralty and Maritime Claims were subsequently renamed the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

28 USC §2073 | RULES OF PROCEDURE AND EVIDENCE; METHOD OF PRESCRIBING

(a)

(1) The Judicial Conference shall prescribe and publish the procedures for the consideration of proposed rules under this section.

(2) The Judicial Conference may authorize the appointment of committees to assist the Conference by recommending rules to be prescribed under sections 2072 and 2075 of this title. Each such committee shall consist of members of the bench and the professional bar, and trial and appellate judges.

(b) The Judicial Conference shall authorize the appointment of a standing committee on rules of practice, procedure, and evidence under subsection (a) of this section. Such standing committee shall review each recommendation of any other committees so appointed and recommend to the Judicial Conference rules of practice, procedure, and evidence and such changes in rules proposed by a committee appointed under subsection (a)(2) of this section as may be necessary to maintain consistency and otherwise promote the interest of justice.

(c)

(1) Each meeting for the transaction of business under this chapter by any committee appointed under this section shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public, and states the reason for so closing the meeting. Minutes of each meeting for the transaction of business under this chapter shall be maintained by the committee and made available to the public, except that any portion of such minutes, relating to a closed meeting and made available to the public, may contain such deletions as may be necessary to avoid frustrating the purposes of closing the meeting.

(2) Any meeting for the transaction of business under this chapter, by a committee appointed under this section, shall be preceded by sufficient notice to enable all interested persons to attend.

(d) In making a recommendation under this section or under section 2072 or 2075, the body making that recommendation shall provide a proposed rule, an explanatory note on the rule, and a written report explaining the body's action, including any minority or other separate views.

(e) Failure to comply with this section does not invalidate a rule prescribed under section 2072 or 2075 of this title.

(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4649; amended Pub. L. 103–394, title I, § 104(e), Oct. 22, 1994, 108 Stat. 4110.)

Editorial Notes
Prior Provisions

A prior section 2073, acts June 25, 1948, ch. 646, 62 Stat. 961 ; May 24, 1949, ch. 139, §104, 63 Stat. 104 ; May 10, 1950, ch. 174, §3, 64 Stat. 158 , empowered the Supreme Court to prescribe, by general rules, the practice and procedure in admiralty and maritime cases in the district courts, prior to repeal by Pub. L. 89–773, §2, Nov. 6, 1966, 80 Stat. 1323 .

Amendments

1994 - Subsec. (a)(2). Pub. L. 103–394, §104(e)(1), substituted "sections 2072 and 2075" for "section 2072".

Subsecs. (d), (e). Pub. L. 103–394, §104(e)(2), inserted "or 2075" after "2072".

Statutory Notes and Related Subsidiaries
Effective Date of 1994 Amendment

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of Title 11.

Effective Date

Section effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as an Effective Date of 1988 Amendment note under section 2071 of this title.

More Complete Information Regarding Assets of the State

Pub. L. 109–8, title IV, §419, Apr. 20, 2005, 119 Stat. 109 , provided that:

"(a) In General. -

> "(1) Disclosure.-The Judicial Conference of the United States, in accordance with section 2075 of title 28 of the United States Code and after consideration of the views of the Director of the Executive Office for United States Trustees, shall propose amended Federal Rules of Bankruptcy Procedure and in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure [11 U.S.C. App.] shall prescribe official bankruptcy forms directing debtors under chapter 11 of title 11 of United States Code, to disclose the information described in paragraph (2) by filing and serving periodic financial and other reports designed to provide such information.
>
> "(2) Information.-The information referred to in paragraph (1) is the value, operations, and profitability of any closely held corporation, partnership, or of any other entity in which the debtor holds a substantial or controlling interest.

"(b) Purpose.-The purpose of the rules and reports under subsection (a) shall be to assist parties in interest taking steps to ensure that the debtor's interest in any entity referred to in subsection (a)(2) is used for the payment of allowed claims against debtor."

Standard Form Disclosure Statement and Plan

Pub. L. 109–8, title IV, §433, Apr. 20, 2005, 119 Stat. 110 , provided that: "Within a reasonable period of time after the date of enactment of this Act [Apr. 20, 2005], the Judicial Conference of the United States shall prescribe in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure [11 U.S.C. App.] official standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between-

> "(1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and
>
> "(2) economy and simplicity for debtors."

Uniform Reporting Rules and Form for Small Business Cases

Pub. L. 109–8, title IV, §435, Apr. 20, 2005, 119 Stat. 111 , provided that:

"(a) Proposal of Rules and Forms.-The Judicial Conference of the United States shall propose in accordance with section 2073 of title 28 of the United States Code amended Federal Rules of Bankruptcy Procedure, and shall prescribe in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure [11 U.S.C. App.] official bankruptcy forms, directing small business debtors to file periodic financial and other reports containing information, including information relating to -

> "(1) the debtor's profitability;
>
> "(2) the debtor's cash receipts and disbursements; and
>
> "(3) whether the debtor is timely filing tax returns and paying taxes and other administrative expenses when due.

"(b) Purpose. - The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance among-

> "(1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information;
>
> "(2) a small business debtor's interest that required reports be easy and inexpensive to complete; and
>
> "(3) the interest of all parties that the required reports help such debtor to understand such debtor's financial condition and plan the [sic] such debtor's future."

28 USC §2074 | RULES OF PROCEDURE AND EVIDENCE; SUBMISSION TO CONGRESS; EFFECTIVE DATE

(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule in such proceedings would not be feasible or would work injustice, in which event the former rule applies.

(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.

(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4649.)

Editorial Notes
Prior Provisions

A prior section 2074, act July 27, 1954, ch. 583, §1, 68 Stat. 567 , empowered the Supreme Court to prescribe rules for review of decisions of the Tax Court of the United States, prior to repeal by Pub. L. 89–773, §2, Nov. 6, 1966, 80 Stat. 1323

Effective Date

Section effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as an Effective Date of 1988 Amendment note under section 2071 of this title.

Statutory Notes and Related Subsidiaries
Amendment to Rule 23 of Federal Rules of Civil Procedure; Effective Date

Pub. L. 109–2, §7, Feb. 18, 2005, 119 Stat. 13 , provided that: "Notwithstanding any other provision of law, the amendments to rule 23 of the Federal Rules of Civil Procedure, which are set forth in the order entered by the Supreme Court of the United States on March 27, 2003, shall take effect on the date of enactment of this Act [Feb. 18, 2005] or on December 1, 2003 (as specified in that order), whichever occurs first."

Modification of Amendments to Federal Rules of Criminal Procedure
Proposed April 29, 2002; Effective Date

Pub. L. 107–273, div. C, title I, §11019(a), Nov. 2, 2002, 116 Stat. 1825 , provided that: "The proposed amendments to the Federal Rules of Criminal Procedure that are embraced by an order entered by the Supreme Court of the United States on April 29, 2002, shall take effect on December 1, 2002, as otherwise provided by law, but with the amendments made in subsection (b) [amending Rule 16 of the Federal Rules of Criminal Procedure]."

Modification of Amendments to Federal Rules of Evidence
Proposed April 29, 1994; Effective Date

Pub. L. 103–322, title IV, §40141, Sept. 13, 1994, 108 Stat. 1918 , provided that:

"(a) Modification of Proposed Amendment.-The proposed amendments to the Federal Rules of Evidence that are embraced by an order entered by the Supreme Court of the United States on April 29, 1994, shall take effect on December 1, 1994, as otherwise provided by law, but with the amendment made by subsection (b).

"(b) Rule.-[Amended Rule 412 of the Federal Rules of Evidence.]

"(c) Technical Amendment.-[Amended table of contents for the Federal Rules of Evidence.]"

Modification of Amendments to Federal Rules of Criminal Procedure Proposed April 29, 1994; Effective Date

Pub. L. 103–322, title XXIII, §230101, Sept. 13, 1994, 108 Stat. 2077 , provided that:

"(a) Modification of Proposed Amendments.-The proposed amendments to the Federal Rules of Criminal Procedure which are embraced by an order entered by the Supreme Court of the United States on April 29, 1994, shall take effect on December 1, 1994, as otherwise provided by law, but with the following amendments:

"(b) In General.-[Amended Rule 32 of the Federal Rules of Criminal Procedure.]

"(c) Effective Date.-The amendments made by subsection (b) shall become effective on December 1, 1994."

Amendments to Civil Rules Proposed April 30, 1991

Pub. L. 102–198, §11, Dec. 9, 1991, 105 Stat. 1626 , provided that:

> "(a) Technical Amendment.-Rule 15(c)(3) of the Federal Rules of Civil Procedure for the United States Courts, as transmitted to the Congress by the Supreme Court pursuant to section 2074 of title 28, United States Code, to become effective on December 1, 1991, is amended by striking 'Rule 4(m)' and inserting 'Rule 4(j)'.
>
> "(b) Amendment to Forms.-Form 1–A, Notice of Lawsuit and Request for Waiver of Service of Summons, and Form 1–B, Waiver of Service of Summons, included in the transmittal by the Supreme Court described in subsection (a), shall not be effective and Form 18–A, Notice and Acknowledgment for Service by Mail, abrogated by the Supreme Court in such transmittal, effective December 1, 1991, shall continue in effect on or after that date."

Amendments to Civil Rules Proposed April 30, 1982

Pub. L. 97–462, §5, Jan. 12, 1983, 96 Stat. 2530 , provided that: "The amendments to the Federal Rules of Civil Procedure [Rule 4], the effective date of which was delayed by the Act entitled 'An Act to delay the effective date of proposed amendments to rule 4 of the Federal Rules of Civil Procedure', approved August 2, 1982 (96 Stat. 246) [Pub. L. 97–227, see below], shall not take effect."

Pub. L. 97–227, Aug. 2, 1982, 96 Stat. 246 , provided: "That notwithstanding the provisions of section 2072 of title 28, United States Code, the amendments to rule 4 of the Federal Rules of Civil Procedure as proposed by the Supreme Court of the United States and transmitted to the Congress by the Chief Justice on April 28, 1982, shall take effect on October 1, 1983, unless previously approved, disapproved, or modified by Act of Congress.

"Sec. 2. This Act shall be effective as of August 1, 1982, but shall not apply to the service of process that takes place between August 1, 1982, and the date of enactment of this Act [Aug. 2, 1982]."

Amendments to Criminal Rules and Rules of Evidence
Proposed April 30, 1979; Postponement of Effective Date

Pub. L. 96–42, July 31, 1979, 93 Stat. 326 , provided: "That notwithstanding any provision of section 3771 or 3772 of title 18 of the United States Code or of section 2072, 2075, or 2076 of title 28 of the United States Code to the contrary -

"(1) the amendments proposed by the United States Supreme Court and transmitted by the Chief Justice on April 30, 1979, to the Federal Rules of Criminal Procedure affecting rules 11(e)(6), 17(h), 32(f), and 44(c), and adding new rules 26.2 and 32.1, and the amendment so proposed and transmitted to the Federal Rules of Evidence affecting rule 410, shall not take effect until December 1, 1980, or until and then only to the extent approved by Act of Congress, whichever is earlier; and

"(2) the amendment proposed by the United States Supreme Court and transmitted by the Chief Justice on April 30, 1979, affecting rule 40 of the Federal Rules of Criminal Procedure shall take effect on August 1, 1979, with the following amendments:

"(A) In the matter designated as paragraph (1) of subdivision (d), strike out 'in accordance with Rule 32.1(a)'.

"(B) In the matter designated as paragraph (2) of subdivision (d), strike out 'in accordance with Rule 32.1(a)(1)'."

Approval and Effective Date of Amendments Proposed April 26, 1976

Pub. L. 95–78, §1, July 30, 1977, 91 Stat. 319 , provided: "That notwithstanding the first section of the Act entitled 'An Act to delay the effective date of certain proposed amendments to the Federal Rules of Criminal Procedure and certain other rules promulgated by the United States Supreme Court' (Public Law 94–349, approved July 8, 1976) [90 Stat. 822] the amendments to rules 6(e), 23, 24, 40.1, and 41(c)(2) of the Rules of Criminal Procedure for the United States district courts [set out in the Appendix to Title 18, Crimes and Criminal Procedure] which are embraced by the order entered by the United States Supreme Court on April 26, 1976, shall take effect only as provided in this Act [see section 4 of Pub. L. 95–78, set out below]."

Effective Date of Pub. L. 95-78

Pub. L. 95–78, §4, July 30, 1977, 91 Stat. 322, provided that:

"(a) The first section of this Act [set out as a note above] shall take effect on the date of the enactment of this Act [July 30, 1977].

"(b) Sections 2 and 3 of this Act [which amended section 1446 of this title, approved proposed amendment of rule 23 of the Federal Rules of Criminal Procedure, modified and approved proposed amendment of rules 6 and 41 of the Federal Rules of Criminal Procedure, and disapproved the proposed amendment of rule 24 of the Federal Rules of Criminal Procedure and the proposed addition of rule 40.1 of the Federal Rules of Criminal Procedure] shall take effect October 1, 1977."

Approval and Effective Date of Rules Governing Section 2254 Cases and Section 2255 Proceedings for United States District Courts

Pub. L. 94–426, §1, Sept. 28, 1976, 90 Stat. 1334 , provided: "That the rules governing section 2254 cases in the United States district courts and the rules governing section 2255 proceedings for the United States district courts, as proposed by the United States Supreme Court, which were delayed by the Act entitled 'An Act to delay the effective date of certain proposed amendments to the Federal Rules of Criminal Procedure and certain other rules promulgated by the United States Supreme Court' (Public Law 94–349), are approved with the amendments set forth in section 2 of this Act and shall take effect as so amended, with respect to petitions under section 2254 and motions under section 2255 of title 28 of the United States Code filed on or after February 1, 1977."

Amendments to Criminal Rules Under Supreme Court Order of April 26, 1976; Postponement of Effective Date

Pub. L. 94–349, §1, July 8, 1976, 90 Stat. 822 , provided: "That, notwithstanding the provisions of sections 3771 and 3772 of title 18 of the United States Code the amendments to rules 6(e), 23, 24, 40.1 and 41(c)(2) of the Rules of Criminal Procedure for the United States district courts which are embraced by the order entered by the United States Supreme Court on April 26, 1976, and which were transmitted to the Congress on or about April 26, 1976, shall not take effect until August 1, 1977, or until and to the extent approved by Act of Congress, whichever is earlier. The remainder of the proposed amendments to the Federal Rules of Criminal Procedure [rules 6(f), 41(a), (c)(1), and 50(b)] shall become effective August 1, 1976, pursuant to law."

Postponement of Effective Date of Proposed Rules and Forms Governing Proceedings Under Sections 2254 and 2255 of this Title

Pub. L. 94–349, §2, July 8, 1976, 90 Stat. 822 , provided: "That, notwithstanding the provisions of section 2072 of title 28 of the United States Code, the rules and forms governing section 2254 [section 2254 of this title] cases in the United States district courts and the rules and forms governing section 2255 [section 2255 of this title] proceedings in the United States district courts which are embraced by the order entered by the United States Supreme Court on April 26, 1976, and which were transmitted to the Congress on or about April 26, 1976, shall not take effect until thirty days after the adjournment sine die of the 94th Congress, or until and to the extent approved by Act of Congress, whichever is earlier."

Approval and Effective Date of Amendments Proposed April 22, 1974

Pub. L. 94–64, §2, July 31, 1975, 89 Stat. 370 , provided that: "The amendments proposed by the United States Supreme Court to the Federal Rules of Criminal Procedure [adding rules 12.1, 12.2, and 29.1 and amending rules 4, 9(a), 11, 12, 15, 16, 17(f), 20, 32(a), (c), and (e), and 43] which are embraced in the order of that Court on April 22, 1974, are approved except as otherwise provided in this Act [making further amendments to rules 4, 9(a), 11, 12, 12.1, 12.2, 15, 16, 17(f), 20, 32(a), (c), and (e), and 43] and shall take effect on December 1, 1975. Except with respect to the amendment to Rule 11, insofar as it adds Rule 11(e)(6), which shall take effect on August 1, 1975, the amendments made by section 3 of this Act shall also take effect on December 1, 1975."

Approval and Effective Date of Amendments Proposed November 20, 1972 and December 18, 1972

Pub. L. 93–595, §3, Jan. 2, 1975, 88 Stat. 1949 , provided that: "The Congress expressly approves the amendments to the Federal Rules of Civil Procedure [Rules 30(c), 32(c), 43, and 44.1] and the amendments to the Federal Rules of Criminal Procedure [Rules 26, 26.1, and 28], which are embraced by the orders entered by the Supreme Court of the United States on November 20, 1972, and December 18, 1972, and such amendments shall take effect on the one hundred and eightieth day beginning after the date of the enactment of this Act [Jan. 2, 1975]."

Amendments to Criminal Rules Under Supreme Court Order of April 22, 1974; Postponement of Effective Date Until August 1, 1975

Pub. L. 93–361, July 30, 1974, 88 Stat. 397 , provided: "That, notwithstanding the provisions of sections 3771 and 3772 of title 18 of the United States Code, the effective date of the proposed amendments to the Federal Rules of Criminal Procedure which are embraced by the order entered by the United States Supreme Court on April 22, 1974, and which were transmitted to the Congress by the Chief Justice on April 22, 1974, is postponed until August 1, 1975."

Congressional Approval Requirement for Proposed Rules of Evidence for United States Courts and Amendments to Federal Rules of Civil Procedure and Criminal Procedure; Suspension of Effectiveness of Such Rules

Pub. L. 93–12, Mar. 30, 1973, 87 Stat. 9 , provided: "That notwithstanding any other provisions of law, the Rules of Evidence for United States Courts and Magistrates, the Amendments to the Federal Rules of Civil Procedure, and the Amendments to the Federal Rules of Criminal Procedure, which are embraced by the orders entered by the Supreme Court of the United States on Monday, November 20, 1972, and Monday, December 18, 1972, shall have no force or effect except to the extent, and with such amendments, as they may be expressly approved by the Act of Congress."

28 USC §2075 | BANKRUPTCY RULES

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11.

Such rules shall not abridge, enlarge, or modify any substantive right.

The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. The rule shall take effect no earlier than December 1 of the year in which it is transmitted to Congress unless otherwise provided by law.

The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.

(Added Pub. L. 88–623, § 1, Oct. 3, 1964, 78 Stat. 1001; amended Pub. L. 95–598, title II, § 247, Nov. 6, 1978, 92 Stat. 2672; Pub. L. 103–394, title I, § 104(f), Oct. 22, 1994, 108 Stat. 4110; Pub. L. 109–8, title XII, § 1232, Apr. 20, 2005, 119 Stat. 202.)

Editorial Notes
Amendments

2005 - Pub. L. 109–8 inserted at end "The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement."

1994 - Pub. L. 103–394 amended third par. generally. Prior to amendment, third par. read as follows: "Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May and until the expiration of ninety days after they have been thus reported."

1978 - Pub. L. 95–598 substituted "in cases under title 11" for "under the Bankruptcy Act" and struck out provisions directing that all laws in conflict with bankruptcy rules be of no further force or effect after such rules have taken effect

Statutory Notes and Related Subsidiaries
Effective Date of 2005 Amendment

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of Title 11.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Rules Promulgated by Supreme Court

Pub. L. 98–353, title III, §320, July 10, 1984, 98 Stat. 357 , provided that: "The Supreme Court shall prescribe general rules implementing the practice and procedure to be followed under section 707(b) of title 11, United States Code. Section 2075 of title 28, United States Code, shall apply with respect to the general rules prescribed under this section."

Applicability of Rules to Cases Under Title 11

Pub. L. 95–598, title IV, §405(d), Nov. 6, 1978, 92 Stat. 2685 , provided that: "The rules prescribed under section 2075 of title 28 of the United States Code and in effect on September 30, 1979, shall apply to cases under title 11, to the extent not inconsistent with the amendments made by this Act, or with this Act [see Tables for complete classification of Pub. L. 95–598], until such rules are repealed or superseded by rules prescribed and effective under such section, as amended by section 248 [247] of this Act."

Additional Rulemaking Power

Pub. L. 95–598, title IV, §410, Nov. 6, 1978, 92 Stat. 2687 , provided that: "The Supreme Court may issue such additional rules of procedure, consistent with Acts of Congress, as may be necessary for the orderly transfer of functions and records and the orderly transition to the new bankruptcy court system created by this Act [see Tables for complete classification of Pub. L. 95–598]."

28 USC §2076 | [REPEALED]

(Pub. L. 100–702, title IV, §401(c), Nov. 19, 1988, 102 Stat. 4650])

Section, added Pub. L. 93–595, §2(a)(1), Jan. 2, 1975, 88 Stat. 1948; amended Pub. L. 94 – 149, §2, Dec. 12, 1975, 89 Stat. 806, authorized the Supreme Court to prescribe amendments to Federal Rules of Evidence. See sections 2072 to 2074 of this title.

Statutory Notes and Related Subsidiaries
Effective Date of Repeal

Repeal effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as an Effective Date of 1988 Amendment note under section 2071 of this title.

28 USC §2077 | PUBLICATION OF RULES; ADVISORY COMMITTEES

(a) The rules for the conduct of the business of each court of appeals, including the operating procedures of such court, shall be published. Each court of appeals shall print or cause to be printed necessary copies of the rules. The Judicial Conference shall prescribe the fees for sales of copies under section 1913 of this title, but the Judicial Conference may provide for free distribution of copies to members of the bar of each court and to other interested persons.

(b) Each court, except the Supreme Court, that is authorized to prescribe rules of the conduct of such court's business under section 2071 of this title shall appoint an advisory committee for the study of the rules of practice and internal operating procedures of such court and, in the case of an advisory committee appointed by a court of appeals, of the rules of the judicial council of the circuit. The advisory committee shall make recommendations to the court concerning such rules and procedures. Members of the committee shall serve without compensation, but the Director may pay travel and transportation expenses in accordance with section 5703 of title 5.

(Added Pub. L. 97–164, title II, § 208(a), Apr. 2, 1982, 96 Stat. 54; amended Pub. L. 100–702, title IV, § 401(b), Nov. 19, 1988, 102 Stat. 4650; Pub. L. 101–650, title IV, § 406, Dec. 1, 1990, 104 Stat. 5124.)

Editorial Notes
Amendments

1990 — Subsec. (b). Pub. L. 101–650 inserted before period at end of first sentence "and, in the case of an advisory committee appointed by a court of appeals, of the rules of the judicial council of the circuit". 1988—Subsec. (b). Pub. L. 100–702 substituted "Each court, except the Supreme Court, that is authorized to prescribe rules of the conduct of such court's business under section 2071 of this title shall appoint" for "Each court of appeals shall appoint" and "such court" for "the court of appeals".

Statutory Notes and Related Subsidiaries
Effective Date of 1990 Amendment

Amendment by Pub. L. 101–650 effective 90 days after Dec. 1, 1990, see section 407 of Pub. L. 101–650, set out as a note under section 332 of this title.

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–702 effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as a note under section 2071 of this title.

Effective Date

Section effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 28 JUDICIARY AND JUDICIAL PROCEDURE

PART: V PROCEDURE

CHAPTER: 133 REVIEW-MISCELLANEOUS PROVISIONS

SECTIONS: §2101 only

NOTE: Pertinent Parts Only!!!

28 USC §2101 | ORIGINAL JURISDICTION

(a) A direct appeal to the Supreme Court from any decision under section 1253 of this title, holding unconstitutional in whole or in part, any Act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court.

(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final.

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

(d) The time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court.

(e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

(g) The time for application for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces shall be as prescribed by rules of the Supreme Court.

(June 25, 1948, ch. 646, 62 Stat. 961; May 24, 1949, ch. 139, §106, 63 Stat. 104; Pub. L. 98–209, §10(b), Dec. 6, 1983, 97 Stat. 1406; Pub. L. 100–352, §5(b), June 27, 1988, 102 Stat. 663; Pub. L. 103–337, div. A, title IX, §924(d)(1)(C), Oct. 5, 1994, 108 Stat. 2832.)

Historical and Revision Notes

1948 Act

Based on title 28, U.S.C., 1940 ed., §§47, 47a, 349a, 350, 380, 380a, section 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 45 of title 49, U.S.C., 1940 ed., Transportation (Feb. 11, 1903, ch. 544, §2, 32 Stat. 1167 ; Mar. 3, 1911, ch. 231, §§210, 266, 291, 36 Stat. 1150 , 1162, 1167; Mar. 4, 1913, ch. 160, 37 Stat. 1013 ; Oct. 22, 1913, ch. 32, 38 Stat. 220 ; Sept. 6, 1916, ch. 448, §6, 39 Stat. 727 ; Feb. 13, 1925, ch. 229, §§1, 8 (a, b, d), 43 Stat. 938 , 940; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54 ; June 7, 1934, ch. 426, 48 Stat. 936 ; Aug. 24, 1937, ch. 754, §§2, 3, 50 Stat. 752 ; June 9, 1944, ch. 239, 58 Stat. 272).

Section consolidates section 350 of title 28, U.S.C., 1940 ed., with those portions of sections 47, 47a, 349a, 380, and 380a, of said title 28, section 29, of title 15, U.S.C., 1940 ed., and section 45 of title 49, U.S.C., 1940 ed., respective time for taking direct appeal. (For disposition of other provisions of said sections, see Distribution Table.)

Subsection (a) of the revised section is derived from sections 349a and 380a of title 28, U.S.C., 1940 ed. The phrase "under rules prescribed by the Supreme Court" was substituted for the phrase "under such rules as may be prescribed by the proper courts" which appeared in both such sections. The Supreme Court by its revised rules 10–13 has made adequate provision for filing record and docketing case. (See Revised Rules of the Supreme Court following section 354 of title 28, U.S.C., 1940 ed.)

Subsection (b) is in accord with sections 47 and 47a of title 28, U.S.C., 1940 ed., and section 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 45 of title 49, U.S.C., 1940 ed., Transportation.

Subsection (c), with respect to the time for taking other appeals or petitioning for a writ of certiorari, substitutes, as more specific, the words "ninety days" for the words "three months" contained in section 350 of title 28, U.S.C., 1940 ed. The provision in said section 350 for allowance of additional time was retained, notwithstanding the language of the Supreme Court in Comm'r v. Bedford's Estate, 1945, 65 S.Ct. 1157, 1159, 325 U.S. 283, 89 L.Ed. 1611, to the effect that the 3 months' period is "more than ample * * * to determine whether to seek further review".

In subsection (c), words "in a civil action, suit, or proceeding" were added because section 350 of title 28, U.S.C., 1940 ed., was superseded as to criminal cases by Federal Rules of Criminal Procedure, Rule 39(a)(2), (b)(2).

Words "or the United States Court of Appeals for the District of Columbia" in section 350 of title 28, U.S.C., 1940 ed., were omitted as covered by "court of appeals" in subsection (d) of this revised section.

Words in section 350 of title 28, U.S.C., 1940 ed., "excepting that writs of certiorari to the Supreme Court of the Philippine Islands may be granted where application therefor is made within six months", were omitted as obsolete, in view of the independence of the Philippines recognized by section 1240 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions.

Subsection (e) relates only to supersedeas or stay of execution of judgments sought to be reviewed in the Supreme Court on writ of certiorari. Supersedeas or stay of proceedings taken to the Supreme Court by appeal from courts of appeals, or direct appeals from a district court or three-judge courts, is governed by Rule 62 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

1949 Act

This section clarifies the meaning of subsection (c) of section 2101 of title 28, U.S.C. At present, such subsection, after the words, "ninety days after entry of such judgment or decree", reads, "unless, upon application for writ of certiorari, for good cause, the Supreme Court or a justice thereof allows an additional time not exceeding sixty days."

The new subsection (d) of section 2101 supplies an omission in revised title 28, U.S.C., and confirms the authority of the Supreme Court to regulate the time for seeking review of State criminal cases.

The other amendment merely renumbers subsections (d) and (e) of such section 2101 as subsections (e) and (f), respectively.

Editorial Notes

Amendments

1994-Subsec. (g). Pub. L. 103–337 substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals".

1988-Subsec. (a). Pub. L. 100–352 substituted "section 1253" for "sections 1252, 1253, and 2282".

1983-Subsec. (g). Pub. L. 98–209 added subsec. (g).

1949-Subsec. (c). Act May 24, 1949, §106(a), clarified the allowance of an additional 60 days in which to apply for a writ of certiorari.

Subsecs. (d) to (f). Act May 24, 1949, §106(b), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

Statutory Notes and Related Subsidiaries

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 98–209 effective on first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of Title 10, Armed Forces.

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 28 JUDICIARY AND JUDICIAL PROCEDURES

PART: VI PARTICULAR PROCEEDINGS

SUBCHAPTER: 151 DECLARATORY JUDGMENTS

SECTIONS: §2201 through §2202

NOTE: Pertinent Parts Only!!!

28 USC §2201 | CREATION OF REMEDY

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(9) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

(June 25, 1948, ch. 646, 62 Stat. 964; May 24, 1949, ch. 139, § 111, 63 Stat. 105; Aug. 28, 1954, ch. 1033, 68 Stat. 890; Pub. L. 85–508, § 12(p), July 7, 1958, 72 Stat. 349; Pub. L. 94–455, title XIII, § 1306(b)(8), Oct. 4, 1976, 90 Stat. 1719; Pub. L. 95–598, title II, § 249, Nov. 6, 1978, 92 Stat. 2672; Pub. L. 98–417, title I, § 106, Sept. 24, 1984, 98 Stat. 1597; Pub. L. 100–449, title IV, § 402(c), Sept. 28, 1988, 102 Stat. 1884; Pub. L. 100–670, title I, § 107(b), Nov. 16, 1988, 102 Stat. 3984; Pub. L. 103–182, title IV, § 414(b), Dec. 8, 1993, 107 Stat. 2147; Pub. L. 111–148, title VII, § 7002(c)(2), Mar. 23, 2010, 124 Stat. 816; Pub. L. 116–113, title IV, § 423(b), Jan. 29, 2020, 134 Stat. 66.)

28 USC §2202 | FURTHER RELIEF

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

(June 25, 1948, ch. 646, 62 Stat. 964.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 28 JUDICIARY AND JUDICIAL PROCEDURES

PART: VI PARTICULAR PROCEEDINGS

SUBCHAPTER: 161 UNITED STATES AS PARTY GENERALLY

SECTIONS: §2403

NOTE: Pertinent Parts Only!!!

28 USC §2403 | INTERVENTION BY UNITED STATES OR A STATE; CONSTITUTIONAL QUESTION

(a) In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(b) In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(June 25, 1948, ch. 646, 62 Stat. 971 ; Pub. L. 94–381, §5, Aug. 12, 1976, 90 Stat. 1120 .)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §401 (Aug. 24, 1937, ch. 754, §1, 50 Stat. 751).

Word "action" was added before "suit or proceeding", in view of Rule 2 of the Federal Rules of Civil Procedure.

Since this section applies to all Federal courts, the word "suit" was not required to be deleted by such rule.

"Court of the United States" is defined in section 451 of this title. Direct appeal from decisions invalidating Acts of Congress is provided by section 1252 of this title.

Changes were made in phraseology.

Editorial Notes

Amendments

1976-Pub. L. 94–381, §5(b), inserted "or a State" after "United States" in section catchline.

Subsecs. (a), (b). Pub. L. 94–381, §5(a), designated existing provisions as subsec. (a) and added subsec. (b).

Statutory Notes and Related Subsidiaries

Effective Date of 1976 Amendment

Amendment by Pub. L. 94–381 not applicable to any action commenced on or before Aug. 12, 1976, see section 7 of Pub. L. 94–381, set out as a note under section 2284 of this title.

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 29 LABOR

CHAPTER: 8 FAIR LABOR STANDARDS

SUBCHAPTER: --

SECTIONS: §203 through §262

NOTE: **not the entire subchapter** (pertinent statutes only!!!)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 29 LABOR

CHAPTER: 8 FAIR LABOR STANDARDS

SUBCHAPTER: --

SECTIONS: §201 through §219

Not the Entire Chapter!! Pertinent Parts Only!

29 USC §201 | SHORT TITLE

This chapter may be cited as the "Fair Labor Standards Act of 1938".

(June 25, 1938, ch. 676, §1, 52 Stat. 1060 .)

Statutory Notes and Related Subsidiaries

Short Title of 2022 Amendment

Pub. L. 117–328, div. KK, §101, Dec. 29, 2022, 136 Stat. 6093 , provided that: "This division [enacting section 218d of this title, amending sections 207, 215, and 216 of this title and section 20168 of Title 49, Transportation, and enacting provisions set out as notes under sections 207, 215, and 218d of this title and section 20168 of Title 49] may be cited as the '*Providing Urgent Maternal Protections for Nursing Mothers Act*' or the '*PUMP for Nursing Mothers Act*'."

Short Title of 2007 Amendment

Pub. L. 110–28, title VIII, §8101, May 25, 2007, 121 Stat. 188 , provided that: "This subtitle [subtitle A (§§8101–8104) of title VIII of Pub. L. 110–28, amending section 206 of this title, repealing sections 205 and 208 of this title, and enacting provisions set out as notes under section 206 of this title] may be cited as the *'Fair Minimum Wage Act of 2007*'."

Short Title of 2000 Amendment

Pub. L. 106–202, §1, May 18, 2000, 114 Stat. 308 , provided that: "This Act [amending section 207 of this title and enacting provisions set out as notes under section 207 of this title] may be cited as the '*Worker Economic Opportunity Act*'."

Short Title of 1998 Amendments

Pub. L. 105–334, §1, Oct. 31, 1998, 112 Stat. 3137 , provided that: "This Act [amending section 213 of this title and enacting provisions set out as a note under section 213 of this title] may be cited as the *'Drive for Teen Employment Act*'."

Pub. L. 105–221, §1, Aug. 7, 1998, 112 Stat. 1248 , provided that: "This Act [amending section 203 of this title] may be cited as the '*Amy Somers Volunteers at Food Banks Act*'."

Short Title of 1996 Amendment

Pub. L. 104–188, [title II], §2104(a), Aug. 20, 1996, 110 Stat. 1928 , provided that: "This section [amending section 206 of this title] may be cited as the 'Minimum Wage Increase Act of 1996'."

Short Title of 1995 Amendment

Pub. L. 104–26, §1, Sept. 6, 1995, 109 Stat. 264 , provided that: "This Act [amending section 207 of this title and enacting provisions set out as a note under section 207 of this title] may be cited as the 'Court Reporter Fair Labor Amendments of 1995'."

Short Title of 1989 Amendment

Pub. L. 101–157, §1(a), Nov. 17, 1989, 103 Stat. 938 , provided that: "This Act [enacting section 60k of Title 2, The Congress, amending sections 203, 205 to 208, 213, 214, and 216 of this title, and enacting provisions set out as notes under sections 203 and 206 of this title] may be cited as the '*Fair Labor Standards Amendments of 1989*'."

Short Title of 1985 Amendment

Pub. L. 99–150, §1(a), Nov. 13, 1985, 99 Stat. 787 , provided that: "This Act [amending sections 203, 207, and 211 of this title and enacting provisions set out as notes under sections 203, 207, 215, and 216 of this title] may be cited as the '*Fair Labor Standards Amendments of 1985*'."

Short Title of 1977 Amendment

Pub. L. 95–151, §1(a), Nov. 1, 1977, 91 Stat. 1245 , provided that: "This Act [amending sections 203, 206, 208, 213, 214, and 216 of this title and enacting provisions set out as notes under sections 203, 204, and 213 of this title] may be cited as the '*Fair Labor Standards Amendments of 1977*'."

Short Title of 1974 Amendment

Pub. L. 93–259, §1(a), Apr. 8, 1974, 88 Stat. 55 , provided that: "This Act [enacting section 633a of this title, amending sections 202 to 208, 210, 212 to 214, 216, 255, 260, 630, and 634 of this title, and enacting provisions set out as notes under this section and sections 202, 206, 207, 213, and 621 of this title] may be cited as the '*Fair Labor Standards Amendments of 1974*'."

Short Title of 1966 Amendment

Pub. L. 89–601, §1, Sept. 23, 1966, 80 Stat. 830 , provided: "That this Act [amending sections 203, 206, 207, 213, 214, 216, 218, and 255 of this title, and enacting provisions set out as notes under sections 207 and 214 of this title, section 1082 of former Title 5, Executive Departments and Government Officers and Employees, and section 2000e–14 of Title 42, The Public Health and Welfare] may be cited as the '*Fair Labor Standards Amendments of 1966*'."

Short Title of 1963 Amendment

Pub. L. 88–38, §1, June 10, 1963, 77 Stat. 56 , provided: "That this Act [amending section 206 of this title and enacting provisions set out as notes under section 206 of this title] may be cited as the '*Equal Pay Act of 1963*'."

Short Title of 1961 Amendment

Pub. L. 87–30, §1, May 5, 1961, 75 Stat. 65 , provided: "That this Act [amending sections 203 to 208, 212 to 214, 216, and 217 of this title and enacting provisions set out as a note under section 213 of this title] may be cited as the '*Fair Labor Standards Amendments of 1961*'."

Short Title of 1956 Amendment

Act Aug. 8, 1956, ch. 1035, §1, 70 Stat. 1118 , provided: "That this Act [amending sections 206, 213, and 216 of this title] may be cited as the '*American Samoa Labor Standards Amendments of 1956*'."

Short Title of 1955 Amendment

Act Aug. 12, 1955, ch. 867, §1, 69 Stat. 711 , provided: "That this Act [amending sections 204–206, 208, and 210 of this title and enacting provisions set out as notes under sections 204, 206, and 208 of this title] may be cited as the '*Fair Labor Standards Amendments of 1955*'."

Short Title of 1949 Amendment

Act Oct. 26, 1949, ch. 736, §1, 63 Stat. 910 , provided: "That this Act [enacting section 216b of this title, amending sections 202 to 208, 211 to 216, and 217 of this title, and repealing section 216a of this title] may be cited as the '*Fair Labor Standards Amendments of 1949*'."

29 USC §202 | CONGRESSIONAL FINDING AND DECLARATION OF POLICY

(a) The Congress finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers

(1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States;

(2) burdens commerce and the free flow of goods in commerce;

(3) constitutes an unfair method of competition in commerce;

(4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and

(5) interferes with the orderly and fair marketing of goods in commerce.

That Congress further finds that the employment of persons in domestic service in households affects commerce.

(b) It is declared to be the policy of this chapter, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

(June 25, 1938, ch. 676, §2, 52 Stat. 1060 ; Oct. 26, 1949, ch. 736, §2, 63 Stat. 910 ; Pub. L. 93–259, §7(a), Apr. 8, 1974, 88 Stat. 62 .)

Editorial Notes

Amendments

1974-Subsec. (a). Pub. L. 93–259 inserted finding of Congress that employment of persons in domestic service in households affects commerce.

1949-Subsec. (b). Act Oct. 26, 1949, inserted reference to regulation of commerce with foreign nations.

Statutory Notes and Related Subsidiaries

Effective Date of 1974 Amendment

Pub. L. 93–259, §29(a), Apr. 8, 1974, 88 Stat. 76 , provided that: "Except as otherwise specifically provided, the amendments made by this Act [see Short Title of 1974 Amendment note set out under section 201 of this title] shall take effect on May 1, 1974."

Effective Date of 1949 Amendment

Act Oct. 26, 1949, ch. 736, §16(a), 63 Stat. 919 , provided that: "The amendments made by this Act [enacting section 216b of this title, amending this section and sections 203 to 208, 211 to 216, and 217 of this title, and repealing section 216a of this title] shall take effect upon the expiration of ninety days from the date of its enactment [Oct. 26, 1947]; except that the amendment made by section 4 [amending section 204 of this title] shall take effect on the date of its enactment [Oct. 26, 1949]."

Rules, Regulations, and Orders With Regard to Fair Labor Standards Amendments of 1974

Pub. L. 93–259, §29(b), Apr. 8, 1974, 88 Stat. 76 , provided that: "Notwithstanding subsection (a) [set out as an Effective Date of 1974 Amendment note above], on and after the date of the enactment of this Act [Apr. 8, 1974] the Secretary of Labor is authorized to prescribe necessary rules, regulations, and orders with regard to the amendments made by this Act [see Short Title of 1974 Amendment note set out under section 201 of this title]."

29 USC §203 | DEFINITIONS

As used in this chapter -

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(e)

(1) Except as provided in paragraphs (2), (3), and (4), the term "employee" means any individual employed by an employer.

(2) In the case of an individual employed by a public agency, such term means -

(A) any individual employed by the Government of the United States -

(i) as a civilian in the military departments (as defined in section 102 of title 5),

(ii) in any executive agency (as defined in section 105 of such title),

(iii) in any unit of the judicial branch of the Government which has positions in the competitive service,

(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

(v) in the Library of Congress, or

(vi) the 1 Government Publishing Office;

(B) any individual employed by the United States Postal Service or the Postal Regulatory Commission; and

(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual -

(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

(ii) who -

(I) holds a public elective office of that State, political subdivision, or agency,

(II) is selected by the holder of such an office to be a member of his personal staff,

(III) is appointed by such an officeholder to serve on a policymaking level,

(IV) is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or

(V) is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.

(4)

(A) The term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if -

(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

(B) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.

(5) The term "employee" does not include individuals who volunteer their services solely for humanitarian purposes to private non-profit food banks and who receive from the food banks groceries.

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) 2 of title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

(h) "Industry" means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(l) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child-labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child

labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m)

(1) "Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging or other facilities are customarily furnished by such employer to his employees: Provided, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: Provided further, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee.

(2)

(A) In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to-

(i) the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on August 20, 1996; and

(ii) an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in clause (i) and the wage in effect under section 206(a)(1) of this title.

The additional amount on account of tips may not exceed the value of the tips actually received by an employee. The preceding 2 sentences shall not apply with respect to any tipped employee unless such employee has been informed by the employer of the provisions of this subsection, and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

(B) An employer may not keep tips received by its employees for any purposes, including allowing managers or supervisors to keep any portion of employees' tips, regardless of whether or not the employer takes a tip credit.

(n) "Resale" shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: Provided, That the sale is recognized as a bona fide retail sale in the industry.

(o) Hours Worked.-In determining for the purposes of sections 206 and 207 of this title the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.

(p) "American vessel" includes any vessel which is documented or numbered under the laws of the United States.

(q) "Secretary" means the Secretary of Labor.

(r)

(1) "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor. Within the

meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement, (A) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (B) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (C) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments.

(2) For purposes of paragraph (1), the activities performed by any person or persons –

(A) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is operated for profit or not for profit), or

(B) in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), or

(C) in connection with the activities of a public agency,

shall be deemed to be activities performed for a business purpose.

(s)

(1) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise that -

(A)

(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

(ii) is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);

(B) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(C) is an activity of a public agency.

(2) Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

(t) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips.

(u) "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

(v) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(w) "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

(x) "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Regulatory Commission), a State, or a political subdivision of a State; or any interstate governmental agency.

(y) "Employee in fire protection activities" means an employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who -

(1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or State; and

(2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

(June 25, 1938, ch. 676, §3, 52 Stat. 1060 ; 1946 Reorg. Plan No. 2, §1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Oct. 26, 1949, ch. 736, §3, 63 Stat. 911 ; Pub. L. 87–30, §2, May 5, 1961, 75 Stat. 65 ; Pub. L. 89–601, title I, §§101–103, title II, §215(a), Sept. 23, 1966, 80 Stat. 830–832 , 837; Pub. L. 92–318, title IX, §906(b)(2), (3), June 23, 1972, 86 Stat. 375 ; Pub. L. 93–259, §§6(a), 13(e), Apr. 8, 1974, 88 Stat. 58 , 64; Pub. L. 95–151, §§3(a), (b), 9(a)–(c), Nov. 1, 1977, 91 Stat. 1249 , 1251; Pub. L. 99–150, §§4(a), 5, Nov. 13, 1985, 99 Stat. 790 ; Pub. L. 101–157, §§3(a), (d), 5, Nov. 17, 1989, 103 Stat. 938 , 939, 941; Pub. L. 104–1, title II, §203(d), Jan. 23, 1995, 109 Stat. 10 ; Pub. L. 104–188, [title II], §2105(b), Aug. 20, 1996, 110 Stat. 1929 ; Pub. L. 105–221, §2, Aug. 7, 1998, 112 Stat. 1248 ; Pub. L. 106–151, §1, Dec. 9, 1999, 113 Stat. 1731 ; Pub. L. 109–435, title VI, §604(f), Dec. 20, 2006, 120 Stat. 3242 ; Pub. L. 113–235, div. H, title I, §1301(b), Dec. 16, 2014, 128 Stat. 2537 ; Pub. L. 115–141, div. S, title XII, §1201(a), Mar. 23, 2018, 132 Stat. 1148 .)

Editorial Notes

References in Text

Section 1141j(g) of title 12, referred to in subsec. (f), was redesignated section 1141j(f) by Pub. L. 110–246, title I, §1610, June 18, 2008, 122 Stat. 1746 .

Amendments

2018-Subsec. (m). Pub. L. 115–141 designated first and second sentences of existing provisions as par. (1) and remainder of existing provisions as par. (2)(A), redesignated former pars. (1) and (2) as cls. (i) and (ii), respectively, of par. (2)(A) and, in cl. (ii), substituted "clause (i)" for "paragraph (1)", and added subpar. (B) of par. (2).

2006-Subsecs. (e)(2)(B), (x). Pub. L. 109–435 substituted "Postal Regulatory Commission" for "Postal Rate Commission".

1999-Subsec. (y). Pub. L. 106–151 added subsec. (y).

1998-Subsec. (e)(5). Pub. L. 105–221 added par. (5).

1996-Subsec. (m). Pub. L. 104–188 inserted "In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to -

> "(1) the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on August 20, 1996; and
>
> "(2) an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in paragraph (1) and the wage in effect under section 206(a)(1) of this title.
>
> The additional amount on account of tips may not exceed the value of the tips actually received by an employee.", and struck out former penultimate sentence which read as follows: "In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of (1) 45 percent of the applicable minimum wage rate during the year beginning April 1, 1990, and (2) 50 percent of the applicable minimum wage rate after March 31, 1991, except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee."

Pub. L. 104–188 in last sentence substituted "preceding 2 sentences" for "previous sentence" and struck out "(1)" after "employee unless" and "(2)" after "subsection, and".

1995-Subsec. (e)(2)(A). Pub. L. 104–1 struck out "legislative or" before "judicial branch" in cl. (iii) and added cl. (vi).

1989-Subsec. (m). Pub. L. 101–157, §5, substituted "in excess of (1) 45 percent of the applicable minimum wage rate during the year beginning April 1, 1990, and (2) 50 percent of the applicable minimum wage rate after March 31, 1991," for "in excess of 40 per centum of the applicable minimum wage rate,".

Subsec. (r). Pub. L. 101–157, §3(d), designated first sentence as par. (1), made a separate sentence out of the existing proviso and redesignated cls. (1), (2), and (3) as (A), (B), and (C), respectively, designated second sentence as par. (2), in par. (2) as so designated, redesignated existing pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, and, in subpar. (A) as so redesignated, substituted "school is operated" for "school is public or private or operated".

Subsec. (s). Pub. L. 101–157, §3(a), amended subsec. (s) generally, completely revising definition of "enterprise engaged in commerce or in the production of goods for commerce".

1985-Subsec. (e)(1). Pub. L. 99–150, §4(a)(1), substituted "paragraphs (2), (3), and (4)" for "paragraphs (2) and (3)".

Subsec. (e)(2)(C)(ii). Pub. L. 99–150, §5, struck out "or" at end of subcl. (III), struck out "who" in subcl. (IV) before "is an", substituted ", or" for period at end of subcl. (IV), and added subcl. (V).

Subsec. (e)(4). Pub. L. 99–150, §4(a)(2), added par. (4).

1977-Subsec. (m). Pub. L. 95–151, §3(b), substituted "45 per centum" for "50 per centum", effective Jan. 1, 1979, and "40 per centum" for "45 per centum", effective Jan. 1, 1980.

Subsec. (s). Pub. L. 95–151, §9(a)–(c), in par. (1) inserted exception for enterprises comprised exclusively of retail or service establishments and described in par. (2), added par. (2), redesignated former pars. (2) to (5) as (3) to (6), respectively, and in text following par. (6), as so redesignated, inserted provisions relating to coverage of retail or service establishments subject to section 206(a)(1) of this title on June 30, 1978, and provisions relating to violations of such coverage requirements.

Subsec. (t). Pub. L. 95–151, §3(a), substituted "$30" for "$20".

1974-Subsec. (d). Pub. L. 93–259, §6(a)(1), redefined "employer" to include a public agency and struck out text which excluded from such term the United States or any State or political subdivision of a State (except with respect to employees of a State, or a political subdivision thereof, employed (1) in a hospital, institution, or school referred to in last sentence of subsec. (r) of this section, or (2) in the operation of a railway or carrier referred to in such sentence).

Subsec. (e). Pub. L. 93–259, §6(a)(2), in revising definition of "employee", incorporated existing introductory text in provisions designated as par. (1), inserting exception provision; added par. (2); incorporated existing cl. (1) in provisions designated as par. (3); and struck out former cl. (2) excepting from "employee", "any individual who is employed by an employer engaged in agriculture if such individual (A) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (B) commutes daily from his permanent

residence to the farm on which he is so employed, and (C) has been engaged in agriculture less than thirteen weeks during the preceding calendar year".

Subsec. (h). Pub. L. 93–259, §6(a)(3), substituted "other activity, or branch or group thereof" for "branch thereof, or group of industries".

Subsec. (m). Pub. L. 93–259, §13(e), substituted in provision respecting wage of tipped employee "the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee" for "in the case of an employee who (either himself or acting through his representative) shows to the satisfaction of the Secretary that the actual amount of tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased under this sentence, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount" and inserted "The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this subsection, and (2) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips."

Subsec. (r)(3). Pub. L. 93–259, §6(a)(4), added par. (3).

Subsec. (s). Pub. L. 93–259, §6(a)(5), in first sentence substituted preceding par. (1) "or employees handling, selling, or otherwise working on goods or materials" for "including employees handling, selling, or otherwise working on goods" and added par. (5), and inserted third sentence deeming employees of an enterprise which is a public agency to be employees engaged in commerce, or in production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.

Subsec. (x). Pub. L. 93–259, §6(a)(6), added subsec. (x).

1972-Subsecs. (r)(1), (s)(4). Pub. L. 92–318, §906(b)(2), (3), inserted reference to a preschool.

1966-Subsec. (d). Pub. L. 89–601, §102(b), expanded definition of employer to include a State or a political subdivision thereof with respect to employees in a hospital, institution, or school referred to in last sentence of subsec. (r) of this section, or in the operation of a railway or carrier referred to in such sentence.

Subsec. (e). Pub. L. 89–601, §103(a), excluded from definition of "employee," when that term is used in definition of "man-day," any agricultural employee who is the parent, spouse, child, or other member of his employer's immediate family and any agricultural hand harvest laborer, paid on a piece rate basis, who commutes daily from his permanent residence to the farm on which he is so employed, and who has been employed in agriculture less than 13 weeks during the preceding calendar year.

Subsec. (m). Pub. L. 89–601, §101(a), inserted provisions for determining the wage of a tipped employee.

Subsec. (n). Pub. L. 89–601, §215(a), struck out ", except as used in subsection (s)(1)," before "shall not".

Subsec. (r). Pub. L. 89–601, §102(a), extended activities performed for a business purpose to include activities in the operation of hospitals, institutions for the sick, aged, or mentally ill or defective, schools for the handicapped, elementary and secondary schools, institutions of higher learning, or street, suburban, or interurban electric railway or local trolley or motorbus carriers if subject to regulation by a State or local agency regardless of whether public or private or whether operated for profit or not for profit.

Subsec. (s). Pub. L. 89–601, §102(c), removed gross annual business level tests of $1,000,000 for retail and service enterprises, street, suburban, or interurban electric railways or local trolley or motorbus carriers, and brought within the coverage of the gross annual business test all enterprises having employees engaged in commerce in the production of goods for commerce, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce, lowered the minimum gross annual volume test for covered enterprises from $1,000,000 to $500,000 for the period from Feb. 1, 1967, through Jan. 31, 1969, and to $250,000 for the period after Jan. 31, 1969, retained the $250,000 annual gross volume test for coverage of gasoline service establishments, and expanded coverage to include laundering or cleaning services, construction or reconstruction activities, or operation of hospitals, certain institutions for the care of the sick, aged, or mentally ill, certain special schools, and institutions of higher learning regardless of annual gross volume.

Subsec. (t). Pub. L. 89–601, §101(b), added subsec. (t).

Subsec. (u). Pub. L. 89–601, §103(b), added subsec. (u).

Subsecs. (v), (w). Pub. L. 89–601, §102(d), added subsecs. (v) and (w).

1961-Subsec. (m). Pub. L. 87–30, §2(a), provided for exclusion from wages under a collective-bargaining agreement the cost of board, lodging, or other facilities and authorized the Secretary to determine the fair value of board, lodging, or other facilities for defined classes of employees in defined areas to be used in lieu of actual cost.

Subsec. (n). Pub. L. 87–30, §2(b), inserted ", except as used in subsection (s)(1)," before "shall not".

Subsecs. (p) to (s). Pub. L. 87–30, §2(c), added subsecs. (p) to (s).

1949-Subsec. (b). Act Oct. 26, 1949, §3(a), substituted "between" for "from" after "States or", and "and" for "to" before "any place".

Subsec. (j). Act Oct. 26, 1949, §3(b), inserted "closely related" before "process" and substituted "directly essential" for "necessary" after "occupation".

Subsec. (l)(1). Act Oct. 26, 1949, §3(c), included parental employment of a child under 16 years of age in an occupation found by the Secretary of Labor to be hazardous for children between the ages of 16 and 18 years, in definition of oppressive child labor.

Subsecs. (n), (o). Act Oct. 26, 1949, §3(d), added subsecs. (n) and (o).

Statutory Notes and Related Subsidiaries

Change of Name

"Government Publishing Office" substituted for "Government Printing Office" in subsec. (e)(2)(A)(vi) 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 1989 Amendment

Pub. L. 101–157, §3(e), Nov. 17, 1989, 103 Stat. 939 , provided that: "The amendments made by this section [amending this section and section 213 of this title] shall become effective on April 1, 1990."

Pub. L. 101–157, §5, Nov. 17, 1989, 103 Stat. 941 , provided that the amendment made by that section is effective Apr. 1, 1990.

Effective Date of 1985 Amendment; Promulgation of Regulations

Pub. L. 99–150, §6, Nov. 13, 1985, 99 Stat. 790 , provided that: "The amendments made by this Act [amending this section and sections 207 and 211 of this title and enacting provisions set out as notes under this section and sections 201, 207, 215, and 216 of this title] shall take effect April 15, 1986. The Secretary of Labor shall before such date promulgate such regulations as may be required to implement such amendments."

Effective Date of 1977 Amendment

Pub. L. 95–151, §3(a), Nov. 1, 1977, 91 Stat. 1249 , provided that the amendment made by that section is effective Jan. 1, 1978.

Pub. L. 95–151, §3(b)(1), Nov. 1, 1977, 91 Stat. 1249 , provided that the amendment made by that section, reducing the maximum percentage of the minimum wage used in determining tips as wages from 50 to 45 per centum, is effective Jan. 1, 1979.

Pub. L. 95–151, §3(b)(2), Nov. 1, 1977, 91 Stat. 1249 , provided that the amendment made by that section, reducing the maximum percentage of the minimum wage used in determining tips as wages from 45 to 40 per centum, is effective Jan. 1, 1980.

Pub. L. 95–151, §15(a), (b), Nov. 1, 1977, 91 Stat. 1253 , provided that:

> "(a) Except as provided in sections 3, 14, and subsection (b) of this section, the amendments made by this Act [amending sections 206, 208, 213, and 216 of this title and enacting provisions set out as a note under section 204 of this title] shall take effect January 1, 1978.
>
> "(b) The amendments made by sections 8, 9, 11, 12, and 13 [amending this section and sections 213 and 214 of this title] shall take effect on the date of the enactment of this Act [Nov. 1, 1977]."

Effective Date of 1974 Amendment

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

Effective Date of 1966 Amendment

Pub. L. 89–601, title VI, §602, Sept. 23, 1966, 80 Stat. 844, provided in part that: "Except as otherwise provided in this Act, the amendments made by this Act [amending this section and sections 206, 207, 213, 214, 216, 218, and 255 of this title] shall take effect on February 1, 1967."

Effective Date of 1961 Amendment

Pub. L. 87–30, §14, May 5, 1961, 75 Stat. 75 , provided that: "The amendments made by this Act [amending this section and sections 204 to 208, 212 to 214, 216, and 217 of this title] shall take effect upon the expiration of one hundred and twenty days after the date of its enactment [May 5, 1961], except as otherwise provided in such amendments and except that the authority to promulgate necessary rules, regulations, or orders with regard to amendments made by this Act, under the Fair Labor Standards Act of 1938 and amendments thereto [this chapter], including amendments made by this Act, may be exercised by the Secretary on and after the date of enactment of this Act [May 5, 1961]."

Effective Date of 1949 Amendment

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

Effect on Regulations

Pub. L. 115–141, div. S, title XII, §1201(c), Mar. 23, 2018, 132 Stat. 1149 , provided that: "The portions of the final rule promulgated by the Department of Labor entitled 'Updating Regulations Issued Under the Fair Labor Standards Act' (76 Fed. Reg. 18832 (April 5, 2011)) that revised sections 531.52, 531.54, and 531.59 of title 29, Code of Federal Regulations (76 Fed. Reg. 18854–18856) and that are not addressed by section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) (as such section was in effect on April 5, 2011), shall have no further force or effect until any future action taken by the Administrator of the Wage and Hour Division of the Department of Labor."

Construction of 1999 Amendment

Pub. L. 106–151, §2, Dec. 9, 1999, 113 Stat. 1731 , provided that: "The amendment made by section 1 [amending this section] shall not be construed to reduce or substitute for compensation standards: (1) contained in any existing or future agreement or memorandum of understanding reached through collective bargaining by a bona fide representative of employees in accordance with the laws of a State or political subdivision of a State; and (2) which result in compensation greater than the compensation available to employees under the overtime exemption under section 7(k) of the Fair Labor Standards Act of 1938 [29 U.S.C. 207(k)]."

Preservation of Coverage

Pub. L. 101–157, §3(b), Nov. 17, 1989, 103 Stat. 939 , provided that:

> "(1) In general.-Any enterprise that on March 31, 1990, was subject to section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) and that because of the amendment made by subsection (a) [amending this section] is not subject to such section shall-
>
> "(A) pay its employees not less than the minimum wage in effect under such section on March 31, 1990;
>
> "(B) pay its employees in accordance with section 7 of such Act (29 U.S.C. 207); and
>
> "(C) remain subject to section 12 of such Act (29 U.S.C. 212).
>
> "(2) Violations.-A violation of paragraph (1) shall be considered a violation of section 6, 7, or 12 of the Fair Labor Standards Act of 1938 [29 U.S.C. 206, 207, 212], as the case may be."

Volunteers; Promulgation of Regulations

Pub. L. 99–150, §4(b), Nov. 13, 1985, 99 Stat. 790 , provided that: "Not later than March 15, 1986, the Secretary of Labor shall issue regulations to carry out paragraph (4) of section 3(e) (as amended by subsection (a) of this section) [29 U.S.C. 203(e)(4)]."

Practice of Public Agency in Treating Certain Individuals as Volunteers Prior to April 15, 1986; Liability

Pub. L. 99–150, §4(c), Nov. 13, 1985, 99 Stat. 790 , provided that: "If, before April 15, 1986, the practice of a public agency was to treat certain individuals as volunteers, such individuals shall until April 15, 1986, be considered, for purposes of the Fair Labor Standards Act of 1938 [this chapter], as volunteers and not as employees. No public agency which is a State, a political subdivision of a State, or an interstate governmental agency shall be liable for a violation of section 6 [29 U.S.C. 206] occurring before April 15, 1986, with respect to services deemed by that agency to have been performed for it by an individual on a voluntary basis."

Status of Baggers at Commissary of Military Department

Pub. L. 95–485, title VIII, §819, Oct. 20, 1978, 92 Stat. 1626 , provided that: "Notwithstanding any other provision of law, an individual who performs bagger or carryout service for patrons of a commissary of a military department may not be considered to be an employee for purposes of the Fair Labor Standards Act of 1938 [this chapter] by virtue of such service if the sole compensation of such individual for such service is derived from tips."

Administrative Action by Secretary of Labor With Regard to Implementation of Fair Labor Standards Amendments of 1977

Pub. L. 95–151, §15(c), Nov. 1, 1977, 91 Stat. 1253 , provided that: "On and after the date of the enactment of this Act [Nov. 1, 1977], the Secretary of Labor shall take such administrative action as may be necessary for the implementation of the amendments made by this Act [See Short Title of 1977 Amendment note set out under section 201 of this title]."

Rules, Regulations, and Orders Promulgated With Regard to 1966 Amendments

Pub. L. 89–601, title VI, §602, Sept. 23, 1966, 80 Stat. 844 , provided in part that: "On and after the date of the enactment of this Act [Sept. 23, 1966] the Secretary is authorized to promulgate necessary rules, regulations, or orders with regard to the amendments made by this Act [see Short Title of 1966 Amendment note set out under section 201 of this title]."

Executive Documents

Transfer of Functions

In subsec. (l), "Secretary of Labor" substituted for "Chief of the Children's Bureau in the Department of Labor" and for "Chief of the Children's Bureau" pursuant to Reorg. Plan No. 2 of 1946, §1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, set out in the Appendix to Title 5, Government Organization and Employees, which transferred functions of Children's Bureau and its Chief under sections 201 to 216 and 217 to 219 of this title to Secretary of Labor to be performed under his direction and control by such officers and employees of Department of Labor as he designates.

[1] So in original. Probably should be preceded by "in".

[2] See References in Text note below.

29 USC §204 | ADMINISTRATION

(a) Creation of Wage and Hour Division in Department of Labor; Administrator

There is created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this chapter referred to as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Appointment, selection, classification, and promotion of employees by Administrator

The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary to carry out his functions and duties under this chapter and shall fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5. The Administrator may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Administrator, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(c) Principal office of Administrator; jurisdiction

The principal office of the Administrator shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

(d) Biennial report to Congress; studies of exemptions to hour and wage provisions and means to prevent curtailment of employment opportunities

(1) The Secretary shall submit biennially in January a report to the Congress covering his activities for the preceding two years and including such information, data, and recommendations for further legislation in

connection with the matters covered by this chapter as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the minimum wages and overtime coverage established by this chapter, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may have occurred in the cost of living and in productivity and the level of wages in manufacturing, the ability of employers to absorb wage increases, and such other factors as he may deem pertinent. Such report shall also include a summary of the special certificates issued under section 214(b) of this title.

(2) The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 213 of this title, and the extent to which such exemptions apply to employees of establishments described in subsection (g) of such section and the economic effects of the application of such exemptions to such employees. The Secretary shall submit a report of his findings and recommendations to the Congress with respect to the studies conducted under this paragraph not later than January 1, 1976.

(3) The Secretary shall conduct a continuing study on means to prevent curtailment of employment opportunities for manpower groups which have had historically high incidences of unemployment (such as disadvantaged minorities, youth, elderly, and such other groups as the Secretary may designate). The first report of the results of such study shall be transmitted to the Congress not later than one year after the effective date of the Fair Labor Standards Amendments of 1974. Subsequent reports on such study shall be transmitted to the Congress at two-year intervals after such effective date. Each such report shall include suggestions respecting the Secretary's authority under section 214 of this title.

(e) Study of effects of foreign production on unemployment; report to President and Congress

Whenever the Secretary has reason to believe that in any industry under this chapter the competition of foreign producers in United States markets or in markets abroad, or

both, has resulted, or is likely to result, in increased unemployment in the United States, he shall undertake an investigation to gain full information with respect to the matter. If he determines such increased unemployment has in fact resulted, or is in fact likely to result, from such competition, he shall make a full and complete report of his findings and determinations to the President and to the Congress: Provided, That he may also include in such report information on the increased employment resulting from additional exports in any industry under this chapter as he may determine to be pertinent to such report.

(f) Employees of Library of Congress; administration of provisions by Office of Personnel Management

The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to individuals employed in the Library of Congress to provide for the carrying out of the Secretary's functions under this chapter with respect to such individuals. Notwithstanding any other provision of this chapter, or any other law, the Director of the Office of Personnel Management is authorized to administer the provisions of this chapter with respect to any individual employed by the United States (other than an individual employed in the Library of Congress, United States Postal Service, Postal Regulatory Commission, or the Tennessee Valley Authority). Nothing in this subsection shall be construed to affect the right of an employee to bring an action for unpaid minimum wages, or unpaid overtime compensation, and liquidated damages under section 216(b) of this title.

(June 25, 1938, ch. 676, §4, 52 Stat. 1061 ; Oct. 26, 1949, ch. 736, §4, 63 Stat. 911 ; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972 ; Aug. 12, 1955, ch. 867, §2, 69 Stat. 711 ; Pub. L. 87–30, §3, May 5, 1961, 75 Stat. 66 ; Pub. L. 93–259, §§6(b), 24(c), 27, Apr. 8, 1974, 88 Stat. 60 , 72, 73; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 104–66, title I, §1102(a), Dec. 21, 1995, 109 Stat. 722 ; Pub. L. 109–435, title VI, §604(f), Dec. 20, 2006, 120 Stat. 3242 .)

Editorial Notes

References in Text

The effective date of the Fair Labor Standards Amendments of 1974, referred to in subsec. (d)(3), is the effective date of Pub. L. 93–259, which is May 1, 1974, except as otherwise specifically provided, see section 29(a) of Pub. L. 93–259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

Codification

In subsec. (a), provisions that prescribed the compensation of the Administrator were omitted to conform to the provisions of the Executive Schedule. See section 5316 of Title 5, Government Organization and Employees.

In subsec. (b), "chapter 51 and subchapter III of chapter 53 of title 5" substituted for "the Classification Act of 1949, as amended" on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631 , the first section of which enacted Title 5.

Amendments

2006 - Subsec. (f). Pub. L. 109–435 substituted "Postal Regulatory Commission" for "Postal Rate Commission".

1995 - Subsec. (d)(1). Pub. L. 104–66 in first sentence substituted "biennially" and "preceding two years" for "annually" and "preceding year", respectively.

1974 - Subsec. (d)(1). Pub. L. 93–259, §§24(c), 27(1), (2), inserted provision at end of subsec. (d) requiring the report to Congress to include a summary of the special certificates issued under section 214(b) of this title, designated subsec. (d) provisions as subsec. (d)(1), and required the report to contain an evaluation and appraisal of overtime coverage established by this chapter, respectively.

Subsec. (d)(2), (3). Pub. L. 93–259, §27(3), added pars. (2) and (3).

Subsec. (f). Pub. L. 93–259, §6(b), added subsec. (f).

1961-Subsec. (e). Pub. L. 87–30 added subsec. (e).

1955-Subsec. (d). Act Aug. 12, 1955, required an evaluation and appraisal by the Secretary of the minimum wages, together with his recommendations to Congress, to be included in the annual report.

1949 - Subsec. (b). Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

Subsec. (a). Act Oct. 26, 1949, increased compensation of Administrator to $15,000.

Statutory Notes and Related Subsidiaries

Effective Date of 1974 Amendment

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

Effective Date of 1961 Amendment

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87–30, set out as a note under section 203 of this title.

Effective Date of 1949 Amendment

Amendment by act Oct. 26, 1949, effective Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

Repeals

Acts Oct. 26, 1949, ch. 736, §4, 63 Stat. 911 , and Oct. 28, 1949, ch. 782, cited as a credit to this section, were repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §8, 80 Stat. 632 , 655.

Termination of Reporting Requirements

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which reports required under paragraphs (1) and (3) of subsec. (d) of this section are listed on page 124), see section 3003 of Pub. L. 104–66, set out as a note under section 1113 of Title 31, Money and Finance.

Minimum Wage Study Commission; Establishment, Purposes, Composition, Etc.

Pub. L. 95–151, §2(e), Nov. 1, 1977, 91 Stat. 1246 , provided for the establishment, purposes, composition, etc., of the Minimum Wage Study Commission, the submission of reports, with the latest report being submitted to the President and Congress thirty six months after the date of the appointment of the members of the Commission and such appointments being made within 180 days after Nov. 1, 1977, and the Commission to cease to exist thirty days after submission of the report.

Definition of "Secretary"

Act Aug. 12, 1955, ch. 867, §6, 69 Stat. 712 , provided that: "The term 'Secretary' as used in this Act and in amendments made by this Act [amending this section and sections 205, 206, 208, and 210 of this title] means the Secretary of Labor."

Executive Documents

Transfer of Functions

Functions relating to enforcement and administration of equal pay provisions vested by subsecs. (d)(1) and (f) in Secretary of Labor and Civil Service Commission transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, §1, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

"Director of the Office of Personnel Management" substituted for "Civil Service Commission" in subsec. (f), pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

Functions of all other officers of Department of Labor and functions of all agencies and employees of that Department, with exception of functions vested by Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by Department, transferred to Secretary of Labor, with power vested in him to authorize their performance or performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5

29 USC §205 | [REPEALED] | PUB. L. 110-28, TITLE VIII, §8103(C)(1)(A), MAY 25, 2007, 121 STAT. 189

(Section, acts June 25, 1938, ch. 676, §5, 52 Stat. 1062 ; June 26, 1940, ch. 432, §3(c), 54 Stat. 615 ; Oct. 26, 1949, ch. 736, §5, 63 Stat. 911 ; Aug. 12, 1955, ch. 867, §5(a), 69 Stat. 711 ; Pub. L. 87–30, §4, May 5, 1961, 75 Stat. 67 ; Pub. L. 93–259, §5(a), Apr. 8, 1974, 88 Stat. 56 ; Pub. L. 101–157, §4(a), Nov. 17, 1989, 103 Stat. 939 , related to establishment of special industry committees for American Samoa to recommend the minimum rate or rates of wages. See section 8103 of Pub. L. 110–28, set out as a note under section 206 of this title.)

Statutory Notes and Related Subsidiaries

Effective Date of Repeal

Repeal effective 60 days after May 25, 2007, see section 8103(c)(2) of Pub. L. 110–28, set out as an Effective Date of 2007 Amendment note under section 206 of this title.

29 USC §206 | MINIMUM WAGE

(a) Employees engaged in commerce; home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; agricultural employees. Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) except as otherwise provided in this section, not less than —

(A) $5.85 an hour, beginning on the 60th day after May 25, 2007;

(B) $6.55 an hour, beginning 12 months after that 60th day; and

(C) $7.25 an hour, beginning 24 months after that 60th day;

(2) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Administrator, or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the

minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers;

(3) if such employee is employed as a seaman on an American vessel, not less than the rate which will provide to the employee, for the period covered by the wage payment, wages equal to compensation at the hourly rate prescribed by paragraph (1) of this subsection for all hours during such period when he was actually on duty (including periods aboard ship when the employee was on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement); or

(4) if such employee is employed in agriculture, not less than the minimum wage rate in effect under paragraph (1) after December 31, 1977.

(b) Additional applicability to employees pursuant to subsequent amendatory provisions

Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) [1] applies) who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966, title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or the Fair Labor Standards Amendments of 1974, wages at the following rate: Effective after December 31, 1977, not less than the minimum wage rate in effect under subsection (a)(1).

(c) Repealed. Pub. L. 104–188, [title II], § 2104(c), Aug. 20, 1996, 110 Stat. 1929

(d) Prohibition of sex discrimination

(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the

rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(e) Employees of employers providing contract services to United States

(1) Notwithstanding the provisions of section 213 of this title (except subsections (a)(1) and (f) thereof), every employer providing any contract services (other than linen supply services) under a contract with the United States or any subcontract thereunder shall pay to each of his employees whose rate of pay is not governed by chapter 67 of title 41 or to whom subsection (a)(1) of this section is not applicable, wages at rates not

less than the rates provided for in subsection (b) of this section.

(2) Notwithstanding the provisions of section 213 of this title (except subsections (a)(1) and (f) thereof) and the provisions of chapter 67 of title 41, every employer in an establishment providing linen supply services to the United States under a contract with the United States or any subcontract thereunder shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (b), except that if more than 50 per centum of the gross annual dollar volume of sales made or business done by such establishment is derived from providing such linen supply services under any such contracts or subcontracts, such employer shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (a)(1) of this section.

(f) Employees in domestic service. Any employee —

(1) who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under subsection (b) unless such employee's compensation for such service would not because of section 209(a)(6) of the Social Security Act [42 U.S.C. 409(a)(6)] constitute wages for the purposes of title II of such Act [42 U.S.C. 401 et seq.], or

(2) who in any workweek —

(A) is employed in domestic service in one or more households, and

(B) is so employed for more than 8 hours in the aggregate,

shall be paid wages for such employment in such workweek at a rate not less than the wage rate in effect under subsection (b).

(g) Newly hired employees who are less than 20 years old

(1) In lieu of the rate prescribed by subsection (a)(1), any employer may pay any employee of such employer, during the first 90 consecutive calendar days after such

employee is initially employed by such employer, a wage which is not less than $4.25 an hour.

(2) In lieu of the rate prescribed by subsection (a)(1), the Governor of Puerto Rico, subject to the approval of the Financial Oversight and Management Board established pursuant to section 2121 of title 48, may designate a time period not to exceed four years during which employers in Puerto Rico may pay employees who are initially employed after June 30, 2016, a wage which is not less than the wage described in paragraph (1). Notwithstanding the time period designated, such wage shall not continue in effect after such Board terminates in accordance with section 2149 of title 48.

(3) No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in paragraph (1) or (2).

(4) Any employer who violates this subsection shall be considered to have violated section 215(a)(3) of this title.

(5) This subsection shall only apply to an employee who has not attained the age of 20 years, except in the case of the wage applicable in Puerto Rico, 25 years, until such time as the Board described in paragraph (2) terminates in accordance with section 2149 of title 48.

(June 25, 1938, ch. 676, § 6, 52 Stat. 1062; June 26, 1940, ch. 432, § 3(e), (f), 54 Stat. 616; Oct. 26, 1949, ch. 736, § 6, 63 Stat. 912; Aug. 12, 1955, ch. 867, § 3, 69 Stat. 711; Aug. 8, 1956, ch. 1035, § 2, 70 Stat. 1118; Pub. L. 87–30, § 5, May 5, 1961, 75 Stat. 67; Pub. L. 88–38, § 3, June 10, 1963, 77 Stat. 56; Pub. L. 89–601, title III, §§ 301–305, Sept. 23, 1966, 80 Stat. 838, 839, 841; Pub. L. 93–259, §§ 2–4, 5(b), 7(b)(1), Apr. 8, 1974, 88 Stat. 55, 56, 62; Pub. L. 95–151, § 2(a)–(d)(2), Nov. 1, 1977, 91 Stat. 1245, 1246; Pub. L. 101–157, §§ 2, 4(b), Nov. 17, 1989, 103 Stat. 938, 940; Pub. L. 101–239, title X, § 10208(d)(2)(B)(i), Dec. 19, 1989, 103 Stat. 2481; Pub. L. 104–188, [title II], §§ 2104(b), (c), 2105(c), Aug. 20, 1996, 110 Stat. 1928, 1929; Pub. L. 110–28, title VIII, §§ 8102(a), 8103(c)(1)(B), May 25, 2007, 121 Stat. 188, 189; Pub. L. 114–187, title IV, § 403, June 30, 2016, 130 Stat. 586.)

29 USC §207 | MAXIMUM HOURS

(a) Employees engaged in interstate commerce; additional applicability to employees pursuant to subsequent amendatory provisions

> (1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.
>
> (2) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966-
>
> > (A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,
> >
> > (B) for a workweek longer than forty-two hours during the second year from such date, or
> >
> > (C) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) Employment pursuant to collective bargaining agreement; employment by independently owned and controlled local enterprise engaged in distribution of petroleum products

No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed-

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks; or

(2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty-hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under subsection (a) or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed; or

(3) by an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if-

(A) the annual gross volume of sales of such enterprise is less than $1,000,000 exclusive of excise taxes,

(B) more than 75 per centum of such enterprise's annual dollar volume of sales is made within the State in which such enterprise is located, and

(C) not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale,

and such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and

one-half times the minimum wage rate applicable to him under section 206 of this title,

and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(c), (d) Repealed. Pub. L. 93–259, §19(e), Apr. 8, 1974, 88 Stat. 66

(e) "Regular rate" defined

As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include–

(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) Sums[1] paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are

defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs;

(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days;

(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a),[2] where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek; or

(8) any value or income derived from employer-provided grants or rights provided pursuant to a stock option, stock appreciation right, or bona fide employee stock purchase program which is not otherwise excludable under any of paragraphs (1) through (7) if-

(A) grants are made pursuant to a program, the terms and conditions of which are communicated to participating employees either at the beginning of the employee's participation in the program or at the time of the grant;

(B) in the case of stock options and stock appreciation rights, the grant or right cannot be exercisable for a period of at least 6 months after the time of grant (except that grants or rights may become exercisable because of an employee's death, disability, retirement, or a change in corporate ownership, or other circumstances permitted by regulation), and the exercise price is at least 85 percent of the fair market value of the stock at the time of grant;

(C) exercise of any grant or right is voluntary; and

(D) any determinations regarding the award of, and the amount of, employer-provided grants or rights that are based on performance are-

(i) made based upon meeting previously established performance criteria (which may include hours of work, efficiency, or productivity) of any business unit consisting of at least 10 employees or of a facility, except that, any determinations may be based on length of service or minimum schedule of hours or days of work; or

(ii) made based upon the past performance (which may include any criteria) of one or more employees in a given period so long as the determination is in the sole discretion of the employer and not pursuant to any prior contract.

(f) Employment necessitating irregular hours of work

No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in subsection (a) or (b) of section 206 of this title (whichever may be applicable) and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

(g) Employment at piece rates

No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection-

> (1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or
>
> (2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or
>
> (3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: Provided, That the rate so established shall be authorized by regulation by the Administrator as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(h) Credit toward minimum wage or overtime compensation of amounts excluded from regular rate

> (1) Except as provided in paragraph (2), sums excluded from the regular rate pursuant to subsection (e) shall not be creditable toward wages required under section 206 of this title or overtime compensation required under this section.

(2) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) shall be creditable toward overtime compensation payable pursuant to this section.

(i) Employment by retail or service establishment

No employer shall be deemed to have violated subsection (a) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 206 of this title, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(j) Employment in hospital or establishment engaged in care of sick, aged, or mentally ill

No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated subsection (a) if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of eighty hours in such fourteen-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(k) Employment by public agency engaged in fire protection or law enforcement activities

No public agency shall be deemed to have violated subsection (a) with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if-

(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the lesser of (A) 216 hours, or (B) the average number of hours

(as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or

(2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 days,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(l) Employment in domestic service in one or more households

No employer shall employ any employee in domestic service in one or more households for a workweek longer than forty hours unless such employee receives compensation for such employment in accordance with subsection (a).

(m) Employment in tobacco industry

For a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee-

(1) is employed by such employer-

(A) to provide services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco of type 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 (as such types are defined by the Secretary of Agriculture), or in auction sale, buying, handling, stemming, redrying, packing, and storing of such tobacco,

(B) in auction sale, buying, handling, sorting, grading, packing, or storing green leaf tobacco of type 32 (as such type is defined by the Secretary of Agriculture), or

(C) in auction sale, buying, handling, stripping, sorting, grading, sizing, packing, or stemming prior to

packing, of perishable cigar leaf tobacco of type 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 61, or 62 (as such types are defined by the Secretary of Agriculture); and

(2) receives for-

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

An employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section.

(n) Employment by street, suburban, or interurban electric railway, or local trolley or motorbus carrier

In the case of an employee of an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) applies there shall be excluded the hours such employee was employed in charter activities by such employer if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment.

(o) Compensatory time

(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only-

(A) pursuant to-

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

(3)

(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon

termination of employment, be paid for the unused compensatory time at a rate of compensation not less than-

(A) the average regular rate received by such employee during the last 3 years of the employee's employment, or

(B) the final regular rate received by such employee,

whichever is higher[3]

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency-

(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) who has requested the use of such compensatory time,

shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

(6) The hours an employee of a public agency performs court reporting transcript preparation duties shall not be considered as hours worked for the purposes of subsection (a) if-

(A) such employee is paid at a per-page rate which is not less than-

(i) the maximum rate established by State law or local ordinance for the jurisdiction of such public agency,

(ii) the maximum rate otherwise established by a judicial or administrative officer and in effect on July 1, 1995, or

(iii) the rate freely negotiated between the employee and the party requesting the transcript, other than the judge who presided over the proceedings being transcribed, and

(B) the hours spent performing such duties are outside of the hours such employee performs other work (including hours for which the agency requires the employee's attendance) pursuant to the employment relationship with such public agency.

For purposes of this section, the amount paid such employee in accordance with subparagraph (A) for the performance of court reporting transcript preparation duties, shall not be considered in the calculation of the regular rate at which such employee is employed.

(7) For purposes of this subsection-

(A) the term "overtime compensation" means the compensation required by subsection (a), and

(B) the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(p) Special detail work for fire protection and law enforcement employees; occasional or sporadic employment; substitution

(1) If an individual who is employed by a State, political subdivision of a State, or an interstate governmental agency in fire protection or law enforcement activities (including activities of security personnel in correctional institutions) and who, solely at such individual's option, agrees to be employed on a special detail by a separate or independent employer in fire protection, law enforcement, or related activities, the hours such individual was employed by such separate and independent employer shall be excluded by the public agency employing such individual in the calculation of the hours for which the employee is entitled to overtime compensation under this section if the public agency-

(A) requires that its employees engaged in fire protection, law enforcement, or security activities be hired by a separate and independent employer to perform the special detail,

(B) facilitates the employment of such employees by a separate and independent employer, or

(C) otherwise affects the condition of employment of such employees by a separate and independent employer.

(2) If an employee of a public agency which is a State, political subdivision of a State, or an interstate

governmental agency undertakes, on an occasional or sporadic basis and solely at the employee's option, part-time employment for the public agency which is in a different capacity from any capacity in which the employee is regularly employed with the public agency, the hours such employee was employed in performing the different employment shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(3) If an individual who is employed in any capacity by a public agency which is a State, political subdivision of a State, or an interstate governmental agency, agrees, with the approval of the public agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by such agency in the same capacity, the hours such employee worked as a substitute shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(q) Maximum hour exemption for employees receiving remedial education

Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum workweek specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if during such period or periods the employee is receiving remedial education that is-

(1) provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

(2) designed to provide reading and other basic skills at an eighth grade level or below; and

(3) does not include job specific training.

(June 25, 1938, ch. 676, §7, 52 Stat. 1063 ; Oct. 29, 1941, ch. 461, 55 Stat. 756 ; July 20, 1949, ch. 352, §1, 63 Stat. 446 ; Oct. 26, 1949, ch. 736, §7, 63 Stat. 912 ; Pub. L. 87–30, §6, May 5, 1961, 75 Stat. 69 ; Pub. L. 89–601, title II, §§204(c), (d), 212(b), title IV, §§401–403, Sept. 23, 1966, 80 Stat. 835–837 , 841, 842; Pub. L. 93–259, §§6(c)(1), 7(b)(2), 9(a), 12(b), 19, 21(a), Apr. 8, 1974, 88 Stat. 60 , 62, 64, 66, 68; Pub. L. 99–150, §§2(a), 3(a)–(c)(1), Nov. 13, 1985, 99 Stat. 787 , 789; Pub. L. 101–157, §7, Nov. 17, 1989, 103 Stat. 944 ; Pub. L. 104–26, §2, Sept. 6, 1995,

109 Stat. 264 ; Pub. L. 106–202, §2(a), (b), May 18, 2000, 114 Stat. 308 , 309; Pub. L. 111–148, title IV, §4207, Mar. 23, 2010, 124 Stat. 577 ; Pub. L. 117–328, div. KK, §102(a)(1), Dec. 29, 2022, 136 Stat. 6093.)

Editorial Notes

References in Text

The Fair Labor Standards Amendments of 1966, referred to in subsec. (a)(2), is Pub. L. 89–601, Sept. 23, 1966, 80 Stat. 830 . For complete classification of this Act to the Code, see Short Title of 1966 Amendment note set out under section 201 of this title and Tables.

The effective date of the Fair Labor Standards Amendments of 1966, referred to in subsec. (a)(2)(A), means the effective date of Pub. L. 89–601, which is Feb. 1, 1967 except as otherwise provided, see section 602 of Pub. L. 89–601, set out as an Effective Date of 1966 Amendment note under section 203 of this title.

Section 6(c)(3) of the Fair Labor Standards Amendments of 1974, referred to in subsec. (k)(1), is Pub. L. 93–259, §6(c)(3), Apr. 8, 1974, 88 Stat. 61 , which is set out as a note under section 213 of this title.

Amendments

2022-Subsec. (r). Pub. L. 117–328 struck out subsec. (r) which related to reasonable break time for nursing mothers.

2010-Subsec. (r). Pub. L. 111–148 added subsec. (r).

2000-Subsec. (e)(8). Pub. L. 106–202, §2(a), added par. (8).

Subsec. (h). Pub. L. 106–202, §2(b), designated existing provisions as par. (2) and added par. (1).

1995-Subsec. (o)(6), (7). Pub. L. 104–26 added par. (6) and redesignated former par. (6) as (7).

1989-Subsec. (q). Pub. L. 101–157 added subsec. (q).

1985-Subsec. (o). Pub. L. 99–150, §2(a), added subsec. (o).

Subsec. (p). Pub. L. 99–150, §3(a)–(c)(1), added subsec. (p).

1974-Subsec. (c). Pub. L. 93–259, §19(a), (b), substituted "seven workweeks" for "ten workweeks", "ten workweeks" for "fourteen workweeks" and "forty-eight hours" for "fifty hours" effective May 1, 1974. Pub. L. 93–259, §19(c), substituted "five workweeks" for "seven workweeks" and "seven workweeks" for "ten workweeks" effective Jan. 1, 1975. Pub. L. 93–259, §19(d), substituted "three workweeks" for "five workweeks" and "five workweeks" for "seven workweeks" effective Jan. 1, 1976. Pub. L. 93–259, §19(e), repealed subsec. (c) effective Dec. 31, 1976.

Subsec. (d). Pub. L. 93–259, §19(a), (b), substituted "seven workweeks" for "ten workweeks", "ten workweeks" for "fourteen workweeks" and "forty-eight hours" for "fifty hours" effective May 1, 1974. Pub. L. 93–259, §19(c), substituted "five workweeks" for "seven workweeks" and "seven workweeks" for "ten workweeks" effective Jan. 1, 1975. Pub. L. 93–259, §19(d), substituted "three workweeks" for "five workweeks" and "five workweeks" for "seven workweeks" effective Jan. 1, 1976. Pub. L. 93–259, §19(e), repealed subsec. (d) effective Dec. 31, 1976.

Subsec. (j). Pub. L. 93–259, §12(b), extended provision excepting from being considered a subsec. (a) violation agreements or undertakings between employers and employees respecting consecutive work period and overtime compensation to agreements between employers engaged in operation of an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises and employees respecting consecutive work period and overtime compensation.

Subsec. (k). Pub. L. 93–259, §6(c)(1)(D), effective Jan. 1, 1978, substituted in par. (1) "exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975" for "exceed 216 hours" and inserted in par. (2) "(or if lower, the number of hours referred to in clause (B) of paragraph (1)".

Pub. L. 93–259, §6(c)(1)(C), substituted "216 hours" for "232 hours", wherever appearing, effective Jan. 1, 1977.

Pub. L. 93–259, §6(c)(1)(B), substituted "232 hours" for "240 hours", wherever appearing, effective Jan. 1, 1976.

Pub. L. 93–259, §6(c)(1)(A), added subsec. (k), effective Jan. 1, 1975.

Subsec. (l). Pub. L. 93–259, §7(b)(2), added subsec. (l).

Subsec. (m). Pub. L. 93–259, §9(a), added subsec. (m).

Subsec. (n). Pub. L. 93–259, §21(a), added subsec. (n).

1966-Subsec. (a). Pub. L. 89–601, §401, retained provision for 40-hour workweek and compensation for employment in excess of 40 hours at not less than one and one-half times the regular rate of pay and substituted provisions setting out a phased timetable for the workweek in the case of employees covered by the overtime provisions for the first time under the Fair Labor Standards Amendments of 1966 beginning at 44 hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966, 42 hours during the second year from such date, and 40 hours after the expiration of the second year from such date, for provisions giving a phased timetable for workweeks in the case of employees first covered under the provisions of the Fair Labor Standards Amendments of 1961.

Subsec. (b)(3). Pub. L. 89–601, §212(b), substituted provisions granting an overtime exemption for petroleum distribution employees if they receive compensation for the hours of

employment in excess of 40 hours in any workweek at a rate not less than one and one-half times the applicable minimum wage rate and if the enterprises do an annual gross sales volume of less than $1,000,000, if more than 75 per centum of such enterprise's annual dollar volume of sales is made within the state in which the enterprise is located, and not more than 25 per centum of the annual dollar volume is to customers who are engaged in the bulk distribution of such products for resale for provisions covering employees for a period of not more than 14 workweeks in the aggregate in any calendar year in an industry found to be of a seasonal nature.

Subsec. (c). Pub. L. 89–601, §204(c), substituted provisions for an overtime exemption of 10 weeks in any calendar year or 14 weeks in the case of an employer not qualifying for the exemption in subsec. (d) of this section, limited to 10 hours a day and 50 hours a week, applicable to employees employed in seasonal industries which are not engaged in agricultural processing, for provisions granting a year-round unlimited exemption applicable to employees of employers engaged in first processing of milk into dairy products, cotton compressing and ginning, cottonseed processing, and the processing of certain farm products into sugar, and granting a 14-week unlimited exemption applicable to employees of employers engaged in first processing of perishable or seasonal fresh fruits or vegetables first processing within the area of production of any agricultural commodity during a seasonal operation, or the handling or slaughtering of livestock and poultry.

Subsec. (d). Pub. L. 89–601, §204(c), added subsec. (d). Former subsec. (d) redesignated (e).

Subsecs. (e), (f). Pub. L. 89–601, §204(d)(1), redesignated former subsecs. (d) and (e) as (e) and (f) respectively. Former subsec. (f) redesignated (g).

Subsecs. (g), (h). Pub. L. 89–601, §204(d)(1), (2), redesignated former subsecs. (f) and (g) as subsecs. (g) and (h) respectively, and in subsecs. (g) and (h) as so redesignated, substituted reference to "subsection (e)" for reference to "subsection (d)." Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 89–601, §§204(d)(1), 402, redesignated former subsec. (h) as (i) and inserted provision that, in determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

Subsec. (j). Pub. L. 89–601, §403, added subsec. (j).

1961-Subsec. (a). Pub. L. 87–30, §6(a), designated existing provisions as par. (1), inserted "in any workweek", and added par. (2).

Subsec. (b)(2). Pub. L. 87–30, §6(b), substituted "in excess of the maximum workweek applicable to such employee under subsection (a)" for "in excess of forty hours in the workweek".

Subsec. (d)(5), (7). Pub. L. 87–30, §6(c), (d), substituted "in excess of the maximum workweek applicable to such employee under subsection (a)" for "forty in a workweek" in par. (5)

and "the maximum workweek applicable to such employee under subsection (a)" for "forty hours" in par. (7).

Subsec. (e). Pub. L. 87–30, §6(e), substituted "the maximum workweek applicable to such employee under subsection (a)", "subsection (a) or (b) of section 206 of this title (whichever may be applicable" and "such maximum" for "forty hours", "section 206(a) of this title" and "forty in any", respectively.

Subsec. (f). Pub. L. 87–30, §6(f), substituted "the maximum workweek applicable to such employee under subsection" for "forty hours" in two places.

Subsec. (h). Pub. L. 87–30, §6(g), added subsec. (h).

1949-Subsec. (a). Act Oct. 26, 1949, continued requirement that employment in excess of 40 hours in a workweek be compensated at rate not less than 1½ times regular rate except as to employees specifically exempted.

Subsec. (b)(1). Act Oct. 26, 1949, increased employment period limitation from one thousand hours to one thousand and forty hours in semi-annual agreements.

Subsec. (b)(2). Act Oct. 26, 1949, increased employment period limitation from two thousand and eighty hours to two thousand two hundred and forty hours in annual agreements, fixed minimum and maximum guaranteed employment periods, and provided for overtime rate for hours worked in excess of the guaranty.

Subsec. (c). Act Oct. 26, 1949, added buttermilk to commodities listed for first processing.

Subsec. (d). Act Oct. 26, 1949, struck out former subsec. (d) and inserted a new subsec. (d) defining regular rate with certain specified types of payments excepted.

Subsec. (e) added by act July 20, 1949, and amended by act Oct. 26, 1949, which determined compensation to be paid for irregular hours of work.

Subsecs. (f) and (g). Act Oct. 26, 1949, added subsecs. (f) and (g).

1941-Subsec. (b)(2) amended by act Oct. 29, 1941.

Statutory Notes and Related Subsidiaries

Effective Date of 2022 Amendment

Pub. L. 117–328, div. KK, §103(a), Dec. 29, 2022, 136 Stat. 6096 , provided that: "The amendments made by section 102(a) [enacting section 218d of this title and amending this section] shall take effect on the date of enactment of this Act [Dec. 29, 2022]."

Effective Date of 2000 Amendment

Pub. L. 106–202, §2(c), May 18, 2000, 114 Stat. 309 , provided that: "The amendments made by this section [amending this section] shall take effect on the date that is 90 days after the date of enactment of this Act [May 18, 2000]."

Effective Date of 1995 Amendment

Pub. L. 104–26, §3, Sept. 6, 1995, 109 Stat. 265 , provided that: "The amendments made by section 2 [amending this section] shall apply after the date of the enactment of this Act [Sept. 6, 1995] and with respect to actions brought in a court after the date of the enactment of this Act."

Effective Date of 1985 Amendment

Amendment by Pub. L. 99–150 effective Apr. 15, 1986, see section 6 of Pub. L. 99–150, set out as a note under section 203 of this title.

Effective Date of 1974 Amendment

Pub. L. 93–259, §6(c)(1)(A)–(D), Apr. 8, 1974, 88 Stat. 60 , provided that the amendments made by that section are effective Jan. 1, 1975, 1976, 1977, and 1978, respectively.

Amendment by sections 7(b)(2), 9(a), 12(b), 19(a), (b), and 21(a) of Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

Pub. L. 93–259, §19(c)–(e), Apr. 8, 1974, 88 Stat. 66 , provided that the amendments and repeals made by subsecs. (c), (d), and (e) of section 19 are effective Jan. 1, 1975, Jan. 1, 1976, and Dec. 31, 1976, respectively.

Court Fees for Electronic Access to Information

Amendment by Pub. L. 89–601 effective Feb. 1, 1967, except as otherwise provided, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

Court Fees for Electronic Access to Information

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87–30, set out as a note under section 203 of this title.

Effective Date of 1949 Amendment

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

Regulations

Pub. L. 106–202, §2(e), May 18, 2000, 114 Stat. 309 , provided that: "The Secretary of Labor may promulgate such regulations as may be necessary to carry out the amendments made by this Act [amending this section]."

Applicability; Liability of Employers

Pub. L. 110–244, title III, §306, June 6, 2008, 122 Stat. 1620 , provided that:

"(a) Applicability Following This Act.-Beginning on the date of enactment of this Act [June 6, 2008], section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) shall apply to a covered employee notwithstanding section 13(b)(1) of that Act (29 U.S.C. 213(b)(1)).

"(b) Liability Limitation Following SAFETEA–LU.-

"(1) Limitation on liability.-An employer shall not be liable for a violation of section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) with respect to a covered employee if-

"(A) the violation occurred in the 1-year period beginning on August 10, 2005; and

"(B) as of the date of the violation, the employer did not have actual knowledge that the employer was subject to the requirements of such section with respect to the covered employee.

"(2) Actions to recover amounts previously paid.-Nothing in paragraph (1) shall be construed to establish a cause of action for an employer to recover amounts paid before the date of enactment of this Act [June 6, 2008] in settlement of, in compromise of, or pursuant to a judgment rendered regarding a claim or potential claim based on an alleged or proven violation of section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) occurring in the 1-year period referred to in paragraph (1)(A) with respect to a covered employee.

"(c) Covered Employee Defined.-In this section, the term 'covered employee' means an individual-

"(1) who is employed by a motor carrier or motor private carrier (as such terms are defined by section 13102 of title 49, United States Code, as amended by section 305);

"(2) whose work, in whole or in part, is defined-

"(A) as that of a driver, driver's helper, loader, or mechanic; and

"(B) as affecting the safety of operation of motor vehicles weighing 10,000 pounds or less in transportation on public highways in interstate or foreign commerce, except vehicles-

"(i) designed or used to transport more than 8 passengers (including the driver) for compensation;

"(ii) designed or used to transport more than 15 passengers (including the driver) and not used to transport passengers for compensation; or

"(iii) used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of title 49, United States Code, and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103 of title 49, United States Code; and

"(3) who performs duties on motor vehicles weighing 10,000 pounds or less."

Liability of Employers

Pub. L. 106–202, §2(d), May 18, 2000, 114 Stat. 309 , provided that: "No employer shall be liable under the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.] for any failure to include in an employee's regular rate (as defined for purposes of such Act) any income or value derived from employer-provided grants or rights obtained pursuant to any stock option, stock appreciation right, or employee stock purchase program if-

"(1) the grants or rights were obtained before the effective date described in subsection (c) [set out as an Effective Date of 2000 Amendment note above];

"(2) the grants or rights were obtained within the 12-month period beginning on the effective date described in subsection (c), so long as such program was in existence on the date of enactment of this Act [May 18, 2000] and will require shareholder approval to modify such program to comply with section 7(e)(8) of the Fair Labor Standards Act of 1938 [29 U.S.C. 207(e)(8)] (as added by the amendments made by subsection (a)); or

"(3) such program is provided under a collective bargaining agreement that is in effect on the effective date described in subsection (c)."

Compensatory Time; Collective Bargaining Agreements in Effect on April 15, 1986

Pub. L. 99–150, §2(b), Nov. 13, 1985, 99 Stat. 788 , provided that: "A collective bargaining agreement which is in effect on April 15, 1986, and which permits compensatory time off in lieu of overtime compensation shall remain in effect until its expiration date unless otherwise modified, except that compensatory time shall be provided after April 14, 1986, in accordance with section 7(o) of the Fair Labor Standards Act of 1938 (as added by subsection (a)) [29 U.S.C. 207(o)]."

Deferment of Monetary Overtime Compensation

Pub. L. 99–150, §2(c)(2), Nov. 13, 1985, 99 Stat. 789 , provided that a State, political subdivision of a State, or interstate governmental agency could defer until Aug. 1, 1986, the payment of monetary overtime compensation under this section for hours worked after Apr. 14, 1986.

Effect of Amendments by Public Law 99–150 on Public Agency Liability Respecting any Employee Covered Under Special Enforcement Policy

Amendment by Pub. L. 99–150 not to affect liability of certain public agencies under section 216 of this title for violation of this section occurring before Apr. 15, 1986, see section 7 of Pub. L. 99–150, set out as a note under section 216 of this title.

Rules, Regulations, and Orders Promulgated With Regard to 1966 Amendments

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89–601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89–601, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

Study by Secretary of Labor of Excessive Overtime

Pub. L. 89–601, title VI, §603, Sept. 23, 1966, 80 Stat. 844 , directed Secretary of Labor to make a complete study of practices dealing with overtime payments for work in excess of forty hours per week and the extent to which such overtime work impeded the creation of new job opportunities in American industry and instructed him to report to the Congress by July 1, 1967, the findings of such survey with appropriate recommendations.

Definition of "Administrator"

The term "Administrator" as meaning the Administrator of the Wage and Hour Division, see section 204 of this title.

Executive Documents

Transfer of Functions

Functions of all other officers of Department of Labor and functions of all agencies and employees of that Department, with exception of functions vested by Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by Department, transferred to Secretary of Labor, with power vested in him to authorize their performance or performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

Ex. Ord. No. 9607. Forty-Eight Hour Wartime Workweek

Ex. Ord. No. 9607, Aug. 30, 1945, 10 F.R. 11191, provided:

By virtue of the authority vested in me by the Constitution and statutes as President of the United States it is ordered that Executive Order 9301 of February 9, 1943 [8 F.R. 1825] (formerly set out as note under this section), establishing a minimum wartime workweek of forty-eight hours, be, and it is hereby, revoked.

Harry S. Truman.

[1] So in original. Probably should not be capitalized.

[2] So in original. The comma probably should be preceded by a closing parenthesis.

[3] So in original. Probably should be followed by a period.

29 USC §208 | [REPEALED] | PUB. L. 110–28, TITLE VIII, §8103(c)(1)(A), May 25, 2007, 121 STAT. 189]

(Section, acts June 25, 1938, ch. 676, §8, 52 Stat. 1064 ; Oct. 26, 1949, ch. 736, §8, 63 Stat. 915 ; Aug. 12, 1955, ch. 867, §§4, 5(b)–(e), 69 Stat. 711 , 712; Pub. L. 85–750, Aug. 25, 1958, 72 Stat. 844 ; Pub. L. 87–30, §7, May 5, 1961, 75 Stat. 70 ; Pub. L. 93–259, §5(c)(1), (d), Apr. 8, 1974, 88 Stat. 58 ; Pub. L. 95–151, §2(d)(3), Nov. 1, 1977, 91 Stat. 1246 ; Pub. L. 101–157, §4(c), Nov. 17, 1989, 103 Stat. 940 ; Pub. L. 101–583, §1, Nov. 15, 1990, 104 Stat. 2871 , related to wage orders in American Samoa.)

Statutory Notes and Related Subsidiaries

Effective Date of Repeal

Repeal effective 60 days after May 25, 2007, see section 8103(c)(2) of Pub. L. 110–28, set out as an Effective Date of 2007 Amendment note under section 206 of this title.

29 USC §209 | ATTENDANCE OF WITNESSES

For the purpose of any hearing or investigation provided for in this chapter, the provisions of sections 49 and 50 of title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Administrator, the Secretary of Labor, and the industry committees.

(June 25, 1938, ch. 676, § 9, 52 Stat. 1065; 1946 Reorg. Plan No. 2, § 1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095.)

29 USC §210 | COURT REVIEW OF WAGE ORDERS IN PUERTO RICO AND THE VIRGIN ISLANDS

(a) Any person aggrieved by an order of the Secretary issued under section 208[1] of this title may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within 60 days after the entry of such order a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify (including provision for the payment of an appropriate minimum wage rate), or set aside such order in whole or in part, so far as it is applicable to the petitioner. The review by the court shall be limited to questions of law, and findings of fact by such industry committee when supported by substantial evidence shall be conclusive. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before such industry committee or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such evidence in the proceedings before such industry committee, the court may order such additional evidence to be taken before an industry committee and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. Such industry committee may modify the initial findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court

of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Administrator's order. The court shall not grant any stay of the order unless the person complaining of such order shall file in court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect.

(June 25, 1938, ch. 676, §10, 52 Stat. 1065 ; Aug. 12, 1955, ch. 867, §5(f), 69 Stat. 712 ; Pub. L. 85–791, §22, Aug. 28, 1958, 72 Stat. 948 ; Pub. L. 93–259, §5(c)(2), Apr. 8, 1974, 88 Stat. 58 .)

Editorial Notes

References in Text

Section 208 of this title, referred to in subsec. (a), was repealed by Pub. L. 110–28, title VIII, §8103(c)(1)(A), May 25, 2007, 121 Stat. 189 .

Amendments

1974 - Subsec. (a). Pub. L. 93–259 inserted "(including provision for the payment of an appropriate minimum wage rate)" in third sentence after "modify".

1958 - Subsec. (a). Pub. L. 85–791 substituted "transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee" for "served upon the Secretary, and thereupon the Secretary shall certify and file in the court a transcript of the record" in second sentence, and inserted "as provided in section 2112 of title 28", and substituted "petition" for "transcript" in third sentence.

1955 - Subsec. (a). Act Aug. 12, 1955, amended subsec. (a) generally to make subsection conform to new procedure applicable to Puerto Rico and Virgin Islands.

Statutory Notes and Related Subsidiaries

Effective Date of 1974 Amendment

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

Definition of "Administrator"

The term "Administrator" as meaning the Administrator of the Wage and Hour Division, see section 204 of this title.

Definition of "Secretary"

The term "Secretary" as meaning the Secretary of Labor, see section 6 of act Aug. 12, 1955, set out as a note under section 204 of this title.

Executive Documents

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

29 USC §211 | COLLECTION OF DATA

(a) Investigations and inspections

The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter. Except as provided in section 212 of this title and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 212 of this title, the Administrator shall bring all actions under section 217 of this title to restrain violations of this chapter.

(b) State and local agencies and employees

With the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Secretary of Labor may, for the purpose of carrying out their respective functions and duties under this chapter, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Records

Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations or orders there-under. The employer of an employee who performs substitute work described in section

207(p)(3) of this title may not be required under this subsection to keep a record of the hours of the substitute work.

(d) Homework regulations

The Administrator is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this chapter, and all existing regulations or orders of the Administrator relating to industrial homework are continued in full force and effect.

(June 25, 1938, ch. 676, § 11, 52 Stat. 1066; 1946 Reorg. Plan No. 2, § 1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Oct. 26, 1949, ch. 736, § 9, 63 Stat. 916; Pub. L. 99–150, § 3(c)(2), Nov. 13, 1985, 99 Stat. 789.)

29 USC §212 | CHILD LABOR PROVISIONS

(a) Restrictions on shipment of goods; prosecution; conviction

No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: Provided, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: And provided further, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

(b) Investigations and inspections

The Secretary of Labor or any of his authorized representatives, shall make all investigations and inspections under section 211(a) of this title with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 217 of this title to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this chapter relating to oppressive child labor.

(c) Oppressive child labor

No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.

(d) Proof of age

In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age.

(June 25, 1938, ch. 676, §12, 52 Stat. 1067 ; 1946 Reorg. Plan No. 2, §1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Oct. 26, 1949, ch. 736, §10, 63 Stat. 917 ; Pub. L. 87–30, §8, May 5, 1961, 75 Stat. 70 ; Pub. L. 93–259, §25(a), Apr. 8, 1974, 88 Stat. 72 .)

Editorial Notes

Amendments

1974 - Subsec. (d). Pub. L. 93–259 added subsec. (d).

1961 - Subsec. (c). Pub. L. 87–30 inserted "or in any enterprise engaged in commerce or in the production of goods for commerce".

1949 - Subsec. (a). Act Oct. 26, 1949, §10(a), struck out effective date at beginning of subsection and inserted proviso excepting good faith purchaser of goods produced by oppressive child labor.

Subsec. (c). Act Oct. 26, 1949, §10(b), added subsec. (c).

Statutory Notes and Related Subsidiaries

Effective Date of 1974 Amendment

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

Effective Date of 1961 Amendment

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87–30, set out as a note under section 203 of this title.

Effective Date of 1949 Amendment

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

Executive Documents

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

"Secretary of Labor" substituted for "Chief of the Children's Bureau in the Department of Labor" in subsec. (b) by 1946 Reorg. Plan No. 2. See note set out under section 203 of this title.

29 USC §213 | EXEMPTIONS

(a) Minimum wage and maximum hour requirements

The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and 207 of this title shall not apply with respect to —

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of title 5, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

(2) Repealed. Pub. L. 101–157, §3(c)(1), Nov. 17, 1989, 103 Stat. 939.

(3) any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33⅓ per centum of its average receipts for the other six months of such year, except that the exemption from sections 206 and 207 of this title provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 206 of this title, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the

Secretary of the Interior or the Secretary of Agriculture; or

(4) Repealed. Pub. L. 101–157, § 3(c)(1), Nov. 17, 1989, 103 Stat. 939.

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture

(A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor,

(B) if such employee is the parent, spouse, child, or other member of his employer's immediate family,

(C) if such employee

(i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment,

(ii) commutes daily from his permanent residence to the farm on which he is so employed, and

(iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year,

(D) if such employee (other than an employee described in clause (C) of this subsection)

(i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has

been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment,

(ii) is employed on the same farm as his parent or person standing in the place of his parent, and

(iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or

(E) if such employee is principally engaged in the range production of livestock; or

(7) any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 214 of this title; or

(8) any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

(9) Repealed. Pub. L. 93–259, § 23(a)(1), Apr. 8, 1974, 88 Stat. 69.

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

(11) Repealed. Pub. L. 93–259, § 10(a), Apr. 8, 1974, 88 Stat. 63.

(12) any employee employed as a seaman on a vessel other than an American vessel; or

(13), (14) Repealed. Pub. L. 93–259, §§ 9(b)(1), 23(b)(1), Apr. 8, 1974, 88 Stat. 63, 69.

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary); or

(16) a criminal investigator who is paid availability pay under section 5545a of title 5;

(17) any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is —

(A) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(B) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(C) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

(D) a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and

who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than $27.63 an hour; or

(18) any employee who is a border patrol agent, as defined in section 5550(a) of title 5; or

(19) any employee employed to play baseball who is compensated pursuant to a contract that provides for a weekly salary for services performed during the league's championship season (but not spring training or the off season) at a rate that is not less than a weekly salary equal to the minimum wage under section 206(a) of this title for a workweek of 40 hours, irrespective of the number of hours the employee devotes to baseball related activities.

(b) Maximum hour requirements

The provisions of section 207 of this title shall not apply with respect to —

(1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49; or

(2) any employee of an employer engaged in the operation of a rail carrier subject to part A of subtitle IV of title 49; or

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act [45 U.S.C. 181 et seq.]; or

(4) Repealed. Pub. L. 93–259, § 11(c), Apr. 8, 1974, 88 Stat. 64.

(5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

(6) any employee employed as a seaman; or

(7) Repealed. Pub. L. 93–259, § 21(b)(3), Apr. 8, 1974, 88 Stat. 68.

(8) Repealed. Pub. L. 95–151, § 14(b), Nov. 1, 1977, 91 Stat. 1252.

(9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Office of Management and Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

(10)

(A) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged

in the business of selling such vehicles or implements to ultimate purchasers; or

(B) any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers; or

(11) any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 207(a) of this title; or

(12) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water, at least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year; or

(13) any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 206(a)(1) of this title; or

(14) any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operations; or

(15) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; or

(16) any employee engaged (A) in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables; or

(17) any driver employed by an employer engaged in the business of operating taxicabs; or

(18) Repealed. Pub. L. 93–259, §§ 15(c), 16(b), Apr. 8, 1974, 88 Stat. 65.

(19) Repealed. Pub. L. 93–259, §§ 15(c), 16(b), Apr. 8, 1974, 88 Stat. 65.

(20) any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be; or

(21) any employee who is employed in domestic service in a household and who resides in such household; or

(22) Repealed. Pub. L. 95–151, § 5, Nov. 1, 1977, 91 Stat. 1249.

(23) Repealed. Pub. L. 93–259, § 10(b)(3), Apr. 8, 1974, 88 Stat. 64.

(24) any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children —

(A) who are orphans or one of whose natural parents is deceased, or

(B) who are enrolled in such institution and reside in residential facilities of the institution, while

such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or

(25) Repealed. Pub. L. 95–151, §§ 6(a), 7(a), Nov. 1, 1977, 91 Stat. 1249, 1250.

(26) Repealed. Pub. L. 95–151, §§ 6(a), 7(a), Nov. 1, 1977, 91 Stat. 1249, 1250.

(27) any employee employed by an establishment which is a motion picture theater; or

(28) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;

(29) any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee

(A) is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and

(B) receives compensation for employment in excess of fifty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

(30) a criminal investigator who is paid availability pay under section 5545a of title 5.

(c) Child labor requirements

(1) Except as provided in paragraph (2) or (4), the provisions of section 212 of this title relating to child

labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee —

(A) is less than twelve years of age and

(i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or

(ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of subsection (a)(6)(A)) required to be paid at the wage rate prescribed by section 206(a)(5)[1] of this title,

(B) is twelve years or thirteen years of age and

(i) such employment is with the consent of his parent or person standing in the place of his parent, or

(ii) his parent or such person is employed on the same farm as such employee, or

(C) is fourteen years of age or older.

(2) The provisions of section 212 of this title relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

(3) The provisions of section 212 of this title relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

(4)

(A) An employer or group of employers may apply to the Secretary for a waiver of the application of

section 212 of this title to the employment for not more than eight weeks in any calendar year of individuals who are less than twelve years of age, but not less than ten years of age, as hand harvest laborers in an agricultural operation which has been, and is customarily and generally recognized as being, paid on a piece rate basis in the region in which such individuals would be employed. The Secretary may not grant such a waiver unless he finds, based on objective data submitted by the applicant, that —

(i) the crop to be harvested is one with a particularly short harvesting season and the application of section 212 of this title would cause severe economic disruption in the industry of the employer or group of employers applying for the waiver;

(ii) the employment of the individuals to whom the waiver would apply would not be deleterious to their health or well-being;

(iii) the level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of the individuals to whom the waiver would apply;

(iv) individuals age twelve and above are not available for such employment; and

(v) the industry of such employer or group of employers has traditionally and substantially employed individuals under twelve years of age without displacing substantial job opportunities for individuals over sixteen years of age.

(B) Any waiver granted by the Secretary under subparagraph (A) shall require that —

(i) the individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

(ii) such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

(iii) such individuals be employed under such waiver (I) for not more than eight weeks between June 1 and October 15 of any calendar year, and (II) in accordance with such other terms and conditions as the Secretary shall prescribe for such individuals' protection.

(5)

(A) In the administration and enforcement of the child labor provisions of this chapter, employees who are 16 and 17 years of age shall be permitted to load materials into, but not operate or unload materials from, scrap paper balers and paper box compactors —

(i) that are safe for 16- and 17-year-old employees loading the scrap paper balers or paper box compactors; and

(ii) that cannot be operated while being loaded.

(B) For purposes of subparagraph (A), scrap paper balers and paper box compactors shall be considered safe for 16- or 17-year-old employees to load only if —

(i)

(I) the scrap paper balers and paper box compactors meet the American National Standards Institute's Standard ANSI Z245.5–1990 for scrap paper balers and Standard ANSI Z245.2–1992 for paper box compactors; or

(II) the scrap paper balers and paper box compactors meet an applicable standard that is adopted by the American National Standards Institute after August 6, 1996, and that is certified by the Secretary to be at least as protective of the safety

of minors as the standard described in subclause (I);

(ii) the scrap paper balers and paper box compactors include an on-off switch incorporating a key-lock or other system and the control of the system is maintained in the custody of employees who are 18 years of age or older;

(iii) the on-off switch of the scrap paper balers and paper box compactors is maintained in an off position when the scrap paper balers and paper box compactors are not in operation; and

(iv) the employer of 16- and 17-year-old employees provides notice, and posts a notice, on the scrap paper balers and paper box compactors stating that —

(I) the scrap paper balers and paper box compactors meet the applicable standard described in clause (i);

(II) 16- and 17-year-old employees may only load the scrap paper balers and paper box compactors; and

(III) any employee under the age of 18 may not operate or unload the scrap paper balers and paper box compactors.

The Secretary shall publish in the Federal Register a standard that is adopted by the American National Standards Institute for scrap paper balers or paper box compactors and certified by the Secretary to be protective of the safety of minors under clause (i)(II).

(C)

(i) Employers shall prepare and submit to the Secretary reports —

(I) on any injury to an employee under the age of 18 that requires medical treatment (other than first aid)

resulting from the employee's contact with a scrap paper baler or paper box compactor during the loading, operation, or unloading of the baler or compactor; and

(II) on any fatality of an employee under the age of 18 resulting from the employee's contact with a scrap paper baler or paper box compactor during the loading, operation, or unloading of the baler or compactor.

(ii) The reports described in clause (i) shall be used by the Secretary to determine whether or not the implementation of subparagraph (A) has had any effect on the safety of children.

(iii) The reports described in clause (i) shall provide —

(I) the name, telephone number, and address of the employer and the address of the place of employment where the incident occurred;

(II) the name, telephone number, and address of the employee who suffered an injury or death as a result of the incident;

(III) the date of the incident;

(IV) a description of the injury and a narrative describing how the incident occurred; and

(V) the name of the manufacturer and the model number of the scrap paper baler or paper box compactor involved in the incident.

(iv) The reports described in clause (i) shall be submitted to the Secretary promptly, but not later than 10 days after the date on which an incident relating to an injury or death occurred.

(v) The Secretary may not rely solely on the reports described in clause (i) as the basis for making a determination that any of the employers described in clause (i) has violated a provision of section 212 of this title relating to oppressive child labor or a regulation or order issued pursuant to section 212 of this title. The Secretary shall, prior to making such a determination, conduct an investigation and inspection in accordance with section 212(b) of this title.

(vi) The reporting requirements of this subparagraph shall expire 2 years after August 6, 1996.

(6) In the administration and enforcement of the child labor provisions of this chapter, employees who are under 17 years of age may not drive automobiles or trucks on public roadways. Employees who are 17 years of age may drive automobiles or trucks on public roadways only if —

(A) such driving is restricted to daylight hours;

(B) the employee holds a State license valid for the type of driving involved in the job performed and has no records of any moving violation at the time of hire;

(C) the employee has successfully completed a State approved driver education course;

(D) the automobile or truck is equipped with a seat belt for the driver and any passengers and the employee's employer has instructed the employee that the seat belts must be used when driving the automobile or truck;

(E) the automobile or truck does not exceed 6,000 pounds of gross vehicle weight;

(F) such driving does not involve —

(i) the towing of vehicles;

(ii) route deliveries or route sales;

(iii) the transportation for hire of property, goods, or passengers;

(iv) urgent, time-sensitive deliveries;

(v) more than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the employee's employer to a customer (other than urgent, time-sensitive deliveries);

(vi) more than two trips away from the primary place of employment in any single day for the purpose of transporting passengers (other than employees of the employer);

(vii) transporting more than three passengers (including employees of the employer); or

(viii) driving beyond a 30 mile radius from the employee's place of employment; and

(G) such driving is only occasional and incidental to the employee's employment.

For purposes of subparagraph (G), the term "occasional and incidental" is no more than one-third of an employee's worktime in any workday and no more than 20 percent of an employee's worktime in any workweek.

(7)

(A)

(i) Subject to subparagraph (B), in the administration and enforcement of the child labor provisions of this chapter, it shall not be considered oppressive child labor for a new entrant into the workforce to be employed inside or outside places of business where machinery is used to process wood products.

(ii) In this paragraph, the term "new entrant into the workforce" means an individual who —

(I) is under the age of 18 and at least the age of 14, and

(II) by statute or judicial order is exempt from compulsory school attendance beyond the eighth grade.

(B) The employment of a new entrant into the workforce under subparagraph (A) shall be permitted —

(i) if the entrant is supervised by an adult relative of the entrant or is supervised by an adult member of the same religious sect or division as the entrant;

(ii) if the entrant does not operate or assist in the operation of power-driven woodworking machines;

(iii) if the entrant is protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation; and

(iv) if the entrant is required to use personal protective equipment to prevent exposure to excessive levels of noise and saw dust.

(d) Delivery of newspapers and wreathmaking

The provisions of sections 206, 207, and 212 of this title shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homeworker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

(e) Maximum hour requirements and minimum wage employees

The provisions of section 207 of this title shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section 206(a)(3)1 of this title, except with respect to employees for whom such rates are in effect; and with respect to such employees the Secretary may make rules and regulations providing reasonable limitations and allowing reasonable

variations, tolerances, and exemptions to and from any or all of the provisions of section 207 of this title if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section 206(a)(3)1 of this title, that economic conditions warrant such action.

(f) Employment in foreign countries and certain United States territories

The provisions of sections 206, 207, 211, and 212 of this title shall not apply with respect to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: a State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462) [43 U.S.C. 1331 et seq.]; American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(g) Certain employment in retail or service establishments, agriculture

The exemption from section 206 of this title provided by paragraph (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated).

(h) Maximum hour requirement: fourteen workweek limitation

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who —

(1) is employed by such employer —

(A) exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

(B) exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

(C) exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; or

(D) exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and

(2) receives for —

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 207 of this title.

(i) Cotton ginning

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who —

(1) is engaged in the ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities; and

(2) receives for any such employment during such workweeks —

(A) in excess of ten hours in any workday, and

(B) in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

(j) Processing of sugar beets, sugar beet molasses, or sugar cane

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who —

(1) is engaged in the processing of sugar beets, sugar beet molasses, or sugar cane into sugar (other than refined sugar) or syrup; and

(2) receives for any such employment during such workweeks —

(A) in excess of ten hours in any workday, and

(B) in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

(June 25, 1938, ch. 676, § 13, 52 Stat. 1067; Aug. 9, 1939, ch. 605, 53 Stat. 1266; Oct. 26, 1949, ch. 736, § 11, 63 Stat. 917; Aug. 8, 1956, ch. 1035, § 3, 70 Stat. 1118; Pub. L. 85–231, § 1(1), Aug. 30, 1957, 71 Stat. 514; Pub. L. 86–624, § 21(b), July 12, 1960, 74 Stat. 417; Pub. L. 87–30, §§ 9, 10, May 5, 1961, 75 Stat. 71, 74; Pub. L. 89–601, title II, §§ 201–204(a), (b), 205–212(a), 213, 214, 215(b), (c), Sept. 23, 1966, 80 Stat. 833–838; Pub. L. 89–670, § 8(e), Oct. 15, 1966, 80 Stat. 943; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 92–

318, title IX, § 906(b)(1), June 23, 1972, 86 Stat. 375; Pub. L. 93–259, §§ 6(c)(2), 7(b)(3), (4), 8, 9(b), 10, 11, 12(a), 13(a)–(d), 14–18, 20(a)–(c), 21(b), 22, 23, 25(b), Apr. 8, 1974, 88 Stat. 61–69, 72; Pub. L. 95–151, §§ 4–8, 9(d), 11, 14, Nov. 1, 1977, 91 Stat. 1249, 1250–1252; Pub. L. 96–70, title I, § 1225(a), Sept. 27, 1979, 93 Stat. 468; Pub. L. 101–157, § 3(c), Nov. 17, 1989, 103 Stat. 939; Pub. L. 103–329, title VI, § 633(d), Sept. 30, 1994, 108 Stat. 2428; Pub. L. 104–88, title III, § 340, Dec. 29, 1995, 109 Stat. 955; Pub. L. 104–174, § 1, Aug. 6, 1996, 110 Stat. 1553; Pub. L. 104–188, [title II], § 2105(a), Aug. 20, 1996, 110 Stat. 1929; Pub. L. 105–78, title I, § 105, Nov. 13, 1997, 111 Stat. 1477; Pub. L. 105–334, § 2(a), Oct. 31, 1998, 112 Stat. 3137; Pub. L. 108–199, div. E, title I, § 108, Jan. 23, 2004, 118 Stat. 236; Pub. L. 113–277, § 2(g)(2), Dec. 18, 2014, 128 Stat. 3005; Pub. L. 115–141, div. S, title II, § 201(a), Mar. 23, 2018, 132 Stat. 1126.)

29 USC §214 | EMPLOYMENT UNDER SPECIAL CERTIFICATES

(a) Learners, apprentices, messengers

The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

(b) Students

(1)

(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than $1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

(B) Except as provided in paragraph (4)(B), during any month in which full-time students are to be employed in any retail or service establishment under certificates issued under this subsection the proportion of student hours of employment to the total hours of employment of all employees in such establishment may not exceed -

(i) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) were covered by this chapter before the effective date of the Fair Labor Standards Amendments of 1974 -

(I) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period,

(II) the maximum proportion for any corresponding month of student hours of employment to the total hours of employment of all employees in such establishment applicable to the issuance of certificates under this section at any time before the effective date of the Fair Labor Standards Amendments of 1974 for the employment of students by such employer, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater;

(ii) in the case of retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered for the first time on or after the effective date of the Fair Labor Standards Amendments of 1974 -

(I) the proportion of hours of employment of students in such establishment to the total hours of employment of all employees in such establishment for the corresponding month of the twelve-month period immediately prior to the effective date of such Amendments,

(II) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater; or

(iii) in the case of a retail or service establishment for which records of student hours worked are not available, the proportion of student hours of employment to the total hours of employment of all employees based on the practice during the immediately preceding twelve-month period in (I) similar establishments of the same employer in the same general metropolitan area in which such establishment is located, (II) similar establishments of the same or nearby communities if such establishment is not in a metropolitan area, or (III) other establishments of the same general character operating in the community or the nearest comparable community.

For purpose of clauses (i), (ii), and (iii) of this subparagraph, the term "student hours of employment" means hours during which students are employed in a retail or service establishment under certificates issued under this subsection.

(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(a)(5) 1 of this title or not less than $1.30 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

(3) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than $1.60

an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

(4)

(A) A special certificate issued under paragraph (1), (2), or (3) shall provide that the student or students for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek.

(B) If the issuance of a special certificate under paragraph (1) or (2) for an employer will cause the number of students employed by such employer under special certificates issued under this subsection to exceed six, the Secretary may not issue such a special certificate for the employment of a student by such employer unless the Secretary finds employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate under paragraph (1) or (2) for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed six -

(i) the Secretary may issue a special certificate under paragraph (1) or (2) for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection, and

(ii) in the case of an employer which is a retail or service establishment, subparagraph (B) of paragraph (1) shall not apply with respect to the issuance of special certificates for such employer under such paragraph.

The requirement of this subparagraph shall not apply in the case of the issuance of special certificates under paragraph (3) for the employment of full-time students by institutions of higher education; except that if the Secretary determines that an institution of higher education is employing students under certificates issued under paragraph (3) but in violation of the requirements of that paragraph or of regulations issued thereunder, the requirements of this subparagraph shall apply with respect to the issuance of special certificates under paragraph (3) for the employment of students by such institution.

(C) No special certificate may be issued under this subsection unless the employer for whom the certificate is to be issued provides evidence satisfactory to the Secretary of the student status of the employees to be employed under such special certificate.

(D) To minimize paperwork for, and to encourage, small businesses to employ students under special certificates issued under paragraphs (1) and (2), the Secretary shall, by regulation or order, prescribe a simplified application form to be used by employers in applying for such a certificate for the employment of not more than six full-time students. Such an application shall require only –

(i) a listing of the name, address, and business of the applicant employer,

(ii) a listing of the date the applicant began business, and

(iii) the certification that the employment of such full-time students will not reduce the full-time employment opportunities of persons

other than persons employed under special certificates.

(c) Handicapped workers

(1) The Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury, at wages which are -

(A) lower than the minimum wage applicable under section 206 of this title,

(B) commensurate with those paid to nonhandicapped workers, employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work, and

(C) related to the individual's productivity.

(2) The Secretary shall not issue a certificate under paragraph (1) unless the employer provides written assurances to the Secretary that -

(A) in the case of individuals paid on an hourly rate basis, wages paid in accordance with paragraph (1) will be reviewed by the employer at periodic intervals at least once every six months, and

(B) wages paid in accordance with paragraph (1) will be adjusted by the employer at periodic intervals, at least once each year, to reflect changes in the prevailing wage paid to experienced nonhandicapped individuals employed in the locality for essentially the same type of work.

(3) Notwithstanding paragraph (1), no employer shall be permitted to reduce the hourly wage rate prescribed by certificate under this subsection in effect on June 1, 1986, of any handicapped individual for a period of two years from such date without prior authorization of the Secretary.

(4) Nothing in this subsection shall be construed to prohibit an employer from maintaining or establishing work activities centers to provide therapeutic activities for handicapped clients.

(5)

(A) Notwithstanding any other provision of this subsection, any employee receiving a special minimum wage at a rate specified pursuant to this subsection or the parent or guardian of such an employee may petition the Secretary to obtain a review of such special minimum wage rate. An employee or the employee's parent or guardian may file such a petition for and in behalf of the employee or in behalf of the employee and other employees similarly situated. No employee may be a party to any such action unless the employee or the employee's parent or guardian gives consent in writing to become such a party and such consent is filed with the Secretary.

(B) Upon receipt of a petition filed in accordance with subparagraph (A), the Secretary within ten days shall assign the petition to an administrative law judge appointed pursuant to section 3105 of title 5. The administrative law judge shall conduct a hearing on the record in accordance with section 554 of title 5 with respect to such petition within thirty days after assignment.

(C) In any such proceeding, the employer shall have the burden of demonstrating that the special minimum wage rate is justified as necessary in order to prevent curtailment of opportunities for employment.

(D) In determining whether any special minimum wage rate is justified pursuant to subparagraph (C), the administrative law judge shall consider -

(i) the productivity of the employee or employees identified in the petition and the conditions under which such productivity was measured; and

(ii) the productivity of other employees performing work of essentially the same type and quality for other employers in the same vicinity.

(E) The administrative law judge shall issue a decision within thirty days after the hearing provided for in subparagraph (B). Such action shall be deemed to be a final agency action unless within thirty days the Secretary grants a request to review the decision of the administrative law judge. Either the petitioner or the employer may request review by the Secretary within fifteen days of the date of issuance of the decision by the administrative law judge.

(F) The Secretary, within thirty days after receiving a request for review, shall review the record and either adopt the decision of the administrative law judge or issue exceptions. The decision of the administrative law judge, together with any exceptions, shall be deemed to be a final agency action.

(G) A final agency action shall be subject to judicial review pursuant to chapter 7 of title 5. An action seeking such review shall be brought within thirty days of a final agency action described in subparagraph (F).

(d) Employment by schools

The Secretary may by regulation or order provide that sections 206 and 207 of this title shall not apply with respect to the employment by any elementary or secondary school of its students if such employment constitutes, as determined under regulations prescribed by the Secretary, an integral part of the regular education program provided by such school and such employment is in accordance with applicable child labor laws.

(June 25, 1938, ch. 676, §14, 52 Stat. 1068 ; Oct. 26, 1949, ch. 736, §12, 63 Stat. 918 ; Pub. L. 87–30, §11, May 5, 1961, 75 Stat. 74 ; Pub. L. 89–601, title V, §501, Sept. 23, 1966, 80 Stat. 842 ; Pub. L. 93–259, §24(a), (b), Apr. 8, 1974, 88 Stat. 69 , 72; Pub. L. 95–151, §§12, 13, Nov. 1, 1977, 91 Stat. 1252 ; Pub. L. 99–486, Oct. 16, 1986, 100 Stat. 1229 ; Pub. L. 101–157, §4(d), Nov. 17, 1989, 103 Stat. 941 .)

Editorial Notes

References in Text

Effective date of the Fair Labor Standards Amendments of 1974, referred to in subsec. (b)(1)(B)(i), (ii), means May 1, 1974, except as otherwise specifically provided, under provisions of section 29(a) of Pub. L. 93–259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

Section 206(a)(5) of this title, referred to in subsec. (b)(2), was redesignated section 206(a)(4) of this title by Pub. L. 110–28, title VIII, §8103(c)(1)(B), May 25, 2007, 121 Stat. 189 .

Amendments

1989-Subsec. (b)(1)(A). Pub. L. 101–157 struck out "(or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206(c) of this title)" after "whichever is the higher".

Subsec. (b)(2), (3). Pub. L. 101–157 struck out "(or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(c) of this title)" after "whichever is the higher".

1986-Subsec. (c). Pub. L. 99–486 amended subsec. (c) generally, revising and restating as pars. (1) to (5) provisions formerly contained in pars. (1) to (3).

1977-Subsec. (b)(4)(B). Pub. L. 95–151, §12(a), substituted "six" for "four" wherever appearing.

Subsec. (b)(4)(D). Pub. L. 95–151, §13, added subpar. (D).

1974-Subsec. (a). Pub. L. 93–259, §24(a), added subsec. (a) and struck out former subsec. (a) which had provided:

> "The Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivery letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe."

Subsec. (b). Pub. L. 93–259, §24(a), added subsec. (b) and struck out former subsec. (b) which had provided:

> "The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the

> employment of full-time students, regardless of age but in compliance with applicable child labor laws, on a part-time basis in retail or service establishments (not to exceed twenty hours in any workweek) or on a part-time or full-time basis in such establishments during school vacations, under special certificates issued pursuant to regulations of the Secretary, at a wage rate not less than 85 per centum of the minimum wage applicable under section 206 of this title, except that the proportion of student hours of employment to total hours of employment of all employees in any establishment may not exceed (1) such proportion for the corresponding month of the twelve-month period preceding May 1, 1961, (2) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered by this chapter for the first time on or after the effective date of the Fair Labor Standards Amendments of 1966, such proportion for the corresponding month of the twelve-month period immediately prior to such date, or (3) in the case of a retail or service establishment coming into existence after May 1, 1961, or a retail or service establishment for which records of student hours worked are not available, a proportion of student hours of employment to total hours of employment of all employees based on the practice during the twelve-month period preceding May 1, 1961, in (A) similar establishments of the same employer in the same general metropolitan area in which the new establishment is located, (B) similar establishments of the same employer in the same or nearby counties if the new establishment is not in a metropolitan area, or (C) other establishments of the same general character operating in the community or the nearest comparable community. Before the Secretary may issue a certificate under this subsection he must find that such employment will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under this subsection."

Subsecs. (c), (d). Pub. L. 93–259, §24(a), (b), struck out subsec. (c) and redesignated subsec. (d) as (c). Former subsec. (c) had provided:

> "The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by certificate or order provide for the employment of full-time students, regardless of age but in compliance with applicable child labor laws, on a part-time basis in agriculture (not to exceed twenty hours in any workweek) or on a part-time or full-time basis in agriculture during school vacations, at a wage rate not less than 85 per centum of the minimum wage applicable under section 206 of this title. Before the Secretary may issue a certificate or order under this subsection he must find that such employment will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under this subsection."

1966-Pub. L. 89–601 provided for employment of full-time students regardless of age but in compliance with applicable child labor laws outside of their school hours in retail or service establishments or in agriculture at not less than 85 percent of the minimum wage in full-time positions during school vacations or in part-time positions not to exceed 20 hours in any workweek under certificates issued by the Secretary, set out the formula for the allowable proportion of student hours of employment to total hours of employment, provided for the employment of handicapped workers at rates down to 50 percent of the applicable minimum wage and at even lower rates for persons suffering severe impairment, authorized the establishment of special rates for handicapped workers employed in work activities centers, and defined work activity centers.

1961-Pub. L. 87–30 provided for employment of students in cl. (1).

1949-Act Oct. 26, 1949, substituted "primarily" for "exclusively" after "messengers employed".

Statutory Notes and Related Subsidiaries

Effective Date of 1977 Amendment

Amendment by Pub. L. 95–151 effective Nov. 1, 1977, see section 15(b) of Pub. L. 95–151, set out as a note under section 203 of this title.

Effective Date of 1974 Amendment

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

Effective Date of 1966 Amendment

Amendment by Pub. L. 89–601 effective Feb. 1, 1967, except as otherwise provided, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

Effective Date of 1961 Amendment

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87–30, set out as a note under section 203 of this title.

Effective Date of 1949 Amendment

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

Rules, Regulations, and Orders Promulgated With Regard to 1966 Amendments

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89–601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89–601, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

Study of Wages Paid Handicapped Clients in Sheltered Workshops

Pub. L. 89–601, title VI, §605, Sept. 23, 1966, 80 Stat. 845 , instructed Secretary of Labor to commence a complete study of wage payments to handicapped clients of sheltered workshops and of feasibility of raising existing wage standards in such workshops. The Secretary was directed to report to Congress by July 1, 1967, findings of such study with appropriate recommendations.

Executive Documents

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

29 USC §215 | PROHIBITED ACTS; PRIMA FACIE EVIDENCE

(a) After the expiration of one hundred and twenty days from June 25, 1938, it shall be unlawful for any person –

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 206 or section 207 of this title, or in violation of any regulation or order of the Secretary issued under section 214 of this title; except that no provision of this chapter shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this chapter shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of this chapter, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful;

(2) to violate any of the provisions of section 206 or section 207 of this title, or any of the provisions of any regulation or order of the Secretary issued under section 214 of this title;

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;

(4) to violate any of the provisions of section 212 of this title;

(5) to violate any of the provisions of section 211(c) of this title, or any regulation or order made or

> continued in effect under the provisions of section 211(d) of this title, or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect; and
>
> (6) to violate any of the provisions of section 218d of this title.

(b) For the purposes of subsection (a)(1) proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

(June 25, 1938, ch. 676, § 15, 52 Stat. 1068; Oct. 26, 1949, ch. 736, § 13, 63 Stat. 919; 1950 Reorg. Plan No. 6, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263; Pub. L. 117–328, div. KK, §102(b)(1), Dec. 29, 2022, 136 Stat. 6095.)

Editorial Notes
Amendments

2022 - Subsec. (a)(6). Pub. L. 117–328 added par. (6).

1949 - Subsec. (a)(1). Act Oct. 26, 1949, §13(a), inserted provision protecting purchaser in good faith in sale of goods produced in violation of this chapter.

Subsec. (a)(5). Act Oct. 26, 1949, §13(b), inserted "or any regulation or order made or continued in effect under the provisions of section 211(d) of this title" after "211(c) of this title".

Statutory Notes and Related Subsidiaries
Effective Date of 2022 Amendment

Pub. L. 117–328, div. KK, §103(b), Dec. 29, 2022, 136 Stat. 6096, provided that:

> "The amendments made by section 102(b) [amending this section and section 216 of this title] shall take effect on the date that is 120 days after the date of enactment of this Act [Dec. 29, 2022]."

Effective Date of 1949 Amendment

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

Liability of Public Agency for Discrimination Against Employee for Assertion of Coverage

Pub. L. 99–150, §8, Nov. 13, 1985, 99 Stat. 791, provided that:

> "A public agency which is a State, political subdivision of a State, or an interstate governmental agency and which discriminates or has discriminated against an employee with respect to the employee's wages or other terms or conditions of employment because on or after February 19, 1985, the employee asserted coverage under section 7 of the Fair Labor Standards Act of 1938 [29 U.S.C. 207] shall be held to have violated section 15(a)(3) of such Act [29 U.S.C. 215(a)(3)]. The protection against discrimination afforded by the preceding sentence shall be available after August 1, 1986, only for an employee who takes an action described in section 15(a)(3) of such Act."

Executive Documents
Transfer of Functions

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

29 USC §216 | PENALTIES

(a) Fines and imprisonment

Any person who willfully violates any of the provisions of section 215 of this title shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Damages; right of action; attorney's fees and costs; termination of right of action

Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 215(a)(3) or 218d of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) or 218d of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. Any employer who violates section 203(m)(2)(B) of this title shall be liable to the employee or employees affected in the amount of the sum of any tip credit taken by the employer and all such tips unlawfully kept by the employer, and in an additional equal amount as liquidated damages. An action to recover the liability prescribed in the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing

of a complaint by the Secretary of Labor in an action under section 217 of this title in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 or section 207 of this title by an employer liable therefor under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of section 215(a)(3) or 218d of this title.

(c) Payment of wages and compensation; waiver of claims; actions by the Secretary; limitation of actions

The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 or section 207 of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) to bring an action by or on behalf of any employee to recover the liability specified in the first sentence of such subsection and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b), unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Secretary of Labor on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary of Labor under this subsection for

the purposes of the statutes of limitations provided in section 6(a) of the Portal-to-Portal Act of 1947 [29 U.S.C. 255(a)], it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action. The authority and requirements described in this subsection shall apply with respect to a violation of section 203(m)(2)(B) of this title, as appropriate, and the employer shall be liable for the amount of the sum of any tip credit taken by the employer and all such tips unlawfully kept by the employer, and an additional equal amount as liquidated damages.

(d) Savings provisions

In any action or proceeding commenced prior to, on, or after August 8, 1956, no employer shall be subject to any liability or punishment under this chapter or the Portal-to-Portal Act of 1947 [29 U.S.C. 251 et seq.] on account of his failure to comply with any provision or provisions of this chapter or such Act (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 213(f) of this title is applicable, (2) with respect to work performed in Guam, the Canal Zone or Wake Island before the effective date of this amendment of subsection (d), or (3) with respect to work performed in a possession named in section 206(a)(3)[1] of this title at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

(e) Civil penalties for certain violations

(1)

(A) Any person who violates the provisions of sections[2] 212 or 213(c) of this title, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty not to exceed -

(i) $11,000 for each employee who was the subject of such a violation; or

(ii) $50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is a repeated or willful violation.

(B) For purposes of subparagraph (A), the term "serious injury" means -

(i) permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

(ii) permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or

(iii) permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

(2) Any person who repeatedly or willfully violates section 206 or 207 of this title, relating to wages, shall be subject to a civil penalty not to exceed $1,100 for each such violation. Any person who violates section 203(m)(2)(B) of this title shall be subject to a civil penalty not to exceed $1,100 for each such violation, as the Secretary determines appropriate, in addition to being liable to the employee or employees affected for all tips unlawfully kept, and an additional equal amount as liquidated damages, as described in subsection (b).

(3) In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under this subsection, when finally determined, may be -

(A) deducted from any sums owing by the United States to the person charged;

(B) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(C) ordered by the court, in an action brought for a violation of section 215(a)(4) of this title or a repeated or willful violation of section 215(a)(2) of this title, to be paid to the Secretary.

(4) Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5 and regulations to be promulgated by the Secretary.

(5) Except for civil penalties collected for violations of section 212 of this title, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 9a of this title. Civil penalties collected for violations of section 212 of this title shall be deposited in the general fund of the Treasury.

(June 25, 1938, ch. 676, § 16, 52 Stat. 1069; May 14, 1947, ch. 52, § 5(a), 61 Stat. 87; Oct. 26, 1949, ch. 736, § 14, 63 Stat. 919; 1950 Reorg. Plan No. 6, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263; Aug. 8, 1956, ch. 1035, § 4, 70 Stat. 1118; Pub. L. 85–231, § 1(2), Aug. 30, 1957, 71 Stat. 514; Pub. L. 87–30, § 12(a), May 5, 1961, 75 Stat. 74; Pub. L. 89–601, title VI, § 601(a), Sept. 23, 1966, 80 Stat. 844; Pub. L. 93–259, §§6(d)(1), 25(c), 26, Apr. 8, 1974, 88 Stat. 61, 72, 73; Pub. L. 95–151, § 10, Nov. 1, 1977, 91 Stat. 1252; Pub. L. 101–157, § 9, Nov. 17, 1989, 103 Stat. 945; Pub. L. 101–508, title III, § 3103, Nov. 5, 1990, 104 Stat. 1388–29; Pub. L. 104–174, § 2, Aug. 6, 1996, 110 Stat. 1554; Pub. L. 110–233, title III, § 302(a), May 21, 2008, 122 Stat. 920; Pub. L. 115–141, div. S, title XII, § 1201(b), Mar. 23, 2018, 132 Stat. 1148; Pub. L. 117–328, div. KK, §102(b)(2), Dec. 29, 2022, 136 Stat. 6096.)

Editorial Notes
References in Text

The Portal-to-Portal Act of 1947, referred to in subsec. (d), is act May 14, 1947, ch. 52, 61 Stat. 84 , which is classified principally to chapter 9 (§251 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 251 of this title and Tables.

The effective date of this amendment of subsection (d), referred to in subsec. (d), occurred upon the expiration of 90 days after Aug. 30, 1957. See section 2 of Pub. L. 85–231, set out as an Effective Date of 1957 Amendment note under section 213 of this title.

Section 206(a)(3) of this title, referred to in subsec. (d)(3), was repealed and section 206(a)(4) of this title was redesignated section 206(a)(3) by Pub. L. 110–28, title VIII, §8103(c)(1)(B), May 25, 2007, 121 Stat. 189.

Constitutionality

For information regarding the constitutionality of certain provisions of this section, see the Table of Laws Held Unconstitutional in Whole or in Part by the Supreme Court on the Constitution Annotated website, constitution.congress.gov.

Amendments

2022 - Subsec. (b). Pub. L. 117–328 substituted "section 215(a)(3) or 218d" for "section 215(a)(3)" wherever appearing.

2018 - Subsec. (b). Pub. L. 115–141, §1201(b)(1), inserted "Any employer who violates section 203(m)(2)(B) of this title shall be liable to the employee or employees affected in the amount of the sum of any tip credit taken by the employer and all such tips unlawfully kept by the employer, and in an additional equal amount as liquidated damages." after second sentence and struck out "either of" after "liability prescribed in".

Subsec. (c). Pub. L. 115–141, §1201(b)(2), inserted at end "The authority and requirements described in this subsection shall apply with respect to a violation of section 203(m)(2)(B) of this title, as appropriate, and the employer shall be liable for the amount of the sum of any tip credit taken by the employer and all such tips unlawfully kept by the employer, and an additional equal amount as liquidated damages."

Subsec. (e)(2). Pub. L. 115–141, §1201(b)(3), inserted at end "Any person who violates section 203(m)(2)(B) of this title shall be subject to a civil penalty not to exceed $1,100 for each such violation, as the Secretary determines appropriate, in addition to being liable to the employee or employees affected for all tips unlawfully kept, and an additional equal amount as liquidated damages, as described in subsection (b)."

2008 - Subsec. (e). Pub. L. 110–233 amended subsec. (e) generally. Prior to amendment, subsec. (e) related to civil penalties for certain violations.

1996 - Subsec. (e). Pub. L. 104–174 in first sentence substituted "of section 212 of this title or section 213(c)(5) of this title" for "of section 212 of this title" and "under section 212 of this title or section 213(c)(5) of this title" for "under that section".

1990 - Subsec. (e). Pub. L. 101–508 struck out "or any person who repeatedly or willfully violates section 206 or 207 of this title" after "issued under that section," in first sentence, substituted "not to exceed $10,000 for each employee who was the subject of such a violation" for "not to exceed $1,000 for each such violation" in first sentence, inserted after first sentence "Any person who repeatedly or willfully violates section 206 or 207 of this title shall be subject to a civil penalty of not to exceed $1,000 for each such violation.", substituted "any penalty under this subsection" for "such penalty" wherever appearing except after "appropriateness of", substituted "Except for civil penalties collected for violations of section 212 of this title, sums" for "Sums" in last sentence, and inserted at end "Civil penalties collected for violations of section 212 of this title shall be deposited in the general fund of the Treasury."

1989 - Subsec. (e). Pub. L. 101–157 inserted "or any person who repeatedly or willfully violates section 206 or 207 of this title" in introductory provisions and inserted "or a repeated or willful violation of section 215(a)(2) of this title" in par. (3).

1977 - Subsec. (b). Pub. L. 95–151, §10(a), (b), inserted provisions relating to violations of section 215(a)(3) of this title by employers, "(1)" after "section 217 of this title in which", and cl. (2), and substituted "An action to recover the liability prescribed in either of the preceding sentences" for "Action to recover such liability".

Subsec. (c). Pub. L. 95–151, §10(c), inserted "to recover the liability specified in the first sentence of such subsection" after "an action by or on behalf of any employee".

1974 - Subsec. (b). Pub. L. 93–259, §6(d)(1), substituted in second sentence "maintained against any employer (including a public agency) in any Federal or State court" for "maintained in any court".

Subsec. (c). Pub. L. 93–259, §26, in revising first three sentences, reenacted first sentence, substituting "Secretary" for "Secretary of Labor"; included in second sentence provision for an action by the Secretary for liquidated damaged and deleted requirement of a written request by an employee claiming unpaid minimum wages or unpaid overtime compensation with the Secretary of Labor prior to an action by the Secretary and proviso prohibiting any action in any case involving an issue of law not settled finally by the courts and depriving courts of jurisdiction of any action or proceeding involving the issue of law not settled finally; and substituted third sentence "The right provided by subsection (b) to bring by or on behalf of any employee and of any employees to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b), unless such action is dismissed without prejudice on motion of the Secretary." for "The consent of any employee to the bringing of any such action by the Secretary of Labor, unless such action is dismissed without prejudice on motion of the

Secretary of Labor, shall constitute a waiver by such employee of any right of action he may have under subsection (b) of this section for such unpaid wages or unpaid overtime compensation and an additional equal amount as liquidated damages."

Subsec. (e). Pub. L. 93–259, §25(c), added subsec. (e).

1966 - Subsec. (c). Pub. L. 89–601 substituted "statutes of limitations" for "two-year statute of limitations".

1961 - Subsec. (b). Pub. L. 87–30 provided for termination of right of action upon commencement of injunction proceedings by the Secretary of Labor.

1957 - Subsec. (d). Pub. L. 85–231 added cls. (1) and (2) and designated existing provisions as cl. (3).

1956 - Subsec. (d). Act Aug. 8, 1956, added subsec. (d).

1949 - Subsec. (c). Act Oct. 26, 1949, added subsec. (c).

1947 - Subsec. (b). Act May 14, 1947, struck out provisions relating to the designation by employee or employees of an agent or representative to maintain an action under this section for and on behalf of all employees similarly situated and inserted provisions relating to the requirement that no employee shall be a party plaintiff unless he gives his consent in writing and such consent is filed with the court.

Statutory Notes and Related Subsidiaries
Effective Date of 2022 Amendment

Amendment by Pub. L. 117–328 effective 120 days after Dec. 29, 2022, see section 103(b) of div. KK of Pub. L. 117–328, set out as a note under section 215 of this title.

Effective Date of 2008 Amendment

Pub. L. 110–233, title III, §302(b), May 21, 2008, 122 Stat. 922 , provided that:

> "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [May 21, 2008]."

Effective Date of 1977 Amendment

Amendment by Pub. L. 95–151 effective Jan. 1, 1978, see section 15(a) of Pub. L. 95–151, set out as a note under section 203 of this title.

Effective Date of 1974 Amendment

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

Effective Date of 1966 Amendment

Amendment by Pub. L. 89–601 effective Feb. 1, 1967, except as otherwise provided, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

Effective Date of 1961 Amendment

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87–30, set out as a note under section 203 of this title.

Effective Date of 1957 Amendment

Amendment by Pub. L. 85–231 effective upon expiration of ninety days from Aug. 30, 1957, see section 2 of Pub. L. 85–231, set out as a note under section 213 of this title.

Effective Date of 1949 Amendment

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

Effective Date of 1947 Amendment

Act May 14, 1947, ch. 52, §5(b), 61 Stat. 87 , provided that:

> "The amendment made by subsection (a) of this section [amending this section] shall be applicable only with respect to actions commenced under the Fair Labor Standards Act of 1938, as amended [this chapter], on or after the date of the enactment of this Act [May 14, 1947]."

Liability of State, Political Subdivision, or Interstate Governmental Agency for Violations Before April 15, 1986, Respecting any Employee Not Covered Under Special Enforcement Policy

Pub. L. 99–150, §2(c)(1), Nov. 13, 1985, 99 Stat. 788 , provided that:

> "No State, political subdivision of a State, or interstate governmental agency shall be liable under section 16 of the Fair Labor Standards Act of 1938 [29 U.S.C. 216] for a violation of section 6 [29 U.S.C. 206] (in the case of a territory or possession of the United States), 7 [29 U.S.C. 207], or 11(c) [29 U.S.C. 211(c)] (as it relates to section 7) of such Act occurring before April 15, 1986, with respect to any employee of the State, political subdivision, or agency who would not have been covered by such Act [this chapter] under the Secretary of Labor's special enforcement policy on January 1, 1985, and published in sections 775.2 and 775.4 of title 29 of the Code of Federal Regulations."

Effect of Amendments by Public Law 99–150 on Public Agency Liability Respecting any Employee Covered Under Special Enforcement Policy

Pub. L. 99–150, §7, Nov. 13, 1985, 99 Stat. 791 , provided that:

> "The amendments made by this Act [see Short Title of 1985 Amendment note set out under section 201 of this title] shall not affect whether a public agency which is a State, political subdivision of a State, or an interstate

> governmental agency is liable under section 16 of the Fair Labor Standards Act of 1938 [29 U.S.C. 216] for a violation of section 6, 7, or 11 of such Act [29 U.S.C. 206, 207, 211] occurring before April 15, 1986, with respect to any employee of such public agency who would have been covered by such Act [this chapter] under the Secretary of Labor's special enforcement policy on January 1, 1985, and published in section 775.3 of title 29 of the Code of Federal Regulations."

Rules, Regulations, and Orders Promulgated With Regard to 1966 Amendments

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89–601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89–601, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

Construction of 1949 Amendments With Portal-to-Portal Act of 1947

Act Oct. 26, 1949, ch. 736, §16(b), 63 Stat. 920 , provided that:

> "Except as provided in section 3(o) [29 U.S.C. 203(o)] and in the last sentence of section 16(c) of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 216(c)], no amendment made by this Act [amending sections 202, 208, 211 to 217 of this title] shall be construed as amending, modifying, or repealing any provisions of the Portal-to-Portal Act of 1947."

Retroactive Effect of 1949 Amendments; Limitation of Actions

Act Oct. 26, 1949, ch. 736, §16(d), 63 Stat. 920 , provided that actions based upon acts or omissions occurring prior to the effective date of act Oct. 26, 1949, which was to be effective ninety days after Oct. 26, 1949, were not prevented by the amendments made to sections 202 to 208, and 211 to 217 of this title by such act, so long as such actions were instituted within two years from such effective date.

Executive Documents
Transfer of Functions

Functions relating to enforcement and administration of equal pay provisions vested by subsecs. (b) and (c) of this section in Secretary of Labor transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, §1, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

Footnotes

[1] See References in Text note below.

[2] So in original. Probably should be "section".

29 USC §217 | INJUNCTION PROCEEDINGS

The district courts, together with the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction, for cause shown, to restrain violations of section 215 of this title, including in the case of violations of section 215(a)(2) of this title the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this chapter (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 255 of this title).

(June 25, 1938, ch. 676, § 17, 52 Stat. 1069; Oct. 26, 1949, ch. 736, § 15, 63 Stat. 919; Pub. L. 85–231, § 1(3), Aug. 30, 1957, 71 Stat. 514; Pub. L. 86–624, § 21(c), July 12, 1960, 74 Stat. 417; Pub. L. 87–30, § 12(b), May 5, 1961, 75 Stat. 74.)

29 USC §218 | RELATION TO OTHER LAWS

(a) No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

(b) Notwithstanding any other provision of this chapter (other than section 213(f) of this title) or any other law —

(1) any Federal employee in the Canal Zone engaged in employment of the kind described in section 5102(c)(7) of title 5, or

(2) any employee employed in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

shall have his basic compensation fixed or adjusted at a wage rate that is not less than the appropriate wage rate provided for in section 206(a)(1) of this title (except that the wage rate provided for in section 206(b) of this title shall apply to any employee who performed services during the workweek in a work place within the Canal Zone), and shall have his overtime compensation set at an hourly rate not less than the overtime rate provided for in section 207(a)(1) of this title.

(June 25, 1938, ch. 676, § 18, 52 Stat. 1069; Pub. L. 89–601, title III, § 306, Sept. 23, 1966, 80 Stat. 841; Pub. L. 90–83, § 8, Sept. 11, 1967, 81 Stat. 222.)

29 USC §219 | SEPARABILITY

If any provision of this chapter or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(June 25, 1938, ch. 676, § 19, 52 Stat. 1069.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 29 LABOR

CHAPTER: 9 PORTAL-TO-PORTAL PAY

SUBCHAPTER: --

SECTIONS: §251 through §262

Not the Entire Chapter!! Pertinent Parts Only!

29 USC §255 | STATUTE OF LIMITATIONS

Any action commenced on or after May 14, 1947, to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act, or the Bacon-Davis Act [1] —

(a) if the cause of action accrues on or after May 14, 1947 — may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued;

(b) if the cause of action accrued prior to May 14, 1947 — may be commenced within whichever of the following periods is the shorter: (1) two years after the cause of action accrued, or (2) the period prescribed by the applicable State statute of limitations; and, except as provided in paragraph (c), every such action shall be forever barred unless commenced within the shorter of such two periods;

(c) if the cause of action accrued prior to May 14, 1947, the action shall not be barred by paragraph (b) if it is commenced within one hundred and twenty days after May 14, 1947 unless at the time commenced it is barred by an applicable State statute of limitations;

(d) with respect to any cause of action brought under section 216(b) of this title against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1974, except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction.

(May 14, 1947, ch. 52, § 6, 61 Stat. 87; Pub. L. 89–601, title VI, § 601(b), Sept. 23, 1966, 80 Stat. 844; Pub. L. 93–259, § 6(d)(2)(A), Apr. 8, 1974, 88 Stat. 61.)

29 USC §256 | DETERMINATION OF COMMENCEMENT OF FUTURE ACTIONS

In determining when an action is commenced for the purposes of section 255 of this title, an action commenced on or after May 14, 1947 under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act, or the Bacon-Davis Act,[1] shall be considered to be commenced on the date when the complaint is filed; except that in the case of a collective or class action instituted under the Fair Labor Standards Act of 1938, as amended, or the Bacon-Davis Act,[1] it shall be considered to be commenced in the case of any individual claimant —

(a) on the date when the complaint is filed, if he is specifically named as a party plaintiff in the complaint and his written consent to become a party plaintiff is filed on such date in the court in which the action is brought; or

(b) if such written consent was not so filed or if his name did not so appear — on the subsequent date on which such written consent is filed in the court in which the action was commenced.

(May 14, 1947, ch. 52, § 7, 61 Stat. 88.)

29 USC §259 | RELIANCE IN FUTURE ON ADMINISTRATIVE RULINGS, ETC.

(a) In any action or proceeding based on any act or omission on or after May 14, 1947, no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act, or the Bacon-Davis Act,[1] if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, of the agency of the United States specified in subsection (b) of this section, or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

(b) The agency referred to in subsection (a) shall be —

(1) in the case of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.] — the Administrator of the Wage and Hour Division of the Department of Labor;

(2) in the case of the Walsh-Healey Act — the Secretary of Labor, or any Federal officer utilized by him in the administration of such Act; and

(3) in the case of the Bacon-Davis Act 1 — the Secretary of Labor.

(May 14, 1947, ch. 52, § 10, 61 Stat. 89.)

29 USC §260 | LIQUIDATED DAMAGES

In any action commenced prior to or on or after May 14, 1947 to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 216 of this title.

(May 14, 1947, ch. 52, § 11, 61 Stat. 89; Pub. L. 93–259, § 6(d)(2)(B), Apr. 8, 1974, 88 Stat. 62.)

29 USC §262 | DEFINITIONS

(a) When the terms "employer", "employee", and "wage" are used in this chapter in relation to the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], they shall have the same meaning as when used in such Act of 1938.

(b) When the term "employer" is used in this chapter in relation to the Walsh-Healey Act or Bacon-Davis Act [1] it shall mean the contractor or subcontractor covered by such Act.

(c) When the term "employee" is used in this chapter in relation to the Walsh-Healey Act or the Bacon-Davis Act 1 it shall mean any individual employed by the contractor or subcontractor covered by such Act in the performance of his contract or subcontract.

(d) The term "Wash-Healey Act" [2] means the Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", approved June 30, 1936 (49 Stat. 2036), as amended; 1 and the term "Bacon-Davis Act" means the Act entitled "An Act to amend the Act approved March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings", approved August 30, 1935 (49 Stat. 1011), as amended.1

(e) As used in section 255 of this title the term "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(May 14, 1947, ch. 52, § 13, 61 Stat. 90.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 29 LABOR

PART: 14 AGE DISCRIMINATION IN EMPLOYMENT

CHAPTER: -- EQUAL PAY ACT OF 1963, AS AMENDED

SECTIONS: §621 through §634

NOTE: **not the entire subchapter** (pertinent statutes only!!!)

29 USC §621 | CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE

(a) The Congress hereby finds and declares that —

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

(Pub. L. 90–202, § 2, Dec. 15, 1967, 81 Stat. 602.)

29 USC §622 | EDUCATION AND RESEARCH PROGRAM; RECOMMENDATION TO CONGRESS

(a) The Secretary of Labor shall undertake studies and provide information to labor unions, management, and the general public concerning the needs and abilities of older workers, and their potentials for continued employment and contribution to the economy. In order to achieve the purposes of this chapter, the Secretary of Labor shall carry on a continuing program of education and information, under which he may, among other measures —

(1) undertake research, and promote research, with a view to reducing barriers to the employment of older persons, and the promotion of measures for utilizing their skills;

(2) publish and otherwise make available to employers, professional societies, the various media of communication, and other interested persons the findings of studies and other materials for the promotion of employment;

(3) foster through the public employment service system and through cooperative effort the development of facilities of public and private agencies for expanding the opportunities and potentials of older persons;

(4) sponsor and assist State and community informational and educational programs.

(b) Not later than six months after the effective date of this chapter, the Secretary shall recommend to the Congress any measures he may deem desirable to change the lower or upper age limits set forth in section 631 of this title.

(Pub. L. 90–202, § 3, Dec. 15, 1967, 81 Stat. 602.)

29 USC §623 | PROHIBITION OF AGE DISCRIMINATION

(a) Employer practices It shall be unlawful for an employer —

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

(b) Employment agency practices

It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age.

(c) Labor organization practices It shall be unlawful for a labor organization —

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's age;

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Opposition to unlawful practices; participation in investigations, proceedings, or litigation

It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

(e) Printing or publication of notice or advertisement indicating preference, limitation, etc.

It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

(f) Lawful practices; age an occupational qualification; other reasonable factors; laws of foreign workplace; seniority system; employee benefit plans; discharge or discipline for good cause It shall not be unlawful for an employer, employment agency, or labor organization —

(1) to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such

employer, to violate the laws of the country in which such workplace is located;

(2) to take any action otherwise prohibited under subsection (a), (b), (c), or (e) of this section —

(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this chapter, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or

(B) to observe the terms of a bona fide employee benefit plan —

(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

(ii) that is a voluntary early retirement incentive plan consistent with the relevant purpose or purposes of this chapter.

Notwithstanding clause (i) or (ii) of subparagraph (B), no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title, because of the age of such individual. An employer, employment agency, or labor organization acting under subparagraph (A), or under clause (i) or (ii) of subparagraph (B), shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this chapter; or

(3) to discharge or otherwise discipline an individual for good cause.

(g) Repealed. Pub. L. 101–239, title VI, § 6202(b)(3)(C)(i), Dec. 19, 1989, 103 Stat. 2233

(h) Practices of foreign corporations controlled by American employers; foreign employers not controlled by American employers; factors determining control

(1) If an employer controls a corporation whose place of incorporation is in a foreign country, any practice by such corporation prohibited under this section shall be presumed to be such practice by such employer.

(2) The prohibitions of this section shall not apply where the employer is a foreign person not controlled by an American employer.

(3) For the purpose of this subsection the determination of whether an employer controls a corporation shall be based upon the —

(A) interrelation of operations,

(B) common management,

(C) centralized control of labor relations, and

(D) common ownership or financial control, of the employer and the corporation.

(i) Employee pension benefit plans; cessation or reduction of benefit accrual or of allocation to employee account; distribution of benefits after attainment of normal retirement age; compliance; highly compensated employees

(1) Except as otherwise provided in this subsection, it shall be unlawful for an employer, an employment agency, a labor organization, or any combination thereof to establish or maintain an employee pension benefit plan which requires or permits —

(A) in the case of a defined benefit plan, the cessation of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual, because of age, or

(B) in the case of a defined contribution plan, the cessation of allocations to an employee's account, or the reduction of the rate at which amounts are allocated to an employee's account, because of age.

(2) Nothing in this section shall be construed to prohibit an employer, employment agency, or labor organization from observing any provision of an employee pension benefit plan to the extent that such provision imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

(3) In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan —

(A) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

(B) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 1056(a)(3) of this title and section 401(a)(14)(C) of title 26, and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 1053(a)(3)(B) of this title or section 411(a)(3)(B) of title 26, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The provisions of this paragraph shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations shall provide for the application of the preceding provisions of this paragraph to all employee pension benefit plans subject to this subsection and may provide for the

application of such provisions, in the case of any such employee, with respect to any period of time within a plan year.

(4) Compliance with the requirements of this subsection with respect to an employee pension benefit plan shall constitute compliance with the requirements of this section relating to benefit accrual under such plan.

(5) Paragraph (1) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of title 26) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of title 26.

(6) A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals or it is a plan permitted by subsection (m)..[1]

(7) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of title 26 and subparagraphs (C) and (D)[2] of section 411(b)(2) of title 26 shall apply with respect to the requirements of this subsection in the same manner and to the same extent as such regulations apply with respect to the requirements of such sections 411(b)(1)(H) and 411(b)(2).

(8) A plan shall not be treated as failing to meet the requirements of this section solely because such plan provides a normal retirement age described in section 1002(24)(B) of this title and section 411(a)(8)(B) of title 26.

(9) For purposes of this subsection —

(A) The terms "employee pension benefit plan", "defined benefit plan", "defined contribution plan", and "normal retirement age" have the meanings provided such terms in section 1002 of this title.

(B) The term "compensation" has the meaning provided by section 414(s) of title 26.

(10) Special rules relating to age. —

(A) Comparison to similarly situated younger individual. —

(i) In general. —

A plan shall not be treated as failing to meet the requirements of paragraph (1) if a participant's accrued benefit, as determined as of any date under the terms of the plan, would be equal to or greater than that of any similarly situated, younger individual who is or could be a participant.

(ii) Similarly situated. —

For purposes of this subparagraph, a participant is similarly situated to any other individual if such participant is identical to such other individual in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

(iii) Disregard of subsidized early retirement benefits. —

In determining the accrued benefit as of any date for purposes of this clause, the subsidized portion of any early retirement benefit or retirement-type subsidy shall be disregarded.

(iv) Accrued benefit. —

For purposes of this subparagraph, the accrued benefit may, under the terms of the plan, be expressed as an annuity payable at normal retirement age, the balance of a hypothetical account, or the current value of the accumulated percentage of the employee's final average compensation.

(B) Applicable defined benefit plans. —

(i) Interest credits. —

(I) In general. —

An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1) unless the terms of the plan provide that any interest credit (or an equivalent amount) for any plan year shall be at a rate which is not greater than a market rate of return. A plan shall not be treated as failing to meet the requirements of this subclause merely because the plan provides for a reasonable minimum guaranteed rate of return or for a rate of return that is equal to the greater of a fixed or variable rate of return.

(II) Preservation of capital. —

An interest credit (or an equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.

(III) Market rate of return. —

The Secretary of the Treasury may provide by regulation for rules governing the calculation of a market rate of return for purposes of subclause (I) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subclause (I). In the case of a governmental plan (as defined in the first sentence of section 414(d) of title 26), a rate of return or a method of crediting interest established pursuant to any provision of Federal, State, or local law (including any

administrative rule or policy adopted in accordance with any such law) shall be treated as a market rate of return for purposes of subclause (I) and a permissible method of crediting interest for purposes of meeting the requirements of subclause (I), except that this sentence shall only apply to a rate of return or method of crediting interest if such rate or method does not violate any other requirement of this chapter.

(ii) Special rule for plan conversions. —

If, after June 29, 2005, an applicable plan amendment is adopted, the plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the requirements of clause (iii) are met with respect to each individual who was a participant in the plan immediately before the adoption of the amendment.

(iii) Rate of benefit accrual. — Subject to clause (iv), the requirements of this clause are met with respect to any participant if the accrued benefit of the participant under the terms of the plan as in effect after the amendment is not less than the sum of —

(I) the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

(II) the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

(iv) Special rules for early retirement subsidies. —

For purposes of clause (iii)(I), the plan shall credit the accumulation account or

similar amount [3] with the amount of any early retirement benefit or retirement-type subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

(v) Applicable plan amendment. — For purposes of this subparagraph —

(I) In general. —

The term "applicable plan amendment" means an amendment to a defined benefit plan which has the effect of converting the plan to an applicable defined benefit plan.

(II) Special rule for coordinated benefits. —

If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in subclause (I), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

(III) Multiple amendments. —

The Secretary of the Treasury shall issue regulations to prevent the avoidance of the purposes of this subparagraph through the use of 2 or more plan amendments rather than a single amendment.

(IV) Applicable defined benefit plan. —

For purposes of this subparagraph, the term "applicable defined benefit plan" has the meaning given such term by section 1053(f)(3) of this title.

(vi) Termination requirements. — An applicable defined benefit plan shall not be treated as meeting the requirements of clause (i) unless the plan provides that, upon the termination of the plan —

(I) if the interest credit rate (or an equivalent amount) under the plan is a variable rate, the rate of interest used to determine accrued benefits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date, and

(II) the interest rate and mortality table used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified under the plan for such purpose as of the termination date, except that if such interest rate is a variable rate, the interest rate shall be determined under the rules of subclause (I).

(C) Certain offsets permitted. —

A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides offsets against benefits under the plan to the extent such offsets are allowable in applying the requirements of section 401(a) of title 26.

(D) Permitted disparities in plan contributions or benefits. —

A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) of title 26 are met.

(E) Indexing permitted. —

(i) In general. —

A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides for indexing of accrued benefits under the plan.

(ii) Protection against loss. —

Except in the case of any benefit provided in the form of a variable annuity, clause (i) shall not apply with respect to any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.

(iii) Indexing. —

For purposes of this subparagraph, the term "indexing" means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.

(F) Early retirement benefit or retirement-type subsidy. —

For purposes of this paragraph, the terms "early retirement benefit" and "retirement-type subsidy" have the meaning given such terms in section 1054(g)(2)(A) of this title.[2]

(G) Benefit accrued to date. —

For purposes of this paragraph, any reference to the accrued benefit shall be a reference to such benefit accrued to date.

(j) Employment as firefighter or law enforcement officer It shall not be unlawful for an employer which is a State, a political subdivision of a State, an agency or instrumentality of a State or a political subdivision of a State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken —

(1) with respect to the employment of an individual as a firefighter or as a law enforcement officer, the employer has complied with section 3(d)(2) of the Age Discrimination in Employment Amendments of 1996[2] if the individual was discharged after the date described in such section, and the individual has attained —

(A) the age of hiring or retirement, respectively, in effect under applicable State or local law on March 3, 1983; or

(B)

(i) if the individual was not hired, the age of hiring in effect on the date of such failure or refusal to hire under applicable State or local law enacted after September 30, 1996; or

(ii) if applicable State or local law was enacted after September 30, 1996, and the individual was discharged, the higher of —

(I) the age of retirement in effect on the date of such discharge under such law; and

(II) age 55; and

(2) pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this chapter.

(k) Seniority system or employee benefit plan; compliance

A seniority system or employee benefit plan shall comply with this chapter regardless of the date of adoption of such system or plan.

(l) Lawful practices; minimum age as condition of eligibility for retirement benefits; deductions from severance pay; reduction of long-term disability benefits Notwithstanding clause (i) or (ii) of subsection (f)(2)(B) —

(1)

(A) It shall not be a violation of subsection (a), (b), (c), or (e) solely because —

(i) an employee pension benefit plan (as defined in section 1002(2) of this title)

provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or

(ii) a defined benefit plan (as defined in section 1002(35) of this title) provides for —

(I) payments that constitute the subsidized portion of an early retirement benefit; or

(II) social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that do not exceed such old-age insurance benefits.

(B) A voluntary early retirement incentive plan that —

(i) is maintained by —

(I) a local educational agency (as defined in section 7801 of title 20), or

(II) an education association which principally represents employees of 1 or more agencies described in subclause (I) and which is described in section 501(c)(5) or (6) of title 26 and exempt from taxation under section 501(a) of title 26, and

(ii) makes payments or supplements described in subclauses (I) and (II) of subparagraph (A)(ii) in coordination with a defined benefit plan (as so defined) maintained by an eligible employer described in section 457(e)(1)(A) of title 26 or by an education association described in clause (i)(II), shall be treated solely for purposes of subparagraph (A)(ii) as if it were a part of the defined benefit plan

with respect to such payments or supplements. Payments or supplements under such a voluntary early retirement incentive plan shall not constitute severance pay for purposes of paragraph (2).

(2)

(A) It shall not be a violation of subsection (a), (b), (c), or (e) solely because following a contingent event unrelated to age —

(i) the value of any retiree health benefits received by an individual eligible for an immediate pension;

(ii) the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and following which the individual is eligible for not less than an immediate and unreduced pension; or

(iii) the values described in both clauses (i) and (ii); are deducted from severance pay made available as a result of the contingent event unrelated to age.

(B) For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i) shall be reduced by the same percentage as the reduction in the pension benefits.

(C) For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of title 26) that —

(i) constitutes additional benefits of up to 52 weeks;

(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

(D) For purposes of this paragraph and solely in order to make the deduction authorized under this paragraph, the term "retiree health benefits" means benefits provided pursuant to a group health plan covering retirees, for which (determined as of the contingent event unrelated to age) —

(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act; or

(iii) the package of benefits provided by the employer is as described in clauses (i) and (ii).

(E)

(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of $3,000 per year for benefit years before age 65, and $750 per year for benefit years beginning at age 65 and above.

(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of $48,000 for individuals below age 65, and $24,000 for individuals age 65 and above.

(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on October 16, 1990, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after October 16, 1990, based on the medical component of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(iv) If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

(F) If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

(3) It shall not be a violation of subsection (a), (b), (c), or (e) solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits (other than those attributable to employee contributions) —

(A) paid to the individual that the individual voluntarily elects to receive; or

(B) for which an individual who has attained the later of age 62 or normal retirement age is eligible.

(m) Voluntary retirement incentive plans Notwithstanding subsection (f)(2)(B), it shall not be a violation of subsection (a), (b), (c), or (e) solely because a plan of an institution of higher education (as defined in section 1001

of title 20) offers employees who are serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) supplemental benefits upon voluntary retirement that are reduced or eliminated on the basis of age, if —

(1) such institution does not implement with respect to such employees any age-based reduction or cessation of benefits that are not such supplemental benefits, except as permitted by other provisions of this chapter;

(2) such supplemental benefits are in addition to any retirement or severance benefits which have been offered generally to employees serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure), independent of any early retirement or exit-incentive plan, within the preceding 365 days; and

(3) any employee who attains the minimum age and satisfies all non-age-based conditions for receiving a benefit under the plan has an opportunity lasting not less than 180 days to elect to retire and to receive the maximum benefit that could then be elected by a younger but otherwise similarly situated employee, and the plan does not require retirement to occur sooner than 180 days after such election.

(Pub. L. 90–202, § 4, Dec. 15, 1967, 81 Stat. 603; Pub. L. 95–256, § 2(a), Apr. 6, 1978, 92 Stat. 189; Pub. L. 97–248, title I, § 116(a), Sept. 3, 1982, 96 Stat. 353; Pub. L. 98–369, div. B, title III, § 2301(b), July 18, 1984, 98 Stat. 1063; Pub. L. 98–459, title VIII, § 802(b), Oct. 9, 1984, 98 Stat. 1792; Pub. L. 99–272, title IX, § 9201(b)(1), (3), Apr. 7, 1986, 100 Stat. 171; Pub. L. 99–509, title IX, § 9201, Oct. 21, 1986, 100 Stat. 1973; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–592, §§ 2(a), (b), 3(a), Oct. 31, 1986, 100 Stat. 3342; Pub. L. 101–239, title VI, § 6202(b)(3)(C)(i), Dec. 19, 1989, 103 Stat. 2233; Pub. L. 101–433, title I, § 103, Oct. 16, 1990, 104 Stat. 978; Pub. L. 101–521, Nov. 5, 1990, 104 Stat. 2287; Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 119[1(b)]], Sept. 30, 1996, 110 Stat. 3009, 3009–23; Pub. L. 105–244, title IX, § 941(a), (b), Oct. 7, 1998, 112 Stat. 1834, 1835; Pub. L. 109–280, title VII, § 701(c), title XI, § 1104(a)(2), Aug. 17, 2006, 120 Stat. 988, 1058; Pub. L. 110–458, title I, § 123(a), Dec. 23, 2008, 122 Stat. 5114; Pub. L. 114–95, title IX, § 9215(e), Dec. 10, 2015, 129 Stat. 2166.)

29 USC §624 | STUDY BY SECRETARY OF LABOR; REPORTS TO PRESIDENT AND CONGRESS; SCOPE OF STUDY; IMPLEMENTATION OF STUDY; TRANSMITTAL DATE OF REPORTS

(a)

(1) The Secretary of Labor is directed to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to the Congress. Such study shall include —

(A) an examination of the effect of the amendment made by section 3(a) of the Age Discrimination in Employment Act Amendments of 1978 in raising the upper age limitation established by section 631(a) of this title to 70 years of age;

(B) a determination of the feasibility of eliminating such limitation;

(C) a determination of the feasibility of raising such limitation above 70 years of age; and

(D) an examination of the effect of the exemption contained in section 631(c) of this title, relating to certain executive employees, and the exemption contained in section 631(d) of this title, relating to tenured teaching personnel.

(2) The Secretary may undertake the study required by paragraph (1) of this subsection directly or by contract or other arrangement.

(b) The report required by subsection (a) of this section shall be transmitted to the President and to the Congress as an interim report not later than January 1, 1981, and in final form not later than January 1, 1982.

(Pub. L. 90–202, § 5, Dec. 15, 1967, 81 Stat. 604; Pub. L. 95–256, § 6, Apr. 6, 1978, 92 Stat. 192.)

29 USC §625 | ADMINISTRATION

The Secretary shall have the power —

(a) Delegation of functions; appointment of personnel; technical assistance to make delegations, to appoint such agents and employees, and to pay for technical assistance on a fee for service basis, as he deems necessary to assist him in the performance of his functions under this chapter;

(b) Cooperation with other agencies, employers, labor organizations, and employment agencies to cooperate with regional, State, local, and other agencies, and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this chapter.

(Pub. L. 90–202, § 6, Dec. 15, 1967, 81 Stat. 604.)

29 USC §626 | RECORDKEEPING, INVESTIGATION, AND ENFORCEMENT

(a) Attendance of witnesses; investigations, inspections, records, and homework regulations The Equal Employment Opportunity Commission shall have the power to make investigations and require the keeping of records necessary or appropriate for the administration of this chapter in accordance with the powers and procedures provided in sections 209 and 211 of this title.

(b) Enforcement; prohibition of age discrimination under fair labor standards; unpaid minimum wages and unpaid overtime compensation; liquidated damages; judicial relief; conciliation, conference, and persuasion

The provisions of this chapter shall be enforced in accordance with the powers, remedies, and procedures provided in sections 211(b), 216 (except for subsection (a) thereof), and 217 of this title, and subsection (c) of this section. Any act prohibited under section 623 of this title shall be deemed to be a prohibited act under section 215 of this title. Amounts owing to a person as a result of a violation of this chapter shall be deemed to be unpaid minimum wages or unpaid overtime compensation for purposes of sections 216 and 217 of this title: Provided, That liquidated damages shall be payable only in cases of willful violations of this chapter. In any action brought to enforce this chapter the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to effectuate the purposes of this chapter, including without limitation judgments compelling employment, reinstatement or promotion, or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section. Before instituting any action under this section, the Equal Employment Opportunity Commission shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with the requirements of this chapter through informal methods of conciliation, conference, and persuasion.

(c) Civil actions; persons aggrieved; jurisdiction; judicial relief; termination of individual action upon commencement of action by Commission; jury trial

(1) Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter: Provided, That the right of any person to bring such action shall terminate upon the commencement of an action by the Equal Employment Opportunity Commission to enforce the right of such employee under this chapter.

(2) In an action brought under paragraph (1), a person shall be entitled to a trial by jury of any issue of fact in any such action for recovery of amounts owing as a result of a violation of this chapter, regardless of whether equitable relief is sought by any party in such action.

(d) Filing of charge with Commission; timeliness; conciliation, conference, and persuasion; unlawful practice

(1) No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission. Such a charge shall be filed —

(A) within 180 days after the alleged unlawful practice occurred; or

(B) in a case to which section 633(b) of this title applies, within 300 days after the alleged unlawful practice occurred, or within 30 days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.

(2) Upon receiving such a charge, the Commission shall promptly notify all persons named in such charge as prospective defendants in the action and shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, and persuasion.

(3) For purposes of this section, an unlawful practice occurs, with respect to discrimination in compensation in violation of this chapter, when a discriminatory compensation decision or other practice is adopted, when a person becomes subject to a discriminatory compensation decision or other practice, or when a person is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

(e) Reliance on administrative rulings; notice of dismissal or termination; civil action after receipt of notice

Section 259 of this title shall apply to actions under this chapter. If a charge filed with the Commission under this chapter is dismissed or the proceedings of the Commission are otherwise terminated by the Commission, the Commission shall notify the person aggrieved. A civil action may be brought under this section by a person defined in section 630(a) of this title against the respondent named in the charge within 90 days after the date of the receipt of such notice.

(f) Waiver

(1) An individual may not waive any right or claim under this chapter unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum —

(A) the waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;

(B) the waiver specifically refers to rights or claims arising under this chapter;

(C) the individual does not waive rights or claims that may arise after the date the waiver is executed;

(D) the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

(E) the individual is advised in writing to consult with an attorney prior to executing the agreement;

(F)

(i) the individual is given a period of at least 21 days within which to consider the agreement; or

(ii) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement;

(G) the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

(H) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to —

(i) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

(ii) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

(2) A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 623 or 633a of this title may not be considered knowing and voluntary unless at a minimum —

(A) subparagraphs (A) through (E) of paragraph (1) have been met; and

(B) the individual is given a reasonable period of time within which to consider the settlement agreement.

(3) In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of paragraph (1), or subparagraph (A) or (B) of paragraph (2), have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

(4) No waiver agreement may affect the Commission's rights and responsibilities to enforce this chapter. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.

(Pub. L. 90–202, § 7, Dec. 15, 1967, 81 Stat. 604; Pub. L. 95–256, § 4(a), (b)(1), (c)(1), Apr. 6, 1978, 92 Stat. 190, 191; 1978 Reorg. Plan No. 1, § 2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781; Pub. L. 101–433, title II, § 201, Oct. 16, 1990, 104 Stat. 983; Pub. L. 102–166, title I, § 115, Nov. 21, 1991, 105 Stat. 1079; Pub. L. 111–2, § 4, Jan. 29, 2009, 123 Stat. 6.)

29 USC §627 | NOTICES TO BE POSTED

> Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice to be prepared or approved by the Equal Employment Opportunity Commission setting forth information as the Commission deems appropriate to effectuate the purposes of this chapter.

(Pub. L. 90–202, § 8, Dec. 15, 1967, 81 Stat. 605; 1978 Reorg. Plan No. 1, § 2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781.)

29 USC §628 | RULES AND REGULATIONS; EXEMPTIONS

In accordance with the provisions of subchapter II of chapter 5 of title 5, the Equal Employment Opportunity Commission may issue such rules and regulations as it may consider necessary or appropriate for carrying out this chapter, and may establish such reasonable exemptions to and from any or all provisions of this chapter as it may find necessary and proper in the public interest.

(Pub. L. 90–202, § 9, Dec. 15, 1967, 81 Stat. 605; 1978 Reorg. Plan No. 1, § 2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781.)

29 USC §629 | CRIMINAL PENALTIES

> Whoever shall forcibly resist, oppose, impede, intimidate or interfere with a duly authorized representative of the Equal Employment Opportunity Commission while it is engaged in the performance of duties under this chapter shall be punished by a fine of not more than $500 or by imprisonment for not more than one year, or by both: Provided, however, That no person shall be imprisoned under this section except when there has been a prior conviction here-under.

(Pub. L. 90–202, § 10, Dec. 15, 1967, 81 Stat. 605; 1978 Reorg. Plan No. 1, § 2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781.)

29 USC §630 | DEFINITIONS

For the purposes of this chapter —

(a) The term "person" means one or more individuals, partnerships, associations, labor organizations, corporations, business trusts, legal representatives, or any organized groups of persons.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year: Provided, That prior to June 30, 1968, employers having fewer than fifty employees shall not be considered employers. The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency, but such term does not include the United States, or a corporation wholly owned by the Government of the United States.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer and includes an agent of such a person; but shall not include an agency of the United States.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor

organizations or their representatives, if the aggregate number of the members of such other labor organization) is fifty or more prior to July 1, 1968, or twenty-five or more on or after July 1, 1968, and such labor organization —

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.]; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by any employer except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency, or political subdivision.

The term "employee" includes any individual who is a citizen of the United States employed by an employer in a workplace in a foreign country.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.].

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].

(j) The term "firefighter" means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

(k) The term "law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of a State, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this subsection, "detention" includes the duties of employees assigned to guard individuals incarcerated in any penal institution.

(l) The term "compensation, terms, conditions, or privileges of employment" encompasses all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan.

(Pub. L. 90–202, § 11, Dec. 15, 1967, 81 Stat. 605; Pub. L. 93–259, § 28(a)(1)–(4), Apr. 8, 1974, 88 Stat. 74; Pub. L. 98–459, title VIII, § 802(a), Oct. 9, 1984, 98 Stat. 1792; Pub. L. 99–592, § 4, Oct. 31, 1986, 100 Stat. 3343; Pub. L. 101–433, title I, § 102, Oct. 16, 1990, 104 Stat. 978.)

29 USC §631 | AGE LIMITS

(a) Individuals at least 40 years of age

The prohibitions in this chapter shall be limited to individuals who are at least 40 years of age.

(b) Employees or applicants for employment in Federal Government

In the case of any personnel action affecting employees or applicants for employment which is subject to the provisions of section 633a of this title, the prohibitions established in section 633a of this title shall be limited to individuals who are at least 40 years of age.

(c) Bona fide executives or high policymakers

(1) Nothing in this chapter shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least $44,000.

(2) In applying the retirement benefit test of paragraph (1) of this subsection, if any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits), or if employees contribute to any such plan or make rollover contributions, such benefit shall be adjusted in accordance with regulations prescribed by the Equal Employment Opportunity Commission, after consultation with the Secretary of the Treasury, so that the benefit is the equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

(Pub. L. 90–202, § 12, Dec. 15, 1967, 81 Stat. 607; Pub. L. 95–256, § 3(a), (b)(3), Apr. 6, 1978, 92 Stat. 189, 190; 1978 Reorg. Plan No. 1, § 2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781; Pub. L. 98–459, title VIII, § 802(c)(1), Oct. 9, 1984, 98 Stat. 1792; Pub. L. 99–272, title IX, § 9201(b)(2), Apr. 7, 1986, 100 Stat. 171; Pub. L. 99–592, §§ 2(c), 6(a), Oct. 31, 1986, 100 Stat. 3342, 3344; Pub. L. 101–239, title VI, § 6202(b)(3)(C)(ii), Dec. 19, 1989, 103 Stat. 2233.)

29 USC §632 | OMITTED

29 USC §633 | FEDERAL-STATE RELATIONSHIP

(a) Federal action superseding State action

Nothing in this chapter shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age except that upon commencement of action under this chapter such action shall supersede any State action.

(b) Limitation of Federal action upon commencement of State proceedings

In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 626 of this title before the expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated: Provided, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State law. If any requirement for the commencement of such proceedings is imposed by a State authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State authority.

(Pub. L. 90–202, § 14, Dec. 15, 1967, 81 Stat. 607.)

29 USC §633a | NONDISCRIMINATION ON ACCOUNT OF AGE IN FEDERAL GOVERNMENT EMPLOYMENT

(a) Federal agencies affected

All personnel actions affecting employees or applicants for employment who are at least 40 years of age (except personnel actions with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, in executive agencies as defined in section 105 of title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Regulatory Commission, in those units in the government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Publishing Office, the Government Accountability Office, and the Library of Congress shall be made free from any discrimination based on age.

(b) Enforcement by Equal Employment Opportunity Commission and by Librarian of Congress in the Library of Congress; remedies; rules, regulations, orders, and instructions of Commission: compliance by Federal agencies; powers and duties of Commission; notification of final action on complaint of discrimination; exemptions: bona fide occupational qualification Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission is authorized to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of this section. The Equal Employment Opportunity Commission shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall —

(1) be responsible for the review and evaluation of the operation of all agency programs designed to carry out the policy of this section, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each department, agency, or unit referred to in subsection (a);

(2) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to nondiscrimination in employment on account of age; and

(3) provide for the acceptance and processing of complaints of discrimination in Federal employment on account of age.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions of the Equal Employment Opportunity Commission which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. Reasonable exemptions to the provisions of this section may be established by the Commission but only when the Commission has established a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position. With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

(c) Civil actions; jurisdiction; relief

Any person aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter.

(d) Notice to Commission; time of notice; Commission notification of prospective defendants; Commission elimination of unlawful practices

When the individual has not filed a complaint concerning age discrimination with the Commission, no civil action may be commenced by any individual under this section until the individual has given the Commission not less than thirty days' notice of an intent to file such action. Such notice shall be filed within one hundred and eighty days after the alleged unlawful practice occurred. Upon receiving a notice of intent

to sue, the Commission shall promptly notify all persons named therein as prospective defendants in the action and take any appropriate action to assure the elimination of any unlawful practice.

(e) Duty of Government agency or official

Nothing contained in this section shall relieve any Government agency or official of the responsibility to assure nondiscrimination on account of age in employment as required under any provision of Federal law.

(f) Applicability of statutory provisions to personnel action of Federal departments, etc.

Any personnel action of any department, agency, or other entity referred to in subsection (a) of this section shall not be subject to, or affected by, any provision of this chapter, other than the provisions of sections 626(d)(3) and 631(b) of this title and the provisions of this section.

(g) Study and report to President and Congress by Equal Employment Opportunity Commission; scope

(1) The Equal Employment Opportunity Commission shall undertake a study relating to the effects of the amendments made to this section by the Age Discrimination in Employment Act Amendments of 1978, and the effects of section 631(b) of this title.

(2) The Equal Employment Opportunity Commission shall transmit a report to the President and to the Congress containing the findings of the Commission resulting from the study of the Commission under paragraph (1) of this subsection. Such report shall be transmitted no later than January 1, 1980.

(Pub. L. 90–202, § 15, as added Pub. L. 93–259, § 28(b)(2), Apr. 8, 1974, 88 Stat. 74; amended Pub. L. 95–256, § 5(a), (e), Apr. 6, 1978, 92 Stat. 191; 1978 Reorg. Plan No. 1, eff. Jan. 1, 1979, § 2, 43 F.R. 19807, 92 Stat. 3781; Pub. L. 104–1, title II, § 201(c)(2), Jan. 23, 1995, 109 Stat. 8; Pub. L. 105–220, title III, § 341(b), Aug. 7, 1998, 112 Stat. 1092; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242; Pub. L. 111–2, § 5(c)(3), Jan. 29, 2009, 123 Stat. 7; Pub. L. 113–235, div. H, title I, § 1301(b), Dec. 16, 2014, 128 Stat. 2537.)

29 USC §634 | AUTHORIZATION OF APPROPRIATIONS

There are hereby authorized to be appropriated such sums as may be necessary to carry out this chapter.

(Pub. L. 90–202, § 17, formerly § 16, Dec. 15, 1967, 81 Stat. 608; renumbered and amended Pub. L. 93–259, § 28(a)(5), (b)(1), Apr. 8, 1974, 88 Stat. 74; Pub. L. 95–256, § 7, Apr. 6, 1978, 92 Stat. 193.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 42 PUBLIC HEALTH AND WELFARE

CHAPTER: 21 CIVIL RIGHTS

SUBCHAPTER: I GENERALLY

SECTIONS: §1981 through §1981a

NOTE: **not the entire subchapter** (pertinent statutes only!!!)

42 USC §1871 | DISPOSITION OF INVENTIONS PRODUCED UNDER CONTRACTS OR OTHER ARRANGEMENTS

Each contract or other arrangement executed pursuant to this chapter which relates to scientific or engineering research shall contain provisions governing the disposition of inventions produced thereunder in a manner calculated to protect the public interest and the equities of the individual or organization with which the contract or other arrangement is executed: Provided, however, That nothing in this chapter shall be construed to authorize the Foundation to enter into any contractual or other arrangement inconsistent with any provision of law affecting the issuance or use of patents.

(May 10, 1950, ch. 171, § 12, 64 Stat. 154; Pub. L. 99–159, title I, §§ 109(c), 110(a)(15), Nov. 22, 1985, 99 Stat. 889, 891.)

42 USC §1981 | EQUAL RIGHTS UNDER THE LAW

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

(R.S. § 1977; Pub. L. 102–166, title I, § 101, Nov. 21, 1991, 105 Stat. 1071.)

42 USC §1981a | DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION IN EMPLOYMENT.

(a) Right of recovery

(1) Civil rights. In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 [42 U.S.C. 2000e–5, 2000e–16] against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act [42 U.S.C. 2000e–2, 2000e–3, 2000e–16], and provided that the complaining party cannot recover under section 1981 of this title, the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

(2) Disability. In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 or 717 of the Civil Rights Act of 1964 [42 U.S.C. 2000e–5, 2000e–16] (as provided in section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a)), and section 794a(a)(1) of title 29, respectively) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) under section 791 of title 29 and the regulations implementing section 791 of title 29, or who violated the requirements of section 791 of title 29 or the regulations implementing section 791 of title 29 concerning the provision of a reasonable accommodation, or section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112), or committed a violation of section 102(b)(5) of the Act, against an individual, the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

(3) Reasonable accommodation and good faith effort. In cases where a discriminatory practice involves the provision of a reasonable accommodation pursuant to section 102(b)(5) of the Americans with Disabilities Act of 1990 [42 U.S.C. 12112(b)(5)] or regulations implementing section 791 of title 29, damages may not be awarded under this section where the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

(b) Compensatory and punitive damages

(1) Determination of punitive damages. A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

(2) Exclusions from compensatory damages. Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964 [42 U.S.C. 2000e–5(g)].

(3) Limitations. The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party—

(A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $50,000;

(B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $100,000; and

(C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $200,000; and

(D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $300,000.

(4) Construction. Nothing in this section shall be construed to limit the scope of, or the relief available under, section 1981 of this title.

(c) Jury trial. If a complaining party seeks compensatory or punitive damages under this section —

(1) any party may demand a trial by jury; and

(2) the court shall not inform the jury of the limitations described in subsection (b)(3).

(d) Definitions. As used in this section:

(1) Complaining party. The term "complaining party" means—

(A) in the case of a person seeking to bring an action under subsection (a)(1), the Equal Employment Opportunity Commission, the Attorney General, or a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

(B) in the case of a person seeking to bring an action under subsection (a)(2), the Equal Employment Opportunity Commission, the Attorney General, a person who may bring an action or proceeding under section 794a(a)(1) of title 29, or a person who may bring an action or proceeding under title I of the Americans with Disabilities Act of 1990 [42 U.S.C. 12111 et seq.].

(2) Discriminatory practice. The term "discriminatory practice" means the discrimination described in paragraph (1), or the discrimination or the violation described in paragraph (2), of subsection (a).

(R.S. § 1977A, as added Pub. L. 102–166, title I, § 102, Nov. 21, 1991, 105 Stat. 1072.)

42 USC §1982 | PROPERTY RIGHTS OF CITIZENS

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

(R.S. § 1978.)

42 USC §1983 | CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. § 1979; Pub. L. 96–170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104–317, title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

42 USC §1985 | CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws;

or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

(R.S. § 1980.)

42 USC §1986 | ACTION FOR NEGLECT TO PREVENT

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

(R.S. § 1981.)

42 USC §1988 | PROCEEDINGS IN VINDICATION OF CIVIL RIGHTS

(a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92–318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C. 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or section 12361 of title 34, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees

In awarding an attorney's fee under subsection (b) in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

(R.S. § 722; Pub. L. 94–559, § 2, Oct. 19, 1976, 90 Stat. 2641; Pub. L. 96–481, title II, § 205(c), Oct. 21, 1980, 94 Stat. 2330; Pub. L. 102–166, title I, §§ 103, 113(a), Nov. 21, 1991, 105 Stat. 1074, 1079; Pub. L. 103–141, § 4(a), Nov. 16, 1993, 107 Stat. 1489; Pub. L. 103–322, title IV, § 40303, Sept. 13, 1994, 108 Stat. 1942; Pub. L. 104–317, title III, § 309(b), Oct. 19, 1996, 110 Stat. 3853; Pub. L. 106–274, § 4(d), Sept. 22, 2000, 114 Stat. 804.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 42 PUBLIC HEALTH AND WELFARE

CHAPTER: 21 CIVIL RIGHTS

SUBCHAPTER: II PUBLIC ACCOMMODATIONS

SECTIONS: §2000a through §2000a-6

NOTE: **Entire Subchapter**

42 USC §2000a | PROHIBITION AGAINST DISCRIMINATION OR SEGREGATION IN PLACES OF PUBLIC ACCOMMODATION

(a) Equal access. All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

(b) Establishments affecting interstate commerce or supported in their activities by State action as places of public accommodation; lodgings; facilities principally engaged in selling food for consumption on the premises; gasoline stations; places of exhibition or entertainment; other covered establishments. Each of the following establishments which serves the public is a place of public accommodation within the meaning of this subchapter if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

> (1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;
>
> (2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;
>
> (3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and
>
> (4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

(c) Operations affecting commerce; criteria; "commerce" defined. The operations of an establishment affect commerce within the meaning of this subchapter if

(1) it is one of the establishments described in paragraph (1) of subsection (b);

(2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers of a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce;

(3) in the case of an establishment described in paragraph (3) of subsection (b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and

(4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

(d) Support by State action. Discrimination or segregation by an establishment is supported by State action within the meaning of this subchapter if such discrimination or segregation

(1) is carried on under color of any law, statute, ordinance, or regulation; or

(2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

(e) Private establishments. The provisions of this subchapter shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b).

(Pub. L. 88–352, title II, § 201, July 2, 1964, 78 Stat. 243.)

42 USC §2000a-1 | PROHIBITION AGAINST DISCRIMINATION OR SEGREGATION REQUIRED BY ANY LAW, STATUTE, ORDINANCE, REGULATION, RULE OR ORDER OF A STATE OR STATE AGENCY.

All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.

(Pub. L. 88–352, title II, § 202, July 2, 1964, 78 Stat. 244.)

42 USC §2000a-2 | PROHIBITION AGAINST DEPRIVATION OF, INTERFERENCE WITH, AND PUNISHMENT FOR EXERCISING RIGHTS AND PRIVILEGES SECURED BY SECTION 2000a OR 2000a-1 OF THIS TITLE

No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive any person of any right or privilege secured by section 2000a or 2000a–1 of this title, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 2000a or 2000a–1 of this title, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 2000a or 2000a–1 of this title.

(Pub. L. 88–352, title II, § 203, July 2, 1964, 78 Stat. 244.)

42 USC §2000a-3 | CIVIL ACTIONS FOR INJUNCTIVE RELIEF.

(a) Persons aggrieved; intervention by Attorney General; legal representation; commencement of action without payment of fees, costs, or security. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2000a–2 of this title, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved and, upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security.

(b) Attorney's fees; liability of United States for costs. In any action commenced pursuant to this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

(c) State or local enforcement proceedings; notification of State or local authority; stay of Federal proceedings. In the case of an alleged act or practice prohibited by this subchapter which occurs in a State, or political subdivision of a State, which has a State or local law prohibiting such act or practice and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no civil action may be brought under subsection (a) before the expiration of thirty days after written notice of such alleged act or practice has been given to the appropriate State or local authority by registered mail or in person, provided that the court may stay proceedings in such civil action pending the termination of State or local enforcement proceedings.

(d) References to Community Relations Service to obtain voluntary compliance; duration of reference; extension of period. In the case of an alleged act or practice prohibited by this subchapter which occurs in a State, or political subdivision of a State, which has no State or local law prohibiting such act or practice, a civil action may be brought under subsection (a): Provided, That the court may refer the matter to the Community Relations Service established by subchapter VIII of this chapter for as long as the court believes there is a reasonable possibility of obtaining voluntary compliance, but for not more than sixty days: Provided further, That upon expiration of such sixty-day period, the court may extend such period for an additional period, not to exceed a cumulative total of one hundred and twenty days, if it believes there then exists a reasonable possibility of securing voluntary compliance.

(Pub. L. 88–352, title II, § 204, July 2, 1964, 78 Stat. 244.)

42 USC §2000a-4 | COMMUNITY RELATIONS SERVICE; INVESTIGATIONS AND HEARINGS; EXECUTIVE SESSION; RELEASE OF TESTIMONY; DUTY TO BRING ABOUT VOLUNTARY SETTLEMENTS.

The Service is authorized to make a full investigation of any complaint referred to it by the court under section 2000a–3(d) of this title and may hold such hearings with respect thereto as may be necessary. The Service shall conduct any hearings with respect to any such complaint in executive session, and shall not release any testimony given therein except by agreement of all parties involved in the complaint with the permission of the court, and the Service shall endeavor to bring about a voluntary settlement between the parties.

(Pub. L. 88–352, title II, § 205, July 2, 1964, 78 Stat. 244.)

42 USC §2000a-5 | CIVIL ACTIONS BY THE ATTORNEY GENERAL

(a) Complaint. Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(**b) Three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single judge district court: hearing, determination, expedition of action.** In any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(Pub. L. 88–352, title II, § 206, July 2, 1964, 78 Stat. 245.)

42 USC §2000a-6 | JURISDICTION; EXHAUSTION OF OTHER REMEDIES; EXCLUSIVENESS OF REMEDIES; ASSERTION OF RIGHTS BASED ON OTHER FEDERAL OR STATE LAWS AND PURSUIT OF REMEDIES FOR ENFORCEMENT OF SUCH RIGHTS.

(a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subchapter and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) The remedies provided in this subchapter shall be the exclusive means of enforcing the rights based on this subchapter, but nothing in this subchapter shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this subchapter, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

(Pub. L. 88–352, title II, § 207, July 2, 1964, 78 Stat. 245.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 42 PUBLIC HEALTH AND WELFARE

CHAPTER: 21 CIVIL RIGHTS

SUBCHAPTER: IV PUBLIC EDUCATION

SECTIONS: §2000C through §2000C-9

NOTE: **Entire Subchapter**

42 USC §2000C | DEFINITIONS

As used in this subchapter -

(a) "Secretary" means the Secretary of Education.

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, sex or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

(c) "Public school" means any elementary or secondary educational institution, and "public college" means any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

(d) "School board" means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

(Pub. L. 88–352, title IV, §401, July 2, 1964, 78 Stat. 246; Pub. L. 92–318, title IX, §906(a), June 23, 1972, 86 Stat. 375; Pub. L. 96–88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692.)

Editorial Notes

Amendments

1972-Subsec. (b). Pub. L. 92–318 inserted "sex" after "religion,".

Statutory Notes and Related Subsidiaries

Transfer of Functions

"Secretary means the Secretary of Education" substituted for "Commissioner means the Commissioner of Education" in subsec. (a) pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education of Department of Health, Education, and Welfare to Secretary of Education.

42 USC §2000C-1 | OMITTED

Editorial Notes

Codification

Section, Pub. L. 88–352, title IV, §402, July 2, 1964, 78 Stat. 247, authorized the Commissioner to conduct a survey and make a report to the President and the Congress within two years of July, 1964 concerning the availability of educational opportunities for minority group members.

42 USC §2000C-2 | TECHNICAL ASSISTANCE IN PREPARATION, ADOPTION, AND IMPLEMENTATION OF PLANS FOR DESEGREGATION OF PUBLIC SCHOOLS

The Secretary is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, to render technical assistance to such applicant in the preparation, adoption, and implementation of plans for the desegregation of public schools. Such technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with special educational problems occasioned by desegregation, and making available to such agencies personnel of the Department of Education or other persons specially equipped to advise and assist them in coping with such problems.

(Pub. L. 88–352, title IV, §403, July 2, 1964, 78 Stat. 247; Pub. L. 96–88, title III, §301(a)(1), (b)(2), title V, §507, Oct. 17, 1979, 93 Stat. 677, 678, 692.)

Statutory Notes and Related Subsidiaries

Transfer of Functions

"Secretary", meaning the Secretary of Education, and "Department of Education" substituted in text for "Commissioner" and "Office of Education", respectively, pursuant to sections 301(a)(1), (b)(2) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1), (b)(2) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education and transferred Office of Education to the Department of Education.

42 USC §2000C-3 | TRAINING INSTITUTES; STIPENDS; TRAVEL ALLOWANCES

The Secretary is authorized to arrange, through grants or contracts, with institutions of higher education for the operation of short-term or regular session institutes for special training designed to improve the ability of teachers, supervisors, counselors, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation. Individuals who attend such an institute on a full-time basis may be paid stipends for the period of their attendance at such institute in amounts specified by the Secretary in regulations, including allowances for travel to attend such institute.

(Pub. L. 88–352, title IV, §404, July 2, 1964, 78 Stat. 247; Pub. L. 96–88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692.)

Statutory Notes and Related Subsidiaries

Transfer of Functions

"Secretary", meaning the Secretary of Education, substituted in text for "Commissioner" pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education.

42 USC §2000C-4 | GRANTS FOR INSERVICE TRAINING IN DEALING WITH AND FOR EMPLOYMENT OF SPECIALISTS TO ADVISE IN PROBLEMS INCIDENT TO DESEGREGATION; FACTORS FOR CONSIDERATION IN MAKING GRANTS AND FIXING AMOUNTS, TERMS, AND CONDITIONS

(a) The Secretary is authorized, upon application of a school board, to make grants to such board to pay, in whole or in part, the cost of -

(1) giving to teachers and other school personnel inservice training in dealing with problems incident to desegregation, and

(2) employing specialists to advise in problems incident to desegregation.

(b) In determining whether to make a grant, and in fixing the amount thereof and the terms and conditions on which it will be made, the Secretary shall take into consideration the amount available for grants under this section and the other applications which are pending before him; the financial condition of the applicant and the other resources available to it; the nature, extent, and gravity of its problems incident to desegregation; and such other factors as he finds relevant.

(Pub. L. 88–352, title IV, §405, July 2, 1964, 78 Stat. 247; Pub. L. 96–88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692.)

Statutory Notes and Related Subsidiaries

Transfer of Functions

"Secretary", meaning the Secretary of Education, substituted in text for "Commissioner" pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education.

42 USC §2000C-5 | PAYMENTS; ADJUSTMENTS; ADVANCES OR REIMBURSEMENT; INSTALLMENTS

Payments pursuant to a grant or contract under this subchapter may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

(Pub. L. 88–352, title IV, §406, July 2, 1964, 78 Stat. 248; Pub. L. 96–88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692.)

Statutory Notes and Related Subsidiaries

Transfer of Functions

"Secretary", meaning the Secretary of Education, substituted in text for "Commissioner" pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education.

42 USC §2000C-6 | CIVIL ACTIONS BY THE ATTORNEY GENERAL

(a) Complaint; certification; notice to school board or college authority; institution of civil action; relief requested; jurisdiction; transportation of pupils to achieve racial balance; judicial power to insure compliance with constitutional standards; impleading additional parties as defendants

Whenever the Attorney General receives a complaint in writing -

> (1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or
>
> (2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, sex or national origin,

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) Persons unable to initiate and maintain legal proceedings

The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

(c) "Parent" and "complaint" defined

The term "parent" as used in this section includes any person standing in loco parentis. A "complaint" as used in this section is a writing or document within the meaning of section 1001, title 18.

(Pub. L. 88–352, title IV, §407, July 2, 1964, 78 Stat. 248; Pub. L. 92–318, title IX, §906(a), June 23, 1972, 86 Stat. 375.)

Editorial Notes

Amendments

1972-Subsec. (a)(2). Pub. L. 92–318 inserted "sex" after "religion,".

42 USC §2000C-7 | LIABILITY OF UNITED STATES FOR COSTS

In any action or proceeding under this subchapter the United States shall be liable for costs the same as a private person.

(Pub. L. 88–352, title IV, §408, July 2, 1964, 78 Stat. 249.)

42 USC §2000C-8 | PERSONAL SUITS FOR RELIEF AGAINST DISCRIMINATION IN PUBLIC EDUCATION

Nothing in this subchapter shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education.

(Pub. L. 88–352, title IV, §409, July 2, 1964, 78 Stat. 249.)

42 USC §2000C-9 | CLASSIFICATION AND ASSIGNMENT

Nothing in this subchapter shall prohibit classification and assignment for reasons other than race, color, religion, sex or national origin.

(Pub. L. 88–352, title IV, §410, July 2, 1964, 78 Stat. 249; Pub. L. 92–318, title IX, §906(a), June 23, 1972, 86 Stat. 375.)

Editorial Notes

Amendments

1972-Pub. L. 92–318 inserted "sex" after "religion,".

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 42 PUBLIC HEALTH AND WELFARE

CHAPTER: 21 CIVIL RIGHTS

SUBCHAPTER: V FEDERALLY ASSISTED PROGRAMS

SECTIONS: §2000D through §2000D-7

NOTE: **Entire Subchapter**

42 USC §2000d | PROHIBITION AGAINST EXCLUSION FROM PARTICIPATION IN, DENIAL OF BENEFITS OF, AND DISCRIMINATION UNDER FEDERALLY ASSISTED PROGRAMS ON GROUND OF RACE, COLOR, OR NATIONAL ORIGIN

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(Pub. L. 88–352, title VI, § 601, July 2, 1964, 78 Stat. 252.)

42 USC §2000d-1 | FEDERAL AUTHORITY AND FINANCIAL ASSISTANCE TO PROGRAMS OR ACTIVITIES BY WAY OF GRANT, LOAN, OR CONTRACT OTHER THAN CONTRACT OF INSURANCE OR GUARANTY; RULES AND REGULATIONS; APPROVAL BY PRESIDENT; COMPLIANCE WITH REQUIREMENTS; REPORTS TO CONGRESSIONAL COMMITTEES; EFFECTIVE DATE OF ADMINISTRATIVE ACTION

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

(Pub. L. 88–352, title VI, § 602, July 2, 1964, 78 Stat. 252.)

42 USC §2000d-2 | JUDICIAL REVIEW; ADMINISTRATIVE PROCEDURE PROVISIONS

> Any department or agency action taken pursuant to section 2000d–1 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d–1 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that chapter.

(Pub. L. 88–352, title VI, § 603, July 2, 1964, 78 Stat. 253.)

42 USC §2000d-3 | CONSTRUCTION OF PROVISIONS NOT TO AUTHORIZE ADMINISTRATIVE ACTION WITH RESPECT TO EMPLOYMENT PRACTICES EXCEPT WHERE PRIMARY OBJECTIVE OF FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

> Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

(Pub. L. 88–352, title VI, § 604, July 2, 1964, 78 Stat. 253.)

42 USC §2000d-4 | "PROGRAM OR ACTIVITY" AND "PROGRAM" DEFINED

Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

(Pub. L. 88–352, title VI, § 605, July 2, 1964, 78 Stat. 253.)

42 USC §2000d-4a | FEDERAL AUTHORITY AND FINANCIAL ASSISTANCE TO PROGRAMS OR ACTIVITIES BY WAY OF CONTRACT OF INSURANCE OR GUARANTY

For the purposes of this subchapter, the term "program or activity" and the term "program" mean all of the operations of —

(1)

(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)

(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of title 20), system of vocational education, or other school system;

(3)

(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship —

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of

any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance.

(Pub. L. 88–352, title VI, § 606, as added Pub. L. 100–259, § 6, Mar. 22, 1988, 102 Stat. 31; amended Pub. L. 103–382, title III, § 391(q), Oct. 20, 1994, 108 Stat. 4024; Pub. L. 107–110, title X, § 1076(y), Jan. 8, 2002, 115 Stat. 2093; Pub. L. 114–95, title IX, § 9215(r), Dec. 10, 2015, 129 Stat. 2171.)

42 USC §2000d-5 | PROHIBITED DEFERRAL OF ACTION ON APPLICATIONS BY LOCAL EDUCATIONAL AGENCIES SEEKING FEDERAL FUNDS FOR ALLEGED NONCOMPLIANCE WITH CIVIL RIGHTS ACT

> The Secretary of Education shall not defer action or order action deferred on any application by a local educational agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.], by the Act of September 30, 1950 [1] (Public Law 874, Eighty-first Congress) or by the Cooperative Research Act [20 U.S.C. 331 et seq.], on the basis of alleged noncompliance with the provisions of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] for more than sixty days after notice is given to such local agency of such deferral unless such local agency is given the opportunity for a hearing as provided in section 602 of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d–1], such hearing to be held within sixty days of such notice, unless the time for such hearing is extended by mutual consent of such local agency and the Secretary, and such deferral shall not continue for more than thirty days after the close of any such hearing unless there has been an express finding on the record of such hearing that such local educational agency has failed to comply with the provisions of title VI of the Civil Rights Act of 1964: Provided, That, for the purpose of determining whether a local educational agency is in compliance with title VI of the Civil Rights Act of 1964 (Public Law 88–352), compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with such title VI, insofar as the matters covered in the order or judgment are concerned.

(Pub. L. 89–750, title I, § 182, Nov. 3, 1966, 80 Stat. 1209; Pub. L. 90–247, title I, § 112, Jan. 2, 1968, 81 Stat. 787; Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 103–382, title III, § 392(b)(1), Oct. 20, 1994, 108 Stat. 4026.)

42 USC §2000d-6 | POLICY OF UNITED STATES AS TO APPLICATION OF NONDISCRIMINATION PROVISIONS IN SCHOOLS OF LOCAL EDUCATIONAL AGENCIES

(a) Declaration of uniform policy

It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and section 182 of the Elementary and Secondary Education Amendments of 1966 [42 U.S.C. 2000d–5] dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation.

(b) Nature of uniformity

Such uniformity refers to one policy applied uniformly to de jure segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

(c) Prohibition of construction for diminution of obligation for enforcement or compliance with nondiscrimination requirements

Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in federally assisted programs and activities as required by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.].

(d) Additional funds

It is the sense of the Congress that the Department of Justice and the Secretary of Education should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States.

(Pub. L. 91–230, § 2, Apr. 13, 1970, 84 Stat. 121; Pub. L. 96–88, title III, § 301, title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

42 USC §2000d-7 | CIVIL RIGHTS REMEDIES EQUALIZATION

(a) General provision

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

(b) Effective date

The provisions of subsection (a) shall take effect with respect to violations that occur in whole or in part after October 21, 1986.

(Pub. L. 99–506, title X, § 1003, Oct. 21, 1986, 100 Stat. 1845.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 42 PUBLIC HEALTH AND WELFARE

CHAPTER: 21 CIVIL RIGHTS

SUBCHAPTER: VI EQUAL EMPLOYMENT OPPORTUNITIES

SECTIONS: §2000e through §2000e-17

NOTE: **Entire Subchapter**

42 USC §2000e | DEFINITIONS

For the purposes of this subchapter—

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization—

> (1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.];
>
> (2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or
>
> (3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or
>
> (4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or
>
> (5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.], and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e–2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(l) The term "complaining party" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term "demonstrates" means meets the burdens of production and persuasion.

(n) The term "respondent" means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e–16 of this title.

(Pub. L. 88–352, title VII, § 701, July 2, 1964, 78 Stat. 253; Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 662; Pub. L. 92–261, § 2, Mar. 24, 1972, 86 Stat. 103; Pub. L. 95–555, § 1, Oct. 31, 1978, 92 Stat. 2076; Pub. L. 95–598, title III, § 330, Nov. 6, 1978, 92 Stat. 2679; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–166, title I, §§ 104, 109(a), Nov. 21, 1991, 105 Stat. 1074, 1077.)

42 USC §2000e-1 | EXEMPTION

(a) Inapplicability of subchapter to certain aliens and employees of religious entities. This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(b) Compliance with statute as violative of foreign law. It shall not be unlawful under section 2000e–2 or 2000e–3 of this title for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

(c) Control of corporation incorporated in foreign country.

(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 2000e–2 or 2000e–3 of this title engaged in by such corporation shall be presumed to be engaged in by such employer.

(2) Sections 2000e–2 and 2000e–3 of this title shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on—

(A) the interrelation of operations;

(B) the common management;

(C) the centralized control of labor relations; and

(D) the common ownership or financial control, of the employer and the corporation.

(Pub. L. 88–352, title VII, § 702, July 2, 1964, 78 Stat. 255; Pub. L. 92–261, § 3, Mar. 24, 1972, 86 Stat. 103; Pub. L. 102–166, title I, § 109(b)(1), Nov. 21, 1991, 105 Stat. 1077.)

42 USC §2000e-2 | UNLAWFUL EMPLOYMENT PRACTICES.

(a) Employer practices.

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices. It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices. It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs. It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion. Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist-front organizations. As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control

Board pursuant to the Subversive Activities Control Act of 1950 [50 U.S.C. 781 et seq.].

(g) National security. Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

> (1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and
>
> (2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions. Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of title 29.

(i) Businesses or enterprises extending preferential treatment to Indians. Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance. Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases.

(1)

(A) An unlawful employment practice based on disparate impact is established under this subchapter only if—

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C)

with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B)

(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.

(3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act [21 U.S.C. 801 et seq.] or any other provision of Federal law, shall be considered an unlawful employment practice under this

subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(l) Prohibition of discriminatory use of test scores. It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices. Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders.

(1)

(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws—

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had—

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an

opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to—

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28.

(Pub. L. 88–352, title VII, § 703, July 2, 1964, 78 Stat. 255; Pub. L. 92–261, § 8(a), (b), Mar. 24, 1972, 86 Stat. 109; Pub. L. 102–166, title I, §§ 105(a), 106, 107(a), 108, Nov. 21, 1991, 105 Stat. 1074–1076.)

42 USC §2000e-3 | OTHER UNLAWFUL EMPLOYMENT PRACTICES.

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings. It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception. It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

(Pub. L. 88–352, title VII, § 704, July 2, 1964, 78 Stat. 257; Pub. L. 92–261, § 8(c), Mar. 24, 1972, 86 Stat. 109.)

42 USC §2000e-4 | EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

(a) Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel. There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b), shall appoint, in accordance with the provisions of title 5 governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of title 5.

(b) General Counsel; appointment; term; duties; representation by attorneys and Attorney General.

(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 2000e–5 and 2000e–6 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the

Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

(c) Exercise of powers during vacancy; quorum. A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(d) Seal; judicial notice. The Commission shall have an official seal which shall be judicially noticed.

(e) Reports to Congress and the President. The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(f) Principal and other offices. The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

(g) Powers of Commission. The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;

(4) upon the request of

(i) any employer, whose employees or some of them; or

(ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 2000e–5 of this title by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

(h) Cooperation with other departments and agencies in performance of educational or promotional activities; outreach activities.

(1) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(2) In exercising its powers under this subchapter, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to—

(A) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

(B) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination, concerning rights and obligations under this subchapter or such law, as the case may be.

(i) Personnel subject to political activity restrictions. All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 7324 [1] of title 5, notwithstanding any exemption contained in such section.

(j) Technical Assistance Training Institute.

(1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the Commission.

(2) An employer or other entity covered under this subchapter shall not be excused from compliance with the requirements of this subchapter because of any failure to receive technical assistance under this subsection.

(3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.

(k) EEOC Education, Technical Assistance, and Training Revolving Fund.

(1) There is hereby established in the Treasury of the United States a revolving fund to be known as the "EEOC Education, Technical Assistance, and Training Revolving Fund" (hereinafter in this subsection referred to as the "Fund") and to pay the cost (including administrative and personnel expenses) of providing education, technical assistance, and training relating to laws administered by the Commission. Monies in the Fund shall be available without fiscal year limitation to the Commission for such purposes.

(2)

(A) The Commission shall charge fees in accordance with the provisions of this paragraph to offset the costs of education, technical assistance, and training provided with monies in the Fund. Such

fees for any education, technical assistance, or training—

(i) shall be imposed on a uniform basis on persons and entities receiving such education, assistance, or training,

(ii) shall not exceed the cost of providing such education, assistance, and training, and

(iii) with respect to each person or entity receiving such education, assistance, or training, shall bear a reasonable relationship to the cost of providing such education, assistance, or training to such person or entity.

(B) Fees received under subparagraph (A) shall be deposited in the Fund by the Commission.

(C) The Commission shall include in each report made under subsection (e) information with respect to the operation of the Fund, including information, presented in the aggregate, relating to—

(i) the number of persons and entities to which the Commission provided education, technical assistance, or training with monies in the Fund, in the fiscal year for which such report is prepared,

(ii) the cost to the Commission to provide such education, technical assistance, or training to such persons and entities, and

(iii) the amount of any fees received by the Commission from such persons and entities for such education, technical assistance, or training.

(3) The Secretary of the Treasury shall invest the portion of the Fund not required to satisfy current expenditures from the Fund, as determined by the Commission, in obligations of the United States or obligations guaranteed as to principal by the United States. Investment proceeds shall be deposited in the Fund.

(4) There is hereby transferred to the Fund $1,000,000 from the Salaries and Expenses appropriation of the Commission.

(Pub. L. 88–352, title VII, § 705, July 2, 1964, 78 Stat. 258; Pub. L. 92–261, § 8(d)–(f), Mar. 24, 1972, 86 Stat. 109, 110; Pub. L. 93–608, § 3(1), Jan. 2, 1975, 88 Stat. 1972; Pub. L. 95–251, § 2(a)(11), Mar. 27, 1978, 92 Stat. 183; Pub. L. 102–166, title I, §§ 110(a), 111, Nov. 21, 1991, 105 Stat. 1078; Pub. L. 102–411, § 2, Oct. 14, 1992, 106 Stat. 2102; Pub. L. 104–66, title II, § 2031, Dec. 21, 1995, 109 Stat. 728.)

42 USC §2000e-5 | ENFORCEMENT PROVISIONS.

(a) Power of Commission to prevent unlawful employment practices. The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e–2 or 2000e–3 of this title.

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause. Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence

in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings. In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) [1] by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission. In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days

during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system.

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this subchapter (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(3)

(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this subchapter, when a discriminatory compensation

decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

(B) In addition to any relief authorized by section 1981a of this title, liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master.

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States

district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b), is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary

to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders.

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2)

(A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e–3(a) of this title.

(B) On a claim in which an individual proves a violation under section 2000e–2(m) of this title and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 2000e–2(m) of this title; and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

(h) Provisions of chapter 6 of title 29 not applicable to civil actions for prevention of unlawful practices. The provisions of chapter 6 of title 29 shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders. In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals. Any civil action brought under this section and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28.

(k) Attorney's fee; liability of Commission and United States for costs. In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

(Pub. L. 88–352, title VII, § 706, July 2, 1964, 78 Stat. 259; Pub. L. 92–261, § 4, Mar. 24, 1972, 86 Stat. 104; Pub. L. 102–166, title I, §§ 107(b), 112, 113(b), Nov. 21, 1991, 105 Stat. 1075, 1078, 1079; Pub. L. 111–2, § 3, Jan. 29, 2009, 123 Stat. 5.)

42 USC §2000e-6 | CIVIL ACTIONS BY THE ATTORNEY GENERAL.

(a) Complaint. Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) Jurisdiction; three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single judge district court: hearing, determination, expedition of action. The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Transfer of functions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission. Effective two years after March 24, 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of title 5, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

(d) Transfer of functions, etc., not to affect suits commenced pursuant to this section prior to date of transfer. Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

(e) Investigation and action by Commission pursuant to filing of charge of discrimination; procedure. Subsequent to March 24, 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e–5 of this title.

(Pub. L. 88–352, title VII, § 707, July 2, 1964, 78 Stat. 261; Pub. L. 92–261, § 5, Mar. 24, 1972, 86 Stat. 107.)

42 USC §2000e-7 | EFFECT ON STATE LAWS

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

(Pub. L. 88–352, title VII, § 708, July 2, 1964, 78 Stat. 262.)

42 USC §2000e-8 | INVESTIGATIONS

(a) Examination and copying of evidence related to unlawful employment practices. In connection with any investigation of a charge filed under section 2000e–5 of this title, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

(b) Cooperation with State and local agencies administering State fair employment practices laws; participation in and contribution to research and other projects; utilization of services; payment in advance or reimbursement; agreements and rescission of agreements. The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this subchapter.

(c) Execution, retention, and preservation of records; reports to Commission; training program records; appropriate relief from regulation or order for undue hardship; procedure for exemption; judicial action to compel compliance. Every employer, employment agency, and labor organization subject to this subchapter shall

(1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed;

(2) preserve such records for such periods; and

(3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this subchapter which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this subchapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

(d) Consultation and coordination between Commission and interested State and Federal agencies in prescribing recordkeeping and reporting requirements; availability of information furnished pursuant to recordkeeping and reporting requirements; conditions on availability. In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) Prohibited disclosures; penalties. It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty, of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

(Pub. L. 88–352, title VII, § 709, July 2, 1964, 78 Stat. 262; Pub. L. 92–261, § 6, Mar. 24, 1972, 86 Stat. 107.)

42 USC §2000e-9 | CONDUCT OF HEARINGS AND INVESTIGATIONS PURSUANT TO SECTION 161 OF TITLE 29

For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of title 29 shall apply.

(Pub. L. 88–352, title VII, § 710, July 2, 1964, 78 Stat. 264; Pub. L. 92–261, § 7, Mar. 24, 1972, 86 Stat. 109.)

42 USC §2000e-10 | POSTING NOTICES; PENALTIES

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts, from or, summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

(Pub. L. 88–352, title VII, § 711, July 2, 1964, 78 Stat. 265.)

42 USC §2000e-11 | VETERANS' SPECIAL RIGHTS OR PREFERENCE

Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

(Pub. L. 88–352, title VII, § 712, July 2, 1964, 78 Stat. 265.)

42 USC §2000e-12 | REGULATIONS; CONFORMITY OF REGULATIONS WITH ADMINISTRATIVE PROCEDURE PROVISIONS; RELIANCE ON INTERPRETATIONS AND INSTRUCTIONS OF COMMISSION.

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of title 5.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this subchapter if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this subchapter regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this subchapter.

(Pub. L. 88–352, title VII, § 713, July 2, 1964, 78 Stat. 265.)

42 USC §2000e-13 | APPLICATION TO PERSONNEL OF COMMISSION OF SECTIONS 111 AND 1114 OF TITLE 18; PUNISHMENT FOR VIOLATION OF SECTION 1114 OF TITLE 18.

The provisions of sections 111 and 1114, title 18, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of title 18, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life.

(Pub. L. 88–352, title VII, § 714, July 2, 1964, 78 Stat. 265; Pub. L. 92–261, § 8(g), Mar. 24, 1972, 86 Stat. 110.)

42 USC §2000e-14 | EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL; ESTABLISHMENT; COMPOSITION; DUTIES; REPORT TO PRESIDENT AND CONGRESS.

The Equal Employment Opportunity Commission shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before October 1 of each year, the Equal Employment Opportunity Commission shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

(Pub. L. 88–352, title VII, § 715, July 2, 1964, 78 Stat. 265; Pub. L. 92–261, § 10, Mar. 24, 1972, 86 Stat. 111; Pub. L. 94–273, § 3(24), Apr. 21, 1976, 90 Stat. 377; 1978 Reorg. Plan No. 1, § 6, eff. July 1, 1978, 43 F.R. 19807, 92 Stat. 3781.)

42 USC §2000e-15 | PRESIDENTIAL CONFERENCES; ACQUAINTANCE OF LEADERSHIP WITH PROVISIONS FOR EMPLOYMENT RIGHTS AND OBLIGATIONS; PLANS FOR FAIR ADMINISTRATION; MEMBERSHIP.

The President shall, as soon as feasible after July 2, 1964, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this subchapter to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this subchapter when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this subchapter.

(Pub. L. 88–352, title VII, § 716(c), July 2, 1964, 78 Stat. 266.)

42 USC §2000e-16 | EMPLOYMENT BY FEDERAL GOVERNMENT.

(a) Discriminatory practices prohibited; employees or applicants for employment subject to coverage. All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, in executive agencies as defined in section 105 of title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Regulatory Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Publishing Office, the Government Accountability Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Equal Employment Opportunity Commission; enforcement powers; issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress. Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall—

> (1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

(c) Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant. Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a), or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e–5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Section 2000e–5(f) through (k) of this title applicable to civil actions. The provisions of section 2000e–5(f) through (k) of this title, as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties..[1]

(e) Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity. Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

(f) Section 2000e–5(e)(3) of this title applicable to compensation discrimination. Section 2000e–5(e)(3) of this title shall apply to complaints of discrimination in compensation under this section.

(Pub. L. 88–352, title VII, § 717, as added Pub. L. 92–261, § 11, Mar. 24, 1972, 86 Stat. 111; amended 1978 Reorg. Plan No. 1, § 3, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781; Pub. L. 96–191, § 8(g), Feb. 15, 1980, 94 Stat. 34; Pub. L. 102–166, title I, § 114, Nov. 21, 1991, 105 Stat. 1079; Pub. L. 104–1, title II, § 201(c)(1), Jan. 23, 1995, 109 Stat. 8; Pub. L. 105–220, title III, § 341(a), Aug. 7, 1998, 112 Stat. 1092; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242; Pub. L. 111–2, § 5(c)(2), Jan. 29, 2009, 123 Stat. 7; Pub. L. 113–235, div. H, title I, § 1301(b), Dec. 16, 2014, 128 Stat. 2537.)

42 USC §2000e-16a | SHORT TITLE; PURPOSE; DEFINITION

(a) Short title. Sections 2000e–16a to 2000e–16c of this title may be cited as the "Government Employee Rights Act of 1991".

(b) Purpose. The purpose of sections 2000e–16a to 2000e–16c of this title is to provide procedures to protect the rights of certain government employees, with respect to their public employment, to be free of discrimination on the basis of race, color, religion, sex, national origin, age, or disability.

(c) "Violation" defined. For purposes of sections 2000e–16a to 2000e–16c of this title, the term "violation" means a practice that violates section 2000e–16b(a) of this title.

(Pub. L. 102–166, title III, § 301, Nov. 21, 1991, 105 Stat. 1088; Pub. L. 103–283, title III, § 312(f)(1), July 22, 1994, 108 Stat. 1446; Pub. L. 104–1, title V, § 504(a)(1), Jan. 23, 1995, 109 Stat. 40.)

42 USC §2000e-16b | DISCRIMINATORY PRACTICES PROHIBITED

(a) Practices. All personnel actions affecting the Presidential appointees described in section 1219[1] of title 2 or the State employees described in section 2000e–16c of this title shall be made free from any discrimination based on—

(1) race, color, religion, sex, or national origin, within the meaning of section 2000e–16 of this title;

(2) age, within the meaning of section 633a of title 29; or

(3) disability, within the meaning of section 791 of title 29 and sections 12112 to 12114 of this title.

(b) Remedies. The remedies referred to in sections 1219(a)(1) 1 of title 2 and 2000e–16c(a) of this title—

(1) may include, in the case of a determination that a violation of subsection (a)(1) or (a)(3) has occurred, such remedies as would be appropriate if awarded under sections 2000e–5(g), 2000e–5(k), and 2000e–16(d) of this title, and such compensatory damages as would be appropriate if awarded under section 1981 or sections 1981a(a) and 1981a(b)(2) of this title;

(2) may include, in the case of a determination that a violation of subsection (a)(2) has occurred, such remedies as would be appropriate if awarded under section 633a(c) of title 29; and

(3) may not include punitive damages.

(Pub. L. 102–166, title III, § 302, Nov. 21, 1991, 105 Stat. 1088; Pub. L. 104–1, title V, § 504(a)(1), Jan. 23, 1995, 109 Stat. 40.)

42 USC §2000e-16c | COVERAGE OF PREVIOUSLY EXEMPT STATE EMPLOYEES

(a) Application. The rights, protections, and remedies provided pursuant to section 2000e–16b of this title shall apply with respect to employment of any individual chosen or appointed, by a person elected to public office in any State or political subdivision of any State by the qualified voters thereof—

(1) to be a member of the elected official's personal staff;

(2) to serve the elected official on the policymaking level; or

(3) to serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

(b) Enforcement by administrative action

(1) In general. Any individual referred to in subsection (a) may file a complaint alleging a violation, not later than 180 days after the occurrence of the alleged violation, with the Equal Employment Opportunity Commission, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission determines that a violation has occurred, the final order shall also provide for appropriate relief.

(2) Referral to State and local authorities

(A) Application. Section 2000e–5(d) of this title shall apply with respect to any proceeding under this section.

(B) Definition. For purposes of the application described in subparagraph (A), the term "any charge filed by a member of the Commission alleging an unlawful employment practice" means a complaint filed under this section.

(c) Judicial review. Any party aggrieved by a final order under subsection (b) may obtain a review of such order under chapter 158 of title 28. For the purpose of this review, the Equal Employment Opportunity Commission shall be an "agency" as that term is used in chapter 158 of title 28.

(d) Standard of review. To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under subsection (b) if it is determined that the order was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(e) Attorney's fees. If the individual referred to in subsection (a) is the prevailing party in a proceeding under this subsection,[1] attorney's fees may be allowed by the court in accordance with the standards prescribed under section 2000e–5(k) of this title.

(Pub. L. 102–166, title III, § 304, formerly § 321, Nov. 21, 1991, 105 Stat. 1097; renumbered § 304 and amended Pub. L. 104–1, title V, § 504(a)(3), (4), Jan. 23, 1995, 109 Stat. 41.)

42 USC §2000e-17 | PROCEDURE FOR DENIAL, WITHHOLDING, TERMINATION, OR SUSPENSION OF GOVERNMENT CONTRACT SUBSEQUENT TO ACCEPTANCE BY GOVERNMENT OF AFFIRMATIVE ACTION PLAN OF EMPLOYER, TIME OF ACCEPTANCE OF PLAN.

No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of section 554 of title 5, and the following pertinent sections: Provided, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: Provided further, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

(Pub. L. 88–352, title VII, § 718, as added Pub. L. 92–261, § 13, Mar. 24, 1972, 86 Stat. 113.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 42 PUBLIC HEALTH AND WELFARE

CHAPTER: 21 CIVIL RIGHTS

SUBCHAPTER: IX MISCELLANEOUS PROVISIONS

SECTIONS: §2000h through §2000h-6

NOTE: **Entire Subchapter**

42 USC §2000H | CRIMINAL CONTEMPT PROCEEDINGS: TRIAL BY JURY, CRIMINAL PRACTICE, PENALTIES, EXCEPTIONS, INTENT; CIVIL CONTEMPT PROCEEDINGS

In any proceeding for criminal contempt arising under title II, III, IV, V, VI, or VII of this Act, the accused, upon demand therefor, shall be entitled to a trial by jury, which shall conform as near as may be to the practice in criminal cases. Upon conviction, the accused shall not be fined more than $1,000 or imprisoned for more than six months.

This section shall not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to writs, orders, or process of the court. No person shall be convicted of criminal contempt hereunder unless the act or omission constituting such contempt shall have been intentional, as required in other cases of criminal contempt.

Nor shall anything herein be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

(Pub. L. 88–352, title XI, §1101, July 2, 1964, 78 Stat. 268.)

Editorial Notes

References in Text

Title II, III, IV, V, VI, or VII of this Act, referred to in text, mean title II, III, IV, V, VI, or VII of Pub. L. 88–352, July 2, 1964, 78 Stat. 243 . Titles II, III, and IV are classified generally to subchapters II (§2000a et seq.), III (§2000b et seq.), and IV (§2000c et seq.) of this chapter. Title V amended sections 1975a to 1975d of this title. Title VI enacted sections 2000d to 2000d–4 of this title. Title VII enacted sections 2000e to 2000e–15 of this title, amended sections 2204 and 2205 of former Title 5, Executive Departments and Government Officers and Employees, and enacted provisions set out as a note under section 2000e of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

42 USC §2000H-1 | DOUBLE JEOPARDY; SPECIFIC CRIMES AND CRIMINAL CONTEMPTS

No person should be put twice in jeopardy under the laws of the United States for the same act or omission. For this reason, an acquittal or conviction in a prosecution for a specific crime under the laws of the United States shall bar a proceeding for criminal contempt, which is based upon the same act or omission and which arises under the provisions of this Act; and an acquittal or conviction in a proceeding for criminal contempt, which arises under the provisions of this Act, shall bar a prosecution for a specific crime under the laws of the United States based upon the same act or omission.

(Pub. L. 88–352, title XI, §1102, July 2, 1964, 78 Stat. 268.)

Editorial Notes

References in Text

This Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

42 USC §2000H-2 | INTERVENTION BY ATTORNEY GENERAL; DENIAL OF EQUAL PROTECTION ON ACCOUNT OF RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN

Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, sex or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

(Pub. L. 88–352, title IX, §902, July 2, 1964, 78 Stat. 266; Pub. L. 92–318, title IX, §906(a), June 23, 1972, 86 Stat. 375.)

Editorial Notes

Amendments

1972-Pub. L. 92–318 inserted "sex" after "religion,".

42 USC §2000h-3 | CONSTRUCTION OF PROVISIONS NOT TO AFFECT AUTHORITY OF ATTORNEY GENERAL, ETC., TO INSTITUTE OR INTERVENE IN ACTIONS OR PROCEEDINGS

Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or of the United States or any agency or officer thereof under existing law to institute or intervene in any action or proceeding.

(Pub. L. 88–352, title XI, §1103, July 2, 1964, 78 Stat. 268.)

Editorial Notes

References in Text

This Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

42 USC §2000H-4 | CONSTRUCTION OF PROVISIONS NOT TO EXCLUDE OPERATION OF STATE LAWS AND NOT TO INVALIDATE CONSISTENT STATE LAWS

Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof.

(Pub. L. 88–352, title XI, §1104, July 2, 1964, 78 Stat. 268.)

Editorial Notes

References in Text

This Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

42 USC §2000H-5 | AUTHORIZATION OF APPROPRIATIONS

There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

(Pub. L. 88–352, title XI, §1105, July 2, 1964, 78 Stat. 268.)

Editorial Notes

References in Text

This Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

42 USC §2000H-6 | SEPARABILITY

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Pub. L. 88–352, title XI, §1106, July 2, 1964, 78 Stat. 268.)

Editorial Notes

References in Text

This Act and the Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 42 PUBLIC HEALTH AND WELFARE

CHAPTER: 21F PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION

SUBCHAPTER: --

SECTIONS: §2000ff through §2000ff-11

NOTE: **Entire Subchapter**

42 USC §2000ff | DEFINITIONS

In this chapter:

(1) Commission

The term "Commission" means the Equal Employment Opportunity Commission as created by section 2000e–4 of this title.

(2) Employee; employer; employment agency; labor organization; member

(A) In general

The term "employee" means —

(i) an employee (including an applicant), as defined in section 2000e(f) of this title;

(ii) a State employee (including an applicant) described in section 2000e–16c(a) of this title;

(iii) a covered employee (including an applicant), as defined in section 1301 of title 2;

(iv) a covered employee (including an applicant), as defined in section 411(c) of title 3; or

(v) an employee or applicant to which section 2000e–16(a) of this title applies.

(B) Employer

The term "employer" means —

(i) an employer (as defined in section 2000e(b) of this title);

(ii) an entity employing a State employee described in section 2000e–16c(a) of this title;

(iii) an employing office, as defined in section 1301 of title 2;

(iv) an employing office, as defined in section 411(c) of title 3; or

(v) an entity to which section 2000e–16(a) of this title applies.

(C) Employment agency; labor organization

The terms "employment agency" and "labor organization" have the meanings given the terms in section 2000e of this title.

(D) Member

The term "member", with respect to a labor organization, includes an applicant for membership in a labor organization.

(3) Family member

The term "family member" means, with respect to an individual —

(A) a dependent (as such term is used for purposes of section 1181(f)(2) of title 29) of such individual, and

(B) any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual or of an individual described in subparagraph (A).

(4) Genetic information

(A) In general

The term "genetic information" means, with respect to any individual, information about —

(i) such individual's genetic tests,

(ii) the genetic tests of family members of such individual, and

(iii) the manifestation of a disease or disorder in family members of such individual.

(B) Inclusion of genetic services and participation in genetic research

Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which

includes genetic services, by such individual or any family member of such individual.

(C) Exclusions

The term "genetic information" shall not include information about the sex or age of any individual.

(5) Genetic monitoring

The term "genetic monitoring" means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, and respond to the effects of or control adverse environmental exposures in the workplace.

(6) Genetic services

The term "genetic services" means —

(A) a genetic test;

(B) genetic counseling (including obtaining, interpreting, or assessing genetic information); or

(C) genetic education.

(7) Genetic test

(A) In general

The term "genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

(B) Exceptions

The term "genetic test" does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

(Pub. L. 110–233, title II, § 201, May 21, 2008, 122 Stat. 905.)

42 USC §2000ff-1 | EMPLOYER PRACTICES

(a) Discrimination based on genetic information

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire, or to discharge, any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of genetic information with respect to the employee; or

(2) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee, because of genetic information with respect to the employee.

(b) Acquisition of genetic information

It shall be an unlawful employment practice for an employer to request, require, or purchase genetic information with respect to an employee or a family member of the employee except—

(1) where an employer inadvertently requests or requires family medical history of the employee or family member of the employee;

(2) where—

(A) health or genetic services are offered by the employer, including such services offered as part of a wellness program;

(B) the employee provides prior, knowing, voluntary, and written authorization;

(C) only the employee (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer except in aggregate terms that do not disclose the identity of specific employees;

(3) where an employer requests or requires family medical history from the employee to comply with the certification provisions of section 2613 of title 29 or such requirements under State family and medical leave laws;

(4) where an employer purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history;

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the employer provides written notice of the genetic monitoring to the employee;

(B)

(i) the employee provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the employee is informed of individual monitoring results;

(D) the monitoring is in compliance with—

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employer, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific employees; or

(6) where the employer conducts DNA analysis for law enforcement purposes as a forensic laboratory or for purposes of human remains identification, and requests or requires genetic information of such employer's employees, but only to the extent that such genetic information is used for analysis of DNA identification markers for quality control to detect sample contamination.

(c) Preservation of protections

In the case of information to which any of paragraphs (1) through (6) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 2000ff–5 of this title.

(Pub. L. 110–233, title II, § 202, May 21, 2008, 122 Stat. 907.)

42 USC §2000ff-2 | EMPLOYMENT AGENCY PRACTICES

(a) Discrimination based on genetic information

It shall be an unlawful employment practice for an employment agency —

(1) to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of genetic information with respect to the individual;

(2) to limit, segregate, or classify individuals or fail or refuse to refer for employment any individual in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this chapter.

(b) Acquisition of genetic information

It shall be an unlawful employment practice for an employment agency to request, require, or purchase genetic information with respect to an individual or a family member of the individual except —

(1) where an employment agency inadvertently requests or requires family medical history of the individual or family member of the individual;

(2) where —

(A) health or genetic services are offered by the employment agency, including such services offered as part of a wellness program;

(B) the individual provides prior, knowing, voluntary, and written authorization;

(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable

information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employment agency except in aggregate terms that do not disclose the identity of specific individuals;

(3) where an employment agency requests or requires family medical history from the individual to comply with the certification provisions of section 2613 of title 29 or such requirements under State family and medical leave laws;

(4) where an employment agency purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if —

(A) the employment agency provides written notice of the genetic monitoring to the individual;

(B)

(i) the individual provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the individual is informed of individual monitoring results;

(D) the monitoring is in compliance with —

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977

(30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employment agency, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals.

(c) Preservation of protections

In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1), (2), or (3) of subsection (a) or treated or disclosed in a manner that violates section 2000ff–5 of this title.

(Pub. L. 110–233, title II, § 203, May 21, 2008, 122 Stat. 908.)

42 USC §2000ff-3 | LABOR ORGANIZATION PRACTICES

(a) Discrimination based on genetic information

It shall be an unlawful employment practice for a labor organization —

(1) to exclude or to expel from the membership of the organization, or otherwise to discriminate against, any member because of genetic information with respect to the member;

(2) to limit, segregate, or classify the members of the organization, or fail or refuse to refer for employment any member, in any way that would deprive or tend to deprive any member of employment opportunities, or otherwise adversely affect the status of the member as an employee, because of genetic information with respect to the member; or

(3) to cause or attempt to cause an employer to discriminate against a member in violation of this chapter.

(b) Acquisition of genetic information

It shall be an unlawful employment practice for a labor organization to request, require, or purchase genetic information with respect to a member or a family member of the member except —

(1) where a labor organization inadvertently requests or requires family medical history of the member or family member of the member;

(2) where —

(A) health or genetic services are offered by the labor organization, including such services offered as part of a wellness program;

(B) the member provides prior, knowing, voluntary, and written authorization;

(C) only the member (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable

information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the labor organization except in aggregate terms that do not disclose the identity of specific members;

(3) where a labor organization requests or requires family medical history from the members to comply with the certification provisions of section 2613 of title 29 or such requirements under State family and medical leave laws;

(4) where a labor organization purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if —

(A) the labor organization provides written notice of the genetic monitoring to the member;

(B)

(i) the member provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the member is informed of individual monitoring results;

(D) the monitoring is in compliance with —

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977

(30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the labor organization, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific members.

(c) Preservation of protections

In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1), (2), or (3) of subsection (a) or treated or disclosed in a manner that violates section 2000ff–5 of this title.

(Pub. L. 110–233, title II, § 204, May 21, 2008, 122 Stat. 910.)

42 USC §2000ff-4 | TRAINING PROGRAMS

(a) Discrimination based on genetic information

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs —

(1) to discriminate against any individual because of genetic information with respect to the individual in admission to, or employment in, any program established to provide apprenticeship or other training or retraining;

(2) to limit, segregate, or classify the applicants for or participants in such apprenticeship or other training or retraining, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual; or

(3) to cause or attempt to cause an employer to discriminate against an applicant for or a participant in such apprenticeship or other training or retraining in violation of this chapter.

(b) Acquisition of genetic information

It shall be an unlawful employment practice for an employer, labor organization, or joint labor-management committee described in subsection (a) to request, require, or purchase genetic information with respect to an individual or a family member of the individual except —

(1) where the employer, labor organization, or joint labor-management committee inadvertently requests or requires family medical history of the individual or family member of the individual;

(2) where —

(A) health or genetic services are offered by the employer, labor organization, or joint labor-management committee, including such services offered as part of a wellness program;

(B) the individual provides prior, knowing, voluntary, and written authorization;

(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer, labor organization, or joint labor-management committee except in aggregate terms that do not disclose the identity of specific individuals;

(3) where the employer, labor organization, or joint labor-management committee requests or requires family medical history from the individual to comply with the certification provisions of section 2613 of title 29 or such requirements under State family and medical leave laws;

(4) where the employer, labor organization, or joint labor-management committee purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history;

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if —

(A) the employer, labor organization, or joint labor-management committee provides written notice of the genetic monitoring to the individual;

(B)

(i) the individual provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the individual is informed of individual monitoring results;

(D) the monitoring is in compliance with —

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employer, labor organization, or joint labor-management committee, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals; or

(6) where the employer conducts DNA analysis for law enforcement purposes as a forensic laboratory or for purposes of human remains identification, and requests or requires genetic information of such employer's apprentices or trainees, but only to the extent that such genetic information is used for analysis of DNA identification markers for quality control to detect sample contamination.

(c) Preservation of protections

In the case of information to which any of paragraphs (1) through (6) of subsection (b) applies, such information may not be used in violation of paragraph (1), (2), or (3) of subsection (a) or treated or disclosed in a manner that violates section 2000ff–5 of this title.

(Pub. L. 110–233, title II, § 205, May 21, 2008, 122 Stat. 911.)

42 USC §2000ff-5 | CONFIDENTIALITY OF GENETIC INFORMATION

(a) Treatment of information as part of confidential medical record

If an employer, employment agency, labor organization, or joint labor-management committee possesses genetic information about an employee or member, such information shall be maintained on separate forms and in separate medical files and be treated as a confidential medical record of the employee or member. An employer, employment agency, labor organization, or joint labor-management committee shall be considered to be in compliance with the maintenance of information requirements of this subsection with respect to genetic information subject to this subsection that is maintained with and treated as a confidential medical record under section 12112(d)(3)(B) of this title.

(b) Limitation on disclosure

An employer, employment agency, labor organization, or joint labor-management committee shall not disclose genetic information concerning an employee or member except —

(1) to the employee or member of a labor organization (or family member if the family member is receiving the genetic services) at the written request of the employee or member of such organization;

(2) to an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided for under part 46 of title 45, Code of Federal Regulations;

(3) in response to an order of a court, except that —

(A) the employer, employment agency, labor organization, or joint labor-management committee may disclose only the genetic information expressly authorized by such order; and

(B) if the court order was secured without the knowledge of the employee or member to whom the information refers, the employer, employment agency, labor organization, or joint labor-management committee shall inform the employee or

member of the court order and any genetic information that was disclosed pursuant to such order;

(4) to government officials who are investigating compliance with this chapter if the information is relevant to the investigation;

(5) to the extent that such disclosure is made in connection with the employee's compliance with the certification provisions of section 2613 of title 29 or such requirements under State family and medical leave laws; or

(6) to a Federal, State, or local public health agency only with regard to information that is described in section 2000ff(4)(A)(iii) of this title and that concerns a contagious disease that presents an imminent hazard of death or life-threatening illness, and that the employee whose family member or family members is or are the subject of a disclosure under this paragraph is notified of such disclosure.

(c) Relationship to HIPAA regulations

With respect to the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note), this chapter does not prohibit a covered entity under such regulations from any use or disclosure of health information that is authorized for the covered entity under such regulations. The previous sentence does not affect the authority of such Secretary to modify such regulations.

(Pub. L. 110–233, title II, § 206, May 21, 2008, 122 Stat. 913.)

42 USC §2000ff-6 | REMEDIES AND ENFORCEMENT

(a) Employees covered by title VII of the Civil Rights Act of 1964

(1) In general

The powers, procedures, and remedies provided in sections 705, 706, 707, 709, 710, and 711 of the Civil Rights Act of 1964 [42 U.S.C. 2000e–4 to 2000e–6, 2000e–8 to 2000e–10] to the Commission, the Attorney General, or any person, alleging a violation of title VII of that Act (42 U.S.C. 2000e et seq.) shall be the powers, procedures, and remedies this chapter provides to the Commission, the Attorney General, or any person, respectively, alleging an unlawful employment practice in violation of this chapter against an employee described in section 2000ff(2)(A)(i) of this title, except as provided in paragraphs (2) and (3).

(2) Costs and fees

The powers, remedies, and procedures provided in subsections (b) and (c) of section 1988 of this title,[1] shall be powers, remedies, and procedures this chapter provides to the Commission, the Attorney General, or any person, alleging such a practice.

(3) Damages

The powers, remedies, and procedures provided in section 1981a of this title, including the limitations contained in subsection (b)(3) of such section 1981a, shall be powers, remedies, and procedures this chapter provides to the Commission, the Attorney General, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1981a(a)(1) of this title).

(b) Employees covered by Government Employee Rights Act of 1991

(1) In general

The powers, remedies, and procedures provided in sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b, 2000e–16c) to the Commission, or any person, alleging a violation of section 302(a)(1) of that Act (42 U.S.C. 2000e–16b(a)(1)) shall be the powers, remedies, and procedures this chapter provides to the Commission, or any person, respectively, alleging an unlawful employment practice in violation of this chapter against an employee described in section 2000ff(2)(A)(ii) of this title, except as provided in paragraphs (2) and (3).

(2) Costs and fees

The powers, remedies, and procedures provided in subsections (b) and (c) of section 1988 of this title,1 shall be powers, remedies, and procedures this chapter provides to the Commission, or any person, alleging such a practice.

(3) Damages

The powers, remedies, and procedures provided in section 1981a of this title, including the limitations contained in subsection (b)(3) of such section 1981a, shall be powers, remedies, and procedures this chapter provides to the Commission, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1981a(a)(1) of this title).

(c) Employees covered by Congressional Accountability Act of 1995

(1) In general

The powers, remedies, and procedures provided in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as defined in section 101 of that Act (2 U.S.C. 1301)), or any person, alleging a violation of section 201(a)(1)

of that Act [2 U.S.C. 1311(a)(1)] shall be the powers, remedies, and procedures this chapter provides to that Board, or any person, alleging an unlawful employment practice in violation of this chapter against an employee described in section 2000ff(2)(A)(iii) of this title, except as provided in paragraphs (2) and (3).

(2) Costs and fees

The powers, remedies, and procedures provided in subsections (b) and (c) of section 1988 of this title,1 shall be powers, remedies, and procedures this chapter provides to that Board, or any person, alleging such a practice.

(3) Damages

The powers, remedies, and procedures provided in section 1981a of this title, including the limitations contained in subsection (b)(3) of such section 1981a, shall be powers, remedies, and procedures this chapter provides to that Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1981a(a)(1) of this title).

(4) Other applicable provisions

With respect to a claim alleging a practice described in paragraph (1), title III of the Congressional Accountability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply in the same manner as such title applies with respect to a claim alleging a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

(d) Employees covered by chapter 5 of title 3

(1) In general

The powers, remedies, and procedures provided in chapter 5 of title 3 to the President, the Commission, the Merit Systems Protection Board, or any person, alleging a violation of section 411(a)(1) of that title, shall be the powers, remedies, and procedures this chapter provides to the President, the Commission, such Board, or any

person, respectively, alleging an unlawful employment practice in violation of this chapter against an employee described in section 2000ff(2)(A)(iv) of this title, except as provided in paragraphs (2) and (3).

(2) Costs and fees

The powers, remedies, and procedures provided in subsections (b) and (c) of section 1988 of this title,1 shall be powers, remedies, and procedures this chapter provides to the President, the Commission, such Board, or any person, alleging such a practice.

(3) Damages

The powers, remedies, and procedures provided in section 1981a of this title, including the limitations contained in subsection (b)(3) of such section 1981a, shall be powers, remedies, and procedures this chapter provides to the President, the Commission, such Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1981a(a)(1) of this title).

(e) Employees covered by section 717 of the Civil Rights Act of 1964

(1) In general

The powers, remedies, and procedures provided in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging a violation of that section shall be the powers, remedies, and procedures this chapter provides to the Commission, the Attorney General, the Librarian of Congress, or any person, respectively, alleging an unlawful employment practice in violation of this chapter against an employee or applicant described in section 2000ff(2)(A)(v) of this title, except as provided in paragraphs (2) and (3).

(2) Costs and fees

The powers, remedies, and procedures provided in subsections (b) and (c) of section 1988 of this title,1 shall be powers, remedies, and procedures this chapter provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice.

(3) Damages

The powers, remedies, and procedures provided in section 1981a of this title, including the limitations contained in subsection (b)(3) of such section 1981a, shall be powers, remedies, and procedures this chapter provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1981a(a)(1) of this title).

(f) Prohibition against retaliation

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter. The remedies and procedures otherwise provided for under this section shall be available to aggrieved individuals with respect to violations of this subsection.

(g) Definition

In this section, the term "Commission" means the Equal Employment Opportunity Commission.

(Pub. L. 110–233, title II, § 207, May 21, 2008, 122 Stat. 914.)

42 USC §2000ff-7 | DISPARATE IMPACT

(a) General rule

Notwithstanding any other provision of this Act, "disparate impact", as that term is used in section 2000e–2(k) of this title, on the basis of genetic information does not establish a cause of action under this Act.

(b) Commission

On the date that is 6 years after May 21, 2008, there shall be established a commission, to be known as the Genetic Nondiscrimination Study Commission (referred to in this section as the "Commission") to review the developing science of genetics and to make recommendations to Congress regarding whether to provide a disparate impact cause of action under this Act.

(c) Membership

(1) In general

The Commission shall be composed of 8 members, of which —

(A) 1 member shall be appointed by the Majority Leader of the Senate;

(B) 1 member shall be appointed by the Minority Leader of the Senate;

(C) 1 member shall be appointed by the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate;

(D) 1 member shall be appointed by the ranking minority member of the Committee on Health, Education, Labor, and Pensions of the Senate;

(E) 1 member shall be appointed by the Speaker of the House of Representatives;

(F) 1 member shall be appointed by the Minority Leader of the House of Representatives;

(G) 1 member shall be appointed by the Chairman of the Committee on Education and Labor of the House of Representatives; and

(H) 1 member shall be appointed by the ranking minority member of the Committee on Education and Labor of the House of Representatives.

(2) Compensation and expenses

The members of the Commission shall not receive compensation for the performance of services for the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Commission.

(d) Administrative provisions

(1) Location

The Commission shall be located in a facility maintained by the Equal Employment Opportunity Commission.

(2) Detail of Government employees

Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(3) Information from Federal agencies

The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this section. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

(4) Hearings

The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the objectives of this section, except that, to the extent possible, the Commission shall use existing data and research.

(5) Postal services

The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) Report

Not later than 1 year after all of the members are appointed to the Commission under subsection (c)(1), the Commission shall submit to Congress a report that summarizes the findings of the Commission and makes such recommendations for legislation as are consistent with this Act.

(f) Authorization of appropriations

There are authorized to be appropriated to the Equal Employment Opportunity Commission such sums as may be necessary to carry out this section.

(Pub. L. 110–233, title II, § 208, May 21, 2008, 122 Stat. 917.)

42 USC §2000ff-8 | CONSTRUCTION

(a) In general

Nothing in this chapter shall be construed to —

(1) limit the rights or protections of an individual under any other Federal or State statute that provides equal or greater protection to an individual than the rights or protections provided for under this chapter, including the protections of an individual under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) (including coverage afforded to individuals under section 102 of such Act (42 U.S.C. 12112)), or under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

(2)

(A) limit the rights or protections of an individual to bring an action under this chapter against an employer, employment agency, labor organization, or joint labor-management committee for a violation of this chapter; or

(B) provide for enforcement of, or penalties for violation of, any requirement or prohibition applicable to any employer, employment agency, labor organization, or joint labor-management committee subject to enforcement for a violation under —

(i) the amendments made by title I of this Act;

(ii)

(I) subsection (a) of section 1181 of title 29 as such section applies with respect to genetic information pursuant to subsection (b)(1)(B) of such section;

(II) section 1182(a)(1)(F) of title 29; or

(III) section 1182(b)(1) of title 29 as such section applies with respect to genetic information as a health status-related factor;

(iii)

(I) subsection (a) of section 2701[1] of the Public Health Service Act as such section applies with respect to genetic information pursuant to subsection (b)(1)(B) of such section;

(II) section 2702(a)(1)(F)1 of such Act; or

(III) section 2702(b)(1)1 of such Act as such section applies with respect to genetic information as a health status-related factor; or

(iv)

(I) subsection (a) of section 9801 of title 26 as such section applies with respect to genetic information pursuant to subsection (b)(1)(B) of such section;

(II) section 9802(a)(1)(F) of title 26; or

(III) section 9802(b)(1) of title 26 as such section applies with respect to genetic information as a health status-related factor;

(3) apply to the Armed Forces Repository of Specimen Samples for the Identification of Remains;

(4) limit or expand the protections, rights, or obligations of employees or employers under applicable workers' compensation laws;

(5) limit the authority of a Federal department or agency to conduct or sponsor occupational or other health research that is conducted in compliance with the regulations contained in part 46 of title 45, Code of Federal Regulations (or any corresponding or similar regulation or rule);

(6) limit the statutory or regulatory authority of the Occupational Safety and Health Administration or the Mine Safety and Health Administration to promulgate or

enforce workplace safety and health laws and regulations; or

(7) require any specific benefit for an employee or member or a family member of an employee or member under any group health plan or health insurance issuer offering group health insurance coverage in connection with a group health plan.

(b) Genetic information of a fetus or embryo

Any reference in this chapter to genetic information concerning an individual or family member of an individual shall —

(1) with respect to such an individual or family member of an individual who is a pregnant woman, include genetic information of any fetus carried by such pregnant woman; and

(2) with respect to an individual or family member utilizing an assisted reproductive technology, include genetic information of any embryo legally held by the individual or family member.

(c) Relation to authorities under title I

With respect to a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, this chapter does not prohibit any activity of such plan or issuer that is authorized for the plan or issuer under any provision of law referred to in clauses (i) through (iv) of subsection (a)(2)(B).

(Pub. L. 110–233, title II, § 209, May 21, 2008, 122 Stat. 918.)

42 USC §2000ff-9 | MEDICAL INFORMATION THAT IS NOT GENETIC INFORMATION

An employer, employment agency, labor organization, or joint labor-management committee shall not be considered to be in violation of this chapter based on the use, acquisition, or disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition of an employee or member, including a manifested disease, disorder, or pathological condition that has or may have a genetic basis.

(Pub. L. 110–233, title II, § 210, May 21, 2008, 122 Stat. 920.)

42 USC §2000ff-10 | REGULATIONS

Not later than 1 year after May 21, 2008, the Commission shall issue final regulations to carry out this chapter.

(Pub. L. 110–233, title II, § 211, May 21, 2008, 122 Stat. 920.)

42 USC §2000ff-11 | AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated such sums as may be necessary to carry out this chapter (except for section 2000ff–7 of this title).

(Pub. L. 110–233, title II, § 212, May 21, 2008, 122 Stat. 920.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 42 PUBLIC HEALTH AND WELFARE

CHAPTER: 45 FAIR HOUSING

SUBCHAPTER: I GENERALLY

SECTIONS: §3601 through §3619

NOTE: **Entire Subchapter**

42 USC §3601 | DECLARATION OF POLICY

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

(Pub. L. 90–284, title VIII, § 801, Apr. 11, 1968, 82 Stat. 81.)

42 USC §3602 | DEFINITIONS

As used in this subchapter —

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 3604, 3605, 3606, or 3617 of this title.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) "Handicap" means, with respect to a person —

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of title 21).

(i) "Aggrieved person" includes any person who —

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

(j) "Complainant" means the person (including the Secretary) who files a complaint under section 3610 of this title.

(k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with —

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(l) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

(m) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

(n) "Respondent" means —

(1) the person or other entity accused in a complaint of an unfair housing practice; and

(2) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 3610(a) of this title.

(o) "Prevailing party" has the same meaning as such term has in section 1988 of this title.

(Pub. L. 90–284, title VIII, § 802, Apr. 11, 1968, 82 Stat. 81; Pub. L. 95–598, title III, § 331, Nov. 6, 1978, 92 Stat. 2679; Pub. L. 100–430, § 5, Sept. 13, 1988, 102 Stat. 1619.)

42 USC §3603 | EFFECTIVE DATES OF CERTAIN PROHIBITIONS

(a) Application to certain described dwellings

Subject to the provisions of subsection (b) and section 3607 of this title, the prohibitions against discrimination in the sale or rental of housing set forth in section 3604 of this title shall apply:

(1) Upon enactment of this subchapter, to —

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to April 11, 1968;

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to April 11, 1968: Provided, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b).

(b) Exemptions

Nothing in section 3604 of this title (other than subsection (c)) shall apply to —

(1) any single-family house sold or rented by an owner: Provided, That such private individual owner does not own more than three such single-family houses at any one time: Provided further, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: Provided further, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: Provided further, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this subchapter only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 3604(c) of this title; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(c) Business of selling or renting dwellings defined

For the purposes of subsection (b), a person shall be deemed to be in the business of selling or renting dwellings if —

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(Pub. L. 90–284, title VIII, § 803, Apr. 11, 1968, 82 Stat. 82.)

42 USC §3604 | DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING AND OTHER PROHIBITED PRACTICES

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful —

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)

(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of —

(A) that buyer or renter,[1]

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of —

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes —

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.[2]

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that —

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5)

(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and

construction requirements of paragraph (3)(C) are met.

(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

(D) Nothing in this subchapter shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)

(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 3610(f)(3) of this title to receive and process complaints or otherwise engage in enforcement activities under this subchapter.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this subchapter.

(7) As used in this subsection, the term "covered multifamily dwellings" means —

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which

this subchapter shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subchapter.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(Pub. L. 90–284, title VIII, § 804, Apr. 11, 1968, 82 Stat. 83; Pub. L. 93–383, title VIII, § 808(b)(1), Aug. 22, 1974, 88 Stat. 729; Pub. L. 100–430, §§ 6(a)–(b)(2), (e), 15, Sept. 13, 1988, 102 Stat. 1620, 1622, 1623, 1636.)

42 USC §3605 | DISCRIMINATION IN RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS

(a) In general

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) "Residential real estate-related transaction" defined

As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance—

(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(c) Appraisal exemption

Nothing in this subchapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

(Pub. L. 90–284, title VIII, § 805, Apr. 11, 1968, 82 Stat. 83; Pub. L. 93–383, title VIII, § 808(b)(2), Aug. 22, 1974, 88 Stat. 729; Pub. L. 100–430, § 6(c), Sept. 13, 1988, 102 Stat. 1622.)

42 USC §3606 | DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES

After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, handicap, familial status, or national origin.

(Pub. L. 90–284, title VIII, § 806, Apr. 11, 1968, 82 Stat. 84; Pub. L. 93–383, title VIII, § 808(b)(3), Aug. 22, 1974, 88 Stat. 729; Pub. L. 100–430, § 6(b)(1), Sept. 13, 1988, 102 Stat. 1622.)

42 USC §3607 | RELIGIOUS ORGANIZATION OR PRIVATE CLUB EXEMPTION

(a) Nothing in this subchapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this subchapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b)

(1) Nothing in this subchapter limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this subchapter regarding familial status apply with respect to housing for older persons.

(2) As used in this section, "housing for older persons" means housing —

(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(B) intended for, and solely occupied by, persons 62 years of age or older; or

(C) intended and operated for occupancy by persons 55 years of age or older, and —

(i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;

(ii) the housing facility or community publishes and adheres to policies and

procedures that demonstrate the intent required under this subparagraph; and

(iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy, which shall —

(I) provide for verification by reliable surveys and affidavits; and

(II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(A) persons residing in such housing as of September 13, 1988, who do not meet the age requirements of subsections [1] (2)(B) or (C): Provided, That new occupants of such housing meet the age requirements of subsections [1] (2)(B) or (C); or

(B) unoccupied units: Provided, That such units are reserved for occupancy by persons who meet the age requirements of subsections 1 (2)(B) or (C).

(4) Nothing in this subchapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 802 of title 21.

(5)

(A) A person shall not be held personally liable for monetary damages for a violation of this subchapter if such person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons.

(B) For the purposes of this paragraph, a person may only show good faith reliance on the application of the exemption by showing that —

(i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and

(ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

(Pub. L. 90–284, title VIII, § 807, Apr. 11, 1968, 82 Stat. 84; Pub. L. 100–430, § 6(d), Sept. 13, 1988, 102 Stat. 1622; Pub. L. 104–76, §§ 2, 3, Dec. 28, 1995, 109 Stat. 787.)

42 USC §3608 | ADMINISTRATION

(a) Authority and responsibility

The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) Assistant Secretary

The Department of Housing and Urban Development shall be provided an additional Assistant Secretary.

(c) Delegation of authority; appointment of administrative law judges; location of conciliation meetings; administrative review

The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this subchapter. The person to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5372, and 7521 of title 5. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his administrative law judges to other administrative law judges or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(d) Cooperation of Secretary and executive departments and agencies in administration of housing and urban development programs and activities to further fair housing purposes

All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.

(e) Functions of Secretary

The Secretary of Housing and Urban Development shall —

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies, including an annual report to the Congress —

(A) specifying the nature and extent of progress made nationally in eliminating discriminatory housing practices and furthering the purposes of this subchapter, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and

(B) containing tabulations of the number of instances (and the reasons therefor) in the preceding year in which —

(i) investigations are not completed as required by section 3610(a)(1)(B) of this title;

(ii) determinations are not made within the time specified in section 3610(g) of this title; and

(iii) hearings are not commenced or findings and conclusions are not made as required by section 3612(g) of this title;

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices;

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter; and

(6) annually report to the Congress, and make available to the public, data on the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department to the extent such characteristics are within the coverage of the provisions of law and Executive orders referred to in subsection (f) which apply to such programs (and in order to develop the data to be included and made available to the public under this subsection, the Secretary shall, without regard to any other provision of law, collect such information relating to those characteristics as the Secretary determines to be necessary or appropriate).

(f) Provisions of law applicable to Department programs

The provisions of law and Executive orders to which subsection (e)(6) applies are —

(1) title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.];

(2) this subchapter;

(3) section 794 of title 29;

(4) the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.];

(5) the Equal Credit Opportunity Act [15 U.S.C. 1691 et seq.];

(6) section 1982 of this title;

(7) section 637(a) of title 15;

(8) section 1735f–5 of title 12;

(9) section 5309 of this title;

(10) section 1701u of title 12;

(11) Executive orders 11063, 11246, 11625, 12250, 12259, and 12432; and

(12) any other provision of law which the Secretary specifies by publication in the Federal Register for the purpose of this subsection.

(Pub. L. 90–284, title VIII, § 808, Apr. 11, 1968, 82 Stat. 84; Pub. L. 95–251, § 3, Mar. 27, 1978, 92 Stat. 184; Pub. L. 95–454, title VIII, § 801(a)(3)(J), Oct. 13, 1978, 92 Stat. 1222; Pub. L. 100–430, § 7, Sept. 13, 1988, 102 Stat. 1623.)

42 USC §3608a | COLLECTION OF CERTAIN DATA

(a) In general

To assess the extent of compliance with Federal fair housing requirements (including the requirements established under title VI of Public Law 88–352 [42 U.S.C. 2000d et seq.] and title VIII of Public Law 90–284 [42 U.S.C. 3601 et seq.]), the Secretary of Agriculture shall collect, not less than annually, data on the racial and ethnic characteristics of persons eligible for, assisted, or otherwise benefiting under each community development, housing assistance, and mortgage and loan insurance and guarantee program administered by such Secretary. Such data shall be collected on a building by building basis if the Secretary determines such collection to be appropriate.

(b) Reports to Congress

The Secretary of Agriculture shall include in the annual report of such Secretary to the Congress a summary and evaluation of the data collected by such Secretary under subsection (a) during the preceding year.

(Pub. L. 100–242, title V, § 562, Feb. 5, 1988, 101 Stat. 1944; Pub. L. 104–66, title I, § 1071(e), Dec. 21, 1995, 109 Stat. 720.)

42 USC §3609 | EDUCATION AND CONCILIATION; CONFERENCES AND CONSULTATIONS; REPORTS

Immediately after April 11, 1968, the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this subchapter. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this subchapter and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. He may pay per diem, travel, and transportation expenses for persons attending such conferences as provided in section 5703 of title 5. He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this subchapter. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

(Pub. L. 90–284, title VIII, § 809, Apr. 11, 1968, 82 Stat. 85.)

42 USC §3610 | ADMINISTRATIVE ENFORCEMENT; PRELIMINARY MATTERS

(a) Complaints and answers

(1)

(A)

(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the Secretary alleging such discriminatory housing practice. The Secretary, on the Secretary's own initiative, may also file such a complaint.

(ii) Such complaints shall be in writing and shall contain such information and be in such form as the Secretary requires.

(iii) The Secretary may also investigate housing practices to determine whether a complaint should be brought under this section.

(B) Upon the filing of such a complaint —

(i) the Secretary shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this subchapter;

(ii) the Secretary shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2), serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this subchapter, together with a copy of the original complaint;

(iii) each respondent may file, not later than 10 days after receipt of notice from the Secretary, an answer to such complaint; and

(iv) the Secretary shall make an investigation of the alleged discriminatory housing practice

and complete such investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), unless it is impracticable to do so.

(C) If the Secretary is unable to complete the investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(D) Complaints and answers shall be under oath or affirmation, and may be reasonably and fairly amended at any time.

(2)

(A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under paragraph (1), to such person, from the Secretary.

(B) Such notice, in addition to meeting the requirements of paragraph (1), shall explain the basis for the Secretary's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) Investigative report and conciliation

(1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Secretary, the Secretary shall, to the extent feasible, engage in conciliation with respect to such complaint.

(2) A conciliation agreement arising out of such conciliation shall be an agreement between the

respondent and the complainant, and shall be subject to approval by the Secretary.

(3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Secretary determines that disclosure is not required to further the purposes of this subchapter.

(5)

(A) At the end of each investigation under this section, the Secretary shall prepare a final investigative report containing —

(i) the names and dates of contacts with witnesses;

(ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(iii) a summary description of other pertinent records;

(iv) a summary of witness statements; and

(v) answers to interrogatories.

(B) A final report under this paragraph may be amended if additional evidence is later discovered.

(c) Failure to comply with conciliation agreement

Whenever the Secretary has reasonable cause to believe that a respondent has breached a conciliation agreement, the Secretary shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 3614 of this title for the enforcement of such agreement.

(d) Prohibitions and requirements with respect to disclosure of information

(1) Nothing said or done in the course of conciliation under this subchapter may be made public or used as

evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned.

(2) Notwithstanding paragraph (1), the Secretary shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Secretary's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(e) Prompt judicial action

(1) If the Secretary concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this subchapter, the Secretary may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such an authorization, the Attorney General shall promptly commence and maintain such an action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Federal Rules of Civil Procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section and section 3612 of this title.

(2) Whenever the Secretary has reason to believe that a basis may exist for the commencement of proceedings against any respondent under sections 3614(a) and 3614(c) of this title or for proceedings by any governmental licensing or supervisory authorities, the Secretary shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be.

(f) Referral for State or local proceedings

(1) Whenever a complaint alleges a discriminatory housing practice —

(A) within the jurisdiction of a State or local public agency; and

(B) as to which such agency has been certified by the Secretary under this subsection;

the Secretary shall refer such complaint to that certified agency before taking any action with respect to such complaint.

(2) Except with the consent of such certified agency, the Secretary, after that referral is made, shall take no further action with respect to such complaint unless —

(A) the certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of such referral;

(B) the certified agency, having so commenced such proceedings, fails to carry forward such proceedings with reasonable promptness; or

(C) the Secretary determines that the certified agency no longer qualifies for certification under this subsection with respect to the relevant jurisdiction.

(3)

(A) The Secretary may certify an agency under this subsection only if the Secretary determines that —

(i) the substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;

(ii) the procedures followed by such agency;

(iii) the remedies available to such agency; and

(iv) the availability of judicial review of such agency's action; are substantially equivalent to those created by and under this subchapter.

(B) Before making such certification, the Secretary shall take into account the current practices and past performance, if any, of such agency.

(4) During the period which begins on September 13, 1988, and ends 40 months after September 13, 1988, each agency certified (including an agency certified for interim referrals pursuant to 24 CFR 115.11, unless such agency is subsequently denied recognition under 24 CFR 115.7) for the purposes of this subchapter on the day before September 13, 1988, shall for the purposes of this subsection be considered certified under this subsection with respect to those matters for which such agency was certified on September 13, 1988. If the Secretary determines in an individual case that an agency has not been able to meet the certification requirements within this 40-month period due to exceptional circumstances, such as the infrequency of legislative sessions in that jurisdiction, the Secretary may extend such period by not more than 8 months.

(5) Not less frequently than every 5 years, the Secretary shall determine whether each agency certified under this subsection continues to qualify for certification. The Secretary shall take appropriate action with respect to any agency not so qualifying.

(g) Reasonable cause determination and effect

(1) The Secretary shall, within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the Secretary has approved a conciliation agreement with respect to the complaint. If the Secretary is unable to make the determination within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(2)

(A) If the Secretary determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section 3612 of this title.

(B) Such charge —

(i) shall consist of a short and plain statement of the facts upon which the Secretary has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(ii) shall be based on the final investigative report; and

(iii) need not be limited to the facts or grounds alleged in the complaint filed under subsection (a).

(C) If the Secretary determines that the matter involves the legality of any State or local zoning or other land use law or ordinance, the Secretary shall immediately refer the matter to the Attorney General for appropriate action under section 3614 of this title, instead of issuing such charge.

(3) If the Secretary determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall promptly dismiss the complaint. The Secretary shall make public disclosure of each such dismissal.

(4) The Secretary may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(h) Service of copies of charge

After the Secretary issues a charge under this section, the Secretary shall cause a copy thereof, together with information as to how to make an election under section

3612(a) of this title and the effect of such an election, to be served —

(1) on each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and

(2) on each aggrieved person on whose behalf the complaint was filed.

(Pub. L. 90–284, title VIII, § 810, as added Pub. L. 100–430, § 8(2), Sept. 13, 1988, 102 Stat. 1625.)

42 USC §3611 | SUBPOENAS; GIVING OF EVIDENCE

(a) In general

The Secretary may, in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this subchapter. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the United States district court for the district in which the investigation is taking place.

(b) Witness fees

Witnesses summoned by a subpoena under this subchapter shall be entitled to the same witness and mileage fees as witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party is unable to pay the fees, by the Secretary.

(c) Criminal penalties

(1) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (a), shall be fined not more than $100,000 or imprisoned not more than one year, or both.

(2) Any person who, with intent thereby to mislead another person in any proceeding under this subchapter —

(A) makes or causes to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to subpoena or other lawful order under subsection (a);

(B) willfully neglects or fails to make or to cause to be made full, true, and correct entries in such reports, accounts, records, or other documents; or

(C) willfully mutilates, alters, or by any other means falsifies any documentary evidence; shall be fined not more than $100,000 or imprisoned not more than one year, or both.

(Pub. L. 90–284, title VIII, § 811, as added Pub. L. 100–430, § 8(2), Sept. 13, 1988, 102 Stat. 1628.)

42 USC §3612 | ENFORCEMENT BY SECRETARY

(a) Election of judicial determination

When a charge is filed under section 3610 of this title, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (o) in lieu of a hearing under subsection (b). The election must be made not later than 20 days after the receipt by the electing person of service under section 3610(h) of this title or, in the case of the Secretary, not later than 20 days after such service. The person making such election shall give notice of doing so to the Secretary and to all other complainants and respondents to whom the charge relates.

(b) Administrative law judge hearing in absence of election

If an election is not made under subsection (a) with respect to a charge filed under section 3610 of this title, the Secretary shall provide an opportunity for a hearing on the record with respect to a charge issued under section 3610 of this title. The Secretary shall delegate the conduct of a hearing under this section to an administrative law judge appointed under section 3105 of title 5. The administrative law judge shall conduct the hearing at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) Rights of parties

At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 3611 of this title. Any aggrieved person may intervene as a party in the proceeding. The Federal Rules of Evidence apply to the presentation of evidence in such hearing as they would in a civil action in a United States district court.

(d) Expedited discovery and hearing

(1) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.

(2) A hearing under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(3) The Secretary shall, not later than 180 days after September 13, 1988, issue rules to implement this subsection.

(e) Resolution of charge

Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

(f) Effect of trial of civil action on administrative proceedings

An administrative law judge may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(g) Hearings, findings and conclusions, and order

(1) The administrative law judge shall commence the hearing under this section no later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within 120 days after the issuance of the charge, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(2) The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within such period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(3) If the administrative law judge finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent —

(A) in an amount not exceeding $10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

(B) in an amount not exceeding $25,000 if the respondent has been adjudged to have committed one other discriminatory housing practice during the 5-year period ending on the date of the filing of this charge; and

(C) in an amount not exceeding $50,000 if the respondent has been adjudged to have committed 2 or more discriminatory housing practices during the 7-year period ending on the date of the filing of this charge; except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs (B) and (C) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge filed under this subchapter.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the Secretary shall, not later than 30 days after the date of the issuance of such order

(or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review) —

(A) send copies of the findings of fact, conclusions of law, and the order, to that governmental agency; and

(B) recommend to that governmental agency appropriate disciplinary action (including, where appropriate, the suspension or revocation of the license of the respondent).

(6) In the case of an order against a respondent against whom another order was issued within the preceding 5 years under this section, the Secretary shall send a copy of each such order to the Attorney General.

(7) If the administrative law judge finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, such administrative law judge shall enter an order dismissing the charge. The Secretary shall make public disclosure of each such dismissal.

(h) Review by Secretary; service of final order

(1) The Secretary may review any finding, conclusion, or order issued under subsection (g). Such review shall be completed not later than 30 days after the finding, conclusion, or order is so issued; otherwise the finding, conclusion, or order becomes final.

(2) The Secretary shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

(i) Judicial review

(1) Any party aggrieved by a final order for relief under this section granting or denying in whole or in part the relief sought may obtain a review of such order under chapter 158 of title 28.

(2) Notwithstanding such chapter, venue of the proceeding shall be in the judicial circuit in which the discriminatory housing practice is alleged to have

occurred, and filing of the petition for review shall be not later than 30 days after the order is entered.

(j) Court enforcement of administrative order upon petition by Secretary

(1) The Secretary may petition any United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the administrative law judge and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that such order be enforced and for appropriate temporary relief or restraining order.

(2) The Secretary shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the administrative law judge.

(k) Relief which may be granted

(1) Upon the filing of a petition under subsection (i) or (j), the court may —

(A) grant to the petitioner, or any other party, such temporary relief, restraining order, or other order as the court deems just and proper;

(B) affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and

(C) enforce such order to the extent that such order is affirmed or modified.

(2) Any party to the proceeding before the administrative law judge may intervene in the court of appeals.

(3) No objection not made before the administrative law judge shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

(l) Enforcement decree in absence of petition for review

If no petition for review is filed under subsection (i) before the expiration of 45 days after the date the administrative law judge's order is entered, the administrative law judge's findings of fact and order shall be conclusive in connection with any petition for enforcement —

(1) which is filed by the Secretary under subsection (j) after the end of such day; or

(2) under subsection (m).

(m) Court enforcement of administrative order upon petition of any person entitled to relief

If before the expiration of 60 days after the date the administrative law judge's order is entered, no petition for review has been filed under subsection (i), and the Secretary has not sought enforcement of the order under subsection (j), any person entitled to relief under the order may petition for a decree enforcing the order in the United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred.

(n) Entry of decree

The clerk of the court of appeals in which a petition for enforcement is filed under subsection (l) or (m) shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary, the respondent named in the petition, and to any other parties to the proceeding before the administrative law judge.

(o) Civil action for enforcement when election is made for such civil action

(1) If an election is made under subsection (a), the Secretary shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court seeking relief under this subsection. Venue for such civil action shall be determined under chapter 87 of title 28.

(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

(3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 3613 of this title. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under section 3613 of this title shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(p) Attorney's fees

In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under this section, the administrative law judge or the court, as the case may be, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 504 of title 5 or by section 2412 of title 28.

(Pub. L. 90–284, title VIII, § 812, as added Pub. L. 100–430, § 8(2), Sept. 13, 1988, 102 Stat. 1629.)

42 USC §3613 | ENFORCEMENT BY PRIVATE PERSONS

(a) Civil action

(1)

(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such 2-year period shall not include any time during which an administrative proceeding under this subchapter was pending with respect to a complaint or charge under this subchapter based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 3610(a) of this title and without regard to the status of any such complaint, but if the Secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Secretary if an administrative law judge has commenced a hearing on the record under this subchapter with respect to such charge.

(b) Appointment of attorney by court

Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may—

(1) appoint an attorney for such person; or

(2) authorize the commencement or continuation of a civil action under subsection (a) without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(c) Relief which may be granted

(1) In a civil action under subsection (a), if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d), may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(2) In a civil action under subsection (a), the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.

(d) Effect on certain sales, encumbrances, and rentals

Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint with the Secretary or civil action under this subchapter.

(e) Intervention by Attorney General

Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 3614(e) of this title in a civil action to which such section applies.

(Pub. L. 90–284, title VIII, § 813, as added Pub. L. 100–430, § 8(2), Sept. 13, 1988, 102 Stat. 1633.)

42 USC §3614 | ENFORCEMENT BY ATTORNEY GENERAL

(a) Pattern or practice cases

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(b) On referral of discriminatory housing practice or conciliation agreement for enforcement

(1)

(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the Secretary under section 3610(g) of this title.

(B) A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(2)

(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the Secretary under section 3610(c) of this title.

(B) A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under section 3610(c) of this title.

(c) Enforcement of subpoenas

The Attorney General, on behalf of the Secretary, or other party at whose request a subpoena is issued, under this

subchapter, may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(d) Relief which may be granted in civil actions under subsections (a) and (b)

(1) In a civil action under subsection (a) or (b), the court —

(A) may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this subchapter as is necessary to assure the full enjoyment of the rights granted by this subchapter;

(B) may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(C) may, to vindicate the public interest, assess a civil penalty against the respondent —

(i) in an amount not exceeding $50,000, for a first violation; and

(ii) in an amount not exceeding $100,000, for any subsequent violation.

(2) In a civil action under this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 2412 of title 28.

(e) Intervention in civil actions

Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 3613 of this title.

(Pub. L. 90–284, title VIII, § 814, as added Pub. L. 100–430, § 8(2), Sept. 13, 1988, 102 Stat. 1634.)

42 USC §3614-1 | INCENTIVES FOR SELF-TESTING AND SELF-CORRECTION

(a) Privileged information

(1) Conditions for privilege

A report or result of a self-test (as that term is defined by regulation of the Secretary) shall be considered to be privileged under paragraph (2) if any person —

(A) conducts, or authorizes an independent third party to conduct, a self-test of any aspect of a residential real estate related lending transaction of that person, or any part of that transaction, in order to determine the level or effectiveness of compliance with this subchapter by that person; and

(B) has identified any possible violation of this subchapter by that person and has taken, or is taking, appropriate corrective action to address any such possible violation.

(2) Privileged self-test

If a person meets the conditions specified in subparagraphs (A) and (B) of paragraph (1) with respect to a self-test described in that paragraph, any report or results of that self-test —

(A) shall be privileged; and

(B) may not be obtained or used by any applicant, department, or agency in any —

(i) proceeding or civil action in which one or more violations of this subchapter are alleged; or

(ii) examination or investigation relating to compliance with this subchapter.

(b) Results of self-testing

(1) In general

No provision of this section may be construed to prevent an aggrieved person, complainant, department, or agency from obtaining or using a report or results of any self-test in any proceeding or civil action in which a

violation of this subchapter is alleged, or in any examination or investigation of compliance with this subchapter if —

(A) the person to whom the self-test relates or any person with lawful access to the report or the results —

(i) voluntarily releases or discloses all, or any part of, the report or results to the aggrieved person, complainant, department, or agency, or to the general public; or

(ii) refers to or describes the report or results as a defense to charges of violations of this subchapter against the person to whom the self-test relates; or

(B) the report or results are sought in conjunction with an adjudication or admission of a violation of this subchapter for the sole purpose of determining an appropriate penalty or remedy.

(2) Disclosure for determination of penalty or remedy

Any report or results of a self-test that are disclosed for the purpose specified in paragraph (1)(B) —

(A) shall be used only for the particular proceeding in which the adjudication or admission referred to in paragraph (1)(B) is made; and

(B) may not be used in any other action or proceeding.

(c) Adjudication

An aggrieved person, complainant, department, or agency that challenges a privilege asserted under this section may seek a determination of the existence and application of that privilege in —

(1) a court of competent jurisdiction; or

(2) an administrative law proceeding with appropriate jurisdiction.

(Pub. L. 90–284, title VIII, § 814A, as added Pub. L. 104–208, div. A, title II, § 2302(b)(1), Sept. 30, 1996, 110 Stat. 3009–421.)

42 USC §3614a | RULES TO IMPLEMENT SUBCHAPTER

The Secretary may make rules (including rules for the collection, maintenance, and analysis of appropriate data) to carry out this subchapter. The Secretary shall give public notice and opportunity for comment with respect to all rules made under this section.

(Pub. L. 90–284, title VIII, § 815, as added Pub. L. 100–430, § 8(2), Sept. 13, 1988, 102 Stat. 1635.)

42 USC §3615 | EFFECT ON STATE LAWS

Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this subchapter shall be effective, that grants, guarantees, or protects the same rights as are granted by this subchapter; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.

(Pub. L. 90–284, title VIII, § 816, formerly § 815, Apr. 11, 1968, 82 Stat. 89; renumbered § 816, Pub. L. 100–430, § 8(1), Sept. 13, 1988, 102 Stat. 1625.)

42 USC §3616 | COOPERATION WITH STATE AND LOCAL AGENCIES ADMINISTERING FAIR HOUSING LAWS; UTILIZATION OF SERVICES AND PERSONNEL; REIMBURSEMENT; WRITTEN AGREEMENTS; PUBLICATION IN FEDERAL REGISTER

> The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this subchapter. In furtherance of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

(Pub. L. 90–284, title VIII, § 817, formerly § 816, Apr. 11, 1968, 82 Stat. 89; renumbered § 817, Pub. L. 100–430, § 8(1), Sept. 13, 1988, 102 Stat. 1625.)

42 USC §3619 | SEPARABILITY

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, the remainder of the subchapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Pub. L. 90–284, title VIII, § 820, formerly § 819, Apr. 11, 1968, 82 Stat. 89; renumbered § 820, Pub. L. 100–430, § 8(1), Sept. 13, 1988, 102 Stat. 1625.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 42 PUBLIC HEALTH AND WELFARE

CHAPTER: 126 EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

SUBCHAPTER: -- FRONT MATTER

SECTIONS: §12101 through §12103

NOTE: **Front Matter**

42 USC §12101 | FINDINGS AND PURPOSE

(a) Findings

The Congress finds that —

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose

It is the purpose of this chapter —

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

(Pub. L. 101–336, § 2, July 26, 1990, 104 Stat. 328; Pub. L. 110–325, § 3, Sept. 25, 2008, 122 Stat. 3554.)

42 USC §12102 | DEFINITION OF DISABILITY

As used in this chapter:

(1) Disability

The term "disability" means, with respect to an individual —

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major life activities

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an

impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability

The definition of "disability" in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)

(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as —

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph —

(I) the term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image.

(Pub. L. 101–336, § 3, July 26, 1990, 104 Stat. 329; Pub. L. 110–325, § 4(a), Sept. 25, 2008, 122 Stat. 3555.)

42 USC §12103 | ADDITIONAL DEFINITIONS

As used in this chapter:

(1) Auxiliary aids and services

The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.".

(Pub. L. 101–336, § 4, as added Pub. L. 110–325, § 4(b), Sept. 25, 2008, 122 Stat. 3556.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 42 PUBLIC HEALTH AND WELFARE

CHAPTER: 126 EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

SUBCHAPTER: I EMPLOYMENT

SECTIONS: §12111 through §12117

NOTE: **Entire Subchapter**

42 USC §12111 | DEFINITIONS

As used in this subchapter:

(1) Commission

The term "Commission" means the Equal Employment Opportunity Commission established by section 2000e–4 of this title.

(2) Covered entity

The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) Direct threat

The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) Employee

The term "employee" means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(5) Employer

(A) In general

The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions

The term "employer" does not include —

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26.

(6) Illegal use of drugs

(A) In general

The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs

The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(7) Person, etc.

The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 2000e of this title.

(8) Qualified individual

The term "qualified individual" means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation

The term "reasonable accommodation" may include —

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship

(A) In general

The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include —

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

(Pub. L. 101–336, title I, § 101, July 26, 1990, 104 Stat. 330; Pub. L. 102–166, title I, § 109(a), Nov. 21, 1991, 105 Stat. 1077; Pub. L. 110–325, § 5(c)(1), Sept. 25, 2008, 122 Stat. 3557.)

42 USC §12112 | DISCRIMINATION

(a) General rule

No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction

As used in subsection (a), the term "discriminate against a qualified individual on the basis of disability" includes —

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration —

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)

(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries

(1) In general

It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

(2) Control of corporation

(A) Presumption

If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

(B) Exception

This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(C) Determination

For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on —

(i) the interrelation of operations;

(ii) the common management;

(iii) the centralized control of labor relations; and

(iv) the common ownership or financial control, of the employer and the corporation.

(d) Medical examinations and inquiries

(1) In general

The prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries.

(2) Preemployment

(A) Prohibited examination or inquiry

Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry

A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination

A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if —

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that —

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

(4) Examination and inquiry

(A) Prohibited examinations and inquiries

A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries

A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement

Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

(Pub. L. 101–336, title I, § 102, July 26, 1990, 104 Stat. 331; Pub. L. 102–166, title I, § 109(b)(2), Nov. 21, 1991, 105 Stat. 1077; Pub. L. 110–325, § 5(a), Sept. 25, 2008, 122 Stat. 3557.)

42 USC §12113 | DEFENSES

(a) In general

It may be a defense to a charge of discrimination under this chapter that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this subchapter.

(b) Qualification standards

The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Qualification standards and tests related to uncorrected vision

Notwithstanding section 12102(4)(E)(ii) of this title, a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.

(d) Religious entities

(1) In general

This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement

Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(e) List of infectious and communicable diseases

(1) In general

The Secretary of Health and Human Services, not later than 6 months after July 26, 1990, shall —

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

(D) widely disseminate such information regarding the list of diseases and their modes of transmissability[1] to the general public.

Such list shall be updated annually.

(2) Applications

In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) Construction

Nothing in this chapter shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissability[1] published by the Secretary of Health and Human Services.

[1] So in original. Probably should be "transmissibility".

(Pub. L. 101–336, title I, § 103, July 26, 1990, 104 Stat. 333; Pub. L. 110–325, § 5(b), Sept. 25, 2008, 122 Stat. 3557.)

42 USC §12114 | ILLEGAL USE OF DRUGS AND ALCOHOL

(a) Qualified individual with a disability

For purposes of this subchapter, a qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction

Nothing in subsection (a) shall be construed to exclude as a qualified individual with a disability an individual who —

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) Authority of covered entity

A covered entity —

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under chapter 81 of title 41;

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any

unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that —

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) Drug testing

(1) In general

For purposes of this subchapter, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) Construction

Nothing in this subchapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) Transportation employees

Nothing in this subchapter shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to —

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c).

(Pub. L. 101–336, title I, § 104, July 26, 1990, 104 Stat. 334; Pub. L. 110–325, § 5(c)(2), Sept. 25, 2008, 122 Stat. 3557.)

42 USC §12115 | POSTING NOTICES

Every employer, employment agency, labor organization, or joint labor-management committee covered under this subchapter shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this chapter, in the manner prescribed by section 2000e–10 of this title.

(Pub. L. 101–336, title I, § 105, July 26, 1990, 104 Stat. 336.)

42 USC §12116 | REGULATIONS

Not later than 1 year after July 26, 1990, the Commission shall issue regulations in an accessible format to carry out this subchapter in accordance with subchapter II of chapter 5 of title 5.

(Pub. L. 101–336, title I, § 106, July 26, 1990, 104 Stat. 336.)

42 USC §12117 | ENFORCEMENT

(a) Powers, remedies, and procedures

The powers, remedies, and procedures set forth in sections 2000e–4, 2000e–5, 2000e–6, 2000e–8, and 2000e–9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

(b) Coordination

The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this subchapter and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this subchapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990.

(Pub. L. 101–336, title I, § 107, July 26, 1990, 104 Stat. 336.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 42 PUBLIC HEALTH AND WELFARE

CHAPTER: 126 EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

SUBCHAPTER: II PUBLIC SERVICES

SECTIONS: §12131 through §12165

NOTE: **Entire Subchapter**

42 USC §12131 | DEFINITIONS

As used in this subchapter:

(1) Public entity

The term "public entity" means -

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) 1 of title 49).

(2) Qualified individual with a disability

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

(Pub. L. 101–336, title II, §201, July 26, 1990, 104 Stat. 337.)

Editorial Notes

References in Text

Section 24102 of title 49, referred to in par. (1)(C), was subsequently amended, and section 24102(4) no longer defines "commuter authority". However, such term is defined elsewhere in that section.

Codification

In par. (1)(C), "section 24102(4) of title 49" substituted for "section 103(8) of the Rail Passenger Service Act" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378 , the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Statutory Notes and Related Subsidiaries

Effective Date

Pub. L. 101–336, title II, §205, July 26, 1990, 104 Stat. 338, provided that:

"(a) General Rule.-Except as provided in subsection (b), this subtitle [subtitle A (§§201–205) of title II of Pub. L. 101–336, enacting this part] shall become effective 18 months after the date of enactment of this Act [July 26, 1990].

"(b) Exception.-Section 204 [section 12134 of this title] shall become effective on the date of enactment of this Act."

Executive Documents

Ex. Ord. No. 13217. Community-Based Alternatives for Individuals With Disabilities

Ex. Ord. No. 13217, June 18, 2001, 66 F.R. 33155, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to place qualified individuals with disabilities in community settings whenever appropriate, it is hereby ordered as follows:

Section 1. Policy. This order is issued consistent with the following findings and principles:

(a) The United States is committed to community-based alternatives for individuals with disabilities and recognizes that such services advance the best interests of Americans.

(b) The United States seeks to ensure that America's community-based programs effectively foster independence and participation in the community for Americans with disabilities.

(c) Unjustified isolation or segregation of qualified individuals with disabilities through institutionalization is a form of disability-based discrimination prohibited by Title II of the Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 [12131] et seq. States must avoid disability-based discrimination unless doing so would fundamentally alter the nature of the service, program, or activity provided by the State.

(d) In Olmstead v. L.C., 527 U.S. 581 (1999) (the "Olmstead decision"), the Supreme Court construed Title II of the ADA [42 U.S.C. 12131 et seq.] to require States to place qualified individuals with mental disabilities in community settings, rather than in institutions, whenever treatment professionals determine that such placement is appropriate, the affected persons do not oppose such placement, and the State can reasonably accommodate the placement, taking into account the resources available to the State and the needs of others with disabilities.

(e) The Federal Government must assist States and localities to implement swiftly the Olmstead decision, so as to help ensure that all Americans have the opportunity

to live close to their families and friends, to live more independently, to engage in productive employment, and to participate in community life.

Sec. 2. Swift Implementation of the Olmstead Decision: Agency Responsibilities.

(a) The Attorney General, the Secretaries of Health and Human Services, Education, Labor, and Housing and Urban Development, and the Commissioner of the Social Security Administration shall work cooperatively to ensure that the Olmstead decision is implemented in a timely manner. Specifically, the designated agencies should work with States to help them assess their compliance with the Olmstead decision and the ADA [42 U.S.C. 12101 et seq.] in providing services to qualified individuals with disabilities in community-based settings, as long as such services are appropriate to the needs of those individuals. These agencies should provide technical guidance and work cooperatively with States to achieve the goals of Title II of the ADA [42 U.S.C. 12131 et seq.], particularly where States have chosen to develop comprehensive, effectively working plans to provide services to qualified individuals with disabilities in the most integrated settings. These agencies should also ensure that existing Federal resources are used in the most effective manner to support the goals of the ADA. The Secretary of Health and Human Services shall take the lead in coordinating these efforts.

(b) The Attorney General, the Secretaries of Health and Human Services, Education, Labor, and Housing and Urban Development, and the Commissioner of the Social Security Administration shall evaluate the policies, programs, statutes, and regulations of their respective agencies to determine whether any should be revised or modified to improve the availability of community-based services for qualified individuals with disabilities. The review shall focus on identifying affected populations, improving the flow of information about supports in the community, and removing barriers that impede opportunities for community placement. The review should ensure the involvement of consumers, advocacy organizations, providers, and relevant agency representatives. Each agency head should report to the President, through the Secretary of Health and Human Services, with the results of their evaluation within 120 days.

(c) The Attorney General and the Secretary of Health and Human Services shall fully enforce Title II of the ADA, including investigating and resolving complaints filed on behalf of individuals who allege that they have been the victims of unjustified institutionalization. Whenever possible, the Department of Justice and the Department of Health and Human Services should work cooperatively with States to resolve these complaints, and should use alternative dispute resolution to bring these complaints to a quick and constructive resolution.

(d) The agency actions directed by this order shall be done consistent with this Administration's budget.

Sec. 3. Judicial Review. Nothing in this order shall affect any otherwise available judicial review of agency action. This order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

42 USC §12132 | DISCRIMINATION

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

(Pub. L. 101–336, title II, §202, July 26, 1990, 104 Stat. 337.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 18 months after July 26, 1990, see section 205(a) of Pub. L. 101–336, set out as a note under section 12131 of this title.

42 USC §12133 | ENFORCEMENT

The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

(Pub. L. 101–336, title II, §203, July 26, 1990, 104 Stat. 337.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 18 months after July 26, 1990, see section 205(a) of Pub. L. 101–336, set out as a note under section 12131 of this title.

42 USC §12134 | REGULATIONS

(a) In general

Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations in an accessible format that implement this part. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 12143, 12149, or 12164 of this title.

(b) Relationship to other regulations

Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) shall be consistent with this chapter and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 794 of title 29. With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 794 of title 29.

(c) Standards

Regulations under subsection (a) shall include standards applicable to facilities and vehicles covered by this part, other than facilities, stations, rail passenger cars, and vehicles covered by part B. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204(a) of this title.

(Pub. L. 101–336, title II, §204, July 26, 1990, 104 Stat. 337.)

Editorial Notes

References in Text

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327 , which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

Statutory Notes and Related Subsidiaries

Effective Date

Section effective July 26, 1990, see section 205(b) of Pub. L. 101–336, set out as a note under section 12131 of this title.

42 USC §12141 | DEFINITIONS

As used in this subpart:

(1) Demand responsive system

The term "demand responsive system" means any system of providing designated public transportation which is not a fixed route system.

(2) Designated public transportation

The term "designated public transportation" means transportation (other than public school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 12161 of this title)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(3) Fixed route system

The term "fixed route system" means a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule.

(4) Operates

The term "operates", as used with respect to a fixed route system or demand responsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

(5) Public school transportation

The term "public school transportation" means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

(6) Secretary

The term "Secretary" means the Secretary of Transportation.

(Pub. L. 101–336, title II, §221, July 26, 1990, 104 Stat. 338.)

Statutory Notes and Related Subsidiaries

Effective Date

Pub. L. 101–336, title II, §231, July 26, 1990, 104 Stat. 346, provided that:

> "(a) General Rule. - Except as provided in subsection (b), this part [part I (§§221–231) of subtitle B of title II of Pub. L. 101–336, enacting this subpart] shall become effective 18 months after the date of enactment of this Act [July 26, 1990].
>
> "(b) Exception. - Sections 222, 223 (other than subsection (a)), 224, 225, 227(b), 228(b), and 229 [sections 12142, 12143(b) to (f), 12144, 12145, 12147(b), 12148(b), and 12149 of this title] shall become effective on the date of enactment of this Act."

42 USC §12142 | PUBLIC ENTITIES OPERATING FIXED ROUTE SYSTEMS

(a) Purchase and lease of new vehicles

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system to purchase or lease a new bus, a new rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following July 26, 1990, and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) Purchase and lease of used vehicles

Subject to subsection (c)(1), it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system to purchase or lease, after the 30th day following July 26, 1990, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Remanufactured vehicles

(1) General rule

Except as provided in paragraph (2), it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system -

(A) to remanufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins (or for which the solicitation is made) after the 30th day following July 26, 1990; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended; unless, after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by

individuals with disabilities, including individuals who use wheelchairs.

(2) Exception for historic vehicles

(A) General rule

If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of paragraph (1) and which do not significantly alter the historic character of such vehicle.

(B) Vehicles of historic character defined by regulations

For purposes of this paragraph and section 12148(b) of this title, a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

(Pub. L. 101–336, title II, §222, July 26, 1990, 104 Stat. 339.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective July 26, 1990, see section 231(b) of Pub. L. 101–336, set out as a note under section 12141 of this title.

42 USC §12143 | PARATRANSIT AS A COMPLEMENT TO FIXED ROUTE SERVICE

(a) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs, that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

(b) Issuance of regulations

Not later than 1 year after July 26, 1990, the Secretary shall issue final regulations to carry out this section.

(c) Required contents of regulations

(1) Eligible recipients of service

The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section -

(A)

(i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide designated public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system;

(B) to one other individual accompanying the individual with the disability; and

(C) to other individuals, in addition to the one individual described in subparagraph (B), accompanying the individual with a disability provided that space for these additional individuals is available on the paratransit vehicle carrying the individual with a disability and that the transportation of such additional individuals will not result in a denial of service to individuals with disabilities.

For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

(2) Service area

The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in

which the public entity solely provides commuter bus service.

(3) Service criteria

Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

(4) Undue financial burden limitation

The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

(5) Additional services

The regulations issued under this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transportation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

(6) Public participation

The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

(7) Plans

The regulations issued under this section shall require that each public entity which operates a fixed route system -

(A) within 18 months after July 26, 1990, submit to the Secretary, and commence implementation of, a plan for providing paratransit and other special transportation services which meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

(8) Provision of services by others

The regulations issued under this section shall -

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity submitting the plan does not have to provide under the plan such service for individuals with disabilities.

(9) Other provisions

The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

(d) Review of plan

(1) General rule

The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) Disapproval

If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefor.

(3) Modification of disapproved plan

Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary, and commence implementation of, such modified plan.

(e) "Discrimination" defined

As used in subsection (a), the term "discrimination" includes -

(1) a failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7);

(2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d)(3);

(3) submission to the Secretary of a modified plan under subsection (d)(3) which does not meet the requirements of this section; or

(4) a failure of such entity to provide paratransit or other special transportation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) Statutory construction

Nothing in this section shall be construed as preventing a public entity -

(1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,

(2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or

(3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

(Pub. L. 101–336, title II, §223, July 26, 1990, 104 Stat. 340.)

Statutory Notes and Related Subsidiaries

Effective Date

Subsec. (a) of this section effective 18 months after July 26, 1990, and subsecs. (b) to (f) of this section effective July 26, 1990, see section 231 of Pub. L. 101–336, set out as a note under section 12141 of this title.

Paratransit System Under FTA Approved Coordinated Plan

Pub. L. 114–94, div. A, title III, §3023, Dec. 4, 2015, 129 Stat. 1494 , provided that: "Notwithstanding the provisions of section 37.131(c) of title 49, Code of Federal Regulations, any paratransit system currently coordinating complementary paratransit service for more than 40 fixed route agencies shall be permitted to continue using an existing tiered, distance-based coordinated paratransit fare system, if the fare for the existing tiered, distance-based coordinated paratransit fare system is not increased by a greater percentage than any increase to the fixed route fare for the largest transit agency in the complementary paratransit service area."

42 USC §12144 | PUBLIC ENTITY OPERATING A DEMAND RESPONSIVE SYSTEM

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for such entity to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following July 26, 1990, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

(Pub. L. 101–336, title II, §224, July 26, 1990, 104 Stat. 342.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective July 26, 1990, see section 231(b) of Pub. L. 101–336, set out as a note under section 12141 of this title.

42 USC §12145 | TEMPORARY RELIEF WHERE LIFTS ARE UNAVAILABLE

(a) Granting

With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 12142(a) or 12144 of this title to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary -

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(b) Duration and notice to Congress

Any relief granted under subsection (a) shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

(c) Fraudulent application

If, at any time, the Secretary has reasonable cause to believe that any relief granted under subsection (a) was fraudulently applied for, the Secretary shall -

(1) cancel such relief if such relief is still in effect; and

(2) take such other action as the Secretary considers appropriate.

(Pub. L. 101–336, title II, §225, July 26, 1990, 104 Stat. 343.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective July 26, 1990, see section 231(b) of Pub. L. 101–336, set out as a note under section 12141 of this title.

42 USC §12146 | NEW FACILITIES

For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to construct a new facility to be used in the provision of designated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(Pub. L. 101–336, title II, §226, July 26, 1990, 104 Stat. 343.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 18 months after July 26, 1990, see section 231(a) of Pub. L. 101–336, set out as a note under section 12141 of this title.

42 USC §12147 | ALTERATIONS OF EXISTING FACILITIES

(a) General rule

With respect to alterations of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for a public entity to fail to make such alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations. Where the public entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Special rule for stations

(1) General rule

For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity that provides designated public transportation to fail, in accordance with the provisions of this subsection, to make key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Rapid rail and light rail key stations

(A) Accessibility

Except as otherwise provided in this paragraph, all key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on July 26, 1990.

(B) Extension for extraordinarily expensive structural changes

The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following July 26, 1990, at least 2/3 of such key stations must be readily accessible to and usable by individuals with disabilities.

(3) Plans and milestones

The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection -

(A) that reflects consultation with individuals with disabilities affected by such plan and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

(Pub. L. 101–336, title II, §227, July 26, 1990, 104 Stat. 343.)

Statutory Notes and Related Subsidiaries

Effective Date

Subsec. (a) of this section effective 18 months after July 26, 1990, and subsec. (b) of this section effective July 26, 1990, see section 231 of Pub. L. 101–336, set out as a note under section 12141 of this title.

42 USC §12148 | PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES AND ONE CAR PER TRAIN RULE

(a) Public transportation programs and activities in existing facilities

(1) In general

With respect to existing facilities used in the provision of designated public transportation services, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for a public entity to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(2) Exception

Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 12147(a) of this title (relating to alterations) or section 12147(b) of this title (relating to key stations).

(3) Utilization

Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.

(b) One car per train rule

(1) General rule

Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by a light or rapid rail system, for purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who

use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

(2) Historic trains

In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of a light or rapid rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 12142(c)(1) of this title and which do not significantly alter the historic character of such vehicle.

(Pub. L. 101–336, title II, §228, July 26, 1990, 104 Stat. 344.)

Editorial Notes

References in Text

The effective date of this section, referred to in subsec. (b)(1), probably means the effective date of subsec. (b), which is effective on date of enactment of Pub. L. 101–336, which was approved July 26, 1990. The effective date of subsec. (a) is 18 months after July 26, 1990. See section 231 of Pub. L. 101–336, set out as an Effective Date note under section 12141 of this title.

Statutory Notes and Related Subsidiaries

Effective Date

Subsec. (a) of this section effective 18 months after July 26, 1990, and subsec. (b) of this section effective July 26, 1990, see section 231 of Pub. L. 101–336, set out as a note under section 12141 of this title.

42 USC §12149 | REGULATIONS

(a) In general

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart (other than section 12143 of this title).

(b) Standards

The regulations issued under this section and section 12143 of this title shall include standards applicable to facilities and vehicles covered by this part. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

(Pub. L. 101–336, title II, §229, July 26, 1990, 104 Stat. 345.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective July 26, 1990, see section 231(b) of Pub. L. 101–336, set out as a note under section 12141 of this title.

42 USC §12150 | INTERIM ACCESSIBILITY REQUIREMENTS

If final regulations have not been issued pursuant to section 12149 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under sections 12146 and 12147 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(Pub. L. 101–336, title II, §230, July 26, 1990, 104 Stat. 345.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 18 months after July 26, 1990, see section 231(a) of Pub. L. 101–336, set out as a note under section 12141 of this title.

42 USC §12161 | DEFINITIONS

As used in this subpart:

(1) Commuter authority

The term "commuter authority" has the meaning given such term in section 24102(4) 1 of title 49.

(2) Commuter rail transportation

The term "commuter rail transportation" has the meaning given the term "commuter rail passenger transportation" in section 24102(5) 1 of title 49.

(3) Intercity rail transportation

The term "intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation.

(4) Rail passenger car

The term "rail passenger car" means, with respect to intercity rail transportation, single-level and bi-level coach cars, single-level and bi-level dining cars, single-level and bi-level sleeping cars, single-level and bi-level lounge cars, and food service cars.

(5) Responsible person

The term "responsible person" means —

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable

basis by regulation by the Secretary of Transportation.

(6) Station

The term "station" means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

(Pub. L. 101–336, title II, §241, July 26, 1990, 104 Stat. 346; Pub. L. 104–287, §6(k), Oct. 11, 1996, 110 Stat. 3400.)

Editorial Notes

References in Text

Section 24102 of title 49, referred to in pars. (1) and (2), was subsequently amended, and pars. (4) and (5) of section 24102 no longer define "commuter authority" and "commuter rail passenger transportation", respectively. However, such terms are defined elsewhere in that section.

Codification

In pars. (1) and (2), "section 24102(4) of title 49" substituted for "section 103(8) of the Rail Passenger Service Act (45 U.S.C. 502(8))" and "section 24102(5) of title 49" substituted for "section 103(9) of the Rail Passenger Service Act (45 U.S.C. 502(9))" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Amendments

1996—Par. (2). Pub. L. 104–287 substituted "commuter rail passenger transportation" for "commuter service".

Statutory Notes and Related Subsidiaries

Effective Date

Pub. L. 101–336, title II, §246, July 26, 1990, 104 Stat. 353, provided that:

> "(a) General Rule. — Except as provided in subsection (b), this part [part II (§§241–246) of subtitle B of title II of Pub. L. 101–336, enacting this subpart] shall become effective 18 months after the date of enactment of this Act [July 26, 1990].
>
> "(b) Exception. — Sections 242 and 244 [sections 12162 and 12164 of this title] shall become effective on the date of enactment of this Act."

[1] See References in Text note below.

42 USC §12162 | INTERCITY AND COMMUTER RAIL ACTIONS CONSIDERED DISCRIMINATORY

(a) Intercity rail transportation

(1) One car per train rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

(2) New intercity cars

(A) General rule

Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Special rule for single-level passenger coaches for individuals who use wheelchairs

Single-level passenger coaches shall be required to —

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and

(iv) have a restroom usable by an individual who uses a wheelchair,

only to the extent provided in paragraph (3).

(C) Special rule for single-level dining cars for individuals who use wheelchairs

Single-level dining cars shall not be required to —

(i) be able to be entered from the station platform by an individual who uses a wheelchair; or

(ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) Special rule for bi-level dining cars for individuals who use wheelchairs

Bi-level dining cars shall not be required to —

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passenger's wheelchair; or

(iv) have a restroom usable by an individual who uses a wheelchair.

(3) Accessibility of single-level coaches

(A) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides intercity rail transportation to fail to have on each train which includes one or more single-level rail passenger coaches —

(i) a number of spaces —

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 5 years after July 26, 1990; and

(ii) a number of spaces —

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 10 years after July 26, 1990.

(B) Location

Spaces required by subparagraph (A) shall be located in single-level rail passenger coaches or food service cars.

(C) Limitation

Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) Other accessibility features

Single-level rail passenger coaches and food service cars on which the spaces required by subparagraph (A) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

(4) Food service

(A) Single-level dining cars

On any train in which a single-level dining car is used to provide food service —

(i) if such single-level dining car was purchased after July 26, 1990, table service in such car shall be provided to a passenger who uses a wheelchair if —

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (i) through which an individual who uses a wheelchair may enter.

(B) Bi-level dining cars

On any train in which a bi-level dining car is used to provide food service —

(i) if such train includes a bi-level lounge car purchased after July 26, 1990, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

(b) Commuter rail transportation

(1) One car per train rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

(2) New commuter rail cars

(A) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Accessibility

For purposes of section 12132 of this title and section 794 of title 29, a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require —

(i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;

(ii) space to fold and store a wheelchair; or

(iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) Used rail cars

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(d) Remanufactured rail cars

(1) Remanufacturing

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Purchase or lease

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) Stations

(1) New stations

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Existing stations

(A) Failure to make readily accessible

(i) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a responsible person to fail to make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(ii) Period for compliance

(I) Intercity rail

All stations in the intercity rail transportation system shall be made readily accessible to and usable by individuals with disabilities, including

individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after July 26, 1990.

(II) Commuter rail

Key stations in commuter rail transportation systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after July 26, 1990, except that the time limit may be extended by the Secretary of Transportation up to 20 years after July 26, 1990, in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

(iii) Designation of key stations

Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Before the final designation of key stations under this clause, a commuter authority shall hold a public hearing.

(iv) Plans and milestones

The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this subparagraph.

(B) Requirement when making alterations

(i) General rule

It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

(ii) Alterations to a primary function area

It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) Required cooperation

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for an owner, or person in control, of a station governed by subparagraph (A) or (B) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this chapter.

(Pub. L. 101–336, title II, §242, July 26, 1990, 104 Stat. 347.)

Editorial Notes

References in Text

This chapter, referred to in subsec. (e)(2)(C), was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

Statutory Notes and Related Subsidiaries

Effective Date

Section effective July 26, 1990, see section 246(b) of Pub. L. 101–336, set out as a note under section 12161 of this title.

42 USC §12163 | CONFORMANCE OF ACCESSIBILITY STANDARDS

Accessibility standards included in regulations issued under this subpart shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 12204(a) of this title.

(Pub. L. 101–336, title II, §243, July 26, 1990, 104 Stat. 352.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 18 months after July 26, 1990, see section 246(a) of Pub. L. 101–336, set out as a note under section 12161 of this title.

42 USC §12164 | REGULATIONS

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart.

(Pub. L. 101–336, title II, §244, July 26, 1990, 104 Stat. 352.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective July 26, 1990, see section 246(b) of Pub. L. 101–336, set out as a note under section 12161 of this title.

42 USC §12165 | INTERIM ACCESSIBILITY REQUIREMENTS

(a) Stations

If final regulations have not been issued pursuant to section 12164 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 12162(e) of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(b) Rail passenger cars

If final regulations have not been issued pursuant to section 12164 of this title, a person shall be considered to have complied with the requirements of section 12162(a) through (d) of this title that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this subpart and are in effect at the time such design is substantially completed.

(Pub. L. 101–336, title II, §245, July 26, 1990, 104 Stat. 352.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 18 months after July 26, 1990, see section 246(a) of Pub. L. 101–336, set out as a note under section 12161 of this title.

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE:	42	PUBLIC HEALTH AND WELFARE
CHAPTER:	126	EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES
SUBCHAPTER:	III	PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SECTIONS: §12181 through §12189

NOTE: **Entire Subchapter**

42 USC §12181 | DEFINITIONS

As used in this subchapter:

(1) Commerce

The term "commerce" means travel, trade, traffic, commerce, transportation, or communication -

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) Commercial facilities

The term "commercial facilities" means facilities -

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 12162 of this title or covered under this subchapter, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 1 (42 U.S.C. 3601 et seq.).

(3) Demand responsive system

The term "demand responsive system" means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

(4) Fixed route system

The term "fixed route system" means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(5) Over-the-road bus

The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

(6) Private entity

The term "private entity" means any entity other than a public entity (as defined in section 12131(1) of this title).

(7) Public accommodation

The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce -

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(8) Rail and railroad

The terms "rail" and "railroad" have the meaning given the term "railroad" in section 20102(1) 1 of title 49.

(9) Readily achievable

The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include -

(A) the nature and cost of the action needed under this chapter;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

(10) Specified public transportation

The term "specified public transportation" means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(11) Vehicle

The term "vehicle" does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 12162 of this title or covered under this subchapter.

(Pub. L. 101–336, title III, §301, July 26, 1990, 104 Stat. 353.)

Editorial Notes

References in Text

The Fair Housing Act of 1968, referred to in par. (2), probably means the Fair Housing Act, title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81 , which is classified principally to subchapter I of chapter 45 (§3601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

Section 20102(1) of title 49, referred to in par. (8), was redesignated section 20102(2) and a new section 20102(1) was added by Pub. L. 110–432, div. A, §2(b)(1), (2), Oct. 16, 2008, 122 Stat. 4850 .

This chapter, referred to in par. (9)(A), was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327 , which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

Codification

In par. (8), "section 20102(1) of title 49" substituted for "section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e))" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378 , the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Statutory Notes and Related Subsidiaries

Effective Date

Pub. L. 101–336, title III, §310, July 26, 1990, 104 Stat. 365, provided that:

"(a) General Rule. - Except as provided in subsections (b) and (c), this title [enacting this subchapter] shall become effective 18 months after the date of the enactment of this Act [July 26, 1990].

"(b) Civil Actions. - Except for any civil action brought for a violation of section 303 [section 12183 of this title], no civil action shall be brought for any act or omission described in section 302 [section 12182 of this title] which occurs -

> "(1) during the first 6 months after the effective date, against businesses that employ 25 or fewer employees and have gross receipts of $1,000,000 or less; and
>
> "(2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of $500,000 or less.

"(c) Exception. - Sections 302(a) [section 12182(a) of this title] for purposes of section 302(b)(2)(B) and (C) only, 304(a) [section 12184(a) of this title] for purposes of section

304(b)(3) only, 304(b)(3), 305 [section 12185 of this title], and 306 [section 12186 of this title] shall take effect on the date of the enactment of this Act [July 26, 1990]."

[1] See References in Text note below.

42 USC §12182 | PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS

(a) General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction

(1) General prohibition

(A) Activities

(i) Denial of participation

It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit

It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit

It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service,

facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) Individual or class of individuals

For purposes of clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) Integrated settings

Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate

Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) Administrative methods

An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration -

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association

It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of

an individual with whom the individual or entity is known to have a relationship or association.

(2) Specific prohibitions

(A) Discrimination

For purposes of subsection (a), discrimination includes –

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger

cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(B) Fixed route system

(i) Accessibility

It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 12184 of this title to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) Equivalent service

If a private entity which operates a fixed route system and which is not subject to section 12184 of this title purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C) Demand responsive system

For purposes of subsection (a), discrimination includes –

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 12184 of this title to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) Over-the-road buses

(i) Limitation on applicability

Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) Accessibility requirements

For purposes of subsection (a), discrimination includes (I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure of such entity to comply with such regulations.

(3) Specific construction

Nothing in this subchapter shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

(Pub. L. 101–336, title III, §302, July 26, 1990, 104 Stat. 355.)

Editorial Notes

References in Text

For the effective date of this subparagraph, referred to in subsec. (b)(2)(B), (C)(ii), see section 310 of Pub. L. 101–336, set out as an Effective Date note under section 12181 of this title.

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 18 months after July 26, 1990, but with subsec. (a) of this section (for purposes of subsec. (b)(2)(B), (C) only) effective July 26, 1990, and with certain qualifications with respect to bringing of civil actions, see section 310 of Pub. L. 101–336, set out as a note under section 12181 of this title.

42 USC §12183 | NEW CONSTRUCTION AND ALTERATIONS IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES

(a) Application of term

Except as provided in subsection (b), as applied to public accommodations and commercial facilities, discrimination for purposes of section 12182(a) of this title includes-

> (1) a failure to design and construct facilities for first occupancy later than 30 months after July 26, 1990, that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this subchapter; and
>
> (2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Elevator

Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines

that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

(Pub. L. 101–336, title III, §303, July 26, 1990, 104 Stat. 358.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 18 months after July 26, 1990, see section 310(a), (b) of Pub. L. 101–336, set out as a note under section 12181 of this title.

42 USC §12184 | PROHIBITION OF DISCRIMINATION IN SPECIFIED PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES

(a) General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) Construction

For purposes of subsection (a), discrimination includes-

(1) the imposition or application by a 1 entity described in subsection (a) of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of such entity to -

(A) make reasonable modifications consistent with those required under section 12182(b)(2)(A)(ii) of this title;

(B) provide auxiliary aids and services consistent with the requirements of section 12182(b)(2)(A)(iii) of this title; and

(C) remove barriers consistent with the requirements of section 12182(b)(2)(A) of this title and with the requirements of section 12183(a)(2) of this title;

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety,

provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4)

(A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title; and

(B) any other failure of such entity to comply with such regulations; and 2

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(6) the purchase or lease by such entity of a new rail passenger car that is to be used to provide specified public transportation, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(7) the remanufacture by such entity of a rail passenger car that is to be used to provide specified public transportation so as to extend its usable life for 10 years or more, or the purchase or lease by such entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Historical or antiquated cars

(1) Exception

To the extent that compliance with subsection (b)(2)(C) or (b)(7) would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car,

or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required.

(2) Definition

As used in this subsection, the term "historical or antiquated rail passenger car" means a rail passenger car -

(A) which is not less than 30 years old at the time of its use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which -

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

(Pub. L. 101–336, title III, §304, July 26, 1990, 104 Stat. 359.)

Editorial Notes

References in Text

For the effective date of this section, referred to in subsec. (b)(3), (5), see section 310 of Pub. L. 101–336, set out as an Effective Date note under section 12181 of this title.

The effective date of this paragraph, referred to in subsec. (b)(6), is 18 months after July 26, 1990, see section 310(a) of Pub. L. 101–336, set out as an Effective Date note under section 12181 of this title.

The Federal Railroad Safety Act of 1970, referred to in subsec. (c)(1), is title II of Pub. L. 91–458, Oct. 16, 1970, 84 Stat. 971 , which was classified generally to subchapter II (§431 et seq.) of chapter 13 of Title 45, Railroads, and was repealed and reenacted in section 5109(c) of Title 5, Government Organization and Employees, section 54a of Title 45, Railroads, chapter 201 and sections 21301, 21302, 21304, 21311, 24902, and 24905 of Title 49, Transportation, and provisions set out as a note under section 20103 of Title 49 by Pub. L. 103–272, §§1(e), 4(b)(1),

(i), (t), 7(b), July 5, 1994, 108 Stat. 862 , 891, 893, 930, 935, 1361, 1365, 1372, 1379, the first section of which enacted subtitles II, III, and V to X of Title 49.

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 18 months after July 26, 1990, but with subsec. (a) of this section (for purposes of subsec. (b)(3) only) and subsec. (b)(3) of this section effective July 26, 1990, see section 310(a), (c) of Pub. L. 101–336, set out as a note under section 12181 of this title.

[1] So in original. Probably should be "an".

[2] So in original. The word "and" probably should not appear.

42 USC §12185 | STUDY

(a) Purposes

The Office of Technology Assessment shall undertake a study to determine -

(1) the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and

(2) the most cost-effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options.

(b) Contents

The study shall include, at a minimum, an analysis of the following:

(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.

(2) The degree to which such buses and service, including any service required under sections 12184(b)(4) and 12186(a)(2) of this title, are readily accessible to and usable by individuals with disabilities.

(3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.

(4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost saving developments in equipment and devices.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity.

(6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

(c) Advisory committee

In conducting the study required by subsection (a), the Office of Technology Assessment shall establish an advisory committee, which shall consist of -

(1) members selected from among private operators and manufacturers of over-the-road buses;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical expertise on issues included in the study, including manufacturers of boarding assistance equipment and devices.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) Deadline

The study required by subsection (a), along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and Congress within 36 months after July 26, 1990. If the President determines that compliance with the regulations issued pursuant to section 12186(a)(2)(B) of this title on or before the applicable deadlines specified in section 12186(a)(2)(B) of this title will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 year.

(e) Review

In developing the study required by subsection (a), the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 792 of title 29. The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d).

(Pub. L. 101–336, title III, §305, July 26, 1990, 104 Stat. 360.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective July 26, 1990, see section 310(c) of Pub. L. 101–336, set out as a note under section 12181 of this title.

Termination of Advisory Committees

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided for by law. See section 1013 of Title 5, Government Organization and Employees

42 USC §12186 | REGULATIONS

(a) Transportation provisions

(1) General rule

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 1 12182(b)(2)(B) and (C) of this title and to carry out section 12184 of this title (other than subsection (b)(4)).

(2) Special rules for providing access to over-the-road buses

(A) Interim requirements

(i) Issuance

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 12184(b)(4) and 12182(b)(2)(D)(ii) of this title that require each private entity which uses an over-the-road bus to provide transportation of individuals to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access to individuals who use wheelchairs during the effective period of such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals.

(ii) Effective period

The regulations issued pursuant to this subparagraph shall be effective until the effective date of the regulations issued under subparagraph (B).

(B) Final requirement

(i) Review of study and interim requirements

The Secretary shall review the study submitted under section 12185 of this title and the regulations issued pursuant to subparagraph (A).

(ii) Issuance

Not later than 1 year after the date of the submission of the study under section 12185 of this title, the Secretary shall issue in an accessible format new regulations to carry out sections 12184(b)(4) and 12182(b)(2)(D)(ii) of this title that require, taking into account the purposes of the study under section 12185 of this title and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs.

(iii) Effective period

Subject to section 12185(d) of this title, the regulations issued pursuant to this subparagraph shall take effect -

(I) with respect to small providers of transportation (as defined by the Secretary), 3 years after the date of issuance of final regulations under clause (ii); and

(II) with respect to other providers of transportation, 2 years after the date of issuance of such final regulations.

(C) Limitation on requiring installation of accessible restrooms

The regulations issued pursuant to this paragraph shall not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

(3) Standards

The regulations issued pursuant to this subsection shall include standards applicable to facilities and vehicles covered by sections 12182(b)(2) and 12184 of this title.

(b) Other provisions

Not later than 1 year after July 26, 1990, the Attorney General shall issue regulations in an accessible format to

carry out the provisions of this subchapter not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 12182 of this title.

(c) Consistency with ATBCB guidelines

Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

(d) Interim accessibility standards

(1) Facilities

If final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under section 12183 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(2) Vehicles and rail passenger cars

If final regulations have not been issued pursuant to this section, a private entity shall be considered to have complied with the requirements of this subchapter, if any, that a vehicle or rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such vehicle or car complies with the laws and regulations (including the Minimum Guidelines and Requirements for

Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such vehicles or cars, to the extent that such laws and regulations are not inconsistent with this subchapter and are in effect at the time such design is substantially completed.

(Pub. L. 101–336, title III, §306, July 26, 1990, 104 Stat. 361; Pub. L. 104–59, title III, §341, Nov. 28, 1995, 109 Stat. 608.)

Editorial Notes

Amendments

1995-Subsec. (a)(2)(B)(iii). Pub. L. 104–59 substituted "3 years after the date of issuance of final regulations under clause (ii)" for "7 years after July 26, 1990" in subcl. (I) and "2 years after the date of issuance of such final regulations" for "6 years after July 26, 1990" in subcl. (II).

Statutory Notes and Related Subsidiaries

Effective Date

Section effective July 26, 1990, see section 310(c) of Pub. L. 101–336, set out as a note under section 12181 of this title.

[1] So in original. Probably should be "section".

42 USC §12187 | EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS

The provisions of this subchapter shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) [42 U.S.C. 2000a et seq.] or to religious organizations or entities controlled by religious organizations, including places of worship.

(Pub. L. 101–336, title III, §307, July 26, 1990, 104 Stat. 363.)

Editorial Notes

References in Text

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241 . Title II of the Act is classified generally to subchapter II (§2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 18 months after July 26, 1990, see section 310(a) of Pub. L. 101–336, set out as a note under section 12181 of this title.

42 USC §12188 | ENFORCEMENT

(a) In general

(1) Availability of remedies and procedures

The remedies and procedures set forth in section 2000a–3(a) of this title are the remedies and procedures this subchapter provides to any person who is being subjected to discrimination on the basis of disability in violation of this subchapter or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 12183 of this title. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this subchapter does not intend to comply with its provisions.

(2) Injunctive relief

In the case of violations of sections 12182(b)(2)(A)(iv) and section 1 12183(a) of this title, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this subchapter. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this subchapter.

(b) Enforcement by Attorney General

(1) Denial of rights

(A) Duty to investigate

(i) In general

The Attorney General shall investigate alleged violations of this subchapter, and shall undertake periodic reviews of compliance of covered entities under this subchapter.

(ii) Attorney General certification

On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a

public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this chapter for the accessibility and usability of covered facilities under this subchapter. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this chapter.

(B) Potential violation

If the Attorney General has reasonable cause to believe that -

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this subchapter; or

(ii) any person or group of persons has been discriminated against under this subchapter and such discrimination raises an issue of general public importance,

the Attorney General may commence a civil action in any appropriate United States district court.

(2) Authority of court

In a civil action under paragraph (1)(B), the court-

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this subchapter -

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount-

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) Single violation

For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) Punitive damages

For purposes of subsection (b)(2)(B), the term "monetary damages" and "such other relief" does not include punitive damages.

(5) Judicial consideration

In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this chapter by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

(Pub. L. 101–336, title III, §308, July 26, 1990, 104 Stat. 363.)

Editorial Notes

References in Text

This chapter, referred to in subsec. (b)(1)(A)(ii), (5), was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 18 months after July 26, 1990, see section 310(a) of Pub. L. 101–336, set out as a note under section 12181 of this title.

Civil Actions for Violations by Public Accommodations

For provisions directing that, except for any civil action brought for a violation of section 12183 of this title, no civil action shall be brought for any act or omission described in section 12182 of this title which occurs (1) during the first six months after the effective date of this subchapter, against businesses that employ 25 or fewer employees and have gross receipts of $1,000,000 or less, and (2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of $500,000 or less, see section 310(b) of Pub. L. 101–336, set out as an Effective Date note under section 12181 of this title.

[1] So in original. The word "section" probably should not appear.

42 USC §12189 | EXAMINATIONS AND COURSES

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

(Pub. L. 101–336, title III, §309, July 26, 1990, 104 Stat. 365.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 18 months after July 26, 1990, see section 310(a) of Pub. L. 101–336, set out as a note under section 12181 of this title.

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 42 PUBLIC HEALTH AND WELFARE

CHAPTER: 126 EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

SUBCHAPTER: IV MISCELLANEOUS PROVISIONS

SECTIONS: §12201 through §12213

NOTE: **Entire Subchapter**

42 USC §12201 | CONSTRUCTION

(a) In general

Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) Relationship to other laws

Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter I, in transportation covered by subchapter II or III, or in places of public accommodation covered by subchapter III.

(c) Insurance

Subchapters I through III of this chapter and title IV of this Act shall not be construed to prohibit or restrict —

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of subchapter [1] I and III.

(d) Accommodations and services

Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

(e) Benefits under State worker's compensation laws

Nothing in this chapter alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs.

(f) Fundamental alteration

Nothing in this chapter alters the provision of section 12182(b)(2)(A)(ii) of this title, specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

(g) Claims of no disability

Nothing in this chapter shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of disability.

(h) Reasonable accommodations and modifications

A covered entity under subchapter I, a public entity under subchapter II, and any person who owns, leases (or leases to), or operates a place of public accommodation under subchapter III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 12102(1) of this title solely under subparagraph (C) of such section.

(Pub. L. 101–336, title V, § 501, July 26, 1990, 104 Stat. 369; Pub. L. 110–325, § 6(a)(1), Sept. 25, 2008, 122 Stat. 3557.)

42 USC §12202 | STATE IMMUNITY

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in [1] Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

(Pub. L. 101–336, title V, § 502, July 26, 1990, 104 Stat. 370.)

42 USC §12203 | PROHIBITION AGAINST RETALIATION AND COERCION

(a) Retaliation

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(b) Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

(c) Remedies and procedures

The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b), with respect to subchapter I, subchapter II and subchapter III, respectively.

(Pub. L. 101–336, title V, § 503, July 26, 1990, 104 Stat. 370.)

42 USC §12204 | REGULATIONS BY ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

(a) Issuance of guidelines

Not later than 9 months after July 26, 1990, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of subchapters II and III of this chapter.

(b) Contents of guidelines

The supplemental guidelines issued under subsection (a) shall establish additional requirements, consistent with this chapter, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) Qualified historic properties

(1) In general

The supplemental guidelines issued under subsection (a) shall include procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

(2) Sites eligible for listing in National Register

With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under division A of subtitle III of title 54, the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

(3) Other sites

With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall establish procedures equivalent to those established by 4.1.7(1)(b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

(Pub. L. 101–336, title V, § 504, July 26, 1990, 104 Stat. 370; Pub. L. 113–287, § 5(k)(5), Dec. 19, 2014, 128 Stat. 3270.)

42 USC §12205 | ATTORNEY'S FEES

In any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

(Pub. L. 101–336, title V, § 505, July 26, 1990, 104 Stat. 371.)

42 USC §12205a | RULE OF CONSTRUCTION REGARDING REGULATORY AUTHORITY

The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this chapter includes the authority to issue regulations implementing the definitions of disability in section 12102 of this title (including rules of construction) and the definitions in section 12103 of this title, consistent with the ADA Amendments Act of 2008.

(Pub. L. 101–336, title V, § 506, as added Pub. L. 110–325, § 6(a)(2), Sept. 25, 2008, 122 Stat. 3558.)

42 USC §12206 | TECHNICAL ASSISTANCE

(a) Plan for assistance

(1) In general

Not later than 180 days after July 26, 1990, the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chair of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this chapter, and other Federal agencies, in understanding the responsibility of such entities and agencies under this chapter.

(2) Publication of plan

The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of title 5 (commonly known as the Administrative Procedure Act).

(b) Agency and public assistance

The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) Implementation

(1) Rendering assistance

Each Federal agency that has responsibility under paragraph (2) for implementing this chapter may render technical assistance to individuals and institutions that have rights or duties under the respective subchapter or subchapters of this chapter for which such agency has responsibility.

(2) Implementation of subchapters

(A) Subchapter I

The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a), for subchapter I.

(B) Subchapter II

(i) Part A

The Attorney General shall implement such plan for assistance for part A of subchapter II.

(ii) Part B

The Secretary of Transportation shall implement such plan for assistance for part B of subchapter II.

(C) Subchapter III

The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for subchapter III, except for section 12184 of this title, the plan for assistance for which shall be implemented by the Secretary of Transportation.

(D) Title IV

The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) Technical assistance manuals

Each Federal agency that has responsibility under paragraph (2) for implementing this chapter shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this chapter no later than six months after applicable final regulations are published under subchapters I, II, and III and title IV.

(d) Grants and contracts

(1) In general

Each Federal agency that has responsibility under subsection (c)(2) for implementing this chapter may make grants or award contracts to effectuate the purposes of this section, subject to the availability of appropriations. Such grants and contracts may be awarded to individuals, institutions not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual (including educational institutions), and associations representing individuals who have rights or duties under this chapter. Contracts may be awarded to entities organized for profit, but such entities may not be the recipients or[1] grants described in this paragraph.

(2) Dissemination of information

Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this chapter and to provide information and technical assistance about techniques for effective compliance with this chapter.

(e) Failure to receive assistance

An employer, public accommodation, or other entity covered under this chapter shall not be excused from compliance with the requirements of this chapter because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

(Pub. L. 101–336, title V, § 507, formerly § 506, July 26, 1990, 104 Stat. 371; renumbered § 507, Pub. L. 110–325, § 6(a)(2), Sept. 25, 2008, 122 Stat. 3558.)

42 USC §12207 | FEDERAL WILDERNESS AREAS

(a) Study

The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) Submission of report

Not later than 1 year after July 26, 1990, the National Council on Disability shall submit the report required under subsection (a) to Congress.

(c) Specific wilderness access

(1) In general

Congress reaffirms that nothing in the Wilderness Act [16 U.S.C. 1131 et seq.] is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) "Wheelchair" defined

For purposes of paragraph (1), the term "wheelchair" means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

(Pub. L. 101–336, title V, § 508, formerly § 507, July 26, 1990, 104 Stat. 372; renumbered § 508, Pub. L. 110–325, § 6(a)(2), Sept. 25, 2008, 122 Stat. 3558.)

42 USC §12208 | TRANSVESTITES

> For the purposes of this chapter, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

(Pub. L. 101–336, title V, § 509, formerly § 508, July 26, 1990, 104 Stat. 373; renumbered § 509, Pub. L. 110–325, § 6(a)(2), Sept. 25, 2008, 122 Stat. 3558.)

42 USC §12209 | INSTRUMENTALITIES OF CONGRESS

The Government Accountability Office, the Government Publishing Office, and the Library of Congress shall be covered as follows:

(1) In general

The rights and protections under this chapter shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) Establishment of remedies and procedures by instrumentalities

The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1).

(3) Report to Congress

The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) Definition of instrumentalities

For purposes of this section, the term "instrumentality of the Congress" means the following:,[1] the Government Accountability Office, the Government Publishing Office, and the Library of Congress,.[1]

(5) Enforcement of employment rights

The remedies and procedures set forth in section 2000e–16 of this title shall be available to any employee of an instrumentality of the Congress who alleges a violation of the rights and protections under sections 12112 through 12114 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

(6) Enforcement of rights to public services and accommodations

The remedies and procedures set forth in section 2000e–16 of this title shall be available to any qualified person with a disability who is a visitor, guest, or patron of an instrumentality of Congress and who alleges a violation of the rights and protections under sections 12131 through 12150 of this title or section 12182 or 12183 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

(7) Construction

Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act.

(Pub. L. 101–336, title V, § 510, formerly § 509, July 26, 1990, 104 Stat. 373; Pub. L. 102–166, title III, § 315, Nov. 21, 1991, 105 Stat. 1095; Pub. L. 104–1, title II, §§ 201(c)(3), 210(g), Jan. 23, 1995, 109 Stat. 8, 16; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; renumbered § 510, Pub. L. 110–325, § 6(a)(2), Sept. 25, 2008, 122 Stat. 3558; Pub. L. 113–235, div. H, title I, § 1301(b), Dec. 16, 2014, 128 Stat. 2537.)

42 USC §12210 | ILLEGAL USE OF DRUGS

(a) In general

For purposes of this chapter, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction

Nothing in subsection (a) shall be construed to exclude as an individual with a disability an individual who —

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

(c) Health and other services

Notwithstanding subsection (a) and section 12211(b)(3) of this title, an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

(d) "Illegal use of drugs" defined

(1) In general

The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(2) Drugs

The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(Pub. L. 101–336, title V, § 511, formerly § 510, July 26, 1990, 104 Stat. 375; renumbered § 511 and amended Pub. L. 110–325, § 6(a)(2), (3), Sept. 25, 2008, 122 Stat. 3558.)

42 USC §12211 | DEFINITIONS

(a) Homosexuality and bisexuality

For purposes of the definition of "disability" in section 12102(2)[1] of this title, homosexuality and bisexuality are not impairments and as such are not disabilities under this chapter.

(b) Certain conditions

Under this chapter, the term "disability" shall not include—

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs.

(Pub. L. 101–336, title V, § 512, formerly § 511, July 26, 1990, 104 Stat. 376; renumbered § 512, Pub. L. 110–325, § 6(a)(2), Sept. 25, 2008, 122 Stat. 3558.)

42 USC §12212 | ALTERNATIVE MEANS OF DISPUTE RESOLUTION

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under this chapter.

(Pub. L. 101–336, title V, § 514, formerly § 513, July 26, 1990, 104 Stat. 377; renumbered § 514, Pub. L. 110–325, § 6(a)(2), Sept. 25, 2008, 122 Stat. 3558.)

42 USC §12213 | SEVERABILITY

Should any provision in this chapter be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the chapter, and such action shall not affect the enforceability of the remaining provisions of the chapter.

(Pub. L. 101–336, title V, § 515, formerly § 514, July 26, 1990, 104 Stat. 378; renumbered § 515, Pub. L. 110–325, § 6(a)(2), Sept. 25, 2008, 122 Stat. 3558.)

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 44 PUBLIC PRINTING AND DOCUMENTS

CHAPTER: 35 COORDINATION OF FEDERAL INFORMATION POLICY

SUBCHAPTER: I FEDERAL INFORMATION POLICY

SECTIONS: §3501 through §3531

NOTE: **not the entire subchapter** (pertinent statutes only!!!)

44 USC §3501 | PURPOSES

The purposes of this subchapter are to —

(1) minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government;

(2) ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government;

(3) coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information resources management policies and practices as a means to improve the productivity, efficiency, and effectiveness of Government programs, including the reduction of information collection burdens on the public and the improvement of service delivery to the public;

(4) improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society;

(5) minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information;

(6) strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government;

(7) provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology;

(8) ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws, including laws relating to —

(A) privacy and confidentiality, including section 552a of title 5;

(B) security of information, including section 11332 of title 40 [1] ; and

(C) access to information, including section 552 of title 5;

(9) ensure the integrity, quality, and utility of the Federal statistical system;

(10) ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public; and

(11) improve the responsibility and accountability of the Office of Management and Budget and all other Federal agencies to Congress and to the public for implementing the information collection review process, information resources management, and related policies and guidelines established under this subchapter.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 163; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1064(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275; Pub. L. 107–217, § 3(l)(3), Aug. 21, 2002, 116 Stat. 1301.)

44 USC §3502 | DEFINITIONS

As used in this subchapter —

(1) the term "agency" means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include —

(A) the Government Accountability Office;

(B) Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities;

(2) the term "burden" means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for —

(A) reviewing instructions;

(B) acquiring, installing, and utilizing technology and systems;

(C) adjusting the existing ways to comply with any previously applicable instructions and requirements;

(D) searching data sources;

(E) completing and reviewing the collection of information; and

(F) transmitting, or otherwise disclosing the information;

(3) the term "collection of information" —

(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or

for an agency, regardless of form or format, calling for either —

(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

(B) shall not include a collection of information described under section 3518(c)(1);

(4) the term "Director" means the Director of the Office of Management and Budget;

(5) the term "independent regulatory agency" means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Agency, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Regulatory Commission, the Securities and Exchange Commission, the Bureau of Consumer Financial Protection, the Office of Financial Research, Office of the Comptroller of the Currency, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

(6) the term "information resources" means information and related resources, such as personnel, equipment, funds, and information technology;

(7) the term "information resources management" means the process of managing information resources to accomplish agency missions and to improve agency

performance, including through the reduction of information collection burdens on the public;

(8) the term "information system" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information;

(9) the term "information technology" has the meaning given that term in section 11101 of title 40 but does not include national security systems as defined in section 11103 of title 40;

(10) the term "person" means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision;

(11) the term "practical utility" means the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion;

(12) the term "public information" means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public;

(13) the term "recordkeeping requirement" means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to —

(A) retain such records;

(B) notify third parties, the Federal Government, or the public of the existence of such records;

(C) disclose such records to third parties, the Federal Government, or the public; or

(D) report to third parties, the Federal Government, or the public regarding such records;

(14) the term "penalty" includes the imposition by an agency or court of a fine or other punishment; a judgment

for monetary damages or equitable relief; or the revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit;

(15) the term "comprehensive data inventory" means the inventory created under section 3511(a), but does not include any underlying data asset listed on the inventory;

(16) the term "data" means recorded information, regardless of form or the media on which the data is recorded;

(17) the term "data asset" means a collection of data elements or data sets that may be grouped together;

(18) the term "machine-readable", when used with respect to data, means data in a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost;

(19) the term "metadata" means structural or descriptive information about data such as content, format, source, rights, accuracy, provenance, frequency, periodicity, granularity, publisher or responsible party, contact information, method of collection, and other descriptions;

(20) the term "open Government data asset" means a public data asset that is —

(A) machine-readable;

(B) available (or could be made available) in an open format;

(C) not encumbered by restrictions, other than intellectual property rights, including under titles 17 and 35, that would impede the use or reuse of such asset; and

(D) based on an underlying open standard that is maintained by a standards organization;

(21) the term "open license" means a legal guarantee that a data asset is made available —

(A) at no cost to the public; and

(B) with no restrictions on copying, publishing, distributing, transmitting, citing, or adapting such asset;

(22) the term "public data asset" means a data asset, or part thereof, maintained by the Federal Government that has been, or may be, released to the public, including any data asset, or part thereof, subject to disclosure under section 552 of title 5; and

(23) the term "statistical laws" means subchapter III of this chapter and other laws pertaining to the protection of information collected for statistical purposes as designated by the Director.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 164; amended Pub. L. 104–106, div. E, title LVI, § 5605(a), Feb. 10, 1996, 110 Stat. 700; Pub. L. 105–85, div. A, title X, § 1073(h)(5)(A), Nov. 18, 1997, 111 Stat. 1907; Pub. L. 106–398, § 1 [[div. A], title X, § 1064(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275; Pub. L. 107–217, § 3(l)(4), Aug. 21, 2002, 116 Stat. 1301; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–435, title VI, § 604(e), Dec. 20, 2006, 120 Stat. 3242; Pub. L. 110–289, div. A, title II, § 1216(e), July 30, 2008, 122 Stat. 2792; Pub. L. 111–203, title III, § 315, title X, § 1100D(a), July 21, 2010, 124 Stat. 1524, 2111; Pub. L. 115–435, title II, § 202(a), Jan. 14, 2019, 132 Stat. 5534.)

44 USC §3503 | OFFICE OF INFORMATION AND REGULATORY AFFAIRS

(a) There is established in the Office of Management and Budget an office to be known as the Office of Information and Regulatory Affairs.

(b) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall delegate to the Administrator the authority to administer all functions under this subchapter, except that any such delegation shall not relieve the Director of responsibility for the administration of such functions. The Administrator shall serve as principal adviser to the Director on Federal information resources management policy.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 166; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1064(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275.)

44 USC §3504 | AUTHORITY AND FUNCTIONS OF DIRECTOR

(a)

(1) The Director shall oversee the use of information resources to improve the efficiency and effectiveness of governmental operations to serve agency missions, including burden reduction and service delivery to the public. In performing such oversight, the Director shall —

(A) develop, coordinate and oversee the implementation of Federal information resources management policies, principles, standards, and guidelines; and

(B) provide direction and oversee —

(i) the review and approval of the collection of information and the reduction of the information collection burden;

(ii) agency dissemination of and public access to information;

(iii) statistical activities;

(iv) records management activities;

(v) privacy, confidentiality, security, disclosure, and sharing of information; and

(vi) the acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures.

(2) The authority of the Director under this subchapter shall be exercised consistent with applicable law.

(b) With respect to general information resources management policy, the Director shall —

(1) develop and oversee the implementation of uniform information resources management policies, principles, standards, and guidelines;

(2) foster greater sharing, dissemination, and access to public information, including through —

(A) the use of comprehensive data inventories and the Federal data catalogue under section 3511; and

(B) the development and utilization of common standards for information collection, storage, processing and communication, including standards for security, interconnectivity and interoperability;

(3) initiate and review proposals for changes in legislation, regulations, and agency procedures to improve information resources management practices;

(4) oversee the development and implementation of best practices in information resources management, including training;

(5) oversee agency integration of program and management functions with information resources management functions; and

(6) issue guidance for agencies to implement section 3506(b)(6) in a manner that takes into account —

(A) risks and restrictions related to the disclosure of personally identifiable information, including the risk that an individual data asset in isolation does not pose a privacy or confidentiality risk but when combined with other available information may pose such a risk;

(B) security considerations, including the risk that information in an individual data asset in isolation does not pose a security risk but when combined with other available information may pose such a risk;

(C) the cost and benefits to the public of converting a data asset into a machine-readable format that is accessible and useful to the public;

(D) whether the application of the requirements described in such section to a data asset could result in legal liability;

(E) a determination of whether a data asset —

(i) is subject to intellectual property rights, including rights under titles 17 and 35;

(ii) contains confidential business information, that could be withheld under section 552(b)(4) of title 5; or

(iii) is otherwise restricted by contract or other binding, written agreement;

(F) the requirement that a data asset be disclosed, if it would otherwise be made available under section 552 of title 5 (commonly known as the "Freedom of Information Act"); and

(G) any other considerations that the Director determines to be relevant.

(c) With respect to the collection of information and the control of paperwork, the Director shall —

(1) review and approve proposed agency collections of information;

(2) coordinate the review of the collection of information associated with Federal procurement and acquisition by the Office of Information and Regulatory Affairs with the Office of Federal Procurement Policy, with particular emphasis on applying information technology to improve the efficiency and effectiveness of Federal procurement, acquisition and payment, and to reduce information collection burdens on the public;

(3) minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected;

(4) maximize the practical utility of and public benefit from information collected by or for the Federal Government;

(5) establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information;[1]

(6) publish in the Federal Register and make available on the Internet (in consultation with the Small Business Administration) on an annual basis a list of the compliance assistance resources available to small businesses, with the first such publication occurring not later than 1 year after the date of enactment of the Small Business Paperwork Relief Act of 2002.

(d) With respect to information dissemination, the Director shall develop and oversee the implementation of policies, principles, standards, and guidelines to —

(1) apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated; and

(2) promote public access to public information and fulfill the purposes of this subchapter, including through the effective use of information technology.

(e) With respect to statistical policy and coordination, the Director shall —

(1) coordinate the activities of the Federal statistical system to ensure —

(A) the efficiency and effectiveness of the system; and

(B) the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes;

(2) ensure that budget proposals of agencies are consistent with system-wide priorities for maintaining and improving the quality of Federal statistics and prepare an annual report on statistical program funding;

(3) develop and oversee the implementation of Governmentwide policies, principles, standards, and guidelines concerning —

(A) statistical collection procedures and methods;

(B) statistical data classification;

(C) statistical information presentation and dissemination;

(D) timely release of statistical data; and

(E) such statistical data sources as may be required for the administration of Federal programs;

(4) evaluate statistical program performance and agency compliance with Governmentwide policies, principles, standards and guidelines;

(5) promote the sharing of information collected for statistical purposes consistent with privacy rights and confidentiality pledges;

(6) coordinate the participation of the United States in international statistical activities, including the development of comparable statistics;

(7) appoint a chief statistician who is a trained and experienced professional statistician to carry out the functions described under this subsection;

(8) establish an Interagency Council on Statistical Policy to advise and assist the Director in carrying out the functions under this subsection that shall —

(A) be headed by the chief statistician; and

(B) consist of —

(i) the heads of the major statistical programs; and

(ii) representatives of other statistical agencies under rotating membership;

(9) provide opportunities for training in statistical policy functions to employees of the Federal Government under which —

(A) each trainee shall be selected at the discretion of the Director based on agency requests and shall serve under the chief statistician for at least 6 months and not more than 1 year; and

(B) all costs of the training shall be paid by the agency requesting training; and

(10) ensure that any change to the standards of core-based statistical area (as defined in section 4 of the MAPS Act of 2021) delineations pursuant to this subsection shall -

(A) be accompanied by a public report that explains-

(i) the scientific basis, criteria, and methodology for such change to existing standards, including clear quantitative thresholds for determining any future statistical re-delineations; and

(ii) the opinions of domestic and international experts in statistics and demographics, including government experts at the Bureau of the Census and other relevant agencies, who were consulted regarding such change to existing standards;

(B) not be influenced by any non-statistical considerations such as impact on program administration or service delivery; and

(C) not propagate automatically for any non-statistical use by any domestic assistance program (as defined in section 4 of the MAPS Act of 2021).

(f) With respect to records management, the Director shall —

(1) provide advice and assistance to the Archivist of the United States and the Administrator of General Services to promote coordination in the administration of chapters 29, 31, and 33 of this title with the information resources management policies, principles, standards, and guidelines established under this subchapter;

(2) review compliance by agencies with —

(A) the requirements of chapters 29, 31, and 33 of this title; and

(B) regulations promulgated by the Archivist of the United States and the Administrator of General Services; and

(3) oversee the application of records management policies, principles, standards, and guidelines, including requirements for archiving information maintained in electronic format, in the planning and design of information systems.

(g) With respect to privacy and security, the Director shall —

(1) develop and oversee the implementation of policies, principles, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for agencies; and

(2) oversee and coordinate compliance with sections 552 and 552a of title 5, sections 20 and 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3 and 278g–4), section 11331 of title 40 and subchapter II of this chapter, and related information management laws.

(h) With respect to Federal information technology, the Director shall —

(1) in consultation with the Director of the National Institute of Standards and Technology and the Administrator of General Services —

(A) develop and oversee the implementation of policies, principles, standards, and guidelines for information technology functions and activities of the Federal Government, including periodic evaluations of major information systems; and

(B) oversee the development and implementation of standards under section 11331 of title 40;[2]

(2) monitor the effectiveness of, and compliance with, directives issued under subtitle III of title 40 and directives issued under section 322[2] of title 40;

(3) coordinate the development and review by the Office of Information and Regulatory Affairs of policy associated with Federal procurement and acquisition of information technology with the Office of Federal Procurement Policy;

(4) ensure, through the review of agency budget proposals, information resources management plans and other means —

(A) agency integration of information resources management plans, program plans and budgets for acquisition and use of information technology; and

(B) the efficiency and effectiveness of inter-agency information technology initiatives to improve agency performance and the accomplishment of agency missions; and

(5) promote the use of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 167; amended Pub. L. 104–106, div. E, title LI, § 5131(e)(1), title LVI, § 5605(b), (c), Feb. 10, 1996, 110 Stat. 688, 700; Pub. L. 105–85, div. A, title X, § 1073(h)(5)(B), (C), Nov. 18, 1997, 111 Stat. 1907; Pub. L. 105–277, div. C, title XVII, § 1702, Oct. 21, 1998, 112 Stat. 2681–749; Pub. L. 106–398, § 1 [[div. A], title X, § 1064(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275; Pub. L. 107–198, § 2(a), June 28, 2002, 116 Stat. 729; Pub. L. 107–217, § 3(l)(5), Aug. 21, 2002, 116 Stat. 1301; Pub. L. 107–296, title X, § 1005(c)(1), Nov. 25, 2002, 116 Stat. 2272; Pub. L. 107–347, title III, § 305(c)(1), Dec. 17, 2002, 116 Stat. 2960; Pub. L. 115–435, title II, § 202(b), (d)(2)(B), Jan. 14, 2019, 132 Stat. 5535, 5541; Pub. L. 117–219, §7, Dec. 5, 2022, 136 Stat. 2274.)

Editorial Notes
References in Text

The date of enactment of the Small Business Paperwork Relief Act of 2002, referred to in subsec. (c)(6), is the date of enactment of Pub. L. 107–198, which was approved June 28, 2002.

Section 4 of the MAPS Act of 2021, referred to in subsec. (e)(10), is section 4 of Pub. L. 117–219, which is set out as a note under section 6102 of Title 31, Money and Finance.

The text of section 11331 of title 40, referred to in subsec. (h)(1)(B), was generally amended by Pub. L. 117–167, div. B, title II, §10246(f), Aug. 9, 2022, 136 Stat. 1492 , so as to provide for the prescription by the Secretary of Commerce of standards and guidelines pertaining to Federal information systems.

Section 322 of title 40, referred to in subsec. (h)(2), was repealed by Pub. L. 109–313, §3(h)(1), Oct. 6, 2006, 120 Stat. 1736.

Prior Provisions

A prior section 3504, added Pub. L. 96–511, §2(a), Dec. 11, 1980, 94 Stat. 2815 ; amended Pub. L. 98–497, title I, §107(b)(26), Oct. 19, 1984, 98 Stat. 2291 ; Pub. L. 99–500, §101(m) [title VIII, §§814, 821(b)(2)], Oct. 18, 1986, 100 Stat. 1783–308 , 1783-336, 1783-342, and Pub. L. 99–591, §101(m) [title VIII, §§814, 821(b)(2)], Oct. 30, 1986, 100 Stat. 3341–308 , 3341-336, 3341-342, related to authority and functions of Director prior to the general amendment of this chapter by Pub. L. 104–13.

Another prior section 3504, Pub. L. 90–620, Oct. 22, 1968, 82 Stat. 1303 , provided for designation of a central collection agency, prior to the general amendment of this chapter by Pub. L. 96–511. See section 3509 of this title.

Amendments

2022 - Subsec. (e)(10). Pub. L. 117–219 added par. (10).

2019 - Subsec. (b)(2)(A). Pub. L. 115–435, §202(d)(2)(B), substituted "the use of comprehensive data inventories and the Federal data catalogue under section 3511" for "the use of the Government Information Locator Service".

Subsec. (b)(6). Pub. L. 115–435, §202(b), added par. (6).

2002-Subsec. (c)(6). Pub. L. 107–198 added par. (6).

Subsec. (g)(1). Pub. L. 107–296, §1005(c)(1)(A), and Pub. L. 107–347, §305(c)(1)(A), amended par. (1) identically, inserting "and" at end.

Subsec. (g)(2). Pub. L. 107–347, §305(c)(1)(B), substituted "section 11331 of title 40 and subchapter II of this chapter" for "sections 11331 and 11332(b) and (c) of title 40" and a period for "; and" at end.

Pub. L. 107–296, §1005(c)(1)(B), which directed amendment of par. (2) by substituting "section 11331 of title 40 and subchapter II of this title" for "sections 11331 and 11332(b) and (c) of title 40" and a period for the semicolon, could not be executed because of amendment by Pub. L. 107–347, §305(c)(1)(B). See Amendment note above and Effective Date of 2002 Amendments notes below.

Pub. L. 107–217, §3(l)(5)(A), substituted "sections 11331 and 11332(b) and (c) of title 40" for "section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441), and sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 759 note)".

Subsec. (g)(3). Pub. L. 107–296, §1005(c)(1)(C), and Pub. L. 107–347, §305(c)(1)(C), amended subsec. (g) identically, striking out par. (3) which read as follows: "require Federal agencies, consistent with the standards and guidelines promulgated under sections 11331 and 11332(b) and (c) of title 40, to identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency."

Pub. L. 107–217, §3(l)(5)(B), substituted "sections 11331 and 11332(b) and (c) of title 40" for "section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441) and sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 759 note)".

Subsec. (h)(1)(B). Pub. L. 107–217, §3(l)(5)(C), substituted "section 11331 of title 40" for "section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441)".

Subsec. (h)(2). Pub. L. 107–217, §3(l)(5)(D), substituted "subtitle III of title 40" for "division E of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.)" and "section 322 of title 40" for "section 110 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757)".

2000 - Subsecs. (a)(2), (d)(2), (f)(1). Pub. L. 106–398 substituted "subchapter" for "chapter".

1998 - Subsec. (a)(1)(B)(vi). Pub. L. 105–277 amended cl. (vi) generally. Prior to amendment, cl. (vi) read as follows: "the acquisition and use of information technology."

1997 - Subsecs. (g)(2), (3), (h)(1)(B). Pub. L. 105–85, §1073(h)(5)(C), substituted "Clinger-Cohen Act of 1996 (40 U.S.C. 1441)" for "Information Technology Management Reform Act of 1996".

Subsec. (h)(2). Pub. L. 105–85, §1073(h)(5)(B), substituted "division E of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.)" for "the Information Technology Management Reform Act of 1996".

1996 - Subsec. (g)(2). Pub. L. 104–106, §5131(e)(1)(A), substituted "sections 20 and 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3 and 278g–4), section 5131 of the Information Technology Management Reform Act of 1996, and sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 759 note)" for "the Computer Security Act of 1987 (40 U.S.C. 759 note)".

Subsec. (g)(3). Pub. L. 104–106, §5131(e)(1)(B), substituted "the standards and guidelines promulgated under section 5131 of the Information Technology Management Reform Act of 1996 and sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 759 note)" for "the Computer Security Act of 1987 (40 U.S.C. 759 note)".

Subsec. (h)(1)(B). Pub. L. 104–106, §5605(b), substituted "section 5131 of the Information Technology Management Reform Act of 1996" for "section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d))".

Subsec. (h)(2). Pub. L. 104–106, §5605(c), substituted "the Information Technology Management Reform Act of 1996 and directives issued under section 110 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757)" for "sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757 and 759)".

Statutory Notes and Related Subsidiaries
Effective Date of 2019 Amendment

Amendment by Pub. L. 115–435 effective 180 days after Jan. 14, 2019, see section 403 of Pub. L. 115–435, set out as a note under section 306 of Title 5, Government Organization and Employees.

Effective Date of 2002 Amendments

Pub. L. 107–347, title IV, §402(b), Dec. 17, 2002, 116 Stat. 2962 , provided that: "Title III [see Short Title of 2002 Amendments note set out under section 101 of this title] and this title [enacting provisions set out as a note under section 3601 of this title] shall take effect on the date of enactment of this Act [Dec. 17, 2002]."

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Effective Date of 2000 Amendment

Amendment by Pub. L. 106–398 effective 30 days after Oct. 30, 2000, see section 1 [[div. A], title X, §1065] of Pub. L. 106–398, Oct. 30, 2000, 114 Stat. 1654 , formerly set out as an Effective Date note under former section 3531 of this title.

Effective Date of 1996 Amendment

Amendment by Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702 .

Effective Date

Section effective Oct. 1, 1995, except as otherwise provided, see section 4(a) of Pub. L. 104–13, set out as a note under section 3501 of this title.

Government Paperwork Elimination

Pub. L. 105–277, div. C, title XVII, Oct. 21, 1998, 112 Stat. 2681–749 , provided that:

> "SEC. 1701. SHORT TITLE.
>
> > "This title may be cited as the 'Government Paperwork Elimination Act'.
>
> "SEC. 1702. AUTHORITY OF OMB TO PROVIDE FOR ACQUISITION AND USE OF ALTERNATIVE INFORMATION TECHNOLOGIES BY EXECUTIVE AGENCIES.
>
> > "[Amended this section.]
>
> "SEC. 1703. PROCEDURES FOR USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES BY EXECUTIVE AGENCIES.

"(a) In General.-In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106) [see Short Title of 1996 Act note set out under section 101 of Title 41, Public Contracts] and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall, in consultation with the National Telecommunications and Information Administration and not later than 18 months after the date of enactment of this Act [Oct. 21, 1998], develop procedures for the use and acceptance of electronic signatures by Executive agencies.

"(b) Requirements for Procedures. –

(1) The procedures developed under subsection (a)-

"(A) shall be compatible with standards and technology for electronic signatures that are generally used in commerce and industry and by State governments;

"(B) may not inappropriately favor one industry or technology;

"(C) shall ensure that electronic signatures are as reliable as is appropriate for the purpose in question and keep intact the information submitted;

"(D) shall provide for the electronic acknowledgment of electronic forms that are successfully submitted; and

"(E) shall, to the extent feasible and appropriate, require an Executive agency that anticipates receipt by electronic means of 50,000 or more submittals of a particular form to take all steps necessary to ensure that multiple methods of electronic signatures are available for the submittal of such form.

"(2) The Director shall ensure the compatibility of the procedures under paragraph (1)(A) in consultation with appropriate private bodies and State government entities that set standards for the use and acceptance of electronic signatures.

"SEC. 1704. DEADLINE FOR IMPLEMENTATION BY EXECUTIVE AGENCIES OF PROCEDURES FOR USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES.

"In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106) [see Short Title of 1996 Act note set out under section 101 of Title 41] and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall ensure that, commencing not later than five years after the date of enactment of this Act [Oct. 21, 1998], Executive agencies provide-

"(1) for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and

"(2) for the use and acceptance of electronic signatures, when practicable.

"SEC. 1705. ELECTRONIC STORAGE AND FILING OF EMPLOYMENT FORMS.

"In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106) [see Short Title of 1996 Amendment Act set out under section 101 of Title 41] and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall, not later than 18 months after the date of enactment of this Act [Oct. 21, 1998], develop procedures to permit private employers to store and file electronically with Executive agencies forms containing information pertaining to the employees of such employers.

"SEC. 1706. STUDY ON USE OF ELECTRONIC SIGNATURES.

"(a) Ongoing Study Required.-In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106) [see Short Title of 1996 Act note set out under section 101 of Title 41] and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall, in cooperation with the National Telecommunications and Information

Administration, conduct an ongoing study of the use of electronic signatures under this title on-

"(1) paperwork reduction and electronic commerce;

"(2) individual privacy; and

"(3) the security and authenticity of transactions.

"(b) Reports.-The Director shall submit to Congress on a periodic basis a report describing the results of the study carried out under subsection (a).

"SEC. 1707. ENFORCEABILITY AND LEGAL EFFECT OF ELECTRONIC RECORDS.

"Electronic records submitted or maintained in accordance with procedures developed under this title, or electronic signatures or other forms of electronic authentication used in accordance with such procedures, shall not be denied legal effect, validity, or enforceability because such records are in electronic form.

"SEC. 1708. DISCLOSURE OF INFORMATION.

"Except as provided by law, information collected in the provision of electronic signature services for communications with an executive agency, as provided by this title, shall only be used or disclosed by persons who obtain, collect, or maintain such information as a business or government practice, for the purpose of facilitating such communications, or with the prior affirmative consent of the person about whom the information pertains.

"SEC. 1709. APPLICATION WITH INTERNAL REVENUE LAWS.

"No provision of this title shall apply to the Department of the Treasury or the Internal Revenue Service to the extent that such provision-

"(1) involves the administration of the internal revenue laws; or

"(2) conflicts with any provision of the Internal Revenue Service Restructuring and Reform Act of 1998 [Pub. L. 105–206, see Tables for classification] or the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.].

"SEC. 1710. DEFINITIONS.

"For purposes of this title:

"(1) Electronic signature.-The term 'electronic signature' means a method of signing an electronic message that-

"(A) identifies and authenticates a particular person as the source of the electronic message; and

"(B) indicates such person's approval of the information contained in the electronic message.

"(2) Executive agency.-The term 'Executive agency' has the meaning given that term in section 105 of title 5, United States Code."

Footnotes

[1] So in original. Probably should be followed by "and".

[2] See References in Text note below.

44 USC §3505 | ASSIGNMENT OF TASKS AND DEADLINES

(a) In carrying out the functions under this subchapter, the Director shall —

(1) in consultation with agency heads, set an annual Governmentwide goal for the reduction of information collection burdens by at least 10 percent during each of fiscal years 1996 and 1997 and 5 percent during each of fiscal years 1998, 1999, 2000, and 2001, and set annual agency goals to —

(A) reduce information collection burdens imposed on the public that —

(i) represent the maximum practicable opportunity in each agency; and

(ii) are consistent with improving agency management of the process for the review of collections of information established under section 3506(c); and

(B) improve information resources management in ways that increase the productivity, efficiency and effectiveness of Federal programs, including service delivery to the public;

(2) with selected agencies and non-Federal entities on a voluntary basis, conduct pilot projects to test alternative policies, practices, regulations, and procedures to fulfill the purposes of this subchapter, particularly with regard to minimizing the Federal information collection burden; and

(3) in consultation with the Administrator of General Services, the Director of the National Institute of Standards and Technology, the Archivist of the United States, and the Director of the Office of Personnel Management, develop and maintain a Governmentwide strategic plan for information resources management, that shall include —

(A) a description of the objectives and the means by which the Federal Government shall apply information resources to improve agency and program performance;

(B) plans for —

(i) reducing information burdens on the public, including reducing such burdens through the elimination of duplication and meeting shared data needs with shared resources;

(ii) enhancing public access to and dissemination of, information, using electronic and other formats; and

(iii) meeting the information technology needs of the Federal Government in accordance with the purposes of this subchapter; and

(C) a description of progress in applying information resources management to improve agency performance and the accomplishment of missions.

(b) For purposes of any pilot project conducted under subsection (a)(2), the Director may, after consultation with the agency head, waive the application of any administrative directive issued by an agency with which the project is conducted, including any directive requiring a collection of information, after giving timely notice to the public and the Congress regarding the need for such waiver.

(c) [1] Inventory of Major Information Systems. —

(1) The head of each agency shall develop and maintain an inventory of major information systems (including major national security systems) operated by or under the control of such agency.

(2) The identification of information systems in an inventory under this subsection shall include an identification of the interfaces between each such system and all other systems or networks, including those not operated by or under the control of the agency.

(3) Such inventory shall be —

(A) updated at least annually;

(B) made available to the Comptroller General; and

(C) used to support information resources management, including —

(i) preparation and maintenance of the inventory of information resources under section 3506(b)(4);

(ii) information technology planning, budgeting, acquisition, and management under section 3506(h), subtitle III of title 40, and related laws and guidance;

(iii) monitoring, testing, and evaluation of information security controls under subchapter II;

(iv) preparation of the index of major information systems required under section 552(g) of title 5, United States Code; and

(v) preparation of information system inventories required for records management under chapters 21, 29, 31, and 33.

(4) The Director shall issue guidance for and oversee the implementation of the requirements of this subsection.

(c) [1] Inventory of Information Systems. —

(1) The head of each agency shall develop and maintain an inventory of the information systems (including national security systems) operated by or under the control of such agency;

(2) The identification of information systems in an inventory under this subsection shall include an identification of the interfaces between each such system and all other systems or networks, including those not operated by or under the control of the agency;

(3) Such inventory shall be —

(A) updated at least annually;

(B) made available to the Comptroller General; and

(C) used to support information resources management, including —

(i) preparation and maintenance of the inventory of information resources under section 3506(b)(4);

(ii) information technology planning, budgeting, acquisition, and management under section 3506(h), subtitle III of title 40, and related laws and guidance;

(iii) monitoring, testing, and evaluation of information security controls under subchapter II;

(iv) preparation of the index of major information systems required under section 552(g) of title 5, United States Code; and

(v) preparation of information system inventories required for records management under chapters 21, 29, 31, and 33.

(4) The Director shall issue guidance for and oversee the implementation of the requirements of this subsection.

[1] So in original. Two subsecs. (c) have been enacted.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 170; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1064(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275; Pub. L. 107–296, title X, § 1005(c)(2), Nov. 25, 2002, 116 Stat. 2272; Pub. L. 107–347, title III, § 305(c)(2), Dec. 17, 2002, 116 Stat. 2961.)

44 USC §3506 | FEDERAL AGENCY RESPONSIBILITIES

(a)

(1) The head of each agency shall be responsible for —

(A) carrying out the agency's information resources management activities to improve agency productivity, efficiency, and effectiveness; and

(B) complying with the requirements of this subchapter and related policies established by the Director.

(2)

(A) Except as provided under subparagraph (B), the head of each agency shall designate a Chief Information Officer who shall report directly to such agency head to carry out the responsibilities of the agency under this subchapter.

(B) The Secretary of the Department of Defense and the Secretary of each military department may each designate Chief Information Officers who shall report directly to such Secretary to carry out the responsibilities of the department under this subchapter. If more than one Chief Information Officer is designated, the respective duties of the Chief Information Officers shall be clearly delineated.

(3) The Chief Information Officer designated under paragraph (2) shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under this subchapter, including the reduction of information collection burdens on the public. The Chief Information Officer and employees of such office shall be selected with special attention to the professional qualifications required to administer the functions described under this subchapter.

(4) Each agency program official shall be responsible and accountable for information resources assigned to and supporting the programs under such official. In consultation with the Chief Information Officer

designated under paragraph (2) and the agency Chief Financial Officer (or comparable official), each agency program official shall define program information needs and develop strategies, systems, and capabilities to meet those needs.

(b) With respect to general information resources management, each agency shall —

(1) manage information resources to —

(A) reduce information collection burdens on the public;

(B) increase program efficiency and effectiveness; and

(C) improve the integrity, quality, and utility of information to all users within and outside the agency, including capabilities for ensuring dissemination of public information, public access to government information, and protections for privacy and security;

(2) in accordance with guidance by the Director, develop and maintain a strategic information resources management plan that, to the extent practicable —

(A) describes how information resources management activities help accomplish agency missions;

(B) includes an open data plan for data that does not concern monetary policy that —

(i) requires the agency to develop processes and procedures that —

(I) require data collection mechanisms created on or after the date of the enactment of the OPEN Government Data Act to be available in an open format; and

(II) facilitate collaboration with non-Government entities (including businesses), researchers, and the public for the purpose of understanding how data users value and use government data;

(ii) identifies and implements methods for collecting and analyzing digital information on data asset usage by users within and outside of the agency, including designating a point of contact within the agency to assist the public and to respond to quality issues, usability issues, recommendations for improvements, and complaints about adherence to open data requirements within a reasonable period of time;

(iii) develops and implements a process to evaluate and improve the timeliness, completeness, consistency, accuracy, usefulness, and availability of open Government data assets;

(iv) includes requirements for meeting the goals of the agency open data plan, including the acquisition of technology, provision of training for employees, and the implementation of procurement standards, in accordance with existing law, regulation, and policy, that allow for the acquisition of innovative solutions from public and private sectors;

(v) identifies as priority data assets any data asset for which disclosure would be in the public interest and establishes a plan to evaluate each priority data asset for disclosure on the Federal Data Catalogue under section 3511 and for a determination under [1] 3511(a)(2)(A)(iii)(I)(bb), including an accounting of which priority data assets have not yet been evaluated; and

(vi) requires the agency to comply with requirements under section 3511, including any standards established by the Director under such section, when disclosing a data asset pursuant to such section; and

(C) is updated annually and made publicly available on the website of the agency not later than 5 days after each such update;

(3) develop and maintain an ongoing process to —

(A) ensure that information resources management operations and decisions are integrated with organizational planning, budget, financial management, human resources management, and program decisions;

(B) in cooperation with the agency Chief Financial Officer (or comparable official), develop a full and accurate accounting of information technology expenditures, related expenses, and results; and

(C) establish goals for improving information resources management's contribution to program productivity, efficiency, and effectiveness, methods for measuring progress towards those goals, and clear roles and responsibilities for achieving those goals;

(4) in consultation with the Director, the Administrator of General Services, and the Archivist of the United States, maintain a current and complete inventory of the agency's information resources, including directories necessary to fulfill the requirements of section 3511 of this subchapter;

(5) in consultation with the Director and the Director of the Office of Personnel Management, conduct formal training programs to educate agency program and management officials about information resources management; and

(6) in accordance with guidance by the Director —

(A) make each data asset of the agency available in an open format; and

(B) make each public data asset of the agency available —

(i) as an open Government data asset; and

(ii) under an open license.

(c) With respect to the collection of information and the control of paperwork, each agency shall —

(1) establish a process within the office headed by the Chief Information Officer designated under subsection (a), that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this subchapter, to —

(A) review each collection of information before submission to the Director for review under this subchapter, including —

(i) an evaluation of the need for the collection of information;

(ii) a functional description of the information to be collected;

(iii) a plan for the collection of the information;

(iv) a specific, objectively supported estimate of burden;

(v) a test of the collection of information through a pilot program, if appropriate; and

(vi) a plan for the efficient and effective management and use of the information to be collected, including necessary resources;

(B) ensure that each information collection —

(i) is inventoried, displays a control number and, if appropriate, an expiration date;

(ii) indicates the collection is in accordance with the clearance requirements of section 3507; and

(iii) informs the person receiving the collection of information of —

(I) the reasons the information is being collected;

(II) the way such information is to be used;

(III) an estimate, to the extent practicable, of the burden of the collection;

(IV) whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and

(V) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number; and

(C) assess the information collection burden of proposed legislation affecting the agency;

(2)

(A) except as provided under subparagraph (B) or section 3507(j), provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to —

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

(B) for any proposed collection of information contained in a proposed rule (to be reviewed by the

Director under section 3507(d)), provide notice and comment through the notice of proposed rulemaking for the proposed rule and such notice shall have the same purposes specified under subparagraph (A)(i) through (iv);

(3) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review under section 3507 —

(A) is necessary for the proper performance of the functions of the agency, including that the information has practical utility;

(B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

(C) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined under section 601(6) of title 5, the use of such techniques as —

(i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

(ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or

(iii) an exemption from coverage of the collection of information, or any part thereof;

(D) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

(E) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

(F) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

(G) contains the statement required under paragraph (1)(B)(iii);

(H) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

(I) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

(J) to the maximum extent practicable, uses information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public; and

(4) in addition to the requirements of this chapter regarding the reduction of information collection burdens for small business concerns (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), make efforts to further reduce the information collection burden for small business concerns with fewer than 25 employees.

(d) With respect to information dissemination, each agency shall —

(1) ensure that the public has timely and equitable access to the agency's public information, including ensuring such access through —

(A) encouraging a diversity of public and private sources for information based on government public information;

(B) in cases in which the agency provides public information maintained in electronic format, providing timely and equitable access to the underlying data (in whole or in part); and

(C) agency dissemination of public information in an efficient, effective, and economical manner;

(2) regularly solicit and consider public input on the agency's information dissemination activities;

(3) provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products;

(4) not, except where specifically authorized by statute —

(A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information to the public;

(B) restrict or regulate the use, resale, or redissemination of public information by the public;

(C) charge fees or royalties for resale or redissemination of public information; or

(D) establish user fees for public information that exceed the cost of dissemination;

(5) ensure that any public data asset of the agency is machine-readable; and

(6) engage the public in using public data assets of the agency and encourage collaboration by —

(A) publishing on the website of the agency, on a regular basis (not less than annually), information on the usage of such assets by non-Government users;

(B) providing the public with the opportunity to request specific data assets to be prioritized for disclosure and to provide suggestions for the development of agency criteria with respect to prioritizing data assets for disclosure;

(C) assisting the public in expanding the use of public data assets; and

(D) hosting challenges, competitions, events, or other initiatives designed to create additional value from public data assets of the agency.

(e) With respect to statistical policy and coordination, each agency shall —

(1) ensure the relevance, accuracy, timeliness, integrity, and objectivity of information collected or created for statistical purposes;

(2) inform respondents fully and accurately about the sponsors, purposes, and uses of statistical surveys and studies;

(3) protect respondents' privacy and ensure that disclosure policies fully honor pledges of confidentiality;

(4) observe Federal standards and practices for data collection, analysis, documentation, sharing, and dissemination of information;

(5) ensure the timely publication of the results of statistical surveys and studies, including information about the quality and limitations of the surveys and studies; and

(6) make data available to statistical agencies and readily accessible to the public.

(f) With respect to records management, each agency shall implement and enforce applicable policies and procedures, including requirements for archiving information maintained in electronic format, particularly in the planning, design and operation of information systems.

(g) With respect to privacy and security, each agency shall —

(1) implement and enforce applicable policies, procedures, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for the agency; and

(2) assume responsibility and accountability for compliance with and coordinated management of sections

552 and 552a of title 5, subchapter II of this chapter, and related information management laws.

(h) With respect to Federal information technology, each agency shall —

(1) implement and enforce applicable Governmentwide and agency information technology management policies, principles, standards, and guidelines;

(2) assume responsibility and accountability for information technology investments;

(3) promote the use of information technology by the agency to improve the productivity, efficiency, and effectiveness of agency programs, including the reduction of information collection burdens on the public and improved dissemination of public information;

(4) propose changes in legislation, regulations, and agency procedures to improve information technology practices, including changes that improve the ability of the agency to use technology to reduce burden; and

(5) assume responsibility for maximizing the value and assessing and managing the risks of major information systems initiatives through a process that is —

(A) integrated with budget, financial, and program management decisions; and

(B) used to select, control, and evaluate the results of major information systems initiatives.

(i)

(1) In addition to the requirements described in subsection (c), each agency shall, with respect to the collection of information and the control of paperwork, establish 1 point of contact in the agency to act as a liaison between the agency and small business concerns (as defined in section 3 of the Small Business Act (15 U.S.C. 632)).

(2) Each point of contact described under paragraph (1) shall be established not later than 1 year after the date of enactment of the Small Business Paperwork Relief Act of 2002.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 171; amended Pub. L. 104–106, div. E, title LI, § 5125(a), Feb. 10, 1996, 110 Stat. 684; Pub. L. 106–398, § 1 [[div. A], title X, § 1064(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275; Pub. L. 107–198, § 2(b), (c), June 28, 2002, 116 Stat. 729; Pub. L. 107–217, § 3(l)(6), Aug. 21, 2002, 116 Stat. 1302; Pub. L. 107–296, title X, § 1005(c)(3), Nov. 25, 2002, 116 Stat. 2273; Pub. L. 107–347, title III, § 305(c)(3), Dec. 17, 2002, 116 Stat. 2961; Pub. L. 115–435, title II, § 202(c)(1), Jan. 14, 2019, 132 Stat. 5536.)

44 USC §3507 | PUBLIC INFORMATION COLLECTION ACTIVITIES; SUBMISSION TO DIRECTOR; APPROVAL AND DELEGATION

(a) An agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information —

(1) the agency has —

(A) conducted the review established under section 3506(c)(1);

(B) evaluated the public comments received under section 3506(c)(2);

(C) submitted to the Director the certification required under section 3506(c)(3), the proposed collection of information, copies of pertinent statutory authority, regulations, and other related materials as the Director may specify; and

(D) published a notice in the Federal Register —

(i) stating that the agency has made such submission; and

(ii) setting forth —

(I) a title for the collection of information;

(II) a summary of the collection of information;

(III) a brief description of the need for the information and the proposed use of the information;

(IV) a description of the likely respondents and proposed frequency of response to the collection of information;

(V) an estimate of the burden that shall result from the collection of information; and

(VI) notice that comments may be submitted to the agency and Director;

(2) the Director has approved the proposed collection of information or approval has been inferred, under the provisions of this section; and

(3) the agency has obtained from the Director a control number to be displayed upon the collection of information.

(b) The Director shall provide at least 30 days for public comment prior to making a decision under subsection (c), (d), or (h), except as provided under subsection (j).

(c)

(1) For any proposed collection of information not contained in a proposed rule, the Director shall notify the agency involved of the decision to approve or disapprove the proposed collection of information.

(2) The Director shall provide the notification under paragraph (1), within 60 days after receipt or publication of the notice under subsection (a)(1)(D), whichever is later.

(3) If the Director does not notify the agency of a denial or approval within the 60-day period described under paragraph (2) —

(A) the approval may be inferred;

(B) a control number shall be assigned without further delay; and

(C) the agency may collect the information for not more than 1 year.

(d)

(1) For any proposed collection of information contained in a proposed rule —

(A) as soon as practicable, but no later than the date of publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information and any information requested by the Director necessary to make the determination required under this subsection; and

(B) within 60 days after the notice of proposed rulemaking is published in the Federal Register, the Director may file public comments pursuant to the standards set forth in section 3508 on the collection of information contained in the proposed rule;

(2) When a final rule is published in the Federal Register, the agency shall explain —

(A) how any collection of information contained in the final rule responds to the comments, if any, filed by the Director or the public; or

(B) the reasons such comments were rejected.

(3) If the Director has received notice and failed to comment on an agency rule within 60 days after the notice of proposed rulemaking, the Director may not disapprove any collection of information specifically contained in an agency rule.

(4) No provision in this section shall be construed to prevent the Director, in the Director's discretion —

(A) from disapproving any collection of information which was not specifically required by an agency rule;

(B) from disapproving any collection of information contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection;

(C) from disapproving any collection of information contained in a final agency rule, if the Director finds within 60 days after the publication of the final rule that the agency's response to the Director's comments filed under paragraph (2) of this subsection was unreasonable; or

(D) from disapproving any collection of information contained in a final rule, if —

(i) the Director determines that the agency has substantially modified in the final rule the collection of information contained in the proposed rule; and

(ii) the agency has not given the Director the information required under paragraph (1) with respect to the modified collection of information, at least 60 days before the issuance of the final rule.

(5) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.

(6) The decision by the Director to approve or not act upon a collection of information contained in an agency rule shall not be subject to judicial review.

(e)

(1) Any decision by the Director under subsection (c), (d), (h), or (j) to disapprove a collection of information, or to instruct the agency to make substantive or material change to a collection of information, shall be publicly available and include an explanation of the reasons for such decision.

(2) Any written communication between the Administrator of the Office of Information and Regulatory Affairs, or any employee of the Office of Information and Regulatory Affairs, and an agency or person not employed by the Federal Government concerning a proposed collection of information shall be made available to the public.

(3) This subsection shall not require the disclosure of —

(A) any information which is protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; or

(B) any communication relating to a collection of information which is not approved under this subchapter, the disclosure of which could lead to retaliation or discrimination against the communicator.

(f)

(1) An independent regulatory agency which is administered by 2 or more members of a commission, board, or similar body, may by majority vote void —

(A) any disapproval by the Director, in whole or in part, of a proposed collection of information of that agency; or

(B) an exercise of authority under subsection (d) of section 3507 concerning that agency.

(2) The agency shall certify each vote to void such disapproval or exercise to the Director, and explain the reasons for such vote. The Director shall without further delay assign a control number to such collection of information, and such vote to void the disapproval or exercise shall be valid for a period of 3 years.

(g) The Director may not approve a collection of information for a period in excess of 3 years.

(h)

(1) If an agency decides to seek extension of the Director's approval granted for a currently approved collection of information, the agency shall —

(A) conduct the review established under section 3506(c), including the seeking of comment from the public on the continued need for, and burden imposed by the collection of information; and

(B) after having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the control number assigned by the Director for the currently approved collection of information, submit the collection of information for review and approval under this section, which shall include an explanation of how the agency has used the information that it has collected.

(2) If under the provisions of this section, the Director disapproves a collection of information contained in an existing rule, or recommends or instructs the agency to make a substantive or material change to a collection of information contained in an existing rule, the Director shall —

(A) publish an explanation thereof in the Federal Register; and

(B) instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information contained in the rule and thereafter to submit the collection of information for approval or disapproval under this subchapter.

(3) An agency may not make a substantive or material modification to a collection of information after such collection has been approved by the Director, unless the modification has been submitted to the Director for review and approval under this subchapter.

(i)

(1) If the Director finds that a senior official of an agency designated under section 3506(a) is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved and has sufficient resources to carry out this responsibility effectively, the Director may, by rule in accordance with the notice and comment provisions of chapter 5 of title 5, United States Code, delegate to such official the authority to approve proposed collections of information in specific program areas, for specific purposes, or for all agency purposes.

(2) A delegation by the Director under this section shall not preclude the Director from reviewing individual collections of information if the Director determines that circumstances warrant such a review. The Director shall retain authority to revoke such delegations, both in general and with regard to any specific matter. In acting for the Director, any official to whom approval authority has been delegated under this section shall comply fully with the rules and regulations promulgated by the Director.

(j)

(1) The agency head may request the Director to authorize a collection of information, if an agency head determines that —

(A) a collection of information —

(i) is needed prior to the expiration of time periods established under this subchapter; and

(ii) is essential to the mission of the agency; and

(B) the agency cannot reasonably comply with the provisions of this subchapter because —

(i) public harm is reasonably likely to result if normal clearance procedures are followed;

(ii) an unanticipated event has occurred; or

(iii) the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.

(2) The Director shall approve or disapprove any such authorization request within the time requested by the agency head and, if approved, shall assign the collection of information a control number. Any collection of information conducted under this subsection may be conducted without compliance with the provisions of this subchapter for a maximum of 180 days after the date on which the Director received the request to authorize such collection.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 176; amended Pub. L. 104–106, div. E, title LVI, § 5605(d), Feb. 10, 1996, 110 Stat. 700; Pub. L. 106–398, § 1 [[div. A], title X, § 1064(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275.)

44 USC §3508 | DETERMINATION OF NECESSITY FOR INFORMATION; HEARING

Before approving a proposed collection of information, the Director shall determine whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility. Before making a determination the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary for any reason, the agency may not engage in the collection of information.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 179.)

44 USC §3509 | DESIGNATION OF CENTRAL COLLECTION AGENCY

The Director may designate a central collection agency to obtain information for two or more agencies if the Director determines that the needs of such agencies for information will be adequately served by a single collection agency, and such sharing of data is not inconsistent with applicable law. In such cases the Director shall prescribe (with reference to the collection of information) the duties and functions of the collection agency so designated and of the agencies for which it is to act as agent (including reimbursement for costs). While the designation is in effect, an agency covered by the designation may not obtain for itself information for the agency which is the duty of the collection agency to obtain. The Director may modify the designation from time to time as circumstances require. The authority to designate under this section is subject to the provisions of section 3507(f) of this subchapter.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 180; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1064(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275.)

44 USC §3510 | COOPERATION OF AGENCIES IN MAKING INFORMATION AVAILABLE

(a) The Director may direct an agency to make available to another agency, or an agency may make available to another agency, information obtained by a collection of information if the disclosure is not inconsistent with applicable law.

(b)

(1) If information obtained by an agency is released by that agency to another agency, all the provisions of law (including penalties) that relate to the unlawful disclosure of information apply to the officers and employees of the agency to which information is released to the same extent and in the same manner as the provisions apply to the officers and employees of the agency which originally obtained the information.

(2) The officers and employees of the agency to which the information is released, in addition, shall be subject to the same provisions of law, including penalties, relating to the unlawful disclosure of information as if the information had been collected directly by that agency.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 180.)

44 USC §3511 | DATA INVENTORY AND FEDERAL DATA CATALOGUE

(a) Comprehensive Data Inventory. —

(1) In general. —

In consultation with the Director and in accordance with the guidance established under paragraph (2), the head of each agency shall, to the maximum extent practicable, develop and maintain a comprehensive data inventory that accounts for all data assets created by, collected by, under the control or direction of, or maintained by the agency. The head of each agency shall ensure that such inventory provides a clear and comprehensive understanding of the data assets in the possession of the agency.

(2) Guidance. — The Director shall establish guidance for agencies to develop and maintain comprehensive data inventories under paragraph (1). Such guidance shall include the following:

(A) A requirement for the head of an agency to include in the comprehensive data inventory metadata on each data asset of the agency, including, to the maximum extent practicable, the following:

(i) A description of the data asset, including all variable names and definitions.

(ii) The name or title of the data asset.

(iii) An indication of whether or not the agency —

(I) has determined or can determine if the data asset is —

(aa) an open Government data asset;

(bb) subject to disclosure or partial disclosure or exempt from disclosure under section 552 of title 5;

(cc) a public data asset eligible for disclosure under subsection (b); or

(dd) a data asset not subject to open format or open license requirements due to existing limitations or restrictions on government distribution of the asset; or

(II) as of the date of such indication, has not made such determination.

(iv) Any determination made under section 3582, if available.

(v) A description of the method by which the public may access or request access to the data asset.

(vi) The date on which the data asset was most recently updated.

(vii) Each agency responsible for maintaining the data asset.

(viii) The owner of the data asset.

(ix) To the extent practicable, any restriction on the use of the data asset.

(x) The location of the data asset.

(xi) Any other metadata necessary to make the comprehensive data inventory useful to the agency and the public, or otherwise determined useful by the Director.

(B) A requirement for the head of an agency to exclude from the comprehensive data inventory any data asset contained on a national security system, as defined in section 11103 of title 40.

(C) Criteria for the head of an agency to use in determining which metadata required by subparagraph (A), if any, in the comprehensive data inventory may not be made publicly available, which shall include, at a minimum, a requirement to ensure all information that could not otherwise be withheld from disclosure under section 552 of title 5 is made public in the comprehensive data inventory.

(D) A requirement for the head of each agency, in accordance with a procedure established by the Director, to submit for inclusion in the Federal data catalogue maintained under subsection (c) the comprehensive data inventory developed pursuant to subparagraph (C), including any real-time updates to such inventory, and data assets made available in accordance with subparagraph (E) or any electronic hyperlink providing access to such data assets.

(E) Criteria for the head of an agency to use in determining whether a particular data asset should not be made publicly available in a manner that takes into account —

(i) risks and restrictions related to the disclosure of personally identifiable information, including the risk that an individual data asset in isolation does not pose a privacy or confidentiality risk but when combined with other available information may pose such a risk;

(ii) security considerations, including the risk that information in an individual data asset in isolation does not pose a security risk but when combined with other available information may pose such a risk;

(iii) the cost and benefits to the public of converting the data into a format that could be understood and used by the public;

(iv) whether the public dissemination of the data asset could result in legal liability;

(v) whether the data asset —

(I) is subject to intellectual property rights, including rights under titles 17 and 35;

(II) contains confidential business information, that could be withheld under section 552(b)(4) of title 5; or

(III) is restricted by contract or other binding, written agreement;

(vi) whether the holder of a right to such data asset has been consulted;

(vii) the expectation that all data assets that would otherwise be made available under section 552 of title 5 be disclosed; and

(viii) any other considerations that the Director determines to be relevant.

(F) Criteria for the head of an agency to use in assessing the indication of a determination under subparagraph (A)(iii) and how to prioritize any such subsequent determinations in the strategic information management plan under section 3506, in consideration of the existing resources available to the agency.

(3) Regular updates required. —

With respect to each data asset created or identified by an agency, the head of the agency shall update the comprehensive data inventory of the agency not later than 90 days after the date of such creation or identification.

(b) Public Data Assets. —

The head of each agency shall submit public data assets, or links to public data assets available online, as open Government data assets for inclusion in the Federal data catalogue maintained under subsection (c), in accordance with the guidance established under subsection (a)(2).

(c) Federal Data Catalogue. —

(1) In general. —

The Administrator of General Services shall maintain a single public interface online as a point of entry dedicated to sharing agency data assets with the public, which shall be known as the "Federal data catalogue". The Administrator and the Director shall ensure that agencies can submit public data assets, or links to public data assets, for publication and public availability on the interface.

(2) Repository. — The Director shall collaborate with the Office of Government Information Services and the Administrator of General Services to develop and maintain an online repository of tools, best practices, and schema standards to facilitate the adoption of open data practices across the Federal Government, which shall —

(A) include any definitions, regulations, policies, checklists, and case studies related to open data policy;

(B) facilitate collaboration and the adoption of best practices across the Federal Government relating to the adoption of open data practices; and

(C) be made available on the Federal data catalogue maintained under paragraph (1).

(3) Access to other data assets. —

The Director shall ensure the Federal data catalogue maintained under paragraph (1) provides information on how the public can access a data asset included in a comprehensive data inventory under subsection (a) that is not yet available on the Federal data catalogue, including information regarding the application process established under section 3583 of title 44.

(d) Delegation. —

The Director shall delegate to the Administrator of the Office of Information and Regulatory Affairs and the Administrator of the Office of Electronic Government the authority to jointly issue guidance required under this section.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 180; amended Pub. L. 113–235, div. H, title I, § 1301(c)(1), Dec. 16, 2014, 128 Stat. 2537; Pub. L. 115–435, title II, § 202(d)(1), Jan. 14, 2019, 132 Stat. 5538.)

44 USC §3512 | PUBLIC PROTECTION

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter if —

(1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter; or

(2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.

(b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 181; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1064(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275.)

44 USC §3513 | DIRECTOR REVIEW OF AGENCY ACTIVITIES; REPORTING; AGENCY RESPONSE

(a) In consultation with the Administrator of General Services, the Archivist of the United States, the Director of the National Institute of Standards and Technology, and the Director of the Office of Personnel Management, the Director shall periodically review selected agency information resources management activities to ascertain the efficiency and effectiveness of such activities to improve agency performance and the accomplishment of agency missions.

(b) Each agency having an activity reviewed under subsection (a) shall, within 60 days after receipt of a report on the review, provide a written plan to the Director describing steps (including milestones) to —

(1) be taken to address information resources management problems identified in the report; and

(2) improve agency performance and the accomplishment of agency missions.

(c) Comparable Treatment. —

Notwithstanding any other provision of law, the Director shall treat or review a rule or order prescribed or proposed by the Director of the Bureau of Consumer Financial Protection on the same terms and conditions as apply to any rule or order prescribed or proposed by the Board of Governors of the Federal Reserve System.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 181; amended Pub. L. 111–203, title X, § 1100D(b), July 21, 2010, 124 Stat. 2111.)

44 USC §3514 | RESPONSIVENESS TO CONGRESS

(a)

(1) The Director shall —

(A) keep the Congress and congressional committees fully and currently informed of the major activities under this subchapter; and

(B) submit a report on such activities to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as the Director determines necessary.

(2) The Director shall include in any such report a description of the extent to which agencies have —

(A) reduced information collection burdens on the public, including —

(i) a summary of accomplishments and planned initiatives to reduce collection of information burdens;

(ii) a list of all violations of this subchapter and of any rules, guidelines, policies, and procedures issued pursuant to this subchapter;

(iii) a list of any increase in the collection of information burden, including the authority for each such collection; and

(iv) a list of agencies that in the preceding year did not reduce information collection burdens in accordance with section 3505(a)(1), a list of the programs and statutory responsibilities of those agencies that precluded that reduction, and recommendations to assist those agencies to reduce information collection burdens in accordance with that section;

(B) improved the quality and utility of statistical information;

(C) improved public access to Government information; and

(D) improved program performance and the accomplishment of agency missions through information resources management.

(b) The preparation of any report required by this section shall be based on performance results reported by the agencies and shall not increase the collection of information burden on persons outside the Federal Government.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 181; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1064(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275.)

44 USC §3515 | ADMINISTRATIVE POWERS

Upon the request of the Director, each agency (other than an independent regulatory agency) shall, to the extent practicable, make its services, personnel, and facilities available to the Director for the performance of functions under this subchapter.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 182; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1064(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275.)

44 USC §3516 | RULES AND REGULATIONS

The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this subchapter.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 182; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1064(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275.)

44 USC §3517 | CONSULTATION WITH OTHER AGENCIES AND THE PUBLIC

(a) In developing information resources management policies, plans, rules, regulations, procedures, and guidelines and in reviewing collections of information, the Director shall provide interested agencies and persons early and meaningful opportunity to comment.

(b) Any person may request the Director to review any collection of information conducted by or for an agency to determine, if, under this subchapter, a person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, the Director shall, in coordination with the agency responsible for the collection of information —

(1) respond to the request within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension; and

(2) take appropriate remedial action, if necessary.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 182; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1064(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275.)

44 USC §3518 | EFFECT ON EXISTING LAWS AND REGULATIONS

(a) Except as otherwise provided in this subchapter, the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information resources management activities is subject to the authority of the Director under this subchapter.

(b) Nothing in this subchapter shall be deemed to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 of 1977 (as amended) and Executive order, relating to telecommunications and information policy, procurement and management of telecommunications and information systems, spectrum use, and related matters.

(c)

(1) Except as provided in paragraph (2), this subchapter shall not apply to the collection of information —

(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

(B) during the conduct of —

(i) a civil action to which the United States or any official or agency thereof is a party; or

(ii) an administrative action or investigation involving an agency against specific individuals or entities;

(C) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

(D) during the conduct of intelligence activities as defined in section 3.4(e) of Executive Order No. 12333, issued December 4, 1981, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

(2) This subchapter applies to the collection of information during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

(d) Nothing in this subchapter shall be interpreted as increasing or decreasing the authority conferred by sections 11331 and 11332 [1] of title 40 on the Secretary of Commerce or the Director of the Office of Management and Budget.

(e) Nothing in this subchapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 183; amended Pub. L. 104–106, div. E, title LI, § 5131(e)(2), Feb. 10, 1996, 110 Stat. 688; Pub. L. 105–85, div. A, title X, § 1073(h)(5)(C), Nov. 18, 1997, 111 Stat. 1907; Pub. L. 106–398, § 1 [[div. A], title X, § 1064(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275; Pub. L. 107–217, § 3(l)(7), Aug. 21, 2002, 116 Stat. 1302.)

44 USC §3519 | ACCESS TO INFORMATION

Under the conditions and procedures prescribed in section 716 of title 31, the Director and personnel in the Office of Information and Regulatory Affairs shall furnish such information as the Comptroller General may require for the discharge of the responsibilities of the Comptroller General. For the purpose of obtaining such information, the Comptroller General or representatives thereof shall have access to all books, documents, papers and records, regardless of form or format, of the Office.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 183.)

44 USC §3520 | CHIEF DATA OFFICERS

(a) Establishment. —

The head of each agency shall designate a nonpolitical appointee employee in the agency as the Chief Data Officer of the agency.

(b) Qualifications. —

The Chief Data Officer of an agency shall be designated on the basis of demonstrated training and experience in data management, governance (including creation, application, and maintenance of data standards), collection, analysis, protection, use, and dissemination, including with respect to any statistical and related techniques to protect and de-identify confidential data.

(c) Functions. — The Chief Data Officer of an agency shall —

(1) be responsible for lifecycle data management;

(2) coordinate with any official in the agency responsible for using, protecting, disseminating, and generating data to ensure that the data needs of the agency are met;

(3) manage data assets of the agency, including the standardization of data format, sharing of data assets, and publication of data assets in accordance with applicable law;

(4) in carrying out the requirements under paragraphs (3) and (5), consult with any statistical official of the agency (as designated under section 314 of title 5);

(5) carry out the requirements of the agency under subsections (b) through (d), (f), and (i) of section 3506, section 3507, and section 3511;

(6) ensure that, to the extent practicable, agency data conforms with data management best practices;

(7) engage agency employees, the public, and contractors in using public data assets and encourage collaborative approaches on improving data use;

(8) support the Performance Improvement Officer of the agency in identifying and using data to carry out the functions described in section 1124(a)(2) of title 31;

(9) support the Evaluation Officer of the agency in obtaining data to carry out the functions described in section 313(d) of title 5;

(10) review the impact of the infrastructure of the agency on data asset accessibility and coordinate with the Chief Information Officer of the agency to improve such infrastructure to reduce barriers that inhibit data asset accessibility;

(11) ensure that, to the extent practicable, the agency maximizes the use of data in the agency, including for the production of evidence (as defined in section 3561), cybersecurity, and the improvement of agency operations;

(12) identify points of contact for roles and responsibilities related to open data use and implementation (as required by the Director);

(13) serve as the agency liaison to other agencies and the Office of Management and Budget on the best way to use existing agency data for statistical purposes (as defined in section 3561); and

(14) comply with any regulation and guidance issued under subchapter III, including the acquisition and maintenance of any required certification and training.

(d) Delegation of Responsibilities. —

(1) In general. —

To the extent necessary to comply with statistical laws, the Chief Data Officer of an agency shall delegate any responsibility under subsection (c) to the head of a statistical agency or unit (as defined in section 3561) within the agency.

(2) Consultation. —

To the extent permissible under law, the individual to whom a responsibility has been delegated under paragraph (1) shall consult with the Chief Data Officer of the agency in carrying out such responsibility.

(3) Deference. —

The Chief Data Officer of the agency shall defer to the individual to whom a responsibility has been delegated under paragraph (1) regarding the necessary delegation of such responsibility with respect to any data acquired, maintained, or disseminated by the agency under applicable statistical law.

(e) Reports. —

The Chief Data Officer of an agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives an annual report on the compliance of the agency with the requirements of this subchapter, including information on each requirement that the agency could not carry out and, if applicable, what the agency needs to carry out such requirement.

(Added Pub. L. 107–198, § 3(a)(2), June 28, 2002, 116 Stat. 730; amended Pub. L. 115–435, title II, § 202(e)(1), Jan. 14, 2019, 132 Stat. 5541.)

44 USC §3520A | CHIEF DATA OFFICER COUNCIL

(a) Establishment. —

There is established in the Office of Management and Budget a Chief Data Officer Council (in this section referred to as the "Council").

(b) Purpose and Functions. — The Council shall —

(1) establish Governmentwide best practices for the use, protection, dissemination, and generation of data;

(2) promote and encourage data sharing agreements between agencies;

(3) identify ways in which agencies can improve upon the production of evidence for use in policymaking;

(4) consult with the public and engage with private users of Government data and other stakeholders on how to improve access to data assets of the Federal Government; and

(5) identify and evaluate new technology solutions for improving the collection and use of data.

(c) Membership. —

(1) In general. —

The Chief Data Officer of each agency shall serve as a member of the Council.

(2) Chair. —

The Director shall select the Chair of the Council from among the members of the Council.

(3) Additional members. —

The Administrator of the Office of Electronic Government shall serve as a member of the Council.

(4) Ex officio member. —

The Director shall appoint a representative for all Chief Information Officers and Evaluation Officers, and such representative shall serve as an ex officio member of the Council.

(d) Reports. —

The Council shall submit to the Director, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Government Reform of the House of Representatives a biennial report on the work of the Council.

(e) Evaluation and Termination. —

(1) GAO evaluation of council. —

Not later than 4 years after date[1] of the enactment of this section, the Comptroller General shall submit to Congress a report on whether the additional duties of the Council improved the use of evidence and program evaluation in the Federal Government.

(2) Termination of council. —

The Council shall terminate and this section shall be repealed upon the expiration of the 2-year period that begins on the date the Comptroller General submits the report under paragraph (1) to Congress.

(Added Pub. L. 115–435, title II, § 202(f)(1), Jan. 14, 2019, 132 Stat. 5542.)

44 USC §3521 | AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated to the Office of Information and Regulatory Affairs to carry out the provisions of this subchapter, and for no other purpose, $8,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, 2000, and 2001.

(Added Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 184, § 3520; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1064(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275; renumbered § 3521, Pub. L. 107–198, § 3(a)(1), June 28, 2002, 116 Stat. 730.)

44 USC §3531 | REPEALED

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 47 TELECOMMUNICATIONS

CHAPTER: 5 WIRE OR RADIO COMMUNICATION

SUBCHAPTER: II COMMON CARRIERS

SECTIONS: §255

NOTE: **not the entire subchapter** (pertinent parts only!!!)

47 USC §255 | ACCESS BY PERSONS WITH DISABILITIES

(a) Definitions

As used in this section -

(1) Disability

The term "disability" has the meaning given to it by section 12102(2)(A) 1 of title 42.

(2) Readily achievable

The term "readily achievable" has the meaning given to it by section 12181(9) of title 42.

(b) Manufacturing

A manufacturer of telecommunications equipment or customer premises equipment shall ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable.

(c) Telecommunications services

A provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.

(d) Compatibility

Whenever the requirements of subsections (b) and (c) are not readily achievable, such a manufacturer or provider shall ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.

(e) Guidelines

Within 18 months after February 8, 1996, the Architectural and Transportation Barriers Compliance Board shall develop guidelines for accessibility of telecommunications equipment and customer premises equipment in conjunction with the Commission. The Board shall review and update the guidelines periodically.

(f) No additional private rights authorized

Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section or any regulation thereunder. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

(June 19, 1934, ch. 652, title II, §255, as added Pub. L. 104–104, title I, §101(a), Feb. 8, 1996, 110 Stat. 75 .)

Editorial Notes

References in Text

Section 12102 of title 42, referred to in subsec. (a)(1), was amended generally by Pub. L. 110–325, §4(a), Sept. 25, 2008, 122 Stat. 3555 , and, as so amended, provisions formerly appearing in par. (2)(A) are now contained in par. (1)(A).

[1] See References in Text note below.

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 52 VOTING AND ELECTIONS

SUBTITLE: I VOTING RIGHTS

CHAPTER: 101 GENERALLY

SECTIONS: §10101 through §10102

NOTE: **Entire Chapter**

52 USC §10101 | VOTING RIGHTS

(a) Race, color, or previous condition not to affect right to vote; uniform standards for voting qualifications; errors or omissions from papers; literacy tests; agreements between Attorney General and State or local authorities; definitions

(1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

(2) No person acting under color of law shall-

(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

(B) deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

(C) employ any literacy test as a qualification for voting in any election unless (i) such test is administered to each individual and is conducted wholly in writing, and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to title III of the Civil Rights Act of 1960 [52 U.S.C. 20701 et seq.]: Provided, however, That the Attorney General may enter into agreements with

appropriate State or local authorities that preparation, conduct, and maintenance of such tests in accordance with the provisions of applicable State or local law, including such special provisions as are necessary in the preparation, conduct, and maintenance of such tests for persons who are blind or otherwise physically handicapped, meet the purposes of this subparagraph and constitute compliance therewith.

(3) For purposes of this subsection-

(A) the term "vote" shall have the same meaning as in subsection (e) of this section;

(B) the phrase "literacy test" includes any test of the ability to read, write, understand, or interpret any matter.

(b) Intimidation, threats, or coercion

No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

(c) Preventive relief; injunction; rebuttable literacy presumption; liability of United States for costs; State as party defendant

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b), the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that

any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any election. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a), the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.

(d) Jurisdiction; exhaustion of other remedies

The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

(e) Order qualifying person to vote; application; hearing; voting referees; transmittal of report and order; certificate of qualification; definitions

In any proceeding instituted pursuant to subsection (c) in the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a), the court shall upon request of the Attorney General and after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was or is pursuant to a pattern or practice. If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for one year and thereafter until the court subsequently finds that such pattern or practice has ceased, be entitled, upon his application therefor, to an order declaring him qualified to vote, upon proof that at any election or elections (1) he is qualified under State law to vote, and (2) he has since such finding by the court been (a) deprived of or denied under

color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. Such order shall be effective as to any election held within the longest period for which such applicant could have been registered or otherwise qualified under State law at which the applicant's qualifications would under State law entitle him to vote.

Notwithstanding any inconsistent provision of State law or the action of any State officer or court, an applicant so declared qualified to vote shall be permitted to vote in any such election. The Attorney General shall cause to be transmitted certified copies of such order to the appropriate election officers. The refusal by any such officer with notice of such order to permit any person so declared qualified to vote to vote at an appropriate election shall constitute contempt of court.

An application for an order pursuant to this subsection shall be heard within ten days, and the execution of any order disposing of such application shall not be stayed if the effect of such stay would be to delay the effectiveness of the order beyond the date of any election at which the applicant would otherwise be enabled to vote.

The court may appoint one or more persons who are qualified voters in the judicial district, to be known as voting referees, who shall subscribe to the oath of office required by section 3331 of title 5, to serve for such period as the court shall determine, to receive such applications and to take evidence and report to the court findings as to whether or not at any election or elections (1) any such applicant is qualified under State law to vote, and (2) he has since the finding by the court heretofore specified been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. In a proceeding before a voting referee, the applicant shall be heard ex parte at such times and places as the court shall direct. His statement under oath shall be prima facie evidence as to his age, residence, and his prior efforts to register or otherwise qualify to vote. Where proof of literacy or an understanding of other subjects is required by valid provisions of State law, the answer of the applicant, if written, shall be included in such report to the court; if

oral, it shall be taken down stenographically and a transcription included in such report to the court.

Upon receipt of such report, the court shall cause the Attorney General to transmit a copy thereof to the State attorney general and to each party to such proceeding together with an order to show cause within ten days, or such shorter time as the court may fix, why an order of the court should not be entered in accordance with such report. Upon the expiration of such period, such order shall be entered unless prior to that time there has been filed with the court and served upon all parties a statement of exceptions to such report. Exceptions as to matters of fact shall be considered only if supported by a duly verified copy of a public record or by affidavit of persons having personal knowledge of such facts or by statements or matters contained in such report; those relating to matters of law shall be supported by an appropriate memorandum of law. The issues of fact and law raised by such exceptions shall be determined by the court or, if the due and speedy administration of justice requires, they may be referred to the voting referee to determine in accordance with procedures prescribed by the court. A hearing as to an issue of fact shall be held only in the event that the proof in support of the exception disclose the existence of a genuine issue of material fact. The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee.

The court, or at its direction the voting referee, shall issue to each applicant so declared qualified a certificate identifying the holder thereof as a person so qualified.

Any voting referee appointed by the court pursuant to this subsection shall to the extent not inconsistent herewith have all the powers conferred upon a master by rule 53(c) of the Federal Rules of Civil Procedure. The compensation to be allowed to any persons appointed by the court pursuant to this subsection shall be fixed by the court and shall be payable by the United States.

Applications pursuant to this subsection shall be determined expeditiously. In the case of any application filed twenty or more days prior to an election which is undetermined by the time of such election, the court shall issue an order authorizing the applicant to vote provisionally: Provided,

however, That such applicant shall be qualified to vote under State law. In the case of an application filed within twenty days prior to an election, the court, in its discretion, may make such an order. In either case the order shall make appropriate provision for the impounding of the applicant's ballot pending determination of the application. The court may take any other action, and may authorize such referee or such other person as it may designate to take any other action, appropriate or necessary to carry out the provisions of this subsection and to enforce its decrees. This subsection shall in no way be construed as a limitation upon the existing powers of the court.

When used in the subsection, the word "vote" includes all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election; the words "affected area" shall mean any subdivision of the State in which the laws of the State relating to voting are or have been to any extent administered by a person found in the proceeding to have violated subsection (a); and the words "qualified under State law" shall mean qualified according to the laws, customs, or usages of the State, and shall not, in any event, imply qualifications more stringent than those used by the persons found in the proceeding to have violated subsection (a) in qualifying persons other than those of the race or color against which the pattern or practice of discrimination was found to exist.

(f) Contempt; assignment of counsel; witnesses

Any person cited for an alleged contempt under this Act shall be allowed to make his full defense by counsel learned in the law; and the court before which he is cited or tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, who shall have free access to him at all reasonable hours. He shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial or hearing, as is usually granted to compel witnesses to appear on behalf of the prosecution. If such person shall

be found by the court to be financially unable to provide for such counsel, it shall be the duty of the court to provide such counsel.

(g) Three-judge district court: hearing, determination, expedition of action, review by Supreme Court; single-judge district court: hearing, determination, expedition of action

In any proceeding instituted by the United States in any district court of the United States under this section in which the Attorney General requests a finding of a pattern or practice of discrimination pursuant to subsection (e) of this section the Attorney General, at the time he files the complaint, or any defendant in the proceeding, within twenty days after service upon him of the complaint, may file with the clerk of such court a request that a court of three judges be convened to hear and determine the entire case. A copy of the request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In any proceeding brought under subsection (c) of this section to enforce subsection (b) of this section, or in the event neither the Attorney General nor any defendant files a request for a three-judge court in any proceeding authorized by this subsection, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the

chief judge of the circuit (or, in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(R.S. §2004; Pub. L. 85–315, pt. IV, §131, Sept. 9, 1957, 71 Stat. 637 ; Pub. L. 86–449, title VI, §601, May 6, 1960, 74 Stat. 90 ; Pub. L. 88–352, title I, §101, July 2, 1964, 78 Stat. 241 ; Pub. L. 89–110, §15, Aug. 6, 1965, 79 Stat. 445 .)

Editorial Notes

References in Text

The Civil Rights Act of 1960, referred to in subsec. (a)(2)(C), is Pub. L. 86–449, May 6, 1960, 74 Stat. 86 . Title III of the Civil Rights Act of 1960 is classified generally to chapter 207 (§20701 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

Rule 53(c) of the Federal Rules of Civil Procedure, referred to in subsec. (e), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

This Act, referred to in subsec. (f), is Pub. L. 85–315, Sept. 9, 1957, 71 Stat. 634 , which enacted sections 1975 to 1975e and 1995 of Title 42, The Public Health and Welfare, and section 295–1 of former Title 5, Executive Departments and Government Officers and Employees, amended this section and sections 1343 and 1861 of Title 28, repealed section 1993 of Title 42, and enacted provisions set out as a note under section 1975 of Title 42.

Codification

Section was formerly classified to section 1971 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section, and to section 31 of Title 8, Aliens and Nationality.

R.S. §2004 derived from act May 31, 1870, ch. 114, §1, 16 Stat. 140 .

In subsec. (e), "section 3331 of title 5" was substituted for "Revised Statutes, section 1757 (5 U.S.C. 16)" on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631 , the first section of which enacted Title 5, Government Organization and Employees.

Amendments

1965-Subsecs. (a), (c). Pub. L. 89–110, §15(a), struck out "Federal" before "election" wherever appearing.

Subsecs. (f) to (h). Pub. L. 89–110, §15(b), redesignated subsecs. (g) and (h) as (f) and (g), respectively, and repealed former subsec. (f) which defined "Federal elections".

1964-Subsec. (a). Pub. L. 88–352, §101(a), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (c). Pub. L. 88–352, §101(b), provided for a rebuttable literacy presumption when a person has not been adjudged an incompetent and has completed the sixth grade of his schooling.

Subsecs. (f), (g). Pub. L. 88–352, §101(c), added subsec. (f) and redesignated former subsec. (f) as (g).

Subsec. (h). Pub. L. 88–352, §101(d), added subsec. (h).

1960-Subsec. (c). Pub. L. 86–449, §601(b), permitted the State to be joined as a party defendant in cases where officials of a State or subdivision thereof are alleged to have committed acts or practices constituting a deprivation of any rights or privileges secured by subsection (a) of this section, and authorized commencement of the proceeding against the State where an official has resigned or has been relieved of his office and no successor has assumed such office.

Subsecs. (e), (f). Pub. L. 86–449, §601(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1957-Pub. L. 85–315, §131, substituted "Voting rights" for "Race, color, or previous condition not to affect right to vote" in section catchline, designated existing provisions as subsec. (a), and added subsecs. (b) to (e).

Statutory Notes and Related Subsidiaries

Short Title of 2022 Amendment

Pub. L. 117–182, §1, Sept. 30, 2022, 136 Stat. 2178 , provided that: "This Act [amending section 21061 of this title and enacting provisions set out as a note under section 21061 of this title] may be cited as the 'Protection and Advocacy for Voting Access Program Inclusion Act' or the 'PAVA Program Inclusion Act'."

Short Title of 2009 Act

Pub. L. 111–84, div. A, title V, §575, Oct. 28, 2009, 123 Stat. 2318 , provided that: "This subtitle [subtitle H (§§575–589) of title V of div. A of Pub. L. 111–84, see Tables for classification] may be cited as the 'Military and Overseas Voter Empowerment Act'."

Short Title of 2006 Act

Pub. L. 109–246, §1, July 27, 2006, 120 Stat. 577 , as amended by Pub. L. 110–258, §1, July 1, 2008, 122 Stat. 2428 , provided that: "This Act [see Tables for classification] may be cited as the 'Fannie Lou Hamer, Rosa Parks, Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006'."

Short Title of 2002 Act

Pub. L. 107–252, §1(a), Oct. 29, 2002, 116 Stat. 1666 , provided that: "This Act [see Tables for classification] may be cited as the 'Help America Vote Act of 2002'."

Pub. L. 107–155, §1(a), Mar. 27, 2002, 116 Stat. 81 , provided that: "This Act [see Tables for classification] may be cited as the 'Bipartisan Campaign Reform Act of 2002'."

Short Title of 1993 Act

Pub. L. 103–31, §1, May 20, 1993, 107 Stat. 77 , provided that: "This Act [see Tables for classification] may be cited as the 'National Voter Registration Act of 1993'."

Short Title of 1992 Act

Pub. L. 102–344, §1, Aug. 26, 1992, 106 Stat. 921 , provided that: "This Act [see Tables for classification] may be cited as the 'Voting Rights Language Assistance Act of 1992'."

Short Title of 1986 Act

Pub. L. 99–410, §1, Aug. 28, 1986, 100 Stat. 924 , provided that: "This Act [see Tables for classification] may be cited as the 'Uniformed and Overseas Citizens Absentee Voting Act'."

Short Title of 1984 Act

Pub. L. 98–435, §1, Sept. 28, 1984, 98 Stat. 1678 , provided that: "This Act [see Tables for classification] may be cited as the 'Voting Accessibility for the Elderly and Handicapped Act'."

Short Title of 1982 Act

Pub. L. 97–205, §1, June 29, 1982, 96 Stat. 131 , provided: "That this Act [see Tables for classification] may be cited as the 'Voting Rights Act Amendments of 1982'."

Short Title of 1980 Act

Pub. L. 96–187, Jan. 8, 1980, 93 Stat. 1339 , provided in part: "That this Act [see Tables for classification] may be cited as the 'Federal Election Campaign Act Amendments of 1979'."

Short Title of 1976 Act

Pub. L. 94–283, §1, May 11, 1976, 90 Stat. 475 , provided that: "This Act [see Tables for classification] may be cited as the 'Federal Election Campaign Act Amendments of 1976'."

Short Title of 1975 Act

Pub. L. 94–203, §1, Jan. 2, 1976, 89 Stat. 1142 , which provided that Pub. L. 94–203 (see Tables for classification) was to be cited as "Overseas Citizens Voting Rights Act of 1975", was repealed by Pub. L. 99–410, title II, §203, Aug. 28, 1986, 100 Stat. 930 .

Short Title of 1974 Act

Pub. L. 93–443, Oct. 15, 1974, 88 Stat. 1263 , provided in part: "That this Act [see Tables for classification] may be cited as the 'Federal Election Campaign Act Amendments of 1974'."

Short Title of 1972 Act

Pub. L. 92–225, Feb. 7, 1972, 86 Stat. 3 , provided in part: "That this Act [see Tables for classification] may be cited as the 'Federal Election Campaign Act of 1971'."

Short Title of 1970 Act

Pub. L. 91–285, §1, June 22, 1970, 84 Stat. 314 , provided: "That this Act [see Tables for classification] may be cited as the 'Voting Rights Act Amendments of 1970'."

Short Title of 1965 Act

Pub. L. 89–110, §1, Aug. 6, 1965, 79 Stat. 437 , provided that: "This Act [see Tables for classification] shall be known as the 'Voting Rights Act of 1965'."

Short Title of 1960 Act

Pub. L. 86–449, §1, May 6, 1960, 74 Stat. 86 , provided that: "This Act [see Tables for classification] may be cited as the 'Civil Rights Act of 1960'."

Short Title of 1957 Act

Pub. L. 85–315, pt. V, §161, Sept. 9, 1957, 71 Stat. 638 , provided that: "This Act [see Tables for classification] may be cited as the 'Civil Rights Act of 1957'."

Short Title of 1955 Act

Act Aug. 9, 1955, ch. 656, §1, 69 Stat. 584 , which provided that such Act (see Tables for classification) was to be cited as "The Federal Voting Assistance Act of 1955", was repealed by Pub. L. 99–410, title II, §203, Aug. 28, 1986, 100 Stat. 930 .

Separability

Pub. L. 86–449, title VII, §701, May 6, 1960, 74 Stat. 92 , provided that: "If any provisions of this Act [see Short Title of 1960 Act note above] is held invalid, the remainder of this Act shall not be affected thereby."

Voter Registration Drives

Pub. L. 98–473, title I, §101(j), Oct. 12, 1984, 98 Stat. 1963 , provided that: "It is the sense of the Congress that-

> "(1) voter registration drives should be encouraged by governmental entities at all levels; and
>
> "(2) voter registration drives conducted by State governments on a nonpartisan basis do not violate the provisions of the Intergovernmental Personnel Act (42 U.S.C. 4728, 4763)."

52 USC §10102 | INTERFERENCE WITH FREEDOM OF ELECTIONS

No officer of the Army, Navy, or Air Force of the United States shall prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State, or in any manner interfere with the freedom of any election in any State, or with the exercise of the free right of suffrage in any State.

(R.S. §2003.)

Editorial Notes

Codification

Section was formerly classified to section 1972 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section, and to section 32 of Title 8, Aliens and Nationality.

R.S. §2003 derived from act Feb. 25, 1865, ch. 52, §1, 13 Stat. 437 .

Air Force inserted to conform to act July 26, 1947, ch. 343, title II, §207(a), (f), 61 Stat. 502 , which established a separate Department of the Air Force, and Secretary of Defense Transfer Order No. 40 [App. A(10)], July 22, 1949, which transferred certain functions to the Air Force. Section 207(a), (f) of act July 26, 1947, was repealed by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641 . Act Aug. 10, 1956, ch. 1041, 70A Stat. 1 , enacted "Title 10, Armed Forces", which in sections 8010 to 8013 continued Department of the Air Force under administrative supervision of Secretary of the Air Force.

LAWS PERTINENT TO DISCRIMINATION LITIGATION | FEDERAL

TITLE: 52 VOTING AND ELECTIONS

SUBTITLE: I VOTING RIGHTS

CHAPTER: 103 ENFORCEMENT OF VOTING RIGHTS

SECTIONS: §10301 through §10314

NOTE: **Entire Chapter**

52 USC §10301 | DENIAL OR ABRIDGEMENT OF RIGHT TO VOTE ON ACCOUNT OF RACE OR COLOR THROUGH VOTING QUALIFICATIONS OR PREREQUISITES; ESTABLISHMENT OF VIOLATION

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

(Pub. L. 89–110, title I, §2, Aug. 6, 1965, 79 Stat. 437 ; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94–73, title II, §206, Aug. 6, 1975, 89 Stat. 402 ; Pub. L. 97–205, §3, June 29, 1982, 96 Stat. 134.)

Editorial Notes

Codification

Section was formerly classified to section 1973 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section. Some section numbers referenced in amendment notes below reflect the classification of such sections prior to their editorial reclassification to this title.

Amendments

1982-Pub. L. 97–205 redesignated existing provisions as subsec. (a), struck out the comma after "voting", substituted "in a manner which results in a denial or abridgement of" for "to deny or abridge", inserted ", as provided in subsection (b)" after "in contravention of the guarantees set forth in section 1973b(f)(2) of this title", and added subsec. (b).

1975-Pub. L. 94–73 substituted "race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title" for "race or color".

Statutory Notes and Related Subsidiaries

Effective Date of 1982 Amendment

Pub. L. 97–205, §6, June 29, 1982, 96 Stat. 135 , provided that: "Except as otherwise provided in this Act [see Tables for classification], the amendments made by this Act shall take effect on the date of the enactment of this Act [June 29, 1982]."

Separability

Pub. L. 94–73, title II, §208, Aug. 6, 1975, 89 Stat. 402 , provided that: "If any amendments made by this Act [see Tables for classification] or the application of any provision thereof to any person or circumstance is judicially determined to be invalid, the remainder of the Voting Rights Act of 1965 [this chapter and chapters 105 and 107 of this title], or the application of such provision to other persons or circumstances shall not be affected by such determination."

Congressional Purpose and Findings

Pub. L. 109–246, §2, July 27, 2006, 120 Stat. 577 , provided that:

"(a) Purpose.-The purpose of this Act [see Tables for classification] is to ensure that the right of all citizens to vote, including the right to register to vote and cast meaningful votes, is preserved and protected as guaranteed by the Constitution.

"(b) Findings.-The Congress finds the following:

"(1) Significant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices. This progress is the direct result of the Voting Rights Act of 1965 [this chapter and chapters 105 and 107 of this title].

"(2) However, vestiges of discrimination in voting continue to exist as demonstrated by second generation barriers constructed to prevent minority voters from fully participating in the electoral process.

"(3) The continued evidence of racially polarized voting in each of the jurisdictions covered by the expiring provisions of the Voting Rights Act of 1965 demonstrates that racial and language minorities remain politically vulnerable, warranting the continued protection of the Voting Rights Act of 1965.

"(4) Evidence of continued discrimination includes-

> "(A) the hundreds of objections interposed, requests for more information submitted followed by voting changes withdrawn from consideration by jurisdictions covered by the Voting Rights Act of 1965, and section 5 [52 U.S.C. 10304] enforcement actions undertaken by the Department of Justice in covered jurisdictions since 1982 that prevented election practices, such as annexation, at-large voting, and the use of multi-member districts, from being enacted to dilute minority voting strength;
>
> "(B) the number of requests for declaratory judgments denied by the United States District Court for the District of Columbia;
>
> "(C) the continued filing of section 2 [52 U.S.C. 10301] cases that originated in covered jurisdictions; and
>
> "(D) the litigation pursued by the Department of Justice since 1982 to enforce sections 4(e), 4(f)(4), and 203 of such Act [52 U.S.C. 10303(e), (f)(4), 10503] to ensure that all language minority citizens have full access to the political process.

"(5) The evidence clearly shows the continued need for Federal oversight in jurisdictions covered by the Voting Rights Act of 1965 since 1982, as demonstrated in the counties certified by the Attorney General for Federal examiner and observer coverage and the tens of thousands of Federal observers that have been dispatched to observe elections in covered jurisdictions.

"(6) The effectiveness of the Voting Rights Act of 1965 has been significantly weakened by the United States Supreme Court decisions in Reno v. Bossier Parish II and Georgia v. Ashcroft, which have misconstrued Congress' original intent in enacting the Voting Rights Act of 1965 and narrowed the protections afforded by section 5 of such Act [52 U.S.C. 10304].

"(7) Despite the progress made by minorities under the Voting Rights Act of 1965, the evidence before Congress reveals that 40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment and to ensure that the right of all citizens to vote is protected as guaranteed by the Constitution.

"(8) Present day discrimination experienced by racial and language minority voters is contained in evidence, including the objections interposed by the Department of Justice in covered jurisdictions; the section 2 [52 U.S.C. 10301] litigation filed to prevent dilutive techniques from adversely affecting minority voters; the enforcement actions filed to protect language minorities; and the tens of thousands of Federal observers dispatched to monitor polls in jurisdictions covered by the Voting Rights Act of 1965.

"(9) The record compiled by Congress demonstrates that, without the continuation of the Voting Rights Act of 1965 protections, racial and language minority citizens will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years."

52 USC §10302 | PROCEEDING TO ENFORCE THE RIGHT TO VOTE

(a) Authorization by court for appointment of Federal observers

Whenever the Attorney General or an aggrieved person institutes a proceeding under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal observers by the Director of the Office of Personnel Management in accordance with section 1973d 1 of title 42 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the voting guarantees of the fourteenth or fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such observers is necessary to enforce such voting guarantees or (2) as part of any final judgment if the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred in such State or subdivision: Provided, That the court need not authorize the appointment of observers if any incidents of denial or abridgement of the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section 10303(f)(2) of this title (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(b) Suspension of use of tests and devices which deny or abridge the right to vote

If in a proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, or in contravention of the voting guarantees set forth in section 10303(f)(2) of this title, it shall suspend the use of tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

(c) Retention of jurisdiction to prevent commencement of new devices to deny or abridge the right to vote

If in any proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section 10303(f)(2) of this title: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

(Pub. L. 89–110, title I, §3, Aug. 6, 1965, 79 Stat. 437 ; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94–73, title II, §§205, 206, title IV, §§401, 410, Aug. 6, 1975, 89 Stat. 402 , 404, 406; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 109–246, §3(d)(1), July 27, 2006, 120 Stat. 580.)

Editorial Notes

References in Text

Section 1973d of title 42, referred to in subsec. (a), was repealed by Pub. L. 109–246, §3(c), July 27, 2006, 120 Stat. 580 .

Codification

Section was formerly classified to section 1973a of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section. Some section numbers referenced in amendment notes below reflect the classification of such sections prior to their editorial reclassification to this title.

Amendments

2006-Subsec. (a). Pub. L. 109–246 substituted "observers" for "examiners" wherever appearing.

1975-Subsec. (a). Pub. L. 94–73 inserted reference to fourteenth amendment in three places, and substituted "voting guarantees" for "guarantees" in three places, "Attorney General or an aggrieved person" for "Attorney General", and "on account of race or color or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title" for "on account of race or color".

Subsec. (b). Pub. L. 94–73 substituted "Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment" for "Attorney General under any statute to enforce the guarantees of the fifteenth amendment", and "on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title" for "on account of race or color".

Subsec. (c). Pub. L. 94–73 substituted "Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that violations of the fourteenth or fifteenth amendment" for "Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that violations of the fifteenth amendment" and "on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title" for "on account of race or color".

Executive Documents

Transfer of Functions

"Director of the Office of Personnel Management" substituted for "United States Civil Service Commission" in subsec. (a) pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1,

1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

[1] See References in Text note below.

52 USC §10303 | SUSPENSION OF THE USE OF TESTS OR DEVICES IN DETERMINING ELIGIBILITY TO VOTE

(a) Action by State or political subdivision for declaratory judgment of no denial or abridgement; three-judge district court; appeal to Supreme Court; retention of jurisdiction by three-judge court

(1) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. A declaratory judgment under this section shall issue only if such court determines that during the ten years preceding the filing of the action, and during the pendency of such action -

(A) no such test or device has been used within such State or political subdivision for the purpose or with the effect of denying or abridging the right to vote on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the

second sentence of this subsection) in contravention of the guarantees of subsection (f)(2);

(B) no final judgment of any court of the United States, other than the denial of declaratory judgment under this section, has determined that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) have occurred anywhere in the territory of such State or subdivision and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds; and no declaratory judgment under this section shall be entered during the pendency of an action commenced before the filing of an action under this section and alleging such denials or abridgements of the right to vote;

(C) no Federal examiners or observers under chapters 103 to 107 of this title have been assigned to such State or political subdivision;

(D) such State or political subdivision and all governmental units within its territory have complied with section 10304 of this title, including compliance with the requirement that no change covered by section 10304 of this title has been enforced without preclearance under section 10304 of this title, and have repealed all changes covered by section 10304 of this title to which the Attorney General has successfully objected or as to which the United States District Court for the District of Columbia has denied a declaratory judgment;

(E) the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court) and no declaratory judgment has been denied under section 10304 of this title, with respect to any submission by or on behalf of the plaintiff or any governmental unit within its territory under section 10304 of this title, and no such

submissions or declaratory judgment actions are pending; and

(F) such State or political subdivision and all governmental units within its territory-

(i) have eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process;

(ii) have engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under chapters 103 to 107 of this title; and

(iii) have engaged in other constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process.

(2) To assist the court in determining whether to issue a declaratory judgment under this subsection, the plaintiff shall present evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority-group participation.

(3) No declaratory judgment shall issue under this subsection with respect to such State or political subdivision if such plaintiff and governmental units within its territory have, during the period beginning ten years before the date the judgment is issued, engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) unless the plaintiff establishes that any such violations were trivial, were promptly corrected, and were not repeated.

(4) The State or political subdivision bringing such action shall publicize the intended commencement and any proposed settlement of such action in the media serving such State or

political subdivision and in appropriate United States post offices. Any aggrieved party may as of right intervene at any stage in such action.

(5) An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for ten years after judgment and shall reopen the action upon motion of the Attorney General or any aggrieved person alleging that conduct has occurred which, had that conduct occurred during the ten-year periods referred to in this subsection, would have precluded the issuance of a declaratory judgment under this subsection. The court, upon such reopening, shall vacate the declaratory judgment issued under this section if, after the issuance of such declaratory judgment, a final judgment against the State or subdivision with respect to which such declaratory judgment was issued, or against any governmental unit within that State or subdivision, determines that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision which sought a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) have occurred anywhere in the territory of such State or subdivision, or if, after the issuance of such declaratory judgment, a consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds.

(6) If, after two years from the date of the filing of a declaratory judgment under this subsection, no date has been set for a hearing in such action, and that delay has not been the result of an avoidable delay on the part of counsel for any party, the chief judge of the United States District Court for the District of Columbia may request the Judicial Council for the Circuit of the District of Columbia to provide the necessary judicial resources to expedite any action filed under this section. If such resources are unavailable within the circuit, the chief judge shall file a certificate of necessity in accordance with section 292(d) of title 28.

(7) The Congress shall reconsider the provisions of this section at the end of the fifteen-year period following the effective date of the amendments made by the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006.

(8) The provisions of this section shall expire at the end of the twenty-five-year period following the effective date of the amendments made by the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006.

(9) Nothing in this section shall prohibit the Attorney General from consenting to an entry of judgment if based upon a showing of objective and compelling evidence by the plaintiff, and upon investigation, he is satisfied that the State or political subdivision has complied with the requirements of subsection (a)(1). Any aggrieved party may as of right intervene at any stage in such action.

(b) Required factual determinations necessary to allow suspension of compliance with tests and devices; publication in Federal Register

The provisions of subsection (a) shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous sentence, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. On and after August 6, 1975, in addition to any State or political

subdivision of a State determined to be subject to subsection (a) pursuant to the previous two sentences, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 10305 or 10309 of this title shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) "Test or device" defined

The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) Required frequency, continuation and probable recurrence of incidents of denial or abridgement to constitute forbidden use of tests or devices

For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(e) Completion of requisite grade level of education in American-flag schools in which the predominant classroom language was other than English

(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

(f) Congressional findings of voting discrimination against language minorities; prohibition of English-only elections; other remedial measures

(1) The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the

fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.

(2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

(3) In addition to the meaning given the term under subsection (c), the term "test or device" shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to subsection (b), the term "test or device", as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection.

(4) Whenever any State or political subdivision subject to the prohibitions of the second sentence of subsection (a) provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in the English language: Provided, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan Natives and American Indians, if the predominate language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

(Pub. L. 89–110, title I, §4, Aug. 6, 1965, 79 Stat. 438 ; renumbered title I and amended Pub. L. 91–285, §§2–4, June 22, 1970, 84 Stat. 314, 315; Pub. L. 94–73, title I, §101, title II, §§201–203, 206, Aug. 6, 1975, 89 Stat. 400–402 ; Pub. L. 97–205, §2(a)–(c), June 29, 1982, 96 Stat. 131–133 ; Pub. L. 109–246, §§3(d)(2), (e)(1), 4, July 27, 2006, 120 Stat. 580 ; Pub. L. 110–258, §2, July 1, 2008, 122 Stat. 2428.)

Editorial Notes

References in Text

The effective date of the amendments made by the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006, referred to in subsec. (a)(7), (8), is the date of enactment of Pub. L. 109–246, which was approved July 27, 2006. See section 10314 of this title.

Codification

Section was formerly classified to section 1973b of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section. Some section numbers referenced in amendment notes below reflect the classification of such sections prior to their editorial reclassification to this title.

Constitutionality

For information regarding the constitutionality of certain provisions of this section, formerly classified to section 1973b of Title 42, The Public Health and Welfare, see the Table of Laws Held Unconstitutional in Whole or in Part by the Supreme Court on the Constitution Annotated website, constitution.congress.gov.

Amendments

2008-Subsec. (a)(7), (8). Pub. L. 110–258 substituted "Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez, and Dr. Hector P. Garcia" for "and Coretta Scott King".

2006-Subsec. (a)(1)(C). Pub. L. 109–246, §3(d)(2), inserted "or observers" after "examiners".

Subsec. (a)(7), (8). Pub. L. 109–246, §4, substituted "Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006" for "Voting Rights Act Amendments of 1982".

Subsec. (b). Pub. L. 109–246, §3(e)(1), substituted "section 1973f" for "section 1973d".

1982-Subsec. (a). Pub. L. 97–205, §2(a), (b), substituted "nineteen years" for "seventeen years" in three places, effective June 29, 1982, and, effective on and after Aug. 5, 1985, completely revised subsec. (a). Prior to such revision, subsec. (a) consisted of 4 undesignated paragraphs reading as follows:

> "To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) of this section or in any political

subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the seventeen years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: Provided, That no such declaratory judgment shall issue with respect to any plaintiff for a period of seventeen years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after August 6, 1965, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred any where in the territory of such plaintiff. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section: Provided, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this paragraph, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section through the use of tests or devices have occurred anywhere in the territory of such plaintiff.

"An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section.

"If the Attorney General determines that he has no reason to believe that any such test or device has been used during the seventeen years preceding the filing of an action under the first sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

> "If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of an action under the second sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section, he shall consent to the entry of such judgment."
>
> Subsec. (f)(4). Pub. L. 97–205, §2(c), inserted "or in the case of Alaskan Natives and American Indians, if the predominate language is historically unwritten".

1975-Subsec. (a). Pub. L. 94–73, §§101, 201, 206, in first par., substituted "seventeen years" for "ten years" in two places, and "determinations have been made under the first two sentences of subsection (b)" for "determinations have been made under subsection (b)", inserted provisions that no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any state with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such state or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section with the proviso that no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this paragraph, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section through the use of tests or devices have occurred anywhere in the territory of such plaintiff, in second par., substituted "on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2)" for "on account of race or color", in third par., substituted "seventeen years preceding the filing of an action under the first sentence of this subsection" for "ten years preceding the filing of the action", and added fourth par.

Subsec. (b). Pub. L. 94–73, §202, inserted provisions that on and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous two sentences, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November, 1972.

Subsec. (d). Pub. L. 94–73, §206, substituted "on account of race or color or in contravention of the guarantees set forth in section 1973b(f)(2) of this title" for "on account of race or color".

Subsec. (f). Pub. L. 94–73, §203, added subsec. (f).

1970-Subsec. (a). Pub. L. 91–285, §3, substituted "ten" for "five" years in first and third pars.

Subsec. (b). Pub. L. 91–285, §4, inserted provision respecting the making of factual determinations concerning maintenance of any test or device on Nov. 1, 1968, registration of less than 50 per centum of persons of voting age on Nov. 1, 1968, and voting by less than 50 per centum of such persons in the presidential election of November 1968.

Statutory Notes and Related Subsidiaries

Effective Date of 1982 Amendment

Amendment by section 2(a), (c) of Pub. L. 97–205 effective June 29, 1982, see section 6 of Pub. L. 97–205, set out as a note under section 10301 of this title.

Pub. L. 97–205, §2(b), June 29, 1982, 96 Stat. 131 , provided that the amendment made by that section is effective on and after Aug. 5, 1984.

52 USC §10304 | ALTERATION OF VOTING QUALIFICATIONS; PROCEDURE AND APPEAL; PURPOSE OR EFFECT OF DIMINISHING THE ABILITY OF CITIZENS TO ELECT THEIR PREFERRED CANDIDATES

(a) Whenever a State or political subdivision with respect to which the prohibitions set forth in section 10303(a) of this title based upon determinations made under the first sentence of section 10303(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 10303(a) of this title based upon determinations made under the second sentence of section 10303(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 10303(a) of this title based upon determinations made under the third sentence of section 10303(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication

by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court.

(b) Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.

(c) The term "purpose" in subsections (a) and (b) of this section shall include any discriminatory purpose.

(d) The purpose of subsection (b) of this section is to protect the ability of such citizens to elect their preferred candidates of choice.

(Pub. L. 89–110, title I, §5, Aug. 6, 1965, 79 Stat. 439 ; renumbered title I and amended Pub. L. 91–285, §§2, 5, June 22, 1970, 84 Stat. 314, 315; Pub. L. 94–73, title II, §§204, 206, title IV, §405, Aug. 6, 1975, 89 Stat. 402 , 404; Pub. L. 109–246, §5, July 27, 2006, 120 Stat. 580 .)

Editorial Notes

Codification

Section was formerly classified to section 1973c of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section. Some section numbers referenced in amendment notes below reflect the classification of such sections prior to their editorial reclassification to this title.

Amendments

2006-Pub. L. 109–246 designated existing provisions as subsec. (a), substituted "neither has the purpose nor will have the effect" for "does not have the purpose and will not have the effect", and added subsecs. (b) to (d).

1975-Pub. L. 94–73 inserted "or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972," after 1968, substituted "or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object," for "except that neither the Attorney General's failure to object", and "on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title" for "on account of race or color", and inserted provisions that in the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to examine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section.

1970-Pub. L. 91–285 inserted "based upon determinations made under the first sentence of section 1973b(b) of this title" after "section 1973b(a) of this title" and "or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968," after "1964,".

52 USC §10305 | USE OF OBSERVERS

(a) Assignment

Whenever -

(1) a court has authorized the appointment of observers under section 10302(a) of this title for a political subdivision; or

(2) the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 10303(b) of this title, unless a declaratory judgment has been rendered under section 10303(a) of this title, that -

(A) the Attorney General has received written meritorious complaints from residents, elected officials, or civic participation organizations that efforts to deny or abridge the right to vote under the color of law on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title are likely to occur; or

(B) in the Attorney General's judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to the Attorney General to be reasonably attributable to violations of the 14th or 15th amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the 14th or 15th amendment), the assignment of observers is otherwise necessary to enforce the guarantees of the 14th or 15th amendment;

the Director of the Office of Personnel Management shall assign as many observers for such subdivision as the Director may deem appropriate.

(b) Status

Except as provided in subsection (c), such observers shall be assigned, compensated, and separated without regard to the provisions of any statute administered by the Director of the Office of Personnel Management, and their service under chapters 103 to 107 of this title shall not be considered employment for the purposes of any statute administered by the Director of the Office of Personnel Management, except

the provisions of section 7324 of title 5 prohibiting partisan political activity.

(c) Designation

The Director of the Office of Personnel Management is authorized to, after consulting the head of the appropriate department or agency, designate suitable persons in the official service of the United States, with their consent, to serve in these positions.

(d) Authority

Observers shall be authorized to -

(1) enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote; and

(2) enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated.

(e) Investigation and report

Observers shall investigate and report to the Attorney General, and if the appointment of observers has been authorized pursuant to section 10302(a) of this title, to the court.

(Pub. L. 89–110, title I, §8, Aug. 6, 1965, 79 Stat. 441; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314; amended Pub. L. 109–246, §3(a), July 27, 2006, 120 Stat. 578 .)

Editorial Notes

Codification

Section was formerly classified to section 1973f of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section. Some section numbers referenced in amendment notes below reflect the classification of such sections prior to their editorial reclassification to this title.

Amendments

2006-Pub. L. 109–246 amended section generally. Prior to amendment, text of section read as follows: "Whenever an examiner is serving under subchapters I–A to I–C of this chapter in any political subdivision, the Director of the Office of Personnel Management may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States,

> (1) to enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and
>
> (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated.

Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 1973a(a) of this title, to the court."

52 USC §10306 | POLL TAXES

(a) Congressional finding and declaration of policy against enforced payment of poll taxes as a device to impair voting rights

The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) Authority of Attorney General to institute actions for relief against enforcement of poll tax requirement

In the exercise of the powers of Congress under section 5 of the fourteenth amendment, section 2 of the fifteenth amendment and section 2 of the twenty-fourth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

(c) Jurisdiction of three-judge district courts; appeal to Supreme Court

The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

(Pub. L. 89–110, title I, §10, Aug. 6, 1965, 79 Stat. 442 ; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94–73, title IV, §408, Aug. 6, 1975, 89 Stat. 405.)

Editorial Notes

Codification

Section was formerly classified to section 1973h of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

Amendments

1975-Subsec. (b). Pub. L. 94–73, §408(2), (3), inserted reference to section 2 of twenty-fourth amendment.

Subsec. (d). Pub. L. 94–73, §408(1), struck out subsec. (d) which related to post-payment of poll taxes in event of a judicial declaration of constitutionality.

52 USC §10307 | PROHIBITED ACTS

(a) Failure or refusal to permit casting or tabulation of vote

No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of chapters 103 to 107 of this title or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

(b) Intimidation, threats, or coercion

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 10302(a), 10305, 10306, or 10308(e) of this title or section 1973d or 1973g of title 42.1

(c) False information in registering or voting; penalties

Whoever knowingly or willfully gives false information as to his name, address or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: Provided, however, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(d) Falsification or concealment of material facts or giving of false statements in matters within jurisdiction of examiners or hearing officers; penalties

Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(e) Voting more than once

(1) Whoever votes more than once in an election referred to in paragraph (2) shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) The prohibition of this subsection applies with respect to any general, special, or primary election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(3) As used in this subsection, the term "votes more than once" does not include the casting of an additional ballot if all prior ballots of that voter were invalidated, nor does it include the voting in two jurisdictions under section 10502 of this title, to the extent two ballots are not cast for an election to the same candidacy or office.

(Pub. L. 89–110, title I, §11, Aug. 6, 1965, 79 Stat. 443 ; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314; amended Pub. L. 91–405, title II, §204(e), Sept. 22, 1970, 84 Stat. 853 ; Pub. L. 94–73, title IV, §§404, 409, Aug. 6, 1975, 89 Stat. 404 , 405.)

Editorial Notes

References in Text

Sections 1973d and 1973g of title 42, referred to in subsec. (b), were repealed by Pub. L. 109–246, §3(c), July 27, 2006, 120 Stat. 580 .

Codification

Section was formerly classified to section 1973i of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

Amendments

1975-Subsec. (c). Pub. L. 94–73, §404, inserted reference to Guam and Virgin Islands.

Subsec. (e). Pub. L. 94–73, §409, added subsec. (e).

1970-Subsec. (c). Pub. L. 91–405 substituted reference to Delegate from District of Columbia for Delegates or Commissioners from territories or possessions.

Statutory Notes and Related Subsidiaries

Effective Date of 1970 Amendment

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as an Effective Date note under section 25a of Title 2, The Congress.

[1] See References in Text note below.

52 USC §10308 | CIVIL AND CRIMINAL SANCTIONS

(a) Depriving or attempting to deprive persons of secured rights

Whoever shall deprive or attempt to deprive any person of any right secured by section 10301, 10302, 10303, 10304, or 10306 of this title or shall violate section 10307(a) of this title, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(b) Destroying, defacing, mutilating, or altering ballots or official voting records

Whoever, within a year following an election in a political subdivision in which an observer has been assigned (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot which has been cast in such election, or (2) alters any official record of voting in such election tabulated from a voting machine or otherwise, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(c) Conspiring to violate or interfere with secured rights

Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 10301, 10302, 10303, 10304, 10306, or 10307(a) of this title shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(d) Civil action by Attorney General for preventive relief; injunctive and other relief

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 10301, 10302, 10303, 10304, 10306, or 10307 of this title, section 1973e of title 42,1 or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under chapters 103 to 107 of this title to vote and (2) to count such votes.

(e) Proceeding by Attorney General to enforce the counting of ballots of registered and eligible persons who are prevented from voting

Whenever in any political subdivision in which there are observers appointed pursuant to chapters 103 to 107 of this title any persons allege to such an observer within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under chapters 103 to 107 of this title or registration by an appropriate election official and (2) their eligibility to vote, they have not been permitted to vote in such election, the observer shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification, the Attorney General may forthwith file with the district court an application for an order providing for the marking, casting, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after the filing of such application. The remedy provided in this subsection shall not preclude any remedy available under State or Federal law.

(f) Jurisdiction of district courts; exhaustion of administrative or other remedies unnecessary

The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of chapters 103 to 107 of this title shall have exhausted any administrative or other remedies that may be provided by law.

(Pub. L. 89–110, title I, §12, Aug. 6, 1965, 79 Stat. 443 ; Pub. L. 90–284, title I, §103(c), Apr. 11, 1968, 82 Stat. 75 ; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314; Pub. L. 109–246, §3(d)(3), (4), (e)(2), July 27, 2006, 120 Stat. 580 .)

Editorial Notes

References in Text

Section 1973e of title 42, referred to in subsec. (d), was repealed by Pub. L. 109–246, §3(c), July 27, 2006, 120 Stat. 580.

Codification

Section was formerly classified to section 1973j of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section. Some section numbers referenced in amendment notes below reflect the classification of such sections prior to their editorial reclassification to this title.

Amendments

2006-Subsec. (a). Pub. L. 109–246, §3(e)(2), struck out "1973e," after "1973c,".

Subsec. (b). Pub. L. 109–246, §3(d)(3), substituted "an observer has been assigned" for "an examiner has been appointed".

Subsec. (c). Pub. L. 109–246, §3(e)(2), struck out "1973e," after "1973c,".

Subsec. (e). Pub. L. 109–246, §3(d)(4), substituted "observers" for "examiners" and substituted "observer" for "examiner" in two places.

1968-Subsecs. (a), (c). Pub. L. 90–284 struck out reference to violation of section 1973i(b) of this title.

[1] See References in Text note below.

52 USC §10309 | TERMINATION OF ASSIGNMENT OF OBSERVERS

(a) In general

The assignment of observers shall terminate in any political subdivision of any State-

(1) with respect to observers appointed pursuant to section 10305 of this title or with respect to examiners certified under chapters 103 to 107 of this title before July 27, 2006, whenever the Attorney General notifies the Director of the Office of Personnel Management, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision described in subsection (b), that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title in such subdivision; and

(2) with respect to observers appointed pursuant to section 10302(a) of this title, upon order of the authorizing court.

(b) Political subdivision with majority of nonwhite persons registered

A political subdivision referred to in subsection (a)(1) is one with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote.

(c) Petition for termination

A political subdivision may petition the Attorney General for a termination under subsection (a)(1).

(Pub. L. 89–110, title I, §13, Aug. 6, 1965, 79 Stat. 444 ; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94–73, title II, §206, Aug. 6, 1975, 89 Stat. 402 ; Pub. L. 109–246, §3(b), July 27, 2006, 120 Stat. 579 ; Pub. L. 110–258, §2, July 1, 2008, 122 Stat. 2428.)

Editorial Notes

Codification

Section was formerly classified to section 1973k of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section. Some section numbers referenced in amendment notes below reflect the classification of such sections prior to their editorial reclassification to this title.

Amendments

2008-Subsec. (a)(1). Pub. L. 110–258 made technical amendment to reference in original act which appears in text as reference to July 27, 2006.

2006-Pub. L. 109–246 amended section generally. Prior to amendment, section related to termination of listing procedures, basis for termination, and survey or census by the Director of the Census.

1975-Pub. L. 94–73 substituted "on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title" for "on account of race or color".

52 USC §10310 | ENFORCEMENT PROCEEDINGS

(a) Criminal contempt

All cases of criminal contempt arising under the provisions of chapters 103 to 107 of this title shall be governed by section 1995 of title 42.

(b) Jurisdiction of courts for declaratory judgment, restraining orders, or temporary or permanent injunction

No court other than the District Court for the District of Columbia shall have jurisdiction to issue any declaratory judgment pursuant to section 10303 or 10304 of this title or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of chapters 103 to 107 of this title or any action of any Federal officer or employee pursuant hereto.

(c) Definitions

(1) The terms "vote" or "voting" shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this chapter, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

(2) The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

(3) The term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.

(d) Subpoenas

In any action for a declaratory judgment brought pursuant to section 10303 or 10304 of this title, subpoenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States: Provided, That no writ of subpoena shall issue

for witnesses without the District of Columbia at a greater distance than one hundred miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

(e) Attorney's fees

In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, reasonable expert fees, and other reasonable litigation expenses as part of the costs.

(Pub. L. 89–110, title I, §14, Aug. 6, 1965, 79 Stat. 445 ; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94–73, title II, §207, title IV, §402, Aug. 6, 1975, 89 Stat. 402 , 404; Pub. L. 109–246, §§3(e)(3), 6, July 27, 2006, 120 Stat. 580 , 581.)

Editorial Notes

Codification

Section was formerly classified to section 1973l of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

Amendments

2006-Subsec. (b). Pub. L. 109–246, §3(e)(3), struck out "or a court of appeals in any proceeding under section 1973g of this title" after "District of Columbia".

Subsec. (e). Pub. L. 109–246, §6, inserted ", reasonable expert fees, and other reasonable litigation expenses" after "reasonable attorney's fee".

1975-Subsec. (c)(3). Pub. L. 94–73, §207, added par. (3).

Subsec. (e). Pub. L. 94–73, §402, added subsec. (e).

52 USC §10311 | IMPAIRMENT OF VOTING RIGHTS OF PERSONS HOLDING CURRENT REGISTRATION

Nothing in chapters 103 to 107 of this title shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

(Pub. L. 89–110, title I, §17, Aug. 6, 1965, 79 Stat. 446 ; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314.)

Editorial Notes

Codification

Section was formerly classified to section 1973n of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

52 USC §10312 | AUTHORIZATION OF APPROPRIATIONS

There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of chapters 103 to 107 of this title.

(Pub. L. 89–110, title I, §18, Aug. 6, 1965, 79 Stat. 446 ; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314.)

Editorial Notes

Codification

Section was formerly classified to section 1973o of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

52 USC §10313 | SEPARABILITY

If any provision of chapters 103 to 107 of this title or the application thereof to any person or circumstances is held invalid, the remainder of chapters 103 to 107 of this title and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Pub. L. 89–110, title I, §19, Aug. 6, 1965, 79 Stat. 446 ; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314.)

Editorial Notes

Codification

Section was formerly classified to section 1973p of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

52 USC §10314 | CONSTRUCTION

A reference in this chapter to the effective date of the amendments made by, or the date of the enactment of, the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006 shall be considered to refer to, respectively, the effective date of the amendments made by, or the date of the enactment of, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.

(Pub. L. 89–110, title I, §20, as added Pub. L. 110–258, §3, July 1, 2008, 122 Stat. 2428.)

Editorial Notes

References in Text

The effective date of the amendments made by, or the date of the enactment of, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, referred to in text, is the date of enactment of Pub. L. 109–246, which was approved July 27, 2006.

Codification

Section was formerly classified to section 1973q of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

APPENDIX

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