§ 401

Title 5, Appendix—Ethics in Government Act of 1978

Pub. L. 101–280, set out as an Effective Date of 1989 Amendment note under section 101 of this Appendix.

[TITLE III—REPEALED]


Effective Date of 1989 Amendment

Repeal effective Jan. 1, 1991, see section 204 of Pub. L. 101–194, set out as an Effective Date of 1989 Amendment note under section 101 of this Appendix.


Effective Date of Repeal

[TITLE IV—OFFICE OF GOVERNMENT ETHICS]

§ 401. Establishment; appointment of Director

(a) There is established an executive agency to be known as the Office of Government Ethics.

(b) There shall be at the head of the Office of Government Ethics a Director (hereinafter referred to as the ‘‘Director’’), who shall be appointed by the President, by and with the advice and consent of the Senate. Effective with respect to any individual appointed or reappointed by the President as Director on or after October 1, 1983, the term of service of the Director shall be five years.

(c) The Director may—

(1) appoint officers and employees, including attorneys, in accordance with chapter 51 and subchapter III of chapter 53 of title 5, United States Code; and

(2) contract for financial and administrative services (including those related to budget and accounting, financial reporting, personnel, and procurement) with the General Services Administration, or such other Federal agency as the Director determines appropriate, for which payment shall be made in advance, or by reimbursement, from funds of the Office of Government Ethics in such amounts as may be agreed upon by the Director and the head of the agency providing such services.

Contract authority under paragraph (2) shall be effective for any fiscal year only to the extent that appropriations are available for that purpose.

conflict of interest or ethical problems revealed by such review;
(5) monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch;
(6) interpreting rules and regulations issued by the President or the Director governing conflict of interest and ethical problems and the filing of financial statements;
(7) consulting, when requested, with agency ethics counselors and other responsible officials regarding the resolution of conflict of interest problems in individual cases;
(8) establishing a formal advisory opinion service whereby advisory opinions are rendered on matters of general applicability or on important matters of first impression after, to the extent practicable, providing interested parties with an opportunity to transmit written comments with respect to the request for such advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public;
(9) ordering corrective action on the part of agencies and employees which the Director deems necessary;
(10) requiring such reports from executive agencies as the Director deems necessary;
(11) assisting the Attorney General in evaluating the effectiveness of the conflict of interest laws and in recommending appropriate amendments;
(12) evaluating, with the assistance of the Attorney General and the Office of Personnel Management, the need for changes in rules and regulations issued by the Director and the agencies regarding conflict of interest and ethical problems, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws;
(13) cooperating with the Attorney General in developing an effective system for reporting allegations of violations of the conflict of interest laws to the Attorney General, as required by section 535 of title 28, United States Code;
(14) providing information on and promoting understanding of ethical standards in executive agencies; and
(15) developing, in consultation with the Office of Personnel Management, and promulgating such rules and regulations as the Director determines necessary or desirable with respect to the evaluation of any item required to be reported by title II of this Act.
(c) In the development of policies, rules, regulations, procedures, and forms to be recommended, authorized, or prescribed by him, the Director shall consult when appropriate with the executive agencies affected and with the Attorney General.
(d)(1) The Director shall, by the exercise of any authority otherwise available to the Director under this title, ensure that each executive agency has established written procedures relating to how the agency is to collect, review, evaluate, and, if applicable, make publicly available, financial disclosure statements filed by any of its officers or employees.
(2) In carrying out paragraph (1), the Director shall ensure that each agency's procedures are in conformance with all applicable requirements, whether established by law, rule, regulation, or Executive order.
(e) In carrying out subsection (b)(10), the Director shall prescribe regulations under which—
(1) each executive agency shall be required to submit to the Office an annual report containing—
(A) a description and evaluation of the agency's ethics program, including any educational, counseling, or other services provided to officers and employees, in effect during the period covered by the report; and
(B) the position title and duties of—
(i) each official who was designated by the agency head to have primary responsibility for the administration, coordination, and management of the agency's ethics program during any portion of the period covered by the report; and
(ii) each officer or employee who was designated to serve as an alternate to the official having primary responsibility during any portion of such period; and
(C) any other information that the Director may require in order to carry out the responsibilities of the Director under this title; and
(2) each executive agency shall be required to inform the Director upon referral of any alleged violation of Federal conflict of interest law to the Attorney General pursuant to section 535 of title 28, United States Code, except that nothing under this paragraph shall require any notification or disclosure which would otherwise be prohibited by law.
(f)(1) In carrying out subsection (b)(9) with respect to executive agencies, the Director—
(A) may—
(i) order specific corrective action on the part of any agency based on the failure of such agency to establish a system for the collection, filing, review, and, when applicable, public inspection of financial disclosure statements, in accordance with applicable requirements, or to modify an existing system in order to meet applicable requirements; or
(ii) order specific corrective action involving the establishment or modification of an agency ethics program (other than with respect to any matter under clause (i)) in accordance with applicable requirements; and
(B) shall, if an agency has not complied with an order under subparagraph (A) within a reasonable period of time, notify the President and the Congress of the agency's noncompliance in writing (including, with the notification, any written comments which the agency may provide).
(2)(A) In carrying out subsection (b)(9) with respect to individual officers and employees—
(i) the Director may make such recommendations and provide such advice to such officers and employees as the Director consid-
ers necessary to ensure compliance with rules, regulations, and Executive orders relating to conflicts of interest or standards of conduct;

(ii) if the Director has reason to believe that an officer or employee is violating, or has violated, any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct, the Director—

(I) may recommend to the head of the officer’s or employee’s agency that such agency head investigate the possible violation and, if the agency head finds such a violation, that such agency head take any appropriate disciplinary action (such as reprimand, suspension, demotion, or dismissal) against the officer or employee, except that, if the officer or employee involved is the agency head, any such recommendation shall instead be submitted to the President; and

(II) shall notify the President in writing if the Director determines that the head of an agency has not conducted an investigation pursuant to subclause (I) within a reasonable time after the Director recommends such action;

(iii) if the Director finds that an officer or employee is violating any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct, the Director—

(I) may order the officer or employee to take specific action (such as divestiture, recusal, or the establishment of a blind trust) to end such violation; and

(II) shall, if the officer or employee has not complied with the order under subclause (I) within a reasonable period of time, notify in writing, the head of the officer’s or employee’s agency of the officer’s or employee’s noncompliance, except that, if the officer or employee involved is the agency head, the notification shall instead be submitted to the President; and

(iv) if the Director finds that an officer or employee is violating, or has violated, any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct, the Director—

(I) may recommend to the head of the officer’s or employee’s agency that appropriate disciplinary action (such as reprimand, suspension, demotion, or dismissal) be brought against the officer or employee, except that if the officer or employee involved is the agency head, any such recommendations shall instead be submitted to the President; and

(II) may notify the President in writing if the Director determines that the head of an agency has not taken appropriate disciplinary action within a reasonable period of time after the Director recommends such action.

(B)(i) In order to carry out the Director’s duties and responsibilities under subparagraph (A)(iii) or (iv) with respect to individual officers and employees, the Director may conduct investigations and make findings concerning possible violations of any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct applicable to officers and employees of the executive branch.

(ii)(I) Subject to clause (iv) of this subparagraph, before any finding is made under subparagraphs (A)(iii) or (iv), the officer or employee involved shall be afforded notification of the alleged violation, and an opportunity to comment, either orally or in writing, on the alleged violation.

(II) The Director shall, in accordance with section 553 of title 5, United States Code, establish procedures for such notification and comment.

(iii) Subject to clause (iv) of this subparagraph, before any action is ordered under subparagraph (A)(iii), the officer or employee involved shall be afforded an opportunity for a hearing, if requested by such officer or employee, except that any such hearing shall be conducted on the record.

(iv) The procedures described in clauses (ii) and (iii) of this subparagraph do not apply to findings or orders for action made to obtain compliance with the financial disclosure requirements in title 2 of this Act. For those findings and orders, the procedures in section 206 of this Act shall apply.

(3) The Director shall send a copy of any order under paragraph (2)(A)(iii) to—

(A) the officer or employee who is the subject of such order; and

(B) the head of the officer’s or employee’s agency or, if such officer or employee is the agency head, to the President.

(4) For purposes of paragraphs (2)(A)(ii), (iii), (iv), and (3)(B), in the case of an officer or employee within an agency which is headed by a board, committee, or other group of individuals (rather than by a single individual), any notification, recommendation, or other matter which would otherwise be sent to an agency head shall instead be sent to the officer’s or employee’s appointing authority.

(5) Nothing in this title shall be considered to allow the Director (or any designee) to make any finding that a provision of title 18, United States Code, or any criminal law of the United States outside of such title, has been or is being violated.

(6) Notwithstanding any other provision of law, no record developed pursuant to the authority of this section concerning an investigation of an individual for a violation of any rule, regulation, or Executive order relating to a conflict of interest shall be made available pursuant to section 552(a)(3) of title 5, United States Code, unless the request for such information identifies the individual to whom such records relate and the subject matter of any alleged violation to which such records relate, except that nothing in this subsection shall affect the application of the provisions of section 552(b)(2) of title 5, United States Code, to any record so identified.


REFERENCES IN TEXT

Title II of this Act, referred to in subsec. (b)(1), (3), and (15), and title 2 of this Act, referred to in subsec.

1 So in original. Probably should be title "II".
(f) (2) (x) (B) (iv), is title II of Pub. L. 95–521, which was set out in this Appendix prior to repeal by Pub. L. 101–194, title II, § 201, Nov. 30, 1989, 103 Stat. 1724.

Section 206 of this Act, referred to in subsec. (f) (2) (x) (B) (iv), is section 206 of Pub. L. 95–521, which was set out in this Appendix prior to repeal by Pub. L. 101–194, title II, § 201, Nov. 30, 1989, 103 Stat. 1724.

AMENDMENTS

1988—Subsecs. (d) to (f). Pub. L. 100–598 added subsecs. (d) to (f).

1983—Subsec. (a). Pub. L. 98–150, § 9(a), substituted “in consultation with” for “under the general supervision of”.

Subsec. (b)(1). Pub. L. 98–150, § 3(b)(1), struck out “and recommending to the Office of Personnel Management” after “(1) developing”, inserted “and the Office of Personnel Management” after “Attorney General”, and substituted “President or the Director” for “President or the Office of Personnel Management”.

Subsec. (b)(2). Pub. L. 98–150, § 3(b)(2), struck out “and recommending to the Office of Personnel Management” after “(2) developing”, inserted “and the Office of Personnel Management” after “Attorney General”, and substituted “President or the Director” for “President or the Office of Personnel Management”.


Subsec. (b)(15). Pub. L. 98–150, § 3(b)(5), substituted “in consultation with the Office of Personnel Management, and promulgating” for “and recommending for promulgation by the Office of Personnel Management”.

1979—Subsec. (b)(1). Pub. L. 96–19, § 9(e), substituted “consultation” for “consultation” and struck out a comma after “rules and regulations” and “President”.


Subsec. (d). Pub. L. 96–19, § 9(e)(1), repealed subsec. (d) which required the promulgation of a regulation establishing a method of readily determining, without expert appraisal, the fair market value of assets required to be disclosed.

Effective Date of 1983 Amendment


Rules and Regulations in Effect Before October 1, 1983

Pub. L. 98–150, § 3(d), Nov. 11, 1983, 97 Stat. 960, provided that:

“(1) Any rules or regulations issued under section 402 of the Ethics in Government Act of 1978 [this section] which are in effect immediately before the effective date of the amendments made by this Act [Oct. 1, 1983] shall remain in effect according to their terms until modified, superseded, set aside, or revoked on or after such effective date.

“(2) The responsibilities of the Director of the Office of Government Ethics under paragraphs (6) and (12), respectively, of section 402(b) of the Ethics in Government Act of 1978 [this section], with respect to rules and regulations issued by the Office of Personnel Management before the effective date of the amendments made by this Act [Oct. 1, 1983] shall not be affected by this Act or any of the amendments made by this Act [see Effective Date of 1983 Amendment note set out under section 102 of this Appendix].”

§ 403. Administrative provisions

(a) Upon the request of the Director, each executive agency is directed to—

1 So in original. Probably should be followed by a period.