

foreign principal (as defined by section 611(b) of this title) or a lobbyist for a foreign entity (as defined in section 1602(6) of title 2) or receive income from a government of a foreign country.

(Pub. L. 96-465, title I, § 602, Oct. 17, 1980, 94 Stat. 2095; Pub. L. 101-246, title I, § 142, Feb. 16, 1990, 104 Stat. 36; Pub. L. 104-65, § 12(c), Dec. 19, 1995, 109 Stat. 701.)

#### Editorial Notes

##### AMENDMENTS

1995—Subsec. (c). Pub. L. 104-65 inserted “or a lobbyist for a foreign entity (as defined in section 1602(6) of title 2)” before “or receive income”.

1990—Subsec. (c). Pub. L. 101-246 added subsec. (c).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-65 effective Jan. 1, 1996, except as otherwise provided, see section 24 of Pub. L. 104-65, set out as an Effective Date note under section 1601 of Title 2, The Congress.

#### § 4003. Recommendations and rankings

(a) Recommendations and rankings by selection boards shall be based upon records of the character, ability, conduct, quality of work, industry, experience, dependability, usefulness, and general performance of members of the Service. Such records may include reports prepared by or on behalf of the Inspector General of the Department of State and the Foreign Service, performance evaluation reports of supervisors, records of commendations, reports of language test scores from the George P. Shultz National Foreign Affairs Training Center, awards, reprimands, and other disciplinary actions, and (with respect to members of the Senior Foreign Service) records of current and prospective assignments.

(b) Precepts for selection boards shall include a description of the needs of the Service for performance requirements, skills, and qualities, which are to be considered in recommendations for promotion. The precepts for selection boards responsible for recommending promotions into and within the Senior Foreign Service shall emphasize performance which demonstrates the strong policy formulation capabilities, executive leadership qualities, and highly developed functional and area expertise, which are required for the Senior Foreign Service. The precepts for selection boards shall include, whether the member of the Service or the member of the Senior Foreign Service, as the case may be, and when occupying positions for which the following is, to any degree, an element of the member's duties, has demonstrated—

(1) a willingness and ability to explain United States policies in person and through the media;

(2) experience serving at an international organization, multilateral institution, or engaging in multinational negotiations;

(3) willingness to serve in hardship posts overseas where applicable and across geographically distinct regions;

(4) experience advancing policies or developing expertise that enhance the United

States' competitiveness with regard to critical and emerging technologies;

(5) willingness to participate in appropriate and relevant professional development opportunities offered by the Foreign Service Institute or other educational institutions associated with the Department;

(6) willingness to enable and encourage subordinates at various levels to avail themselves of appropriate and relevant professional development opportunities offered by the Foreign Service Institute or other educational institutions associated with the Department;

(7) a willingness and ability to regularly and meaningfully engage with civil society and other local actors in country;

(8) other demonstrated experience in public diplomacy; or

(9) the ability to effectively manage and assess risk associated with the conduct of diplomatic operations.

(c)(1) A member of the Service or member of the Senior Foreign Service whose performance will be evaluated by a selection board may submit to such selection board a gap memo in advance of such evaluation.

(2) Members of a selection board may not consider as negative the submission of a gap memo by a member described in paragraph (1) when evaluating the performance of such member.

(3) In this subsection, the term “gap memo” means a written record, submitted to a selection board in a standard format established by the Director General of the Foreign Service, which indicates and explains a gap in the record of a member of the Service or member of the Senior Foreign Service whose performance will be evaluated by such selection board, which gap is due to personal circumstances, including for health, family, or other reason as determined by the Director General in consultation with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

(Pub. L. 96-465, title I, § 603, Oct. 17, 1980, 94 Stat. 2095; Pub. L. 107-132, § 1(b), Jan. 16, 2002, 115 Stat. 2412; Pub. L. 108-458, title VII, § 7110(c), Dec. 17, 2004, 118 Stat. 3794; Pub. L. 117-81, div. E, title LIII, § 5325(a), Dec. 27, 2021, 135 Stat. 2370; Pub. L. 117-263, div. I, title XCIII, § 9302(k), Dec. 23, 2022, 136 Stat. 3889; Pub. L. 118-31, div. F, title LXII, § 6201, Dec. 22, 2023, 137 Stat. 971.)

#### Editorial Notes

##### AMENDMENTS

2023—Subsec. (b)(2) to (9). Pub. L. 118-31 added pars. (2) to (6) and redesignated former pars. (2) to (4) as (7) to (9), respectively.

2022—Subsec. (b). Pub. L. 117-263, § 9302(k)(1), inserted “and when occupying positions for which the following is, to any degree, an element of the member's duties,” after “as the case may be,” in introductory provisions.

Subsec. (b)(1). Pub. L. 117-263, § 9302(k)(2), substituted semicolon at end for “when occupying positions for which such willingness and ability is, to any degree, an element of the member's duties, or”.

Subsec. (b)(2), (3). Pub. L. 117-263, § 9302(k)(3), (4), added pars. (2) and (3) and struck out former par. (2) which read as follows: “other experience in public diplomacy.”

Subsec. (b)(4). Pub. L. 117-263, § 9302(k)(5), which directed that par. (4) be added after par. (3) “as redesignated that par. (4) be added after par. (3) “as redesignated

nated”, was executed by adding par. (4) after par. (3) as added by Pub. L. 117-263, §9302(k)(3), to reflect the probable intent of Congress. See above.

2021—Subsec. (c). Pub. L. 117-81 added subsec. (c).

2004—Subsec. (b). Pub. L. 108-458 inserted at end “The precepts for selection boards shall include, whether the member of the Service or the member of the Senior Foreign Service, as the case may be, has demonstrated—” and pars. (1) and (2).

2002—Subsec. (a). Pub. L. 107-132 substituted “George P. Shultz National Foreign Affairs Training Center” for “Foreign Service Institute”.

#### Statutory Notes and Related Subsidiaries

##### CONSULTATION AND GUIDANCE

Pub. L. 117-81, div. E, title LIII, §5325(b), Dec. 27, 2021, 135 Stat. 2370, provided that:

“(1) CONSULTATION.—Not later than 30 days after the date of the enactment of this Act [Dec. 27, 2021], the Director General of the Foreign Service shall consult with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate regarding the development of the gap memo under subsection (c) of section 603 of the Foreign Service Act of 1980 (22 U.S.C. 4003), as added by subsection (a) of this section.

“(2) DEFINITION.—In this subsection, the term ‘gap memo’ has the meaning given such term in subsection (c) of section 603 of the Foreign Service Act of 1980 (22 U.S.C. 4003), as added by subsection (a) of this section.”

#### § 4004. Records

(a) The records described in section 4003(a) of this title shall be maintained in accordance with regulations prescribed by the Secretary. Except to the extent that they pertain to the receipt, disbursement, and accounting for public funds, such records shall be confidential and subject to inspection only by the President, the Secretary, such employees of the Government as may be authorized by law or assigned by the Secretary to work on such records, the legislative and appropriations committees of the Congress charged with considering legislation and appropriations for the Service, and representatives duly authorized by such committees. Access to such records relating to a member of the Service shall be granted to such member, upon written request.

(b) Notwithstanding subsection (a), any record of disciplinary action that includes a suspension of more than five days taken against a member of the Service, including any correction of that record under section 4137(b)(1) of this title, shall remain a part of the personnel records until the member is tenured as a career member of the Service or next promoted.

(Pub. L. 96-465, title I, §604, Oct. 17, 1980, 94 Stat. 2096; Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title III, §327(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-438.)

#### Editorial Notes

##### AMENDMENTS

1999—Pub. L. 106-113, in section catchline, substituted “Records” for “Confidentiality of records”, designated existing provisions as subsec. (a), and added subsec. (b).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title III, §327(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-438, provided

that: “The amendments made by this section [amending this section] apply to all disciplinary actions initiated on or after the date of enactment of this Act [Nov. 29, 1999].”

#### § 4005. Implementation of selection board recommendations

(a) Recommendations for promotion made by selection boards shall be submitted to the Secretary in rank order by salary class or in rank order by specialization within a salary class. The Secretary shall make promotions and, with respect to career appointments into or within the Senior Foreign Service, shall make recommendations to the President for promotions, in accordance with the rankings of the selection boards.

(b) Notwithstanding subsection (a), in special circumstances set forth by regulation, the Secretary may remove the name of an individual from the rank order list submitted by a selection board or delay the promotion of an individual named in such a list.

(Pub. L. 96-465, title I, §605, Oct. 17, 1980, 94 Stat. 2096.)

#### § 4006. Other bases for promoting or increasing pay

(a) The Secretary may pursuant to a recommendation of the Foreign Service Grievance Board, an equal employment opportunity appeals examiner, or the Special Counsel of the Merit Systems Protection Board, and shall pursuant to a decision or order of the Merit Systems Protection Board—

(1) recommend to the President a promotion of a member of the Service under section 3942(a) of this title;

(2) promote a member of the Service under section 3943 of this title;

(3) grant performance pay to a member of the Senior Foreign Service under section 3965(c) of this title; or

(4) grant a within-class salary increase under section 3966 of this title to a member of the Service who is assigned to a salary class in the Foreign Service Schedule.

(b) In implementing subsection (a) of this section and in cases in which the Secretary has exercised the authority of section 4005(b) of this title, the Secretary may, in special circumstances set forth by regulation, make retroactive promotions, grant performance pay, make retroactive within-class salary increases, and recommend retroactive promotions by the President.

(Pub. L. 96-465, title I, §606, Oct. 17, 1980, 94 Stat. 2096.)

#### § 4007. Retirement for expiration of time in class

##### (a) Maximum time

(1) The Secretary shall, by regulation, establish maximum time in class limitations for—

(A) career members of the Senior Foreign Service,

(B) Foreign Service officers, and

(C) other career members of the Service who are in such occupational categories as may be designated by the Secretary and who are as-