

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

(c) Access by grievant

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

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

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

(e) Proceedings and decisions of Foreign Service Grievance Board

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

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

§ 4139. Relationship to other remedies

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

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

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

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

- (A) file a grievance under this subchapter, or
- (B) initiate in writing a proceeding under another provision of law, regulation, or Executive order that authorizes relief,

but not both.

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

(A) files a grievance under this subchapter, or

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

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

Editorial Notes

AMENDMENTS

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

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

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of Title 5, Government Organization and Employees.

§ 4140. Judicial review

(a) Any aggrieved party may obtain judicial review of a final action of the Secretary or the Board on any grievance in the district courts of the United States in accordance with the standards set forth in chapter 7 of title 5, if the request for judicial review is filed not later than 180 days after the final action of the Secretary or the Board (or in the case of an aggrieved party who is posted abroad at the time of the final action of the Secretary or the Board, if the request for judicial review is filed not later than 180 days after the aggrieved party's return to the United States). Section 706 of title 5 shall apply without limitation or exception. This subsection shall not apply to any grievance with respect to which subsection (b) applies.

(b)(1) For purposes of this subsection, the term “aggrieved party” means a grievant.

(2) With respect to a grievance based on an alleged violation of a law, rule, regulation, or policy directive referred to in section 4131(a)(1)(H) of this title, judicial review of whether the act, omission, or condition that is the basis of the grievance violates such law, rule, regulation, or policy directive may be obtained by an aggrieved party only if such party commences a civil action, not later than 90 days after such party receives notice of the final action of the Secretary or the Board, in an appropriate district court of the United States for de novo review.

(Pub. L. 96-465, title I, §1110, Oct. 17, 1980, 94 Stat. 2148; Pub. L. 102-138, title I, §153(e), Oct. 28,