

Public Law 100-598
100th Congress

An Act

To reauthorize the Office of Government Ethics, and for other purposes.

Nov. 3, 1988

[S. 2344]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Government
organization
and employees.

SECTION 1. REFERENCES.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Ethics in Government Act of 1978 (5 U.S.C. App.).

SEC. 2. REAUTHORIZATION.

Section 405 is amended to read as follows:

5 USC app.
Appropriation
authorization.

"There are authorized to be appropriated to carry out the provisions of this title and for no other purpose—

"(1) not to exceed \$2,500,000 for the fiscal year ending September 30, 1989; and

"(2) not to exceed \$3,500,000 for each of the 5 fiscal years thereafter."

SEC. 3. OFFICE OF GOVERNMENT ETHICS TO FUNCTION INDEPENDENTLY.

(a) ESTABLISHMENT AS A SEPARATE EXECUTIVE AGENCY.—Section 401(a) is amended by striking out "in the Office of Personnel Management an office to be known as" and inserting "an executive agency to be known as".

5 USC app.

(b) APPOINTMENT AND CONTRACTING AUTHORITY.—Section 401 is amended by adding at the end the following:

5 USC app.

"(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."

Effective date.

SEC. 4. REPORTS TO CONGRESS.

5 USC app.

The Ethics in Government Act of 1978 is amended by adding after section 407 the following:

"REPORTS TO CONGRESS

"SEC. 408. The Director shall, no later than March 31 of each year in which the second session of a Congress begins, submit to the Congress a report containing—

"(1) a summary of the actions taken by the Director during a 2-year period ending on December 31 of the preceding year in order to carry out the Director's functions and responsibilities under this title; and

"(2) such other information as the Director may consider appropriate."

SEC. 5. AGENCY PROCEDURES RELATING TO FINANCIAL DISCLOSURE STATEMENTS.

5 USC app.

Section 402 is amended by adding after subsection (c) the following:

"(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."

SEC. 6. INFORMATION TO BE REPORTED BY EXECUTIVE AGENCIES.

5 USC app.

Section 402 is amended by adding after subsection (d) (as added by section 5) the following:

Regulations.

"(e) In carrying out subsection (b)(10), the Director shall prescribe regulations under which—

Reports.

"(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."

SEC. 7. CORRECTIVE ACTION.

Section 402 is amended by adding after subsection (e) (as added by section 6) the following: 5 USC app.

“(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 an 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

Public information.

“(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 considers 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 noncompli-

ance, 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 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) of title 5, United States Code, to any record so identified.”

Records.

SEC. 8. ANNUAL PAY OF DIRECTOR.

Section 407 is amended to read as follows:

5 USC app.

“ANNUAL PAY OF DIRECTOR

“SEC. 407. Chapter 53 of title 5, United States Code, is amended—

“(1) in section 5316 by striking out: ‘Director of the Office of Government Ethics.’; and

“(2) in section 5314 by adding at the end thereof: ‘Director of the Office of Government Ethics.’”

SEC. 9. ADMINISTRATIVE PROVISIONS.

Section 403 is amended by striking out “pursuant to subsections (b)(3) and (b)(4) of section 402.” and inserting in lieu thereof “pursuant to the Office of Government Ethics responsibilities under this Act. The head of any agency may detail such personnel and furnish such services, with or without reimbursement, as the Director may request to carry out the provisions of this Act”.

5 USC app.

SEC. 10. EFFECTIVE DATE.

5 USC app.

(a) **IN GENERAL.**—Except as provided in subsection (b), the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) **EXCEPTION.**—The amendments made by section 3 shall take effect on October 1, 1989.

Approved November 3, 1988.

LEGISLATIVE HISTORY—S. 2344 (H.R. 4712):

HOUSE REPORTS: No. 100-1017, Pt. 1, accompanying H.R. 4712 (Comm. on Post Office and Civil Service).

SENATE REPORTS: No. 100-392 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 134 (1988):

June 28, considered and passed Senate.

Oct. 3, 4, considered and passed House, amended, in lieu of H.R. 4712.

Oct. 20, Senate concurred in House amendment with an amendment. House concurred in Senate amendment.