

Subsec. (b)(3). Pub. L. 95-454, §906(c)(2)(F), (H), substituted "3401" for "3391".

Pub. L. 95-437 added par. (3).

Subsec. (c). Pub. L. 95-454, §906(a)(3), substituted "Office" for "Commission".

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-654 effective 120 days after Nov. 14, 1988, see section 301(d) of Pub. L. 100-654, set out as an Effective Date note under section 8906a of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8901 of this title.

### § 8914. Effect of other statutes

Any provision of law outside of this chapter which provides coverage or any other benefit under this chapter to any individuals who (based on their being employed by an entity other than the Government) would not otherwise be eligible for any such coverage or benefit shall not apply with respect to any individual appointed, transferred, or otherwise commencing that type of employment on or after October 1, 1988.

(Added Pub. L. 100-238, title I, §108(a)(3)(A), Jan. 8, 1988, 101 Stat. 1747.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 6103; title 25 section 4501.

## Subpart H—Access to Criminal History Record Information

### CHAPTER 91—ACCESS TO CRIMINAL HISTORY RECORDS FOR NATIONAL SECURITY PURPOSES

Sec.

9101. Criminal history record information for national security purposes.

#### § 9101. Criminal history record information for national security purposes

(a) As used in this section:

(1) The term "criminal justice agency" includes Federal, State, and local agencies and means: (A) courts, or (B) a Government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or Executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

(2) The term "criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any dis-

position arising therefrom, sentencing, correction supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. The term does not include those records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.

(3) The term "classified information" means information or material designated pursuant to the provisions of a statute or Executive order as requiring protection against unauthorized disclosure for reasons of national security.

(4) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(5) The term "local" and "locality" means any local government authority or agency or component thereof within a State having jurisdiction over matters at a county, municipal, or other local government level.

(b)(1) Upon request by the Department of Defense, the Department of State, the Office of Personnel Management, the Central Intelligence Agency, or the Federal Bureau of Investigation, criminal justice agencies shall make available criminal history record information regarding individuals under investigation by such department, office, agency, or bureau for the purpose of determining eligibility for (A) access to classified information or (B) assignment to or retention in sensitive national security duties. Such a request to a State central criminal history record repository shall be accompanied by the fingerprints of the individual who is the subject of the request if required by State law and if the repository uses the fingerprints in an automated fingerprint identification system. Fees, if any, charged for providing criminal history record information pursuant to this subsection shall not exceed the reasonable cost of providing such information, nor shall they in any event exceed those charged to State or local agencies other than criminal justice agencies for such information.

(2) This subsection shall apply notwithstanding any other provision of law or regulation of any State or of any locality within a State, or any other law of the United States.

(3)(A) Upon request by a State or locality, the Department of Defense, the Department of State, the Office of Personnel Management, the Central Intelligence Agency, or the Federal Bureau of Investigation shall enter into an agreement with such State or locality to indemnify and hold harmless such State or locality, and its officers, employees and agents, from any claim against such State or locality, or its officer, employee or agent, for damages, costs and other monetary loss, whether or not suit is instituted, arising from the disclosure or use by such department, office, agency, or bureau of criminal history record information obtained from the State or locality pursuant to this subsection, if

the laws of such State or locality, as of the date of enactment of this section, otherwise have the effect of prohibiting the disclosure of such criminal history record information to such department, office, agency, or bureau.

(B) When the Department of Defense, the Department of State, the Office of Personnel Management, the Central Intelligence Agency, or the Federal Bureau of Investigation and a State or locality have entered into an agreement described in subparagraph (A), and a claim described in such subparagraph is made against such State or locality, or its officer, employee, or agent, the State or locality shall expeditiously transmit notice of such claim to the Attorney General and to the United States Attorney of the district embracing the place wherein the claim is made, and the United States shall have the opportunity to make all determinations regarding the settlement or defense of such claim.

(c) The Department of Defense, the Department of State, the Office of Personnel Management, the Central Intelligence Agency, or the Federal Bureau of Investigation shall not obtain criminal history record information pursuant to this section unless it has received written consent from the individual under investigation for the release of such information for the purposes set forth in paragraph (b)(1).

(d) Criminal history record information received under this section shall be disclosed or used only for the purposes set forth in paragraph (b)(1) or for national security or criminal justice purposes authorized by law, and such information shall be made available to the individual who is the subject of such information upon request.

(e) The authority provided under this section with respect to the Department of State may be exercised only so long as the Department of State continues to extend to its employees and applicants for employment, at a minimum, those procedural safeguards provided for as part of the security clearance process that were made available, as of May 1, 1987, pursuant to section 163.4 of volume 3 of the Foreign Affairs Manual.

(Added Pub. L. 99-169, title VIII, § 801(a), Dec. 4, 1985, 99 Stat. 1009; amended Pub. L. 99-569, title IV, § 402(a), Oct. 27, 1986, 100 Stat. 3196; Pub. L. 101-246, title I, § 114, Feb. 16, 1990, 104 Stat. 22.)

#### TERMINATION OF SUBSECTION (b)(3)

*For termination of subsection (b)(3) of this section by section 803(b) of Pub. L. 99-169, see Termination Date of Subsection (b)(3) of This Section note below.*

#### AMENDMENTS

1990—Subsecs. (b)(1), (3)(A), (B), (c). Pub. L. 101-246, § 114(1), inserted “the Department of State,” after “Defense,” wherever appearing.

Subsec. (e). Pub. L. 101-246, § 114(2), added subsec. (e).  
1986—Subsecs. (b)(1), (3), (c). Pub. L. 99-569 inserted references to the Federal Bureau of Investigation and such bureau.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 402(c) of Pub. L. 99-569 provided that: “The amendments made by this section [amending this section and provisions set out as a note under this section] shall become effective with respect to any inquiry which begins after the date of enactment of this Act [Oct. 27, 1986] conducted by the Federal Bureau of Investigation for purposes specified in paragraph (b)(1) of section 9101 of title 5, United States Code.”

#### EFFECTIVE DATE

Section 802 of Pub. L. 99-169 provided that: “The amendments made by section 801(a) of this Act [enacting this section] shall become effective with respect to any inquiry which begins after the date of enactment of this Act [Dec. 4, 1985] conducted by the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency, for the purposes specified in paragraph (b)(1) of section 9101 of title 5, United States Code, as added by this Act.”

#### TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

#### TERMINATION DATE OF SUBSECTION (b)(3) OF THIS SECTION

Pub. L. 100-453, title I, § 101(d), Sept. 29, 1988, 102 Stat. 1904, provided that: “The expiration date provided for in section 803(b) of the Intelligence Authorization Act for Fiscal Year 1986 (Public Law 99-169) [set out below] shall be extended until December 31, 1989.”

Section 803(b) of Pub. L. 99-169 provided that: “Three years after the date of enactment of this Act [Dec. 4, 1985], section 9101(b)(3) of title 5, United States Code, shall expire.”

#### REPORT TO CONGRESSIONAL COMMITTEES ON EFFECT OF PROVISIONS FOR INDEMNIFICATION AGREEMENTS

Section 803(a) of Pub. L. 99-169, as amended by Pub. L. 99-569, title IV, § 402(b), Oct. 27, 1986, 100 Stat. 3196, directed Department of Justice, within two years after Dec. 4, 1985, and after consultation with Department of Defense, Office of Personnel Management, Central Intelligence Agency, and Federal Bureau of Investigation, to report to appropriate committees of Congress concerning the effect of 5 U.S.C. 9101(b)(3), as added by this Act, including the effect of the absence of indemnification agreements upon States and localities not eligible under 5 U.S.C. 9101(b)(3) for such agreements.