

designated existing provisions as subsec. (a), substituted provisions authorizing the President to take necessary action, for provisions authorizing the President to prescribe rules, and added subsecs. (b) and (c).

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.

§ 3322. Voluntary separation before resolution of personnel investigation

(a) With respect to any employee occupying a position in the competitive service or the expected service who is the subject of a personnel investigation and resigns from Government employment prior to the resolution of such investigation, the head of the agency from which such employee so resigns shall, if an adverse finding was made with respect to such employee pursuant to such investigation, make a permanent notation in the employee's official personnel record file. The head shall make such notation not later than 40 days after the date of the resolution of such investigation.

(b) Prior to making a permanent notation in an employee's official personnel record file under subsection (a), the head of the agency shall—

(1) notify the employee in writing within 5 days of the resolution of the investigation and provide such employee a copy of the adverse finding and any supporting documentation;

(2) provide the employee with a reasonable time, but not less than 30 days, to respond in writing and to furnish affidavits and other documentary evidence to show why the adverse finding was unfounded (a summary of which shall be included in any notation made to the employee's personnel file under subsection (d)); and

(3) provide a written decision and the specific reasons therefore to the employee at the earliest practicable date.

(c) An employee is entitled to appeal the decision of the head of the agency to make a permanent notation under subsection (a) to the Merit Systems Protection Board under section 7701.

(d)(1) If an employee files an appeal with the Merit Systems Protection Board pursuant to subsection (c), the agency head shall make a notation in the employee's official personnel record file indicating that an appeal disputing the notation is pending not later than 2 weeks after the date on which such appeal was filed.

(2) If the head of the agency is the prevailing party on appeal, not later than 2 weeks after the date that the Board issues the appeal decision, the head of the agency shall remove the notation made under paragraph (1) from the employee's official personnel record file.

(3) If the employee is the prevailing party on appeal, not later than 2 weeks after the date that the Board issues the appeal decision, the head of the agency shall remove the notation made under paragraph (1) and the notation of an adverse finding made under subsection (a) from the employee's official personnel record file.

(e) In this section, the term "personnel investigation" includes—

(1) an investigation by an Inspector General; and

(2) an adverse personnel action as a result of performance, misconduct, or for such cause as will promote the efficiency of the service under chapter 43 or chapter 75.

(Added Pub. L. 114-328, div. A, title XI, §1140(a), Dec. 23, 2016, 130 Stat. 2470.)

PRIOR PROVISIONS

A prior section 3322, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422, related to temporary appointments after age 70 in the competitive service, prior to repeal by Pub. L. 95-256, §5(b)(1), Apr. 6, 1978, 92 Stat. 191, effective Sept. 30, 1978.

EFFECTIVE DATE

Pub. L. 114-328, div. A, title XI, §1140(b), Dec. 23, 2016, 130 Stat. 2471, provided that: "The amendment made by subsection (a) [enacting this section] shall apply to any employee described in section 3322 of title 5, United States Code, (as added by such subsection) who leaves the service after the date of enactment of this Act [Dec. 23, 2016]."

§ 3323. Automatic separations; reappointment; re-employment of annuitants

(a) An individual who reaches the retirement age prescribed for automatic separation applicable to him may not be continued in the civil service or in the government of the District of Columbia. An individual separated on account of age under a statute or regulation providing for retirement on account of age is not eligible for appointment in the civil service or in the government of the District of Columbia. The President, when in his judgment the public interest so requires, may except an individual from this subsection by Executive order. This subsection does not apply to an individual named by a statute providing for the continuance of the individual in the civil service or in the government of the District of Columbia.

(b)(1) Notwithstanding other statutes, an annuitant, as defined by section 8331 or 8401, receiving annuity from the Civil Service Retirement and Disability Fund is not barred by reason of his retired status from employment in an appointive position for which the annuitant is qualified. An annuitant so reemployed, other than an annuitant reappointed under paragraph (2) of this subsection, serves at the will of the appointing authority.

(2) Subject to such regulations as the Director of the Office of Personnel Management may prescribe, any annuitant to whom the first sentence of paragraph (1) of this subsection applies and who has served as an administrative law judge pursuant to an appointment under section 3105 of this title may be reappointed an administrative law judge under such section for a specified period or for such period as may be necessary for such administrative law judge to conduct and complete the hearing and disposition of one or more specified cases. The provisions of this title that apply to or with respect to administrative law judges appointed under section 3105 of this title shall apply to or with respect to administrative law judges reappointed under such section pursuant to the first sentence of this paragraph.

(c) Notwithstanding subsection (a) of this section, a member of the Foreign Service retired under section 812 of the Foreign Service Act of