

(2) In carrying out any investigation under this subsection, the Secretary's duly authorized representatives shall, at all reasonable times, have reasonable access to, for purposes of examination, and the right to copy and receive, any documents of any person or agency that the Secretary considers relevant to the investigation.

(3) In carrying out any investigation under this subsection, the Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation. In case of disobedience of the subpoena or contumacy and on request of the Secretary, the Attorney General may apply to any district court of the United States in whose jurisdiction such disobedience or contumacy occurs for an order enforcing the subpoena.

(4) Upon application, the district courts of the United States shall have jurisdiction to issue writs commanding any person or agency to comply with the subpoena of the Secretary or to comply with any order of the Secretary made pursuant to a lawful investigation under this subsection and the district courts shall have jurisdiction to punish failure to obey a subpoena or other lawful order of the Secretary as a contempt of court.

(c)(1)(A) If the Secretary of Labor determines as a result of an investigation under subsection (b) that the action alleged in a complaint under subsection (a) occurred, the Secretary shall attempt to resolve the complaint by making reasonable efforts to ensure that the agency specified in the complaint complies with applicable provisions of statute or regulation relating to veterans' preference.

(B) The Secretary of Labor shall make determinations referred to in subparagraph (A) based on a preponderance of the evidence.

(2) If the efforts of the Secretary under subsection (b) with respect to a complaint under subsection (a) do not result in the resolution of the complaint, the Secretary shall notify the person who submitted the complaint, in writing, of the results of the Secretary's investigation under subsection (b).

(d)(1) If the Secretary of Labor is unable to resolve a complaint under subsection (a) within 60 days after the date on which it is filed, the complainant may elect to appeal the alleged violation to the Merit Systems Protection Board in accordance with such procedures as the Merit Systems Protection Board shall prescribe, except that in no event may any such appeal be brought—

(A) before the 61st day after the date on which the complaint is filed; or

(B) later than 15 days after the date on which the complainant receives written notification from the Secretary under subsection (c)(2).

(2) An appeal under this subsection may not be brought unless—

(A) the complainant first provides written notification to the Secretary of such complainant's intention to bring such appeal; and

(B) appropriate evidence of compliance with subparagraph (A) is included (in such form and manner as the Merit Systems Protection Board may prescribe) with the notice of appeal under this subsection.

(3) Upon receiving notification under paragraph (2)(A), the Secretary shall not continue to investigate or further attempt to resolve the complaint to which the notification relates.

(e)(1) This section shall not be construed to prohibit a preference eligible from appealing directly to the Merit Systems Protection Board from any action which is appealable to the Board under any other law, rule, or regulation, in lieu of administrative redress under this section.

(2) A preference eligible may not pursue redress for an alleged violation described in subsection (a) under this section at the same time the preference eligible pursues redress for such violation under any other law, rule, or regulation.

(Added Pub. L. 105-339, §3(a), Oct. 31, 1998, 112 Stat. 3182; amended Pub. L. 108-454, title VIII, §804(a), Dec. 10, 2004, 118 Stat. 3626.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108-454 designated existing provisions as subpar. (A) and added subpar. (B).

§ 3330b. Preference eligibles; judicial redress

(a) In lieu of continuing the administrative redress procedure provided under section 3330a(d), a preference eligible, or a veteran described by section 3330a(a)(1)(B) with respect to a violation described by such section, may elect, in accordance with this section, to terminate those administrative proceedings and file an action with the appropriate United States district court not later than 60 days after the date of the election.

(b) An election under this section may not be made—

(1) before the 121st day after the date on which the appeal is filed with the Merit Systems Protection Board under section 3330a(d); or

(2) after the Merit Systems Protection Board has issued a judicially reviewable decision on the merits of the appeal.

(c) An election under this section shall be made, in writing, in such form and manner as the Merit Systems Protection Board shall by regulation prescribe. The election shall be effective as of the date on which it is received, and the administrative proceeding to which it relates shall terminate immediately upon the receipt of such election.

(Added Pub. L. 105-339, §3(a), Oct. 31, 1998, 112 Stat. 3184; amended Pub. L. 108-454, title VIII, §804(b), Dec. 10, 2004, 118 Stat. 3626.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-454, which directed insertion of “, or a veteran described by section 3330a(a)(1)(B) with respect to a violation described by such section,” after “a preference eligible” in subsec. (a) of section 3330b, without specifying the Code title to be amended, was executed by making the insertion in subsec. (a) of this section, to reflect the probable intent of Congress.

§ 3330c. Preference eligibles; remedy

(a) If the Merit Systems Protection Board (in a proceeding under section 3330a) or a court (in a proceeding under section 3330b) determines

that an agency has violated a right described in section 3330a, the Board or court (as the case may be) shall order the agency to comply with such provisions and award compensation for any loss of wages or benefits suffered by the individual by reason of the violation involved. If the Board or court determines that such violation was willful, it shall award an amount equal to backpay as liquidated damages.

(b) A preference eligible who prevails in an action under section 3330a or 3330b shall be awarded reasonable attorney fees, expert witness fees, and other litigation expenses.

(Added Pub. L. 105-339, §3(a), Oct. 31, 1998, 112 Stat. 3184.)

§ 3330d. Appointment of military spouses

(a) DEFINITIONS.—In this section:

(1) The term “active duty”—

(A) has the meaning given that term in section 101(d)(1) of title 10;

(B) includes full-time National Guard duty (as defined in section 101(d)(5) of title 10); and

(C) for a member of a reserve component (as described in section 10101 of title 10), does not include training duties or attendance at a service school.

(2) The term “agency”—

(A) has the meaning given the term “Executive agency” in section 105 of this title; and

(B) does not include the Government Accountability Office.

(3) The term “spouse of a disabled or deceased member of the Armed Forces” means an individual—

(A) who is married to a member of the Armed Forces who—

(i) is retired, released, or discharged from the Armed Forces; and

(ii) on the date on which the member retires, is released, or is discharged, has a disability rating of 100 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs; or

(B) who—

(i) was married to a member of the Armed Forces on the date on which the member dies while on active duty in the Armed Forces; and

(ii) has not remarried.

(b) APPOINTMENT AUTHORITY.—The head of an agency may appoint noncompetitively—

(1) a spouse of a member of the Armed Forces on active duty; or

(2) a spouse of a disabled or deceased member of the Armed Forces.

(c) SPECIAL RULES REGARDING SPOUSE OF A DISABLED OR DECEASED MEMBER OF THE ARMED FORCES.—

(1) IN GENERAL.—An appointment of an eligible spouse as described in subparagraph (A) or (B) of subsection (a)(3) is not restricted to a geographical area.

(2) SINGLE PERMANENT APPOINTMENT.—A spouse of a disabled or deceased member of the Armed Forces may not receive more than 1 permanent appointment under this section.

(Added Pub. L. 112-239, div. A, title V, §566(a), Jan. 2, 2013, 126 Stat. 1749; amended Pub. L. 114-328, div. A, title XI, §1131, Dec. 23, 2016, 130 Stat. 2457; Pub. L. 115-232, div. A, title V, §573(a), (c), Aug. 13, 2018, 132 Stat. 1779.)

AMENDMENT OF SECTION

For expiration of amendment by Pub. L. 115-232 and revival of section, see Termination Date of 2018 Amendment note below.

AMENDMENTS

2018—Pub. L. 115-232, §573(c), (e), temporarily amended section catchline generally, substituting “Appointment of military spouses” for “Appointment of certain military spouses”. See Termination Date of 2018 Amendment note below.

Subsec. (a)(3) to (6). Pub. L. 115-232, §573(a)(1), (e), temporarily redesignated par. (6) as (3) and temporarily struck out former pars. (3) to (5) which defined geographic area of the permanent duty station, permanent change of station, and relocating spouse of a member of the Armed Forces, respectively. See Termination Date of 2018 Amendment note below.

Subsecs. (b) to (d). Pub. L. 115-232, §573(a)(2)–(4), (e), temporarily added subsec. (b) relating to appointment authority, temporarily redesignated subsec. (d) as (c) and substituted “subsection (a)(3)” for “subsection (a)(6)” in par. (1), and temporarily struck out former subsecs. (b) and (c) relating to appointment authority and special rules regarding relocating spouse, respectively. See Termination Date of 2018 Amendment note below.

2016—Subsec. (c)(3). Pub. L. 114-328 added par. (3).

TERMINATION DATE OF 2018 AMENDMENT

Pub. L. 115-232, div. A, title V, §573(e), Aug. 13, 2018, 132 Stat. 1779, provided that: “Effective on the date that is 5 years after the date of the enactment of this Act [Aug. 13, 2018]—

“(1) the authority provided by this section [amending this section and enacting provisions set out as a note below], and the amendments made by this section [amending this section], shall expire; and

“(2) the provisions of section 3330d of title 5, United States Code, amended or repealed by such section are restored or revived as if such section had not been enacted.”

REGULATIONS

Pub. L. 112-239, div. A, title V, §566(b), Jan. 2, 2013, 126 Stat. 1751, provided that: “Not later than 180 after the date of the enactment of this Act [Jan. 2, 2013], the Director of the Office of Personnel Management shall amend section 315.612 of title 5, Code of Federal Regulations (relating to noncompetitive appointment of certain military spouses), in accordance with the amendment made by subsection (a) [enacting this section] and promulgate or amend any other regulations necessary to carry out the amendment made by subsection (a).”

OPM LIMITATION AND REPORTS

Pub. L. 115-232, div. A, title V, §573(d), Aug. 13, 2018, 132 Stat. 1779, provided that:

“(1) RELOCATING SPOUSES.—With respect to the noncompetitive appointment of a relocating spouse of a member of the Armed Forces under subsection (b)(1) of section 3330d of title 5, United States Code, as amended by subsection (a), the Director of the Office of Personnel Management—

“(A) shall monitor the number of such appointments;

“(B) shall require the head of each agency with authority to make such appointments under such section to submit an annual report to the Director on such appointments, including information on the number of individuals so appointed, the types of posi-