

collective bargaining obligation of an agency under chapter 71.”

Subsec. (c)(7). Pub. L. 115-232, § 1107(b)(1)(B), redesignated par. (7) as (6).

2016—Subsec. (c). Pub. L. 114-137 added subsec. (c) and struck out former subsec. (c) which read as follows:

“(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

“(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective on the date on which the Director of the Office of Personnel Management issues final regulations for implementation, with such regulations due not later than one year after Aug. 13, 2018, see section 1107(d) of Pub. L. 115-232, set out as a note under section 3317 of this title.

EFFECTIVE DATE

Section effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as a note under section 101 of Title 6, Domestic Security.

§ 3320. Excepted service; government of the District of Columbia; selection

The nominating or appointing authority shall select for appointment to each vacancy in the excepted service in the executive branch and in the government of the District of Columbia from the qualified applicants in the same manner and under the same conditions required for the competitive service by sections 3308-3318 of this title. This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 115-232, div. A, title XI, § 1107(b)(2), Aug. 13, 2018, 132 Stat. 2005.)

AMENDMENT OF SECTION

Pub. L. 115-232, div. A, title XI, § 1107(b)(2), (d), Aug. 13, 2018, 132 Stat. 2005, provided that, effective on the date on which the Director of the Office of Personnel Management issues final regulations for implementation, with such regulations due not later than one year after Aug. 13, 2018, this section is amended by striking “sections 3308-3318” and inserting “sections 3308 through 3319”. See 2018 Amendment note below.

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 858.	June 27, 1944, ch. 287, § 9, 58 Stat. 389.
.....	5 U.S.C. 869.	June 27, 1944, ch. 287, § 20, 58 Stat. 391.

Former sections 858 and 869 are combined and restated for clarity and to conform to section 3318(a). The word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1). The words “shall select for appoint-

ment to each vacancy in the expected service in the executive branch and in the government of the District of Columbia from the qualified applicants in the same manner and under the same conditions required for the competitive service by sections 3308-3318 of this title” are substituted for “In the unclassified Federal, and District of Columbia, civil service, and in all other positions and employment hereinbefore referred to in (c) of section 851 of this title . . . shall make selection from the qualified applicants in accordance with the provisions of this chapter”. The reference to the excepted service “in the executive branch” is substituted for the exception of the legislative and judicial branches in former section 869. Former section 869 did not prohibit the application of those provisions of the Act of June 27, 1944, which relate to the competitive service in the legislative or judicial branch by reason of the specific provisions of section 311 of the Act of June 10, 1921, as amended (31 U.S.C. 52); 28 U.S.C. 602; and Executive Order No. 67 of June 13, 1895. The reference to appointments of postmasters is omitted from this section since those referred to are in the competitive service. The application of former section 869 to the remainder of the Act of June 27, 1944, is covered by the sections into which the remainder is carried (see Table I).

This section merely continues, and does not in any way change, the requirements in former section 858 relative to the selection of applicants for positions in the excepted service. Under this section, the Federal Bureau of Investigation and other agencies having positions in the excepted service will continue to fill those positions in the same manner that they have been filled under former section 858. Such excepted appointments are appointments authorized to be made without regard to the statutes, rules, and regulations governing appointments in the competitive service and this is not changed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-232 substituted “sections 3308 through 3319” for “sections 3308-3318”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective on the date on which the Director of the Office of Personnel Management issues final regulations for implementation, with such regulations due not later than one year after Aug. 13, 2018, see section 1107(d) of Pub. L. 115-232, set out as an Effective Date of Repeal note under section 3317 of this title.

ASSISTANCE OF UNITED STATES CIVIL SERVICE COMMISSION IN DEVELOPING MERIT SYSTEM FOR DISTRICT OF COLUMBIA

Pub. L. 93-198, title VII, § 734, Dec. 24, 1973, 87 Stat. 823, authorized the United States Civil Service Commission to advise and assist the District of Columbia Mayor and Council in the further development of the merit system or systems required by the District of Columbia charter, which was approved on May 7, 1974, and authorized the Commission to enter into agreements with the District government to make available its registers of eligibles as a recruiting source to fill District positions as needed, with the costs of any specific services furnished by the Civil Service Commission to be compensated for under the provisions of section 685a of former Title 31, Money and Finance [31 U.S.C. 1537].

§ 3321. Competitive service; probationary period

(a) The President may take such action, including the issuance of rules, regulations, and

directives, as shall provide as nearly as conditions of good administration warrant for a period of probation—

(1) before an appointment in the competitive service becomes final; and

(2) before initial appointment as a supervisor or manager becomes final.

(b) An individual—

(1) who has been transferred, assigned, or promoted from a position to a supervisory or managerial position, and

(2) who does not satisfactorily complete the probationary period under subsection (a)(2) of this section,

shall be returned to a position of no lower grade and pay than the position from which the individual was transferred, assigned, or promoted. Nothing in this section prohibits an agency from taking an action against an individual serving a probationary period under subsection (a)(2) of this section for cause unrelated to supervisory or managerial performance.

(c) Subsections (a) and (b) of this section shall not apply with respect to appointments in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 95-454, title III, § 303(a), Oct. 13, 1978, 92 Stat. 1146; Pub. L. 100-325, § 2(d), May 30, 1988, 102 Stat. 581; Pub. L. 114-92, div. A, title XI, § 1105(c)(1), Nov. 25, 2015, 129 Stat. 1024; Pub. L. 117-81, div. A, title XI, § 1106(b)(2)(A), Dec. 27, 2021, 135 Stat. 1950.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 633(2)(4).	Jan. 16, 1883, ch. 27, § 2(24), 22 Stat. 404.

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302. Wording is changed because in practice an appointment is not made after probation. The words “or employment” are omitted as included within “appointment”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Editorial Notes

AMENDMENTS

2021—Subsec. (c). Pub. L. 117-81 struck out “, or any individual covered by section 1599e of title 10” before period at end.

2015—Subsec. (c). Pub. L. 114-92 inserted “, or any individual covered by section 1599e of title 10” before period at end.

1988—Subsec. (c). Pub. L. 100-325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1978—Pub. L. 95-454 substituted “probationary period” for “probation; period of” in section catchline, 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).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 applied as if effective Dec. 31, 2022, to correspond to the effective date of the

repeal of section 1599e of Title 10, Armed Forces, to reflect the probable intent of Congress. See Effective Date of Repeal note under section 1599e of Title 10.

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 excepted 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