

(C) in which the person is qualified to serve, taking into consideration whether the employee in that position is required to be a member of a reserve component of the armed forces as a condition of employment.

(2) To the maximum extent practicable, the position shall also be in a pay grade or other pay classification sufficient to ensure that the rate of basic pay of the former military technician, upon appointment to the position, is not less than the rate of basic pay last received by the former military technician for technician service before separation.

(d) This section shall not apply in the case of—

(1) an involuntary separation for cause on charges of misconduct or delinquency; or

(2) a technician who, as of the date of application under this section, is eligible for immediate (including for disability) or early retirement under subchapter III of chapter 83 or under chapter 84.

(e) The Secretary of Defense shall, in consultation with the Director of the Office of Personnel Management, prescribe such regulations as may be necessary to carry out this section.

(Added Pub. L. 102-484, div. A, title V, §544(a), Oct. 23, 1992, 106 Stat. 2415; amended Pub. L. 104-106, div. A, title X, §1037(a), Feb. 10, 1996, 110 Stat. 431; Pub. L. 105-85, div. A, title XI, §1103, Nov. 18, 1997, 111 Stat. 1923; Pub. L. 106-398, §1 [[div. A], title X, §1087(f)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-293.)

#### REFERENCES IN TEXT

Section 8401(30) of this title, referred to in subssecs. (a) and (b), was amended generally by Pub. L. 106-65, div. A, title V, §522(c)(2), Oct. 5, 1999, 113 Stat. 597, and, as so amended, no longer contains a subpar. (B).

#### CODIFICATION

Another section 3329 was renumbered section 3330 of this title.

#### AMENDMENTS

2000—Subsec. (a). Pub. L. 106-398, §1 [[div. A], title X, §1087(f)(1)(A)], substituted “the term ‘military technician (dual status)’” for “such term”.

Subsec. (b). Pub. L. 106-398, §1 [[div. A], title X, §1087(f)(1)(B)], substituted “section 12732 of title 10” for “section 1332 of title 10”.

1997—Subsec. (b). Pub. L. 105-85 struck out “a position described in subsection (c) not later than 6 months after the date of the application” after “program of the Department of Defense”.

1996—Subsec. (b). Pub. L. 104-106, §1037(a)(1), substituted “be provided placement consideration in a position described in subsection (c) through a priority placement program of the Department of Defense” for “be offered”.

Subsec. (c). Pub. L. 104-106, §1037(a)(2), added subsec. (c) and struck out former subsec. (c) which read as follows: “The position to be offered shall be a position—

- “(1) in the competitive service;
- “(2) within the Department of Defense;
- “(3) for which the individual is qualified; and
- “(4) the rate of basic pay for which is not less than the rate last received for technician service before separation.”

#### § 3330. Government-wide list of vacant positions

(a) For the purpose of this section, the term “agency” means an Executive agency, excluding the Government Accountability Office and any

agency (or unit thereof) whose principal function is the conduct of foreign intelligence or counterintelligence activities, as determined by the President.

(b) The Office of Personnel Management shall establish and keep current a comprehensive list of all announcements of vacant positions in the competitive service within each agency that are to be filled by appointment for more than one year and for which applications are being (or will soon be) accepted from outside the agency’s work force.

(c) Included for any position listed shall be—

(1) a brief description of the position, including its title, tenure, location, and rate of pay;

(2) application procedures, including the period within which applications may be submitted and procedures for obtaining additional information; and

(3) any other information which the Office considers appropriate.

(d) The list shall be available to members of the public.

(e) The Office shall prescribe such regulations as may be necessary to carry out this section. Any requirement under this section that agencies notify the Office as to the availability of any vacant positions shall be designed so as to avoid any duplication of information otherwise required to be furnished under section 3327 of this title or any other provision of law.

(f) The Office may, to the extent it determines appropriate, charge such fees to agencies for services provided under this section and for related Federal employment information. The Office shall retain such fees to pay the costs of providing such services and information.

(Added Pub. L. 102-484, div. D, title XLIV, §4431(a), Oct. 23, 1992, 106 Stat. 2719, §3329; renumbered §3330 and amended Pub. L. 104-52, title IV, §4(1), Nov. 19, 1995, 109 Stat. 490; Pub. L. 104-106, div. A, title X, §1037(b)(1), Feb. 10, 1996, 110 Stat. 432; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

#### AMENDMENTS

2004—Subsec. (a). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

1996—Pub. L. 104-106, which directed renumbering of the section 3329 of this title that was added by Pub. L. 102-484, §4431, as section 3330 of this title, could not be executed because of the intervening renumbering of that section by Pub. L. 104-52, §4(1)(A). See 1995 Amendment note below.

1995—Pub. L. 104-52, §4(1)(A), renumbered section 3329 of this title, relating to government-wide list of vacant positions, as this section.

Subsec. (f). Pub. L. 104-52, §4(1)(B), added subsec. (f).

#### § 3330a. Preference eligible; administrative redress

(a)(1)(A) A preference eligible who alleges that an agency has violated such individual’s rights under any statute or regulation relating to veterans’ preference may file a complaint with the Secretary of Labor.

(B) A veteran described in section 3304(f)(1) who alleges that an agency has violated such section with respect to such veteran may file a complaint with the Secretary of Labor.

(2)(A) A complaint under this subsection must be filed within 60 days after the date of the alleged violation.

(B) Such complaint shall be in writing, be in such form as the Secretary may prescribe, specify the agency against which the complaint is filed, and contain a summary of the allegations that form the basis for the complaint.

(3) The Secretary shall, upon request, provide technical assistance to a potential complainant with respect to a complaint under this subsection.

(b)(1) The Secretary of Labor shall investigate each complaint under subsection (a).

(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.)