

114<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4360

---

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2016

Received; read twice and referred to the Committee on Homeland Security and  
Governmental Affairs

---

## AN ACT

To amend title 5, United States Code, to provide that a Federal employee who leaves Government service while under personnel investigation shall have a notation of any adverse findings under such investigation placed in such employee's official personnel file, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Official Personnel File  
5 Enhancement Act”.

6 **SEC. 2. RECORD OF INVESTIGATION OF PERSONNEL AC-**  
7 **TION IN SEPARATED EMPLOYEE’S OFFICIAL**  
8 **PERSONNEL FILE.**

9 (a) IN GENERAL.—Subchapter I of chapter 33 of title  
10 5, United States Code, is amended by inserting after sec-  
11 tion 3321 the following:

12 **“§ 3322. Voluntary separation before resolution of**  
13 **personnel investigation**

14 “(a) With respect to any employee occupying a posi-  
15 tion in the competitive service or the excepted service who  
16 is the subject of a personnel investigation and resigns from  
17 Government employment prior to the resolution of such  
18 investigation, the head of the agency from which such em-  
19 ployee so resigns shall, if an adverse finding was made  
20 with respect to such employee pursuant to such investiga-  
21 tion, make a permanent notation in the employee’s official  
22 personnel record file. The head shall make such notation  
23 not later than 40 days after the date of the resolution of  
24 such investigation.

1       “(b) Prior to making a permanent notation in an em-  
2 ployee’s official personnel record file under subsection (a),  
3 the head of the agency shall—

4               “(1) notify the employee in writing within 5  
5 days of the resolution of the investigation and pro-  
6 vide such employee a copy of the adverse finding and  
7 any supporting documentation;

8               “(2) provide the employee with a reasonable  
9 time, but not less than 30 days, to respond in writ-  
10 ing and to furnish affidavits and other documentary  
11 evidence to show why the adverse finding was un-  
12 founded (a summary of which shall be included in  
13 any notation made to the employee’s personnel file  
14 under subsection (d)); and

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

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

22       “(d)(1) If an employee files an appeal with the Merit  
23 Systems Protection Board pursuant to subsection (c), the  
24 agency head shall make a notation in the employee’s offi-  
25 cial personnel record file indicating that an appeal dis-

1 putting the notation is pending not later than 2 weeks after  
2 the date on which such appeal was filed.

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

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

14 “(e) In this section, the term ‘personnel investigation’  
15 includes—

16 “(1) an investigation by an Inspector General;  
17 and

18 “(2) an adverse personnel action as a result of  
19 performance, misconduct, or for such cause as will  
20 promote the efficiency of the service under chapter  
21 43 or chapter 75.”.

22 (b) APPLICATION.—The amendment made by sub-  
23 section (a) shall apply to any employee described in section  
24 3322 of title 5, United States Code, (as added by such

1 subsection) who leaves the service after the date of enact-  
2 ment of this Act.

3 (c) CLERICAL AMENDMENT.—The table of sections  
4 of subchapter I of chapter 33 of title 5, United States  
5 Code, is amended by inserting after the item relating to  
6 section 3321 the following:

“3322. Voluntary separation before resolution of personnel investigation.”.

7 **SEC. 3. REVIEW OF OFFICIAL PERSONNEL FILE OF FORMER**  
8 **FEDERAL EMPLOYEES BEFORE REHIRING.**

9 (a) IN GENERAL.—Subchapter I of chapter 33 of title  
10 5, United States Code, is amended by adding at the end  
11 the following:

12 **“§ 3330e. Review of official personnel file of former**  
13 **Federal employees before rehiring**

14 “(a) If a former Government employee is a candidate  
15 for a position within the competitive service or the ex-  
16 cepted service, prior to making any determination with re-  
17 spect to the appointment or reinstatement of such em-  
18 ployee to such position, the appointing authority shall re-  
19 view and consider the information relating to such employ-  
20 ee’s former period or periods of service in such employee’s  
21 official personnel record file.

22 “(b) In subsection (a), the term ‘former Government  
23 employee’ means an individual whose most recent position  
24 with the Government prior to becoming a candidate as de-

1 scribed under subsection (a) was within the competitive  
2 service or the excepted service.

3 “(c) The Office of Personnel Management shall pre-  
4 scribe regulations to carry out the purpose of this sec-  
5 tion.”.

6 (b) APPLICATION.—The amendment made by sub-  
7 section (a) shall apply to any former Government em-  
8 ployee (as described in section 3330e of title 5, United  
9 States Code, as added by such subsection) appointed or  
10 reinstated on or after the date that is 180 days after the  
11 date of enactment of this Act.

12 (c) CLERICAL AMENDMENT.—The table of sections  
13 of subchapter I of chapter 33 of title 5, United States  
14 Code, is amended by adding at the end the following:

“3330e. Review of official personnel file of former Federal employees before re-  
hiring.”.

Passed the House of Representatives April 26, 2016.

Attest:

KAREN L. HAAS,

*Clerk.*