



OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 315

RIN 3206-AM76

Noncompetitive Appointment of Certain Military Spouses

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to modify the provisions governing the recruitment and employment of certain military spouses in Federal agencies to conform to statutory mandates affecting the rules governing this hiring authority and to carry out certain provisions of an Executive order of May 9, 2018, *Enhancing Noncompetitive Civil Service Appointments of Military Spouses*. OPM is revising the current text to conform the eligibility criteria for appointment of military spouses to intervening statutory requirements and add agency reporting requirements. The intent of this hiring authority is to enhance the recruitment and noncompetitive appointment of certain military spouses for permanent Federal positions in the competitive service.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Michelle Glynn, telephone: 202-606-1571, fax: 202-606-3340, TDD: 202-418-3134, or email: michelle.glynn@opm.gov.

SUPPLEMENTARY INFORMATION: On May 29, 2020, the Office of Personnel Management (OPM) published proposed regulations in the **Federal Register** at 85 FR 32304 to modify the provisions governing the hiring authority for certain military spouses. OPM made these changes to effect provisions contained in the Fiscal Year (FY) 2013 National Defense Authorization Act (NDAA), Public Law 112-239, section 566,

subsequently codified at 5 U.S.C. 3330d; the FY 2017 NDAA, Public Law 114-328, section 1131, which amended 5 U.S.C. 3330d(c); and the FY 2019 NDAA, Public Law 115-232, section 573, which temporarily amends 5 U.S.C. 3330d and imposes a temporary reporting requirement on OPM; as well as certain provisions of E.O. 13832 of May 9, 2018, *Enhancing Noncompetitive Civil Service Appointments of Military Spouses*, imposing permanent agency reporting requirements. OPM received one comment on the proposed rule from an individual.

The individual recommends that OPM use the term “temporary” in conjunction with “noncompetitive” when describing or referring to this hiring authority. OPM is not adopting this suggestion. Agencies may appoint eligible spouses to positions on a permanent, term, or temporary basis under this authority. The regulations in 5 CFR part 316 currently provide for noncompetitive appointment of certain military spouses on a term or temporary basis (§316.301.302(b)(3) for term employment and §316.402(b)(3) for temporary limited employment).

OPM is adopting the proposed regulation with one minor change to the email address for submission of agency’s yearly reports to Department of Labor.

Regulatory Flexibility Act

The Office of Personnel Management Director certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

E.O. 13563 and E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 13563 and 12866.

E.O. 13132, Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power

and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E.O. 12988, Civil Justice Reform

This regulation meets the applicable standard set forth in section 3(a) and (b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local or tribal governments of more than \$100 million annually. Thus, no written assessment of unfunded mandates is required.

Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 et seq.) requires rules (as defined in 5 U.S.C. 804) to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this action before its effective date, as required by 5 U.S.C. 801. OMB's Office of Information and Regulatory Affairs has determined that this is not a "major rule" as defined by the Congressional Review Act (5 U.S.C. 804(2)).

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This final regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 315

Government employees.

Office of Personnel Management

Alexys Stanley,
Regulatory Affairs Analyst.

Accordingly, OPM is amending 5 CFR part 315 as follows:

PART 315 – CAREER AND CAREER-CONDITIONAL EMPLOYMENT

1. The authority citation for part 315 is revised to read as follows:

Authority: 5 U.S.C. 1302, 2301, 2302, 3301, and 3302; E.O. 10577, 19 FR 7521, 3 CFR, 1954-1958 Comp., p. 218; and E.O. 13162, 65 FR 43211, 3 CFR, 2000 Comp., p. 283, unless otherwise noted.

Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652.

Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104.

Sec. 315.603 also issued under 5 U.S.C. 8151.

Sec. 315.605 also issued under E.O. 12034, 43 FR 1917, 3 CFR, 1978 Comp., p. 111.

Sec. 315.606 also issued under E.O. 11219, 30 FR 6381, 3 CFR, 1964-1965 Comp., p. 303.

Sec. 315.607 also issued under 22 U.S.C. 2560.

Sec. 315.608 also issued under E.O. 12721, 55 FR 31349, 3 CFR, 1990 Comp., p. 293.

Sec. 315.610 also issued under 5 U.S.C. 3304(c). Sec. 315.611 also issued under 5 U.S.C. 3304(f).

Sec. 315.612 also issued under E.O. 13473, 73 FR 56703, 3 CFR, 2008 Comp., p. 241; Sec. 566, Pub. L. 112-239, 126 Stat. 1632 (5 U.S.C. 3330d); Sec. 1131, Pub. L. 114-328, 130 Stat. 2000 (5 U.S.C. 3330d(c)); Sec. 573, Pub. L. 115-232, 132 Stat. 1636 (5 U.S.C. 3330d); and E.O. 13832, 83 FR 22343, 3 CFR, 2018 Comp., p. 808.

Sec. 315.708 also issued under E.O. 13318, 68 FR 66317, 3 CFR, 20043 Comp., p. 265.

Sec. 315.710 also issued under E.O. 12596, 52 FR 17537, 3 CFR, 1987 Comp., p. 229; E.O. 13832, 83 FR 22343, 3 CFR, 2018 Comp., p. 808; and Sec. 573, Pub. L. 115-232, 132 Stat. 1636 (5 U.S.C. 3330d).

Subpart F—Career or Career Conditional Appointment Under Special Authorities

2. In § 315.612, revise paragraphs (a) through (e) and add paragraph (h) to read as follows:

§ 315.612 Noncompetitive appointment of certain military spouses.

(a) *Agency authority.* In accordance with the provisions of this section, an agency head may appoint noncompetitively a spouse of a member of the armed forces serving on active duty, a spouse of a 100 percent disabled service member injured while on active duty, or the un-remarried widow or widower of a service member who was killed while performing active duty.

(b) *Definitions*—(1) *Active duty* means full-time duty in the armed forces, including full-time National Guard duty, except that for Reserve Component members the term “active duty” does not include training duties or attendance at service schools.

(2) *Armed forces* has the meaning given that term in 10 U.S.C. 101.

(3) *Duty station* means the permanent location to which a member of the armed forces is assigned for duty as specified on the individual’s permanent change of station (PCS) orders.

(4) *Member of the armed forces or service member* means an individual who:

(i) Is serving on active duty in the armed forces or serving under orders specifying the individual is called or ordered to active duty for more than 180 consecutive days;

(ii) Retired or was released or discharged from active duty in the armed forces and has a disability rating of 100 percent as documented by the Department of Veterans Affairs; or

(iii) Was killed while serving on active duty in the armed forces.

(5) *Spouse* means the husband or wife of a member of the armed forces.

(c) *Eligibility.* (1)(i) A spouse of a member of the armed forces as defined in paragraph (b)(4)(i) of this section must be currently married to the member of the armed forces on active duty.

(ii) For appointments made on or after August 13, 2023, the following additional criteria must be met for eligibility for appointment (for appointments made prior to or on August 12, 2023, the criteria in this paragraph (c)(1)(ii) does not apply):

(A) The member of the armed forces must have received orders authorizing a permanent change of station.

(B) The spouse must have married the member of the armed forces on, or prior to, the date of such orders authorizing the permanent change of station.

(C) The spouse must have relocated or is relocating with the member of the armed forces to the new duty station specified in the documentation ordering the permanent change of station.

(2) A spouse of a member of the armed forces as defined in paragraph (b)(4)(ii) of this section must be currently married to the member of the armed forces.

(3) A spouse of a member of the armed forces as defined in paragraph (b)(4)(iii) of this section must be the un-remarried widow or widower of the member of the armed forces killed on active duty in the armed forces.

(4) Except as indicated in paragraph (c)(5) of this section, noncompetitive appointment of eligible spouses under this section are not restricted to a geographical location.

(5) Beginning August 13, 2023, the noncompetitive appointment of a relocating spouse of a member of the armed forces as defined in paragraph (b)(4)(i) of this section is limited to the geographic area of the permanent duty station of the member of the armed

forces, unless there is no agency with a position within the geographic area of the permanent duty station of the member of the armed forces.

(d) *Conditions.* (1) In accordance with the provisions of this section, a spouse is eligible for noncompetitive appointment:

(i) From the date of documentation verifying the spouse's marriage to a member of the armed forces as defined in paragraph (b)(4)(i) of this section, where the spouse seeks appointment based upon marriage to an active duty member of the armed forces;

(ii) From the date of documentation verifying that the member of the armed forces is 100 percent disabled, where the spouse seeks appointment based upon marriage to a member defined in paragraph (b)(4)(ii) of this section; or

(iii) From the date of documentation verifying that the member of the armed forces was killed while on active duty where the spouse seeks appointment as the widow or widower of a member defined in paragraph (b)(4)(iii) of this section.

(2) The spouse of a member of the armed forces as defined in paragraph (b)(4)(i) of this section may receive unlimited noncompetitive appointments under this section to permanent positions through August 12, 2023. Beginning August 13, 2023, the spouse of such a member may receive a noncompetitive appointment under this section if the member receives permanent change of station orders and is limited to one such appointment per permanent change of station.

(3) A spouse of a member of the armed forces as defined in paragraph (b)(4)(ii) or (iii) of this section may receive only one noncompetitive appointment under this section to a permanent position.

(4) Any law, Executive order, or regulation that disqualifies an applicant for appointment also disqualifies a spouse for appointment under this section.

(e) *Proof of eligibility.* (1)(i) Prior to appointment, the spouse of a member of the armed forces as defined in paragraph (b)(4)(i) of this section must submit to the employing agency copies of:

(A) Documentation verifying active duty status; and

(B) Documentation verifying marriage to the member of the armed forces (i.e., a marriage certificate or other legal documentation verifying marriage).

(ii) For appointments made on or after August 13, 2023, the spouse must also submit to the employing agency a copy of the service member's orders reflecting a permanent change of station, dated August 13, 2023, or later. (For appointments made on or before August 12, 2023, the requirement of this paragraph (e)(1)(ii) does not apply.)

(2) Prior to appointment, the spouse of a member of the armed forces as defined in paragraph (b)(4)(ii) of this section must submit to the employing agency copies of:

(i) Documentation showing the member of the armed forces retired, or was released or discharged from active duty, with a disability rating of 100 percent; and

(ii) Documentation verifying marriage to the member of the armed forces (i.e., a marriage license or other legal documentation verifying marriage).

(3) Prior to appointment, the spouse of a member of the armed forces as defined in paragraph (b)(4)(iii) of this section must submit to the employing agency copies of:

(i) Documentation showing the member was released or discharged from active duty due to his or her death while on active duty;

(ii) Documentation verifying the member of the armed forces was killed while serving on active duty;

(iii) Documentation verifying the widow or widower's marriage to the member of the armed forces (i.e., a marriage license or other legal documentation verifying marriage); and

(iv) A statement certifying that the individual seeking to use the authority is the un-remarried widow or widower of the service member.

(h) *Agency reporting requirements.* (1) As required by Executive Order 13832, each agency shall report annually (by December 31st of each year) to OPM and the Department of Labor on:

(i) The number of positions made available under the military spouse hiring authority;

(ii) The number of applications submitted under the military spouse hiring authority;

(iii) The number of military spouses appointed under the military spouse hiring authority during the preceding fiscal year; and

(iv) Actions taken to advertise the military spouse hiring authority, and any other actions taken to promote the hiring of military spouses.

(2) As required by section 573(d) of Public Law 115-232, each agency shall report annually until August 13, 2023, and separate from the report required in paragraph (h)(1) of this section on the following:

(i) The number of relocating and non-relocating spouses of current military members appointed under this authority;

(ii) The types of positions filled (by title, series, and grade level); and

(iii) The effectiveness of this hiring authority.

(3) Agencies should send their reports electronically to OPM's Employee Services, VETS Office at militaryspouse@opm.gov.

(4) Agencies are also required to send their reports separately and directly to Department of Labor (DOL) at milspouse@dol.gov.

