



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

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MEMORANDUM FOR CHIEF HUMAN CAPITAL OFFICERS

From: Kiran A. Ahuja
Director

Subject: Noncompetitive Appointment of Certain Military Spouses -
Questions and Answers

In 1999 Congress designated the month of May as Military Spouse Appreciation Month. Military Spouses are valuable members of our federal community, both military and civilian. The U.S. Office of Personnel Management (OPM) recognizes their sacrifice and their contributions. In honor of Military Spouse Appreciation Month, OPM reminds you that, on September 21, 2021, we published final regulations in the **Federal Register** at 86 FR 52395, to make it easier for agencies to hire Military Spouses. [Learn about the noncompetitive appointment of certain military spouses](#). These regulations changed the eligibility criteria for certain military spouses and added reporting requirements, which implemented statutory changes meant to bolster the noncompetitive appointment of certain military spouses hiring authority.

The Fiscal Years (FY) 2023, 2019 and 2013 National Defense Authorization Acts (NDAA) amended several provisions of 5 U.S.C. 3330d(c) – Special rules regarding relocating spouses. The FY 2023 NDAA amended the previous sunset date to certain governing provisions of the non-competitive hiring authority for Military Spouses. Specifically, any spouse currently married to an active-duty military member is eligible for appointment under this hiring authority until December 31, 2028, the sunset of the FY 23 NDAA provisions. The FY 23 NDAA also removed the reporting requirements specified in previous NDAA's. Please note: these reporting requirements were never codified in title 5 USC 3330d; they appeared in Public Law 115-332. Agencies must still follow the reporting requirements contained in Executive Order (EO) 13832, titled "*Enhancing the noncompetitive Civil Service Appointments of Military Spouses*." Additionally, the EO instructs agencies "to the greatest extent possible" to hire military spouses for positions in the competitive service.

OPM has updated our question and answers policy guidance based on the statutory provisions of FY 2023, 2019 and 2013 NDAA; and Executive Order 13832 of May 8, 2018- *Enhancing Noncompetitive Civil Service Appointments of Military Spouses*. We are updating the regulations which govern these changes but note the EO and FY 2023 NDAA changes are currently in effect.

If you have any questions or need additional information, please contact Michelle T. Glynn, at (202) 606-1571 or michelle.glynn@opm.gov.

Attachment: Noncompetitive Appointment of Certain Military Spouses Questions and Answers

cc: Human Resources Directors

Noncompetitive Appointment of Certain Military Spouses

5 CFR 315.612, Subpart F

Questions and Answers

Executive Order 13473, dated September 28, 2008, authorized the noncompetitive appointment of certain military spouses to competitive service positions. The U.S. Office of Personnel Management (OPM) codified implementing regulations at 5 CFR 315.612, effective September 11, 2009. Over the past decade, several statutory changes have significantly impacted the noncompetitive hiring authority of certain military spouses.

On September 21, 2021, OPM published final regulations in the **Federal Register** at 86 FR 52395 to change the provisions governing the noncompetitive appointment of certain military spouses. This rule became effective October 21, 2021.

Significant Changes

On December 23, 2022, the President signed the Fiscal Year (FY) 2023 National Defense Authorization Act (NDAA). Section 1111 extended the sunset date of section 573 of P.L. 115-232, through December 31, 2028. The FY 2023 NDAA also removed the provisions pertaining to OPM limitations and agency reporting requirements. These provisions were not codified in 5 U.S.C. 33030d; they appeared in Public Law 115-332. OPM reminds agencies they must still follow the reporting requirements contained in Executive Order (EO) 13832, “*Enhancing the Noncompetitive Civil Service Appointments of Military Spouses*” signed by the President on May 9, 2018.

On May 9, 2018, the President signed EO 13832. The purpose of the EO is to provide greater opportunities for military spouses to be considered “to the greatest extent possible for federal jobs in the competitive service through the use of the government-wide noncompetitive hiring authority for military spouses.”

On August 12, 2018, the President signed the Fiscal Year (FY) 2019 National Defense Authorization Act (NDAA). Section 573 amended several provisions of 5 U.S.C. 3330d governing the military spouse hiring authority, to also include the eligibility criteria for relocating spouses which has been replaced with any spouse married to a member of the armed forces on active duty until August 12, 2023.

Previous Changes

On December 23, 2016, the President signed FY 2017 NDAA. Section 1131 amended section 3330d(c) of title 5 United States Code, by placing no time limitation on eligibility for relocating spouses of a member of the armed forces. Under this section, a relocating spouse of a member of the armed forces will remain eligible for noncompetitive appointment for the duration of the spouse’s relocation to the permanent duty station of

the military member. This eliminated the previous 2-year eligibility limitation for relocating spouses who are otherwise still eligible.

On January 2, 2013, the President signed the FY 2013 NDAA. Section 566(a) of this Act codified in statute at 5 U.S.C. 3330d, the hiring authority previously created by E.O. 13473. This section, in doing so, limits to one, the number of permanent appointments the spouses of 100 percent disabled, or deceased, member of the armed forces may receive under this hiring authority.

Questions and Answers

The following questions and answers are intended to provide clarification on the use of this updated hiring authority and provide guidance on significant statutory changes. The questions and answers listed here are not meant to be a substitute for reading the regulations. [Learn about the noncompetitive appointment of certain military spouses.](#)

General Provisions

1. What is the purpose of these provisions?

Answer: The purpose of these provisions is to minimize disruptions in military families due to military active duty service, disability, and deaths resulting from active duty service. To achieve this, these provisions authorize the noncompetitive appointment of certain military spouses to positions in the competitive service.

2. Where can these regulations be found?

Answer: These regulations can be found in 5 CFR 315.612.

3. Do these rules apply to ALL military spouses?

Answer: No. In accordance with both the FY 2019 and 2023 NDAA, these rules apply to the following categories of military spouses:

- Spouses of current active duty service members,
- Spouses of service members who incurred a 100 percent disability (whether the service member is currently employed or not) because of the service member's active duty service, and
- Un-remarried widows or widowers of service members killed while on active duty.

4. Do military spouses have a hiring preference under these provisions?

Answer: No. Military spouses eligible under this authority do not have a hiring preference by virtue of their eligibility under these provisions. This appointing authority merely provides an opportunity for noncompetitive entry into the competitive service when an agency seeks to hire under these provisions. It does not constitute, establish, or convey a hiring preference.

5. Do eligible spouses have selection priority under these provisions?

Answer: No. Eligible spouses do not have a selection priority over other qualified applicants under these provisions. This appointing authority allows for eligible individuals to be considered and selected for Federal jobs; however, it does not convey selection priority to eligible spouses.

This authority is a noncompetitive hiring tool agencies may use to select qualified, eligible individuals. Agencies are not required to use this hiring authority, nor does it take precedence over the use of other appointment mechanisms. EO 13832 does, however, require agencies to consider using this hiring authority to the greatest extent possible when recruiting for positions in the competitive service.

6. If a military spouse, who is a preference eligible, is competing against an eligible spouse who is not a preference eligible, must agencies apply veterans' preference and pass-over procedures when making a selection under this authority?

Answer: No. Because this authority is a noncompetitive hiring mechanism, the agency can select any qualified eligible spouse. Veterans' preference is not a consideration when filling positions under this authority.

7. Is public notice required before an agency may fill a job through this noncompetitive hiring authority?

Answer: Yes. Agencies must adhere to the provisions of 5 U.S.C. 3330, before filling positions under this authority. Section 3330 of title 5, U.S. Code, requires public notice for any job that will last more than 1 year that is filled from outside an agency's workforce. In addition, agencies must adhere to the requirements of their career transition assistance plans (CTAP) and their interagency career transition assistance plans (ICTAP) before filling positions through this hiring authority.

8. Do agencies have to clear their career transition assistance plans (CTAP) and interagency career transition assistance plans (ICTAP) lists before making a selection under these provisions?

Answer: Yes, agencies must clear CTAP, ICTAP, and any applicable reemployment priority lists (RPL) before making any type of selection under these provisions.

9. May eligible spouses be hired into temporary or term positions under this authority?

Answer: Yes, eligible spouses who meet OPM qualifications standards may also be hired into temporary or term positions at 5 CFR 316, Subparts C and D, respectively, at the discretion of the hiring agency under this authority.

10. Must an individual relocate with his or her service-member spouse in order to be eligible for non-competitive appointment?

Answer: The requirement for a spouse to relocate under PCS orders with the military member has been further removed from statute until December 31, 2028.

11. Are eligible spouses required to meet Government-wide qualification standards in order to be appointed under this authority?

Answer: Yes. Eligible spouses must be qualified for the position for which they are seeking consideration under this authority.

12. What qualification standards should an agency use when determining an individual's fitness for appointment under this authority?

Answer: Agencies use the Government-wide qualification standard applicable to the position being filled; or any OPM-approved agency-specific qualification standard. [Learn about Government-wide qualification standards.](#)

Definitions

13. The definition of “service member” at 5 CFR 315.612(b)(4)(iii) refers to an individual who was “killed while serving on active duty in the armed forces.” What is the meaning of this phrase?

Answer: For these purposes, a service member is “killed” anytime a service member dies, or is otherwise deprived of his or her life, for whatever reason while serving on active duty in the armed forces. For example, an individual who dies as the result of an enemy attack, accident, disease, or natural causes has been “killed while serving on active duty in the armed forces” for purposes of these provisions.

Eligibility

14. How long are spouses of active duty military members, 100 percent disabled, and deceased service members eligible for appointment under this hiring authority?

Answer: There is no limitation for appointment based on “eligibility” for these spouses provided they meet the appropriate definition of a military spouse. On January 1, 2029, the statute regarding the eligibility for spouses of active duty military members will revert back to “relocating spouses” who are authorized under Permanent Change of Station (PCS) orders with the military member.

15. Are spouses of service members who are on retirement, or release or discharge from active duty orders eligible *solely on the basis of those orders*?

Answer: No. Orders for release or discharge from active duty service such as release for hardship, or expiration of term of service (ETS) orders cannot be used to establish eligibility under these provisions. The spouse of a service member who is 100 percent disabled, and on separation or ETS orders, may be eligible on the basis of the service member’s service-connected disability.

Conditions

16. Is there a limit on the number of permanent appointments eligible spouses may receive?

Answer: Spouses of active duty military members are not limited to the number of permanent appointments they may receive. Spouses of 100% disabled and deceased service members are limited to one permanent appointment. However, there is no limitation of the number of temporary or term appointments any eligible military spouse may receive under this hiring authority.

Proof of Eligibility

17. How does an agency confirm that an individual is the spouse of an active duty service member for purposes of appointment under these provisions?

Answer: To confirm eligibility the hiring agency must verify the individual has a valid marriage certificate or other documentation verifying marriage (such as any official documentation verifying a recognized common law marriage) and a copy of the orders verifying the military member is currently on active duty.

18. What documentation is needed to confirm eligibility for spouses of disabled veterans separated or retired from their applicable branch of service with a 100 percent disability rating?

Answer: Individuals must submit a copy of their spouses’ Department of Defense (DD) Form 214 and a copy of documentation from either the Department of Veterans Affairs or the Department of Defense indicating the service member has a disability rating of 100

percent due to a service-connected disability. Spouses must also submit documentation verifying marriage to the service member.

Recruitment

19. What changes does EO 13832 make to how agencies recruit for military spouses?

Answer: EO 13832 encourages agencies to indicate in their JOAs, to greatest extent possible, that the hiring agency will consider individuals eligible under the military spouse hiring authority when filling jobs in the competitive service under delegated examining or merit promotion (i.e., internal placement) procedures.

This means agencies must specify in their JOAs on [USAJOBS](#) that the competitive service positions open to the general public (i.e., U.S. citizens), current or former federal employees, veterans, and/or applicants eligible under other non-competitive hiring authorities are also open to eligible military spouses.

20. Does EO 13832 apply to positions being filled under direct hire authority (DHA)?

Answer: No. The exhortation in EO 13832 applies to jobs being filled under competitive examining or merit promotion (i.e., internal placement) procedures. DHA is not filled through nor subject to either of these processes.

Reporting Requirements

21. Are there any reporting requirements associated with the use of this hiring authority?

Answer: Yes. EO 13832, requires agencies to report on their usage of this military spouse hiring authority. However, section 1111 of FY 2023 NDAA removed the statutory reporting requirements of FY 2019 NDAA, which are separate from the reporting requirements of the EO. Per EO 13832, agencies must report annually (i.e., by December 31st of each year) and separately, to both OPM and the Department of Labor on the following:

- The number of positions made available under the military spouse hiring authority during the preceding FY;
- The number of applications submitted under the military spouse hiring authority during the preceding FY;

- The number of military spouses appointed under the military spouse hiring authority during the preceding FY; and
- Actions taken by the agency during that period to advertise and promote the hiring of military spouses.

Agencies should submit their reports to DOL – milspouse@dol.gov and OPM – militaryspouse@opm.gov.

Miscellaneous

22. What is the eligibility period for spouses of service members who began active duty prior to the date of Executive Order 13473 or the effective date of the implementing regulations and recent statute changes?

Answer: Eligibility for spouses begins on the date of the documentation verifying marriage to the active duty service member, the date of the documentation verifying a service member is 100 percent disabled, or the date of the documentation verifying a service member was killed while on active duty – *regardless of when the service member entered on active duty.*

23. Are there any limitations on the types of positions for which eligible spouses may apply?

Answer: There are no limitations on the types of positions for which eligible spouses may apply under this authority. Eligible spouses may apply via this authority for any temporary, term, or permanent position in the competitive service for which they are qualified and an agency has posted a current job announcement. Use of this authority is discretionary but encouraged to the best extent possible as describe in EO 13832.

24. Are there any limitations on the grade levels to which an eligible spouse may be appointed?

Answer: No. There are no grade level limitations on positions to which eligible spouses may be appointed under these provisions. Eligible spouses may apply to any competitive service position (temporary, term, or permanent), *at any grade level*, for which they qualify and are otherwise eligible. Use of this authority is completely discretionary on the part of the agency but encouraged to the best extent possible as described in EO 13832.

25. How does an agency advertise positions which may be filled through this appointing authority?

Answer: Because positions filled under this authority are in the competitive service, agencies have two options for advertising positions filled through this authority: post an “open to the public” job announcement, and/or post a merit promotion announcement.

26. If a military spouse applies under an “open to the public” announcement, how should the agency consider the applicant?

Answer: Agencies are responsible for developing procedures for accepting applications and communicating those procedures to applicants through the job announcement. If the job announcement is “open to the public” then the agency must clearly provide instructions to applicants on how the application will be received.

This means that agencies have the discretion, for example, to consider military spouse applicants on a separate list specific to only the military spouse hiring authority. The agency also has the option to consider military spouse applicants along with other applicants from outside the government who are on a competitive list.

If the applicant applies only under the military spouse hiring authority, the hiring agency must consider the applicant under this authority (assuming they are otherwise eligible).

If the applicant applies for consideration under both the competitive process and as a military spouse, the agency must consider the applicant on both the competitive list as well as the military spouse list.

27. If an agency posts two separate announcements (merit promotion and “open to the public”), and the military spouse applicant applies to both announcements, can the agency process the application under only one announcement?

Answer: No. In this instance, military spouses are given two opportunities to be considered for one position and must be referred and considered on both lists, provided they are otherwise eligible. If the military spouse applies to both announcements the agency cannot remove the military spouse eligible from either lists to make a selection. This means the agency may not deny consideration under one referral, e.g., delegated examining unit, because the military spouse eligible is being considered under a different referral, e.g., merit promotion.

28. If an agency advertises a position that solicits applications from the general public under delegated examining procedures, how do agencies certify and provide a list of eligibles for the military spouse hiring authority?

Answer: Military spouses may be referred on a merit referral certificate/list and be selected from among candidates with special non-competitive eligibility for employment (e.g., along with individuals with disabilities under Schedule A). The agency may select candidates from a delegated examining certificate or from among candidates with special noncompetitive eligibility for employment.

29. How are eligible military spouses referred for selection?

Answer: Agencies may use both a delegated examining (DE) referral certificate and/or a merit promotion referral list to appoint an individual under the military spouse hiring authority. In accordance with the hiring agency's plan for delegated examining procedures, an agency may list individuals eligible for noncompetitive appointment separate and apart from individuals on the DE certificate. Under merit promotion procedures, individuals are placed on a merit referral list with other military spouses who are being referred for selection.

30. How do agencies document appointments made under this authority?

Answer: Documentation of appointments made using this authority are found in the Guide to Processing Personnel Actions; chapter 9 (permanent appointments) and chapter 10 (temporary and term appointments). [Learn about The Guide to Processing Personnel Actions](#)

31. If the spouse of an eligible service member is a non-U.S. citizen, is the spouse still eligible for noncompetitive appointment?

Answer: No. This authority provides for noncompetitive entry into the competitive service. Executive Order 11935, however, generally bars the employment of non-citizens in competitive service positions.

32. Does eligibility under another appointing authority (e.g., the Veteran's Recruitment Appointment authority) preclude an individual from eligibility under this authority?

Answer: No. Eligible spouses may apply and ask for consideration under this and any other appointing authority for which they are eligible.

33. How can an agency recruit eligible spouses, in order to consider them for positions using this authority?

Answer: Agencies have a variety of ways through which to recruit eligible spouses. These include, but are not limited to the following:

- Establish partnerships/liasons with Family Support Offices (FSOs) at local military installations. These FSOs can provide information about this authority to recently relocated service members and/or their spouses.
- Partner with Department of Defense Transition Assistance Program (TAP) personnel. TAP representatives may also be able to provide information about this authority to recently relocated service members.
- Post information about this hiring authority and job opportunities on agency websites.

34. How does an eligible spouse find out about job openings?

Answer: An electronic listing of Federal job opportunities may be obtained on [USAJOBS](#). Many Federal agencies also display electronic employment information and job listings on their websites.

35. Are spouses hired under this authority subject to any grade-level limitations on the positions into which they are hired?

Answer: No. Eligible spouses are not subject to any grade-level limitations in conjunction with appointment under this authority. Individuals must meet the qualification requirements for the position in question, as well as the requirements of other applicable laws, regulations, or provisions.

36. Are agencies provided specific slots or full-time equivalent allocations (FTEs) for filling positions through this authority?

Answer: No. Agencies are encouraged, to the best extent possible, to use this authority to fill any competitive service vacancy they may have. The implementing executive order did not allocate specific or additional FTEs in conjunction with this appointing authority.

37. Do spouses appointed to term or permanent positions under this authority serve a trial or probationary period?

Answer: Yes. Spouses appointed to term or permanent positions are subject to either a trial or probationary period, as appropriate, per 5 CFR 315.801(e) and 5 CFR 316.304. Individuals appointed to temporary positions do not serve a probationary period.

38. Is the service member's type of discharge from the armed forces a consideration in determining whether the service member's spouse is eligible for appointment under these provisions?

Answer: No. The type or character of discharge under which the service member was released or discharged from active duty is not a consideration in determining eligibility for the service member's spouse.

39. Does this authority apply to spouses of Public Health Service members?

Answer: No. Public Health Service members are members of the uniformed services, but title 10 of the U.S. Code excludes them as members of the active duty armed forces.

40. Is there an expiration date on any of the provisions governing the military spouse hiring authority?

Answer: Yes. The FY 2023 NDAA sunsets the statutory changes regarding “relocating spouses” on December 31,2028. After which time, the provisions at 5 U.S.C. 3330(d) in effect prior to the date of enactment (i.e., August 12, 2018) will apply unless the provisions are further extended or made permanent by Congress.

41. Which personnel action codes should agencies use on the Standard Form (SF) 50 when processing actions under this authority?

Answer: Permanent appointments:

- If the spouse is not on the agency’s rolls:

The Nature of Action code (NOAC) is 101;
The authority code is LAM;
And the authority is 315.612

- If the spouse is already on the agency’s rolls:

The Nature of Action code (NOAC) is 501;
The authority code is LAM;
And the authority is 315.612

Term appointments:

- If the spouse is not on the agency’s rolls:

The Nature of Action code (NOAC) is 108;
The authority code is LDM;
And the authority is 316.302(b)(3)MS

- If the spouse is already on the agency’s rolls:

The Nature of Action code (NOAC) is 508;
The authority code is LDM;
And the authority is 316.302(b)(3)MS

Temporary appointments:

- If the spouse is not on the agency’s rolls:

The Nature of Action code (NOAC) is 115;
The authority code is LCM;
And the authority is 316.402(b)(3)MS

- If the spouse is already on the agency’s rolls:

The Nature of Action code (NOAC) is 515;
The authority code is LCM;
And the authority is 316.402(b)(3)MS