



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Friday, March 1, 2019

MEMORANDUM FOR: CHIEF HUMAN CAPITAL OFFICERS

FROM: MARGARET M. WEICHERT
ACTING DIRECTOR

Subject: Recent Changes to the Noncompetitive Hiring Authority of Military Spouses

Two recent provisions have significantly impacted the non-competitive hiring authority of military spouses. These are: Executive Order (EO) 13832 titled, "Enhancing Noncompetitive Civil Service Appointments of Military Spouses" signed by the President on May 9, 2018; and Public Law 115-232, The National Defense Authorization Act for Fiscal Year 2019 (NDAA FY19), section 573, signed by the President on August 13, 2018.

In each case, these provisions became effective on the date the President signed them. I advise agencies to read them carefully and consult with their human resources office and legal counsel regarding these changes to the extent necessary when making appointments. As explained below, the NDAA FY19 contains changes, applicable for the next five years, that affect certain provisions of the EO (i.e., broadening the definition of a military spouse that the President used in his EO). Noncompetitive appointments of military spouses must still be made consistent with the provisions in 5 CFR 315.612, except to the extent those regulations have been modified in subsequent enactments, including the NDAA FY19. In addition, agencies should comply with additional policy directives from the President, established in the EO, to the extent possible and consistent with the most recent amendments to the statute. The U.S. Office of Personnel Management (OPM) is updating our implementing regulations in 5 CFR 315.612*, as well as our supplemental guidance, in accordance with statutory changes since the original enactment.

NDAA FY19

The NDAA FY19 amended several provisions of 5 U.S.C. 3330d, governing the military spouse hiring authority, including the eligibility criteria. Previously, the eligibility criteria covered three groups of military spouses: individuals married to a member of the armed forces who received permanent change of station (PCS) orders; spouses of deceased members of the armed forces; and spouses of 100 percent disabled members of the armed forces.

NDAA FY19 changed the contours of the first group. Section 573(a) eliminated the eligibility criterion that was based on a spouse relocating with a military member on PCS orders and

* The revisions to OPM's implementing regulations will also address two provisions of section 315.612 that would have needed to be amended even before the temporary changes enacted pursuant to NDAA FY19.

replaced it with one that includes all spouses of members of the armed forces on active duty. Because of this change, the definitions for ‘relocating spouse of a member of the Armed Forces’, ‘permanent change of station’, and ‘geographic area of the permanent duty station’ have been removed for the next five years. Section 573(a) also temporarily eliminates 5 U.S.C. 3330d(c) – Special rules regarding relocating spouses. In accordance with revised 5 U.S.C. 3330d(b), the head of an agency may now appoint noncompetitively: the spouse of a member of the armed forces on active duty, the spouse of a 100 percent disabled member of the armed forces, or the spouse of a deceased member of the armed forces.

Section 573(d) requires agencies to report to OPM on an annual basis (i.e., by December 31 of each year) on the number of appointments made for spouses of members of the armed forces on active duty.

Section 573(e) sunsets these statutory changes on August 12, 2023, after which time the provisions at 5 USC 3330(d) in effect prior to the date of enactment (i.e., August 12, 2018) will apply again.

Executive Order 13832

The purpose of the EO, which pre-dated the most recent statutory changes, was to exhort agencies to provide greater opportunities for military spouses to be considered for Federal jobs in the competitive service through the use of the Governmentwide noncompetitive hiring authority for military spouses.

Promoting the non-competitive hiring authority for certain military spouses

Section 3(a) of the EO directed agencies, to the greatest extent possible consistent with hiring needs, to indicate in their Job Opportunity Announcements (JOA) for positions in the competitive service that they will consider candidates under the noncompetitive military spouse authority (in addition to any other hiring authority the JOA indicates the agency will consider).

Section 3(b) of the EO directed agencies to actively advertise and promote the military spouse hiring authority and solicit applications from military spouses for positions advertised via USAJOBS and any other means the agency wishes to use.

Section 3(d) of the EO directed OPM to periodically issue notifications about the military spouse hiring authority to the Chief Human Capital Officers, for dissemination to the eligible military spouse populations. This section also directed OPM to post information about a change effectuated by Congress in an earlier enactment, the National Defense Authorization Act for Fiscal Year 2017, Pub. L. 114-328 (NDAA FY17). NDAA FY17, section 1131 removed a previously existing two-year limitation on eligibility for spouses who relocated under PCS orders with their service-member spouse. Subsequently, Congress enacted NDAA FY19, which has eliminated the definition of a relocating spouse, and Special Rules Regarding Relocating Spouses until a sunset date in 2023. Accordingly, OPM advises not only that the two-year limitation no longer applies but also that, until the sunset for NDAA FY19, there is no requirement that a spouse have relocated with the related member of the military to be eligible for appointment under this authority.

Section 3(e) of the EO requires OPM to educate agencies about the military spouse hiring authority and brief agency human resources specialists and hiring managers on how to use the authority effectively. This shall include guidance on the Telework Enhancement Act of 2010 (P.L. 111-292) and how it can be used to recruit and support military spouses hired through the non-competitive authority.

Reporting Requirements

Section 3(f) of the EO requires agencies, beginning in FY19, to report annually (i.e., by December 31 of each year) to both OPM and the U.S. Department of Labor on:

- 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.

Section 4(a) of the EO requires OPM to provide an annual report to the President on the implementation of this EO to include recommendations for improving the hiring of military spouses, and the military spouse hiring authority itself.

Section 4(b) of the EO requires the annual report described in Sec. 4(a) to be developed in consultation with the Secretary of Defense and the Secretary of the Department of Homeland Security, for actions that could be taken to improve license portability and remove barriers to employment facing military spouses.

Please submit your reports to:

DOL – Mr. Nathan Mehrens, Deputy Assistant Secretary for Policy, at Mehrens.Nathan.P@DOL.gov, and

OPM – Ms. Berlyn Cooper-Howard, Senior Program Manager, National Programs & Veterans Liaisons, at fedshirevets@opm.gov.

Actions

OPM plans to undertake the following activities to help implement the EO and NDAA FY19 changes

- Draft new implementing regulations**
- Develop a Fact Sheet, and update our Frequently Asked Questions
- Combine the reporting requirements imposed on agencies by EO 13832, with the reporting requirements imposed on agencies by the NDAA FY 19 provisions.
- Develop a set of ‘Myth-busters’ to help human resources practitioners and hiring managers better understand the hiring authority
- Host a Military Spouse Talent Summit and assist agencies with hosting military spouse hiring fairs
- Develop tools to educate military spouses on how to find and apply for positions through www.USAJOBS.gov
- Develop training materials that agencies can incorporate within their human resources staff or manager training

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

cc: Deputy Chief Human Capital Officers, and Human Resources Directors

** As noted above, in addition to the changes required by NDAA FY19, OPM will make two changes to better align the regulations with earlier enacted statutes. Those changes are as follows:
 Paragraph (c)(3) of the current iteration of section 315.612 purports to require an agency head to issue a waiver before a military spouse unable to locate a position in his or her geographic area because no Federal agency exists in that area may be appointed. That requirement went beyond the underlying statute, enacted pursuant to Pub. L. 112-239, section 566(a) (Jan. 2, 2013) and codified in the “permanent” version of 5 U.S.C. 3330d(c)(1). Section 3330d(c)(1), as originally enacted, appears to permit appointment in another area automatically when no Federal agency exists in the spouse’s own geographic area. Accordingly, OPM will revise its regulations not only to eliminate the geographic area requirement for the next five years, as required by NDAA FY19, but also to change the version of the regulation that will become effective again in 2023 to eliminate the requirement for a waiver.
 Paragraph (d)(1)(i) of the current iteration of OPM’s regulation purports to limit the period during which a relocating spouse may be appointed pursuant to the authority to “a maximum of 2 years from the date of the service member’s permanent change of station orders.” This provision is out of synch with Pub. L. 114-328, section 1131 (Dec. 23, 2016), codified at 5 U.S.C. 330d(c)(3) of the “permanent” version of the statute, which removed the two-year limitation and permitted appointment throughout the duration of the relocation. Accordingly, OPM will also revise this provision in the version of the regulations that will become effective again in 2023.

Attachments: EO 13832, [NDAA FY19 sec. 573](#) and NDAA FY17 sec.1131

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