



OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 315

[Docket ID: OPM-2023-0026]

RIN 3206-AO57

Noncompetitive Appointment of Certain Military Spouses

AGENCY: Office of Personnel Management.

ACTION: Interim final rule; request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the changes authorized by the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 on the noncompetitive appointment authority for certain military spouses. These changes extend certain temporary provisions and remove the reporting requirements that were imposed by the NDAA for FY 2019. These changes will continue to enhance the recruitment and hiring of military spouses for permanent Federal positions in the competitive service.

DATES: The interim regulations are effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number and/or Regulation Identifier Number (RIN) and by title, by the following method:

- Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Michelle Glynn, telephone: 202-606-1571, fax: 202-606-4430, TDD: 202-418-3134, or email: michelle.glynn@opm.gov.

SUPPLEMENTARY INFORMATION: On December 23, 2022, the President signed the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117-263) (“FY 2023 NDAA”). Section 573(d) of Public Law 115-232 (“FY 2019 NDAA”) provided for a temporary amendment to 5 U.S.C. 3330d to expand the eligibility for noncompetitive appointment of spouses currently married to a member of the armed forces on active duty. Under the FY 2019 NDAA, this authority would have sunset on August 13, 2023, which is reflected in OPM’s current regulations. **Section 1111 of the FY 2023 NDAA extended the temporary amendment until December 31, 2028.**

Section 573(d) of the FY 2019 NDAA required agencies to report annually to OPM on the number of relocating and non-relocating spouses of current military members appointed; the types of positions filled (by title, series, and grade level); and the effectiveness of this hiring authority. Section 573(d) also required a report to Congress 18 months after enactment that had become obsolete. The FY 2023 NDAA removed these temporary agency reporting requirements established under the FY 2019 NDAA. Although the reporting requirements have been removed from statute, section 3(f) of Executive Order 13832, of May 9, 2018, *Enhancing Noncompetitive Civil Service Appointments of Military Spouses*, imposed similar agency reporting requirements that are still in effect.

The changes in the FY 2023 NDAA became effective upon the President’s signature. OPM is amending its regulations through this interim final rule to reflect the provisions of the FY 2023 NDAA.

Waiver of Notice of Proposed Rule Making

OPM is issuing this rulemaking as an interim final rule because it has determined that, under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), it would be impracticable and contrary to the public interest to delay a final regulation until a public notice and comment

process has been completed. OPM is also waiving general notice of proposed rulemaking under the Civil Service Reform Act's parallel rulemaking provisions at 5 U.S.C. 1103(b)(3) because the interim rule is necessary to be implemented expeditiously as a result of a statutory change to enhance the recruitment and employment of military spouses in the Federal government.

Accordingly, to ensure the regulations accurately reflect the current state of the law, OPM finds that good cause exists to waive the general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b)(3)(B). Expeditious issuance of this interim final regulation is required to prevent confusion in light of the (now invalid) August 13, 2023 sunset date reflected in the regulations for the expanded eligibility for noncompetitive appointment of spouses married to members of the armed forces on active duty. OPM will promulgate a final rule as soon as practical after receiving public comments on the interim final rule.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), OPM finds that good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days. The delay in effective date is being waived because the provisions of the law extending the noncompetitive appointment authority became effective upon enactment, December 23, 2022, and a delay could result in certain military spouses improperly losing consideration for appointment.

Expected Impact of This Interim Final Rule

A. Statement of Need

OPM is issuing this interim rule to implement statutory changes codified at 5 U.S.C. 3330d, which extends the eligibility date for noncompetitive appointment of military spouses married to a member of the armed forces on active duty; and removes the temporary agency reporting requirements established under section 573(d) of Public Law 115-232. These changes are required under the provisions of the FY 2023 NDAA.

B. Impact

OPM's interim final rule allows spouses married to members of the armed forces on active duty to remain eligible for noncompetitive appointment under this hiring authority until December 31, 2028. On May 25, 2023, OPM issued CHCO Memo with updated guidance for this hiring authority, to include announcing the sunset date, the December 31, 2028 eligibility date, for spouses married to active duty members of the armed forces.¹

Under the FY 2019 NDAA provisions, these spouses were eligible until August 12, 2023. We anticipate that these statutory changes will improve and enhance the effectiveness of the noncompetitive appointment of these spouses consistent with E.O. 13832, which instructs agencies to consider military spouses to the greatest extent possible when filling positions in the competitive service.

C. Regulatory Alternatives

There are no regulatory alternatives to this interim final rule because OPM is required to implement the statute.

D. Costs

The costs associated with the interim final rule are minimal and include: the costs associated with the resources needed to process a potentially higher volume of job applicants for Federal jobs, and the usual learning curve of implementing a regulatory change. To help minimize the latter costs, OPM intends to provide technical assistance upon request to any agency that may require such assistance. Because agency resources and the potential volume of increased job applicants vary, OPM cannot monetize the costs of these rules.

E. Benefits

The interim final rule will benefit military spouses married to military members on active duty and hiring agencies as well. This rule will make clear that these spouses are eligible for noncompetitive appointment under this hiring authority until December 31, 2028, the sunset date

¹ <https://www.chcoc.gov/content/noncompetitive-appointment-certain-military-spouses-questions-and-answers>.

of the FY 2023 NDAA provisions. Additionally, this rule benefits agencies by relieving them of the duplicative reporting requirements established under the FY 2019 NDAA provisions.

Regulatory Review

Executive Orders 13563, 12866, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). In accordance with the provisions of Executive Order 12866, this interim final rule was reviewed by the Office of Management and Budget as a significant regulatory action, but not significant under Section (3)(f)(1) of Executive Order 14094.

Regulatory Flexibility Act

The Director of OPM 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. 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, OPM has determined that this interim final rule does not have federalism implications that require preparation of a federalism summary impact statement.

E.O. 12988, Civil Justice Reform

OPM has determined this interim final rule meets the relevant standards of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This interim final rule will not result in the expenditure by State, local or tribal governments or the private sector 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 regulatory action will not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 315

Government employees.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

Accordingly, OPM amends 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), Sec. 1111, Pub. L. 117-263, 136 Stat. 2395 (5 U.S.C. 3330d).

Subpart F—Career or Career Conditional Appointment Under Special Authorities

2. Amend § 315.612 by:

a. Revising paragraphs (c), (d), and (e) by replacing each occurrence of “August 12, 2023” with “December 31, 2028”.

b. Revising paragraphs (c), (d), and (e) by replacing each occurrence of “August 13, 2023” with “January 1, 2029”.

c. Revising paragraph (h) to read as follows.

§ 315.612 Noncompetitive appointment of certain military spouses.

* * * * *

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

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

[FR Doc. 2023-21254 Filed: 9/27/2023 8:45 am; Publication Date: 9/28/2023]