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**DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT**

HUMAN RESOURCES (HR) BULLETIN #118, FY10

SUBJECT: Non-competitive Appointment of Certain Military Spouses

EFFECTIVE DATE: Upon release of this HR Bulletin

EXPIRATION DATE: Effective until canceled or superseded

BACKGROUND: The Office of Personnel Management (OPM) has finalized regulations that allow the non-competitive appointment of certain military spouses in accordance with Executive Order 13473, dated September 25, 2008. These regulations allow agencies to non-competitively hire military spouses that meet certain requirements and conditions. The regulations recognize the service of members of the Armed Forces and the sacrifices made by their spouses, as well as facilitate the selection of qualified military spouses to positions within the Federal Government.

PURPOSE: The purpose of this HR Bulletin is to communicate the terms and conditions under which certain military spouses can be non-competitively appointed to positions within the Federal Government, and to clarify issues that are not addressed directly by the regulations.

Eligibility

Under Title 5, Code of Federal Regulations (CFR), Part 315, Subpart F, Section 612, certain military spouses who meet one of the following criteria may be non-competitively appointed:

1. A spouse of a member of the Armed Forces serving on active duty who has orders specifying a change in permanent duty station;
2. A spouse of a 100 percent disabled service member injured while on active duty; or
3. The unmarried widow or widower of a service member who was killed while performing active duty.

This authority may be used to appoint eligible spouses to temporary, term, or permanent positions within the competitive service under the provisions of Title 5, CFR § 315.612. This authority may not be used to appoint military spouses to positions within the excepted service.

Ineligibility

Spouses of service members of the Armed Forces who are on retirement, release, or discharge from active duty are not eligible under this authority based upon those orders. Orders for release or discharge from active duty service, such as release or hardship, or expiration-of-terms service orders cannot be used to establish eligibility under this authority.

Military spouses who are non-U.S. citizens are not eligible under this authority.

Spouses of Public Health Service members are not eligible under this authority, as members of the Public Health Service are not members of the active duty Armed Forces.

Veterans' Preference and Pass Overs

This authority does not provide a hiring preference; therefore, hiring managers are not required to select military spouses that are eligible under this authority.

An eligible spouse, who is preference eligible, will not receive any preference over an eligible spouse, who is not preference eligible. Hiring managers may select any eligible spouse and a veterans' pass over is not necessary.

Definitions

Active duty – Full-time duty in the Armed Forces, including full-time National Guard duty; however, it does not include training activities or attendance at service schools for Reserve Component members.

Duty station – 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) order.

Spouse – The husband or wife of a member of the Armed Forces.

Member of the Armed Forces has the meaning given under Title 10, United States Code (U.S.C.) § 101.

The definition of "killed while on active duty" under Title 5, CFR § 315.612(b)(4)(iii) does not apply specifically to service members who have been killed in "combat." Spouses of service members killed while on active duty are eligible as long as they meet all other terms and conditions of Title 5, CFR, Part 315.

A spouse of a member of the Armed Forces must be the unmarried widow or widower of the member killed while on active duty in the Armed Forces.

Date of Marriage

Individuals are not eligible for this appointment if they marry a member of the Armed Forces after that service member's orders authorizing a PCS.

Individuals are eligible for this appointment when married to a service member at the time the member receives his/her orders to relocate, become 100 percent disabled, or are killed while on active duty.

Documentation of Marriage

Documentation verifying marriage under Title 5, CFR § 315.612(e)(1), (e)(2) and (e)(3) does not require a marriage license. SHROs may, at their discretion, accept other forms of documentation in lieu of a marriage license in order to prove marriage. Other acceptable documentation may include, but are not limited to, Federal tax documents, financial statements, property documents, etc.

Geographic Area

Non-competitive appointment is limited to the geographic area specified on the service member's PCS orders. The Principal Human Resources Manager (PHRM) of each operating unit may define "geographic area" to cover regions that are within a reasonable commuting distance from the duty station to which the spouse has relocated. The PHRM may waive the geographic limit if no Federal agency exists within the geographic area. The PHRM may, at his or her discretion, establish a mileage limitation in order to define a geographic area.

Spouses of retired or separated active duty members who have a 100 percent disability are not restricted to a geographic location and may be non-competitively appointed to any geographic location if they otherwise qualify under this authority.

Under this authority, an individual must physically relocate with their spouse in order to be eligible as a result of their spouse receiving a PCS order.

Documentation

The spouse of a member of the Armed Forces seeking eligibility under this authority as a result of his or her spouse's PCS order must submit the following:

1. A copy of the service member's active duty orders that authorize a permanent change of station. This authorization must include: a statement authorizing the service member's spouse to accompany the member to the new permanent duty

station; the specific location to which the member of the Armed Forces is to be assigned, reassigned, or transferred pursuant to permanent change of station orders; and the effective date of the permanent change of station; and

2. Documentation verifying marriage to the member of the Armed Forces.

The spouse of a member of the Armed Forces seeking eligibility under this authority based upon the 100 percent disability of his or her spouse, must submit the following:

1. Documentation showing the service member was released or discharged from active duty due to a service-connected disability;
2. Documentation showing the service member retired, or was released or discharged from active duty, with a disability rating of 100 percent; and
3. Documentation verifying marriage to the service member.

The spouse of a member of the Armed Forces seeking eligibility under this authority, based upon being the unmarried widow or widower of a service member who was killed while performing active duty, must submit the following:

1. Documentation showing the service member was released or discharged from active duty due to his or her death while on active duty;
2. Documentation verifying the service member was killed while performing active duty;
3. Documentation verifying marriage to the service member; and
4. A statement certifying that he or she is the un-remarried widow or widower of the service member.

Spouses eligible for non-competitive appointment under this authority must submit proof of their eligibility by the closing date of the vacancy announcement. The PHRM, or their designee, may extend the deadline for submission of documentation on a case-by-case basis in order to facilitate a military spouse's ability to prove their eligibility under this authority.

Conditions and Number of Appointments

Spouses are eligible for a non-competitive appointment for a maximum of two years from:

1. The date of the service member's PCS orders;
2. Documentation verifying the member of the Armed Forces is 100 percent disabled; or

3. Documentation verifying the member of the Armed Forces was killed while on active duty.

The two-year eligibility time limit specified under Title 5, CFR § 315.612(d)(1) cannot be extended.

Spouses of relocating service members are limited to one permanent appointment under this authority, per PCS order. However, there is no limit on the number of temporary or term appointments they may receive per PCS move. In addition, spouses who received a temporary or a term appointments as a result of a PCS move are still eligible for one permanent appointment based on that same PCS move.

There is no limitation on the number of appointments a spouse of a 100 percent disabled veteran or the widow or widower of a deceased service member may receive under this authority. However, a spouse of a 100 percent disabled veteran or the widow or widower of a deceased service member is subject to the two-year period specified in Title 5, CFR § 315.612(d)(1).

SHROs must ensure that potential appointees under this authority have not exceeded the one-time eligibility under Title 5, CFR § 315.612(d)(3). SHROs must obtain a signed statement from the military spouse stating that they have not exceeded the one-time eligibility under Title 5, CFR § 315.612(d)(3), and should verify the military spouse's eligibility by examining the appointment authorities used on the Standard Form (SF) -50s from previous Federal appointments.

Spouses of individuals who receive follow-on PCS orders to military commands in the same geographic area as the one to which an individual was initially assigned do not attain additional eligibility under these provisions.

Grade-Level Limitations

There are no grade-level limitations on positions to which eligible spouses may be appointed under this authority. Eligible spouses may be appointed to any competitive position, at any grade level, for which they qualify and are otherwise eligible.

ICTAP/CTAP

Military spouses eligible for non-competitive appointment under this authority must not be given preference over Interagency Career Transition Assistance Plan (ICTAP) and Career Transition Assistance Plan (Plan) eligible employees. SHROs must ensure that all ICTAP and CTAP eligible employees are considered for appointment before any military spouses can be appointed through this authority.

Public Notice

SHROs must follow Departmental policy on advertising positions that will last more than one year. Departmental policies related to ICTAP and CTAP must be followed when a position is not advertised.

Probationary and Trial Periods

Military spouses appointed to term or permanent positions under this authority are subject to either a trial or probationary period, as appropriate, in accordance with Title 5, CFR § 315.801(e) and Title 5, CFR § 316.304, and may be terminated at any time during the trial or probationary period in accordance with Title 5, Part 315, Subpart H and Title 5, Part 316, Subpart C. Military spouses appointed to temporary positions are not subject to probationary or trial periods.

Processing

SHROs should use the appropriate codes below to process actions on the SF-50 under this authority.

- Permanent Appointments:

If the spouse is not on the Department's rolls, then the Nature of Action code (NOAC) is "101" and the authority code is "LAM." The authority is 315.612.

If the spouse is on the Department's rolls, then the NOAC is "501" and the authority code is "LAM." The authority is 315.612.

- Term Appointments:

If the spouse is not on the Department's rolls, then the NOAC is "108" and the authority code is "LDM." The authority is 316.302(b)(3)MS.

If the spouse is on the Department's rolls, then the NOAC is "508" and the authority code is "LDM." The authority is 316.302.(b)(3)MS.

- Temporary Appointments:

If the spouse is not on the Department's rolls, then the NOAC is "115" and the authority code is "LCM." The authority is 316.402(b)(3)MS.

If the spouse is on the Department's rolls, then the NOAC is "515" and the authority code is "LCM." The authority is 316.402(b)(3)MS.

REFERENCES: Title 5, Code of Federal Regulations, Part 315, Subpart F, Section 612; *Federal Register*, Volume 74, Number 154; Title 10, U.S.C. § 101.

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