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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 315 and 316

RIN 3206–AL73

Noncompetitive Appointment of Certain Military Spouses

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing final regulations which establish a noncompetitive hiring authority for certain military spouses to positions in the competitive service. These regulations implement Executive Order 13473 dated September 25, 2008, which authorizes noncompetitive appointments in the civil service for spouses of certain members of the armed forces. The intended effect of this rule is to facilitate the entry of military spouses into the Federal civil service as part of an effort to recruit and retain skilled and experienced members of the armed forces and to recognize and honor the service of members injured, disabled, or killed in connection with their service.

DATES: This rule is effective September 11, 2009.

FOR FURTHER INFORMATION CONTACT: Jacquelyn A. Carrington at (202) 606–0960, FAX at (202) 606–2329, TDD at (202) 418–3134, or e-mail at *jacquelyn.carrington@opm.gov*.

SUPPLEMENTARY INFORMATION: On December 5, 2008, OPM issued proposed regulations in the **Federal Register** at 73 FR 74071 to regulate the noncompetitive appointment of certain military spouses in parts 315 and 316 of title 5, Code of Federal Regulations (CFR). We requested comments on the proposed rule to be submitted by January 5, 2009.

OPM received comments from 43 individuals, 10 Federal agencies, and 1 military family organization that were pertinent to the proposed changes. A discussion of the comments we received is categorized below into the following areas: Agency Authority, Definitions, Eligibility, Conditions, Proof of Eligibility, Acquisition of Competitive Status, and Miscellaneous.

Agency Authority

An individual asked OPM to explain the circumstances under which eligible spouses can be appointed under this authority. The circumstances under which spouses may be appointed are listed at § 315.612(a). Agencies may use this authority to noncompetitively appoint to the competitive service eligible spouses to temporary, term, or permanent positions consistent with the provisions of § 315.612 and 5 CFR part 316. For more specifics concerning the use of this authority, OPM will issue supplemental guidance on the use of this authority, which will be available at *http://www.opm.gov.*

Definitions

One agency commented that the Merit Systems Protection Board decision in *Edward Thomas Hesse* v. *Department of the Army* (104 M.S.P.R. 647, 2007) may impact the definition of ''active duty'' in § 315.612(b)(1). OPM does not agree with the agency's comment. The *Hesse* decision related to the definition of ''disabled veteran'' under 5 U.S.C. 2108(2). The term ''active duty'' in § 315.612(b) is defined using the language from Executive Order 13473. Neither the Executive Order nor the regulation changes the statutory definition of ''disabled veteran.''

Two agencies suggested revising the definition of ''member of the armed forces or service member'' in § 315.612(b)(4)(ii) to clarify that a service member's 100 percent disability must be military-related or service-connected. OPM agrees clarification is needed and we have amended section 315.612(b)(4)(ii) accordingly.

One agency suggested that OPM modify the definition of ''member of the armed forces or service member'' in section 315.612(b)(4)(ii) to include the spouse of a military member who has been declared catastrophically injured by his or her attending physician, but whose formal disability rating is not yet finalized. OPM cannot adopt this suggestion because section 2(e) of E.O. 13473 defines a totally disabled veteran as having a disability rating of 100 percent from the appropriate military entity.

A national military family association suggested that OPM expand section 315.612(b)(4)(i) to include a service member who receives follow-on orders to a military command in the same geographic area to which he or she is already stationed. OPM is not adopting this suggestion because E.O. 13473 does not authorize noncompetitive appointment eligibility for service members who receive follow-on orders.

The same organization suggested that OPM expand section 315.612(b)(4)(i) to include the spouse of a National Guard or Reserve service member activated for more than 180 days who did not receive permanent change of station (PCS) orders when activated. OPM cannot adopt this suggestion because section 3(a) of E.O. 13473 limits eligibility under this authority to spouses of service members in receipt of PCS orders (except in cases in which the service member incurs a 100 percent service-connected disability or is killed while on active duty).

One individual suggested OPM delete the provision in section 315.612(b)(ii) requiring a 100 percent disability rating for certain service members with a service-connected disability. OPM cannot adopt this suggestion because section 2(e)(i) of E.O. 13473 specifies that a 100 percent disability is required for an individual with a service-connected disability.

An individual suggested that OPM delete the period at the end of section 315.612(b)(4)(ii) to better clarify the definition of a ''member of the armed services or service member.'' We agree that clarity is needed and have modified the punctuation in section 315.612(b)(4) to make clear that a ''member of the armed services or service member'' means an individual who meets any of the three criteria contained in the definition instead of having to meet all three criteria.

One individual and one national military family association asked whether eligibility under this authority is limited to spouses of injured service members or those killed while on active duty. Section 315.612(a) explains that eligibility under this authority, in accordance with the other provisions of

this rule, applies to the spouse of a service member serving on active duty in the armed forces who has received PCS orders; the spouse of a 100 percent disabled service member whose disability resulted from active duty in the armed forces; and, the un-remarried widow or widower of a service member who was killed while on active duty in the armed forces.

One commenter asked whether a service member must have been killed in combat, as opposed to being killed while on active duty but not in combat, in order for the spouse of that service member to be eligible under this authority. One agency asked whether the service member must have been performing actual duty or simply have been in an active duty status for the spouse to be eligible. Section 3(c) of the E.O. states that the unmarried widow or widower of a member of the Armed Forces who was killed while performing active duty are eligible for non-competitive appointment under this authority. Because the intent of the E.O. is to help widows and widowers of spouses killed in the service of our nation, OPM is applying the E.O. language broadly to include spouses of anyone killed while in active duty status (*i.e.,* the individual need not have been killed in ''combat'').

Two individuals and one national military family association suggested that an individual who marries after his or her military spouse receives PCS orders should be eligible for noncompetitive appointment under this authority. OPM is not adopting this suggestion. The intent of E.O. 13473 is to provide employment opportunities for individuals who are married to service members at the time these service members receive their orders to relocate, become 100 percent disabled, or are killed.

One individual suggested that this authority apply to spouses of individuals on training duty or who are attending military service schools. Section 2(c) of E.O. 13473 specifically excludes training duties and attendance at service schools from coverage under this authority.

Eligibility

One individual and two agencies recommended revising section 315.612(c)(3) to clarify that the geographical limitation applies only to the spouse of a member of the armed services or service member defined in section 315.612(b)(4)(i). We agree that clarification is needed and have modified section 315.612(c)(3) accordingly.

One individual and three agencies asked whether the spouse of a service member must relocate with the service member in order to be eligible for noncompetitive appointment under this authority, for example, if the service member goes on an unaccompanied tour. As stated in section 3(a) of the E.O., the spouse must relocate with the service member in order to be eligible for appointment under this authority.

Another individual recommended providing eligibility for the widow or widower of a service member who dies after separation or medical retirement as a result of injury sustained on active duty. OPM cannot adopt this recommendation because section 3(c) of E.O. 13473 specifies that eligibility is provided for service members who are killed while performing active duty.

One agency asked whether agencies can use this authority to appoint an individual whose service member spouse dies while assigned to an unaccompanied tour. Although the spouse was not eligible for appointment under section 315.612(c)(1) because the military member was on an unaccompanied tour, the spouse could become eligible under section 315.612(c)(3) as the un-remarried widow or widower of a service member killed while on active duty.

One agency recommended revising section 315. 612(c)(1) to provide eligibility for individuals who wait to marry until they have orders to relocate, or subsequently marry after the relocation. The agency suggests that the two-year eligibility period should be predicated on the military member's orders and proof of marriage, regardless of when or where the marriage takes place. OPM cannot adopt this recommendation. Section 3 of E.O. 13473 specifies that eligibility for appointment under this authority is limited to spouses who relocate to the service member's new permanent duty station. To be eligible for the noncompetitive appointment in this scenario, the spouse must accompany the military member on permanent change of station orders. In order to prove his or her eligibility, the spouse must present documentation authorizing him or her to accompany the service member to the new duty station along with a copy of the PCS orders. Military orders, however, only authorize dependent travel if the service member is married at the time the orders are processed. For this reason, individuals who wait to marry after their spouse relocates are not eligible for noncompetitive appointment under this authority.

Five agencies and one individual commented on the geographic limitation contained in section 315.612(c)(3). One of the agencies recommended revising the language in this paragraph to add that the agency head's designee at the Chief Human Capital Officer (CHCO) level, or comparable level in a non-CHCO agency, may waive the geographic limitation. OPM agrees that the head of the agency could delegate the waiver authority to his or her designee, and we have modified the language in paragraph (c)(3) accordingly.

The individual commenter suggested removing the geographic restriction from section 315.612(c)(3) because some spouses may not be able to relocate due to family obligations. OPM is not adopting this suggestion. Section 3(a) of E.O. 13473 specifically states spouses are eligible to be appointed under this authority provided that the spouse relocates to the member's new permanent duty station.

Two of the agencies suggested the term ''geographic area'' be further defined, e.g., by establishing a mileage standard as the basis for determining the geographic area within which the noncompetitive appointing authority will apply. OPM is not adopting these suggestions. Establishing a definitive mileage standard may adversely affect certain spouses' eligibility for appointment. We believe the agency is in the best position to determine the reasonableness of commuting distance within its location. In fact, most agencies have defined ''commuting area'' in their merit promotion plans established under 5 CFR part 335. Also, the parameters in section 315.612(c)(3) specify that the geographic limit is based on the duty station specified on the service member's PCS orders. (OPM notes that we have clarified language in paragraph (c)(3) to specify the geographic limitation applies only to spouses who relocated with their spouses and are eligible for appointment under section 315.612(b)(1).)

One of these same agencies recommended modifying section 315.612(c)(3) to waive the geographic limitation if no Federal agency exists in the geographic area to which the military member is relocated or there are none that employs the occupational specialty for which the spouse qualifies, *e.g.,* a nursing assistant or health care information technology specialist. OPM is not adopting this suggestion. The intent of these provisions is to provide employment opportunities for individuals negatively impacted by their military spouse's relocation, not to provide employment opportunities

within the spouse's occupational specialty.

The other agency suggested OPM provide guidance on applying the geographic limitation. OPM will address this concern in supplemental guidance material which will be available on the OPM Web site at *http://www.opm.gov.*

Conditions

Five individuals, ten agencies, and one national military family organization suggested the 2-year eligibility period specified in section 315.612(d)(1) should be eliminated or extended. OPM is not adopting this suggestion because the intent of this hiring authority is to provide employment access for certain individuals negatively impacted by their military spouses' relocation, incapacitation, or death. We believe 2 years is a reasonable time period for affected individuals to obtain Federal employment via this authority. We note that spouses of 100 percent disabled service members and service members killed while on active duty will have a veterans' preference entitlement in addition to eligibility under this appointing authority.

Two agencies asked whether the 2 year time limit specified under section 315.612(d)(1) is extended if the eligible individual is appointed to a temporary or term appointment. The 2 year time limit cannot be extended for individuals appointed to temporary or term positions under this authority. The intent of this hiring authority is to provide employment access for certain individuals. The 2 year time limit is consistent with other noncompetitive appointing authorities. We also note again that spouses of 100 percent disabled service members and service members killed while on active duty will have a veterans' preference entitlement in addition to eligibility under this appointing authority.

One agency commented that the date in section 315.612(d)(1)(i) should be revised from 2 years from the date of the service member's PCS orders to 2 years from the reporting or effective date stated in the orders, to eliminate any confusion, as some may think this is the issuance date. OPM is not adopting this suggestion. We believe a 2 year period from the date the orders are issued provides consistency and equitable treatment of affected individuals because individuals' reporting times may vary.

Two agencies and one individual commented on section 315.612(d)(3), which would have provided eligibility to spouses who relocated with a service member within 1 year prior to the effective date of the final regulations. One of these agencies recommended removing this retroactive eligibility. The other agency recommended extending the period to 2 years, and the individual commenter suggested extending the period back to September 11, 2001. OPM is adopting the recommendation to delete this provision from the final regulation. The separate 1-year retroactive provision is not needed for spouses who have already relocated with the service member because their eligibility has been established under section 315.612(d)(1). This section provides eligibility for 2 years from the date of the member's PCS orders. E.O. 13473 does not contain a grandfather provision for service members who may have met the eligibility criteria in prior years. We have replaced the language in paragraph (d)(3) with the language in paragraph (d)(4) of the proposed regulations and deleted paragraph (d)(4).

One agency asked if there is a limit on the number of noncompetitive appointments a spouse of a 100 percent disabled or deceased service member may receive. There is no limit 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, these spouses remain subject to the 2-year period specified in section 315.612(d)(1)(ii). Spouses of relocating service members are limited to only one appointment under this authority per PCS order.

Three agencies asked whether the 2-year eligibility period specified in section 315.612(d)(1) begins on the date of the PCS orders or the date the eligible spouse relocates to the new duty station. Section 315.612(d)(1)(i) states that the 2-year eligibility period begins on the date of the service member's PCS orders.

One agency and one individual suggested OPM eliminate the requirement in section 315.612(d)(2), which limits an individual's eligibility to one appointment per PCS relocation. OPM is not adopting this suggestion because the intent of this rule is to provide employment opportunities to individuals negatively impacted by a PCS move.

Proof of Eligibility

Two agencies suggested we modify section 315.612(e)(1)(c) to specify that documentation must verify an individual's current marriage to a service member. OPM is not adopting this suggestion because we do not believe this clarification is necessary. Section 315.612(b)(6) defines a spouse as the husband or wife of a member of the armed forces. This definition implies that a spouse is a current spouse. Agencies also commented that the regulations should ensure the currency and reliability of documentation of death or disability. OPM believes that the proof of eligibility requirements in section 315.612(e) is sufficiently detailed. It is incumbent on each agency to accept eligibility documents from military spouses seeking noncompetitive appointment that are as reliable as the eligibility documents submitted by applicants for veterans preference. See Instructions on Documentation Required accompanying the Standard Form 15, Application for 10-Point Veterans Preference, available at *http://www.opm.gov/forms*.

One of these agencies also suggested we modify the parenthetical examples in section 315.612(e)(1)(ii) and (iii) by changing the ''or'' to ''and'' in these examples. We are not adopting this suggestion because there are valid forms of documentation, other than a marriage license, which some individuals may be able to produce in lieu of a marriage license in order to prove their eligibility under this authority. Our intention is provide individuals with as much flexibility as possible when proving their eligibility.

One agency asked whether the documentation of 100 percent service-connected disability rating applies regardless of how long the member has been retired from active duty. The amount of time a member has been separated or retired from active duty due to service-connected disability is not a factor when considering a spouse's eligibility under this authority.

One agency recommended revising section 315.612(e)(2)(ii) to add at the end, ''resulting from active duty'' to ensure the disability resulted from active duty, a military-related cause, and not another cause. OPM is not adopting this suggestion because the documentation specified in paragraph (b)(4)(ii) is sufficient to prove a service-connected disability.

Acquisition of Competitive Status and Tenure on Appointment

One agency asked for confirmation that the noncompetitive appointing authority does not apply to appointments made under the Federal Career Intern Program (FCIP) because section 315.612 requires a career-conditional appointment, unless the appointee has already completed the service requirements for career tenure. The agency is correct. Appointments under the FCIP authority are made in the excepted service.

One agency asked whether spouses convert to career appointments after 1 year or 3 years of appointment under this authority because section 315.612(g) specifies that an eligible military spouse hired under this authority has a career-conditional appointment until the employee fulfills the requirements for career tenure. The agency misread the requirement. Section 315.612(g) reads: ''An appointment under paragraph (a) of this section is career-conditional *unless* the appointee has already satisfied the requirements for career tenure or is exempt from the service requirement pursuant to § 315.201.''

Miscellaneous

One agency asked whether agencies must rate and rank eligible spouses when making appointments using this authority. Because this is a noncompetitive hiring authority, agencies are not required to rate and rank individuals when using this authority. Agencies must evaluate eligible spouses to determine whether they meet the qualifications for the positions being filled.

One individual asked whether this appointing authority applies only to positions being filled in the competitive service. Similarly, one agency asked if it is correct to say that the authority under section 315.612 is no different than a VRA or the Student Employment Education Program and other Schedule A appointing authorities. A noncompetitive appointment is an appointment to, or placement in, a position in the competitive service that is not made by selection from an open competitive examination and that is usually based on current or prior Federal service. This authority applies only to positions being filled in the competitive service.

One individual commented that this authority is not necessary because there is already an Executive order for family members returning from overseas appointments. The hiring authority provided by section 315.608 for certain former overseas employees is a separate noncompetitive hiring authority established under Executive Order 11219. The new authority provided by section 315.612 established under Executive Order 13473 does not affect or take precedence over other available appointing authorities.

One individual suggested that OPM change the rules pertaining to citizenship requirements for Federal employment to allow foreign military spouses to be eligible under this appointing authority. Executive Order 11935, signed on September 2, 1976, restricts the employment of non-citizens in competitive service positions covered by title 5 of the U.S. Code. Executive Order 13473, which provides for the noncompetitive appointment of certain military spouses, does not amend E.O. 11935, nor does it provide OPM with any authority to supersede the citizenship requirement.

One commenter asked whether OPM will specify the qualifications requirements pertaining to the various positions agencies may fill under this authority. Agencies use Governmentwide qualification standards when filling positions in the competitive service. The qualification requirements will vary depending on the specific position an agency is seeking to fill. Agencies will identify the qualification requirements in the vacancy announcement advertising the specific position to be filled. This authority is not limited to specific positions, and may be used to fill any position in the competitive service.

The same individual asked whether agencies will be required to report, via Central Personnel Data File (CPDF), appointments made under this authority. Agencies must submit hiring activity reports for this authority to CPDF the same as when making other appointments. OPM will then capture this CPDF data on the use of this authority to monitor, on an ad hoc basis, the use of this authority.

Three agencies asked OPM to clarify whether agencies are required to post a Federal vacancy announcement prior to appointing individuals under this authority. If a vacancy announcement is required, two of these agencies suggested that OPM eliminate this requirement in conjunction with use of this appointing authority. Per 5 U.S.C. 3330(b), agencies must follow public notice requirements (i.e., posting of a vacancy announcement on the USAJOBS Web site) when using this authority to fill permanent or term positions, or temporary positions lasting more than 1-year. In addition, 5 CFR part 330 requires agencies to advertise jobs lasting more than 120 days. In response to a commenter's question, these vacancy announcement requirements apply to competitive service positions in the National Security Personnel System (NSPS). OPM will issue question and answer guidance which will include information on the use of this appointing authority for NSPS positions.

Another individual asked how eligible spouses can find out about employment opportunities under this authority. Spouses may find out about job opportunities under this authority on OPM's USAJOBS Web site (*http://www.usajobs.gov*). In addition, some agencies may choose to have information on their Web sites specific to positions being filled through this authority. Job seekers should, therefore, check the Web sites of agencies in which they may wish to work, in addition to USAJOBS.

Two individuals inquired about the type of vacancy announcements eligible spouses may respond to in applying for employment under this authority. Eligible spouses may apply for positions advertised as being open to the ''public,'' ''all sources,'' or ''status candidates.'' Use of this authority, however, is at the discretion of the hiring agency.

One individual asked whether this authority will have any affect on other veterans' hiring authorities, such as Veterans Recruitment Act (VRA) appointments. OPM cannot predict the impact of this appointing authority because use of this authority is at the discretion of hiring agencies.

One agency suggested that this noncompetitive hiring authority should not apply in overseas locations because of the possible difficulty in administering rotation programs. OPM is not adopting the suggestion to limit applicability of this authority. Depending on the circumstances surrounding the location of the position, use of any competitive service appointing authority may be problematic (for example, when a treaty with a host nation restricts appointing U.S. citizens abroad). As a noncompetitive hiring authority, this authority is available for agencies to use at their discretion.

One agency asked whether there is a selection priority if more than one eligible applies under this authority or if multiple candidates eligible for noncompetitive appointments apply for a position. Agencies have the discretion to select and appoint individuals under any available appointing authority. In accordance with 5 CFR 335.103(b)(4), agency merit promotion plans must provide for management's right to select from other appropriate sources. This authority is one among many other sources authorized and available to agencies, such as other noncompetitive authorities, competitive examining, merit promotion, and excepted authorities under 5 CFR part 213. OPM will issue question and answer guidance on the use of noncompetitive authorities generally. The guidance will address appropriate consideration of applicants who have eligibility for noncompetitive appointment, and who are also eligible

for consideration under competitive or merit promotion procedures.

One individual asked whether any mechanisms will be put in place to prevent personnel officers and military commanders from hiring their spouses regardless of whether the spouses are qualified. Another person suggested that oversight mechanisms were needed at military installations to safeguard against abuses by these entities when using this authority. Mechanisms such as nepotism rules, merit system principles, and prohibited personnel practices are currently in place to ensure administrative probity with respect to agencies' use of this appointing authority. Oversight at local military installations is the responsibility of the Installation Commander or his or her designee. In addition, OPM conducts periodic audits of agencies' hiring practices to ensure agencies are using the various appointing authorities appropriately and in a manner consistent with all applicable laws and regulations.

The same individual noted his belief that this authority provides a hiring preference for eligible military spouses. OPM disagrees with this assertion. This authority is a noncompetitive hiring mechanism; it does not establish or constitute a hiring preference for eligible spouses, nor does it create an entitlement to a Federal job for an eligible spouse. Use of this authority is completely at the discretion of hiring agencies. As a result, it is one of many hiring tools agencies may use to recruit needed individuals.

One individual and one agency asked whether an unmarried widow or widower (*i.e.*, eligible for appointment under section 315.612(c)(1)(ii)) who accepts an appointment under this authority and remarries after being employed under this authority will be permitted to remain employed. Yes, individuals eligible under section 315.612(c)(1)(ii) who remarry after becoming employed under this authority will not lose their jobs because of their remarriage.

One agency asked OPM to explain the effect of telework arrangements on the geographic limitations specified in section 315.612(c)(3). Spouses eligible under paragraph (b)(4)(i) of this section must relocate with their service member spouse per paragraph (c)(1)(ii). Upon relocation, these individuals are subject to the same agency workplace flexibility policies as are other employees of that agency. We wish to remind readers the intent of the proposal was to benefit individuals negatively impacted by their military spouses' relocation. Individuals eligible under paragraph (b)(4)(i) should not be allowed to leverage this authority unless they have actually relocated per the intent of E.O. 13473.

One individual asked whether there are any grade-level limitations for positions filled through this appointing authority. OPM is not imposing any grade-level limitation on positions filled through this hiring authority.

Another individual asked whether the spouse of a 100 percent disabled Vietnam Veteran has eligibility under this rule. Spouses of any 100 percent disabled veteran have a 2-year eligibility period from the date of the documentation verifying the service member is 100 percent disabled, per section 315.612(d)(1)(ii). Spouses of 100 percent disabled Vietnam Veterans who are not eligible under this appointing authority may be eligible for veterans' preference based on their military spouses' disability. For more information, we encourage such spouses to visit VETSINFO Guide at *http://www.opm.gov/veterans/html/vetsinfo.asp*.

One agency asked how agencies will know if the military spouse has used his or her eligibility and been selected for another position in the local commuting area. OPM advises agencies to ensure they ask potential appointees under this authority whether they have used the one-time eligibility under section 315.612(d)(3). OPM will address this issue further in the supplemental guidance.

One agency asked how spouses of relocated service members should be treated after they are appointed under this authority. This agency also asked whether the spouse would be available for a new excepted appointment if he or she resigned from an appointment under this authority and reapplied. OPM believes the regulation is clear as written. The authority under section 315.612(g) provides that a selectee is appointed under a career-conditional appointment, unless the selectee meets or is exempt from the service requirement for career tenure pursuant to section 315.201. Once appointed, the selectee is treated as any other career or career-conditional employee. Again, agencies appoint individuals selected under this authority to the competitive, not the excepted, service.

One agency commented that OPM needs to issue clear guidance on how human resources (HR) offices are to properly refer applicants who are eligible under multiple appointment authorities, particularly when one or more eligibilities afford/s an applicant veterans' preference and one or more do not. The agency also urged OPM to address separately general procedures to be followed by HR offices conducting recruitment for applicants with status and special appointment eligibility, and by HR offices conducting delegated examining. OPM agrees and will issue supplemental guidance, which will be available on the OPM Web site at *http://www.opm.gov*.

Another individual asked whether agencies are required to establish training programs in conjunction with filling positions using this hiring authority. OPM is not requiring agencies to establish or utilize training programs when filling positions under this authority. We remind readers this authority is simply a noncompetitive hiring mechanism for positions in the competitive service; it is not a training and development program for eligible spouses.

The same individual asked whether this authority would have any impact on agencies' use of mobility agreements. Use of this authority has no impact on an agency's decision to use mobility agreements (which are applicable to an agency's current employees, not those eligible under this rule).

Three individuals were opposed to the proposed rule because they are opposed to the policy reflected in E.O. 13473 One of these individuals only supports eligibility for noncompetitive appointment of only individuals defined in section 315.612(b)(4)(ii) and (iii). OPM cannot implement this comment because we are obligated to issue regulations that implement the E.O.

Three individuals commented only to support the proposed rule.

One individual asked when the proposed rule would become effective. The effective date of this rule will be 30 days from the date the final rules are published in the **Federal Register**.

One individual asked whether this rule applies to retired service members who are married to individuals serving on active duty. Prior military service, in and of itself, does not prohibit an individual from meeting the definition of ''spouse'' in section 315.612(b)(6). Provided they meet all applicable rules, such individuals are eligible under this authority.

The same individual asked whether agencies may use this authority to appoint eligible spouses who currently have a Federal job. Yes, agencies may use this authority to noncompetitively appoint eligible spouses who currently have a Federal job, consistent with all applicable provisions.

The same individual also asked whether agencies must apply veterans' preference when making appointments under this authority. When a

noncompetitive list is used in conjunction with a competitive list, there is no obligation to exhaust preference eligibles from the competitive list before making selections from the noncompetitive list. In addition, once an agency has determined to make the selection from the noncompetitive list, there is no ability to apply veterans' preference. Veterans' preference requirements apply only when positions are filled from a list prepared through a competitive hiring process or when positions are filled pursuant to part 302 of OPM's regulations.

One agency asked whether eligibles being considered under this authority may be appointed to the excepted service if they do not have all of the required documentation. The authority under section 315.612 is for appointments in the competitive service only.

OPM received 8 comments that were outside the scope of this regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

Paperwork Reduction Act

The information collection requirements contained in this final rule are currently approved by OMB under RIN 3206–AL73. This final regulation does not modify this approved collection.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 315 and 316

Government employees.

Office of Personnel Management.

John Berry,

Director.

■ Accordingly, OPM is issuing final regulations to amend title 5, Code of Federal Regulations, part 315, subpart F, and part 316, as follows:

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

Subpart F—Career or Career-Conditional Appointment Under Special Authorities

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

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp. p. 218, unless otherwise noted; and E.O. 13162. 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, 3 CFR, 1978 Comp. p. 111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608 also issued under E.O. 12721, 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. Sec. 315.708 also issued under E.O. 13318, 3 CFR, 2004 Comp. p. 265. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp. p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

■ 2. Add § 315.612 to subpart F 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 may appoint noncompetitively a spouse of a member of the armed forces serving on active duty who has orders specifying a permanent change of station (not for training), a spouse of a 100 percent disabled service member injured while on active duty, or the unremarried 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 under orders specifying the individual is called or ordered to active duty for more than 180 consecutive days, has been issued orders for a permanent change of station, and is authorized for dependent travel (*i.e.*, the travel of the service member's family members) as part of the orders specifying the individual's permanent change of station;

(ii) Retired from active duty in the armed forces with a service-connected disability rating of 100 percent as documented by a branch of the armed forces, or 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) *Permanent change of station* means the assignment, reassignment, or transfer of a member of the armed forces from his or her present duty station or location without return to the previous duty station or location.

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

(c) *Eligibility.* (1) A spouse of a member of the armed forces as defined in paragraph (b)(4)(i) of this section must have:

(i) Married the member of the armed forces on, or prior to, the date of the service member's orders authorizing a permanent change of station; and

(ii) Relocated with the member of the armed forces to the new duty station specified in the documentation ordering a permanent change of station.

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

(3) For spouses eligible under paragraph (b)(4)(i) of this section, noncompetitive appointment under this section is limited to the geographic area, as specified on the service member's permanent change of station orders. It includes the service member's duty station and the surrounding area from which people reasonably can be expected to travel daily to and from work. The head of an agency, or his or her designee, may waive this limitation (*i.e.*, accept applications from spouses) if no Federal agency exists in the spouse's geographic area. Spouses of active duty military members who are on retirement or separation PCS orders from active duty are not eligible to be appointed using this authority unless the service member is injured with a 100 percent disability.

(4) Spouses of retired or separated active duty members who have a 100 percent disability are not restricted to a geographical location.

(d) *Conditions.* (1) In accordance with the provisions of this section, spouses are eligible for noncompetitive appointment for a maximum of 2 years from the date of:

(i) The service member's permanent change of station orders;

(ii) Documentation verifying the member of the armed forces is 100 percent disabled; or

(iii) Documentation verifying the member of the armed forces was killed while on active duty.

(2) A spouse may receive only one noncompetitive appointment under this section to a permanent position per the service member's orders authorizing a permanent change of station.

(3) 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) 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:

(i) A copy of the service member's active duty orders which authorize a permanent change of station. This authorization must include:

(A) A statement authorizing the service member's spouse to accompany the member to the new permanent duty station;

(B) 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

(C) The effective date of the permanent change of station; and

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

(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 was released or discharged from active duty due to a service-connected disability;

(ii) 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

(iii) 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 individual 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; and

(iii) Documentation verifying 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 he or she is the un-remarried widow or widower of the service member.

(f) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section acquires competitive status automatically upon completion of probation.

(g) *Tenure on appointment.* An appointment under paragraph (a) of this section is career-conditional unless the appointee has already satisfied the requirements for career tenure or is exempt from the service requirement pursuant to § 315.201.

PART 316—TEMPORARY AND TERM EMPLOYMENT

■ 3. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

■ 4. Section 316.302(b)(3) is revised to read as follows:

§ 316.302 Selection of term employees.

* * * * *

(b) * * *

(3) Career-conditional appointment under § 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, 315.612, or 315.711 of this chapter;

* * * * *

■ 5. Section 316.402(b)(3) is revised to read as follows:

§ 316.402 Procedures for making temporary appointments.

* * * * *

(b) * * *

(3) Career-conditional appointment under § 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, 315.612, 315.703, or 315.711 of this chapter.

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1365]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation Z (Truth in Lending). The Board is required to adjust annually the dollar amount that triggers requirements for certain home mortgage loans bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 (HOEPA) sets forth rules for home-secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. In keeping with the statute, the Board has annually adjusted the $400 amount based on the annual percentage change reflected in the Consumer Price Index as reported on June 1st. The adjusted dollar amount for 2010 is $579.

DATES: *Effective Date:* January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Dana Miller, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601–1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board's official staff commentary (12 CFR part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions.

In 1995, the Board published amendments to Regulation Z implementing HOEPA, contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, 108 Stat. 2160 (60 FR 15463). These amendments, contained in §§ 226.32 and 226.34 of the regulation, impose substantive limitations and additional disclosure requirements on certain closed-end home mortgage loans bearing rates or fees above a certain percentage or amount. As enacted, the statute requires creditors to comply with the HOEPA rules if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. TILA and Regulation Z provide that the $400 figure shall be adjusted annually on January 1 by the annual