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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## 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 September 28, 2023. Comments must be received on or before November 27, 2023.

**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](mailto: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.<sup>1</sup>

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 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 3304(f). 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;

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

(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](mailto:militaryspouse@opm.gov).

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

[FR Doc. 2023-21254 Filed 9-27-23; 8:45 am]

BILLING CODE 6325-39-P

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 843

[Docket ID: OPM-2023-0008]

RIN 3206-AO55

### Federal Employees' Retirement System; Present Value Conversion Factors for Spouses of Deceased Separated Employees

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is adopting its proposed rule to revise the table of reduction factors for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities. The annuity factor for spouses of deceased employees who die in service when those spouses elect to receive the basic employee death benefit in 36 installments under the Federal Employees' Retirement System (FERS) Act of 1986 remains unchanged. These revisions are necessary to ensure that the tables conform to the economic and demographic assumptions adopted by the Board of Actuaries and published in the *Federal Register* on April 14, 2023, as required by law.

**DATES:** This rule is effective October 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Karla Yeakle, (202) 606-0299.

**SUPPLEMENTARY INFORMATION:** On April 14, 2023, OPM published a notice at 88 FR 23108 in the *Federal Register* to revise the normal cost percentages

under the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99-335, 100 Stat. 514, as amended, based on economic assumptions and demographic factors adopted by the Board of Actuaries of the Civil Service Retirement System. By statute under 5 U.S.C. 8461(i), the revisions to the actuarial assumptions require corresponding changes in factors used to produce actuarially equivalent benefits when required by the FERS Act. As a result, on July 14, 2023, at 88 FR 45100, OPM published a proposed rule in the *Federal Register* to revise the table of reduction factors in 5 CFR part 843, Appendix A to subpart C for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities. The annuity factor for spouses of deceased employees who die in service when those spouses elect to receive the basic employee death benefit in 36 installments under 5 CFR 843.309 remains unchanged.

OPM received one comment in response to its proposed rule. The commentor questioned whether this rule change will affect the cost to the Federal retirement systems. Any potential cost impact to the retirement systems would merely be costs associated with complying with the statutory requirements under 5 U.S.C. 8442(c)(2)(B)(ii) and 5 U.S.C. 8461(i). The provision under 5 U.S.C. 8442(c)(2)(B)(ii) requires that if a survivor of a former Federal employee elects to receive a survivor annuity immediately upon the death of the former employee (instead of electing to wait to receive the survivor annuity until the deceased former employee would have otherwise been entitled to an unreduced deferred annuity benefit), then OPM must reduce the survivor annuity so it is "actuarially equivalent" to the present value of what the survivor annuitant would have received had the survivor elected the later survivor annuity commencing date. The statutory provision under 5 U.S.C. 8461(i) provides that OPM must determine "actuarial equivalence" using the same economic assumptions most recently used by the Board of Actuaries for valuation of the FERS based on dynamic assumptions. Therefore, any potential cost impacts to the retirement systems are the result of changes to OPM's calculations of actuarial equivalence using the most recent dynamic assumptions used by the Board of Actuaries as required under 5 U.S.C. 8442(c)(2)(B)(ii) and 5 U.S.C. 8461(i). Additionally, considering the small

number of survivor annuities affected, OPM does not anticipate this rule will have substantial cost impact to the retirement systems.

The effective date of a substantive rule is normally delayed by 30 days. See 5 U.S.C. 553(d). OPM published notice of the normal cost percentages on April 14, 2023, with an effective date of October 1, 2023. Based on the same economic assumptions as the normal cost percentages, OPM published notice of conversion factors on July 14, 2023, and provided a 30-day comment period. OPM provided notice of the October 1, 2023, effective date for the conversion factors in its July 14, 2023, proposed rule and received no comments regarding the date. Delaying the effective date by 30 days is unnecessary as this is a routine, technical rule to update the conversion factors to align with the economic assumptions underlying the normal cost percentages. Furthermore, the normal cost percentages are used to calculate payments into the Civil Service Retirement and Disability Fund (Fund) and failing to adjust the conversion factors at the same time could result in a liability to the Fund. Accordingly, it is also in the public interest to ensure consistency between the economic assumptions underlying the normal cost percentages and the conversion factors. Finally, ensuring the effective dates for the two rules are in alignment complies with 5 U.S.C. 8442 and 8461(i). Therefore, OPM finds there is good cause to make the rule effective October 1, 2023.

### Expected Impact of This Rule

OPM is adopting its proposed rule to revise the table of reduction factors for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities. The factors that are in effect can be found in appendix A to subpart C of 5 CFR part 843.

Of all the applications for survivor annuity death benefits OPM receives annually, OPM expects this rule to affect approximately one percent of those survivor annuity death applications it receives that are based on the death of a separated employee. Of the changes this rule implements, the most significant change is to conform the factors to the revised actuarial assumptions when the current or former spouse elects to receive an adjusted annuity beginning on the day after the death of the separated employee, such that the annuity is reduced using the factors in appendix A to subpart C of 5