



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE

4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

SEP 29 2021

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Temporary Authority to Immediately Appoint Retired Members of the Armed Forces to Certain Positions in the Department of Defense

Reference: Section 1108 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283)

The reference, for certain positions, waives application of 5 U.S.C. § 3326, which generally imposes a 180-day waiting period between the retirement of a Service member and appointment to a DoD civilian position. The waiver applies to competitive service positions that are: at or below the level of General Schedule 13 (or equivalent); located at a defense industrial base facility that is part of the core logistics capabilities; and have been certified by the Secretary of the Military Department concerned as lacking sufficient numbers of potential candidates.

Implementing guidance is attached concerning use of this authority by the Military Departments. No appointments may be made under this authority after January 1, 2024.

For more information, my point of contact is Ms. Kelly Cruz, Director, Employment and Compensation, Defense Civilian Personnel Advisory Service, at (571) 372-1536 or kelly.m.cruz.civ@mail.mil.

A handwritten signature in black ink, appearing to read "Gilbert R. Cisneros, Jr.", is located below the text.

Gilbert R. Cisneros, Jr.

Attachment:
As stated

**TEMPORARY AUTHORITY TO IMMEDIATELY APPOINT RETIRED MEMBERS
OF THE ARMED FORCES TO CERTAIN POSITIONS IN THE DEPARTMENT OF
DEFENSE**

1. Authority

a. Section 1108 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021, for certain (“covered”) positions, waives application of 5 U.S.C. § 3326, which generally imposes a 180-day waiting period between the retirement of a Service member and appointment to a DoD civilian position. The waiver applies to competitive service positions that are: at or below the level of General Schedule (GS) 13 (or equivalent); located at a defense industrial base facility that is part of the core logistics capabilities; and have been certified by the Secretary of the Military Department concerned as lacking sufficient numbers of potential candidates.

b. Secretaries of the Military Departments may delegate authority to certify that a position lacks sufficient numbers of potential candidates to a military officer at or above the grade of O-6 or a civilian employee at or above the grade of GS-15 (or equivalent).

c. This authority is distinct from the authority delegated in DoD Instruction 1402.01, “Employment of Retired Members of the Armed Forces,” September 9, 2007, to approve the appointment of a retired member of the Armed Forces to a position in DoD during the 180 days after retirement, pursuant to 5 U.S.C. § 3326(b)(1).

d. This authority may not be used for appointments made after January 1, 2024.

2. Appointing Authority

This authority may be used in conjunction with any applicable hiring authority to appoint the retired military member, to include delegated examining (DE) or a DoD direct hire authority (DHA).

3. Covered Positions

This authority may be used to appoint individuals to positions in the competitive service meeting the following specifications:

a. At or below the level of GS- 13 (or equivalent), to include those under the Federal wage system;

b. At any defense industrial base facility that is part of the core logistics capabilities; and

c. That have been certified by the Secretary of the Military Department concerned, or designee as specified in paragraph 1.b., as lacking sufficient numbers of potential candidates.

4. Definitions

a. "Lacking sufficient number of candidates" may occur when the need to fill positions creates an operational hardship in meeting mission requirements brought about by circumstances such as, but not limited to, unusual or unanticipated events, extraordinary workload, or new or emerging mission requirement creating the need to fill positions.

b. "Core logistics capabilities" as defined in 10 U.S.C. § 2464(a).

c. "Defense Industrial Base Facility" means any DoD depot, arsenal, shipyard, or plant located in the United States, as defined in 10 U.S.C. § 2208(u)(3).

d. "Member" means a person appointed or enlisted in, or conscripted into, a Uniformed Service, as defined in 37 U.S.C. § 101.

e. "Secretary concerned" means the Secretary for the respective Military Department, as defined in 37 U.S.C. § 101.

5. Oversight and Accountability

a. The Military Departments are responsible for the development of guidance to implement this authority in accordance with Merit System Principles.

b. The Defense Civilian Personnel Advisory Service (DCPAS) will oversee and monitor use of this authority throughout the DoD and collect information as outlined in section 7 for purposes of preparing the report required to be submitted to the congressional defense committees by January 1, 2023.

6. Certification Requirements

In making the certification determination required by section 3.b., certification officials will address the following criteria:

a. Recruitment needs, to include the current number of positions being recruited and the projected recruitment needs (projected retirements, projected turnover, increased/new workload);

b. Supply gap, to include vacancy lapse rate, and market data analysis of labor market demands; and

c. Past recruitment efforts and evidence of ineffectiveness in attracting a sufficient amount of applicants.

7. Reporting

DoD Components will annually submit a report to DCPAS, by September 30th of each year, which includes the following:

- a. A description of the use of this authority;
- b. Positions to which appointments are authorized to be made using this authority;
- c. Number of retired members appointed to each position;
- d. Type of hiring authority used to appoint the retired military member (e.g., DE, DHA, 30 percent disabled veteran, Veterans' Recruitment Appointment, or Schedule A disability appointment, etc.);
- e. Time to hire (TTH) data and analysis (e.g., comparison to TTH under the traditional section 3326 wavier process); and
- f. Supplemental Component guidance issued to implement this authority.