

# OCHR FACTSHEET

## 180 DAY RETIREMENT WAIVERS

### Waivers to Appoint Retired Military Members to Civilian Positions within 180 Days of Retirement

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#### Why is a waiver required?

On December 23, 2016, President Obama signed into law the National Defense Authorization Act (NDAA) of fiscal year (FY) 2017. Section 1111 modifies 5 United States Code (U.S.C.) 3326 to eliminate the Department of Defense's flexibility of paragraph (b)(3) that allowed a retired member of the Armed Forces to be appointed to a position in the civil service (including non-appropriated fund instrumentality) during the period of 180 days immediately after retirement (without needing a waiver) if a state of national emergency exists.

With the enactment of NDAA FY17 striking paragraph (b)(3) of 5 USC 3326, the only instances when a retired military member may be appointed in the Department of the Navy (DON) to a civil service position within 180 days of retirement is (1) if the appointment is approved by the Secretary of the Navy (or designee) and, if the position is in the competitive service, with approval from Office of Personnel Management; or (2) the minimum rate of basic pay for the position has been increased under 5 U.S.C. 5305 (i.e., Special Pay Authority).

#### What positions are impacted by this change?

All appropriated fund civilian positions in the competitive and excepted service, as well as non-appropriated fund, Senior Executive Service (SES), Senior Level (SL), and Scientific and Professional (ST) positions (including permanent, temporary, term, part-time, flexible, and intermittent positions), regardless of whether the incumbents of the positions are compensated or uncompensated.

#### What is required to request an appointment waiver?

Waivers may be submitted when it is determined the retired military member is better qualified than any in-service candidate. There must be sufficient evidence to support recruitment was conducted to seek highly qualified candidates and how the retired member's knowledge, skills, and abilities (KSAs) is clearly superior to other available candidates, to include how the other candidates' KSAs fall short of the retired member. Waivers must be approved prior to the appointment of a retired military member. The law requires waiver requests must contain verification full consideration was given to eligible career employees, the vacancy was publicized to give interested candidates opportunity to apply, and that unfair advantage was not given to the retired military member (e.g., qualification requirements written to favor the retired member or a position has not been held pending retirement of the member). This supports the intent of merit system principles and also avoids the appearance of preferential treatment for a select group of applicants.

#### This Fact Sheet:

- Explains why appointment waivers are required
- Defines the positions impacted
- Describes the requirements for requesting waivers
- Answers Frequently Asked Questions regarding such waivers

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## Frequently Asked Questions

### **Q1. Is this a new requirement?**

A1. This is not a new requirement. A state of national emergency was declared on September 14, 2001 and it became the DON's business practice to appoint retired military members within 180 days of retirement without needing to first seek a waiver. With the elimination of the language in the law that allowed for this previous hiring flexibility, it is necessary to revert to the procedures prior to September 14, 2001.

### **Q2. Does this mean retired military members cannot apply to a vacancy announcement until after 180 days from the date of their retirement?**

A2. No. Retired members of the Armed Forces have a right to seek and be considered for Federal civilian employment. The change to 5 U.S.C. 3326 does not impact this right; rather it only imposes a requirement for approval of appointment during that time. Additionally, consideration must be in compliance with merit system principles, which require selection and advancement be determined solely on the basis of relative ability, knowledge, and skills after fair and open competition, ensuring all applicants receive equal opportunity.

### **Q3. Retired military members are a source of best qualified candidates. Why do I have to go through the extra step to hire them?**

A3. While retired military members may possess related experience from their military careers that aligns with the requirements of the vacancy being filled, it should not be assumed that they are the only best qualified candidates by virtue of their experience. When submitting a waiver, documentation must be included to show the superiority of the retired member's qualifications to other referred candidates.

### **Q4. Does a retired military member's terminal leave time count towards the 180 day time period?**

A4. No. The retired military member's terminal leave time does not count towards the 180 day time period as the service member is not considered retired during the period of terminal leave. The 180 day waiting period begins the day following the official date of the service member's retirement.

## Where to Find Additional Information

The 5 U.S.C. 3326 can be found at <https://www.law.cornell.edu/uscode/text/5/3326>

The DoD instruction and policy can be found at <http://www.dtic.mil/whs/directives/corres/pdf/140201p.pdf>.

Enclosure (2) of the DoD Instruction contains proper formatting of requests along with all required supporting documentation.

## Still need assistance?

For additional questions on the waiver requirements, email [DONStaffing@navy.mil](mailto:DONStaffing@navy.mil).

