



ADMINISTRATIVE INSTRUCTION 45

EMPLOYMENT OF RETIRED MEMBERS OF THE U.S. ARMED FORCES

Originating Component:	Office of the Director of Administration and Management
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Approved by:	David Tillotson III, Acting Deputy Chief Management Officer of the Department of Defense
Change 1 Approved by:	Michael B. Donley, Director of Administration and Management

Purpose: In accordance with the authority in DoD Directives 5105.53 and the January 11, 2021 Deputy Secretary of Defense Memorandum regarding reestablishment of the Director of Administration and Management (DA&M), this issuance:

- Implements policy established in DoD Instruction (DoDI) 1402.01.
- Assigns responsibilities and provides procedures for employing retired members of the U.S. Armed Forces (referred to in this issuance as "retired members") in the Washington Headquarters Services (WHS)-serviced Components.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

a. This issuance applies to:

(1) General Schedule (GS) 15 and below or equivalent positions in OSD and those Defense Agencies, DoD Field Activities, and other components of the DoD that receive human resource services from WHS, referred to collectively in this issuance as the “WHS-serviced Components.”

(2) Senior Executive Service (SES), Senior Level (SL), Scientific and Professional (ST), and other equivalent personnel categories in the components of the DoD that receive human resources services from WHS, referred to collectively in this issuance as the “WHS-serviced Components.”

b. This issuance does **not** apply to employees in the Defense Civilian Intelligence Personnel System.

1.2. POLICY. It is policy for the WHS-serviced Components that:

a. In accordance with DoD Directive 1020.02E and Administrative Instruction 31, employment decisions must be based solely upon job related criteria and not on discriminatory factors.

b. In accordance with DoDI 1402.01:

(1) Positions will be filled with qualified individuals; generally, the best qualified under consideration, in accordance with Section 2301 of Title 5, United States Code (U.S.C).

(2) Retired members have a right to seek and be considered for Federal civilian employment. Consideration will be fair, equitable, and in compliance with the merit system principles of open competition to avoid both the practice and appearance of preferential treatment.

c. Pursuant to Section 3326 of Title 5, U.S.C., appointments or transfers of retired members to positions covered under this issuance during the 180 days immediately after retirement may only be made when:

(1) The minimum rate of basic pay for the position has been increased by the Office of Personnel Management (OPM), pursuant to Section 5305 of Title 5, U.S.C., or a special pay table was created for the position because of difficulties hiring for such positions; or

(2) A waiver has been approved for the position in accordance with Section 3 of this issuance.

1.3. SUMMARY OF CHANGE 1. The changes to this issuance:

a. Update authorities from the Chief Management Officer of the Department of Defense to the DA&M in accordance with:

(1) Section 901 of Public Law 116-283, which eliminated the position of the Deputy Chief Management Officer of the Department of Defense effective January 1, 2021.

(2) The January 11, 2021 Deputy Secretary of Defense Memorandums, which implemented Public Law 116-283 and reestablished the DA&M.

b. Update applicability to exclude employees in the Defense Civilian Intelligence Personnel System.

c. Clarify existing processes.

d. Update references and organizational symbols for accuracy.

SECTION 2: RESPONSIBILITIES

2.1. DIRECTOR, WHS. Under the authority, direction, and control of the DA&M, the Director, WHS:

- a. Oversees the implementation of this issuance.
- b. Implements this issuance for SES, SL, ST, and equivalent personnel categories in the DoD Fourth Estate.
- c. Approves or denies requests to appoint retired members within 180 days after retirement to GS-14, GS-15, SES, SL, ST, and equivalent positions, in accordance with DoDI 1402.01 or the other criteria in accordance with Section 3326 of Title 5, U.S.C. This authority may be delegated no lower than the Deputy Director, WHS, as outlined in DoDI 1402.01.

2.2. CHIEF HUMAN RESOURCES OFFICER, HUMAN RESOURCES DIRECTORATE (HRD). Under the authority, direction, and control of the Director, WHS, the Chief Human Resources Officer, HRD:

- a. Approves or denies each proposed appointment of a retired member within 180 days of retirement at the grade level of GS-13 and below, or equivalent level or the other criteria pursuant to Section 3326 of Title 5, U.S.C., and in accordance with DoDI 1402.01 and the guidance in this issuance. This authority may be delegated as outlined in DoDI 1402.01.
- b. Verifies the rate and rank of eligible candidates or provides an OPM certificate of eligible candidates, or both, and refers the best qualified candidate to the WHS-serviced Component's selecting official (referred to in this issuance as the "selecting official").
- c. Verifies that the documentation submitted by the selecting official for all grades complies with applicable procedures and adheres to the requirements of DoDI 1402.01 and this issuance.
- d. In the absence of an exception in Section 3326 of Title 5, U.S.C., recommends each request for SES, SL, ST, and equivalent personnel to the Director, WHS, for concurrence or non-concurrence.
- e. Informs the selecting official of the decision and, if approved, begins the internal tentative job offer hiring process under WHS/HRD internal operating procedures.
- f. Retains all documentation in the active files for 2 years from the date of the appointment action. When documentation is needed in connection with an ongoing administrative, negotiated, quasi-judicial, or judicial proceeding, the documentation must be retained as long as necessary.

2.3. WHS-SERVICED COMPONENT HEADS. The WHS-serviced Component heads, through their appointed selecting official:

- a. Ensure positions are filled through open recruitment and fair, job-related assessment of applicants.
- b. Base decisions on merit and avoiding discrimination on the basis of race, color, religion, sex, and national origin.
- c. Submit requests for waiver packages to the Chief Human Resources Officer, HRD.

SECTION 3: PROCESSING APPOINTMENT WAIVER REQUESTS

These principles must be observed before appointing retired members 180 days after retirement, unless one of the exceptions in Section 3326 of Title 5, U.S.C. applies as stated in Paragraph 1.2.c. of this issuance.

a. When the appointment is in the competitive service and selection is from an established Delegated Examining Unit (DEU) register, retired members will be afforded treatment in accordance with applicable OPM regulations.

b. When the selection for appointment, either inside or outside the competitive service, is other than from an established DEU register, recruitment for the position must be conducted in a way that:

(1) Ensures reasonable efforts are made to publicize the vacancy and gives interested candidates an opportunity to apply.

(2) Adheres to the principles of merit selection. These principles require that:

(a) Qualifications reflect valid performance requirements for the position.

(b) When selecting a retired member, HRD will validate that candidates were not available for consideration through the DoD Priority Placement Program, the Reemployment Priority List, or the Interagency Career Transition Assistance Plan for Displaced Employees. All other statutory priority placement requirements must be cleared, pursuant to Part 330 of Title 5, Code of Federal Regulations.

(c) The retired member is the best of the highly qualified candidates as compared to all highly qualified in-service candidates on the referral lists.

c. Positions may not be held open in anticipation of a Service member's retirement in order to provide that individual with a preferential opportunity to apply for or be appointed to the position. Active recruitment must be initiated when the position becomes vacant, unless suspension of recruitment can be justified fully by management for reasons unrelated to the impending retirement of a Service member.

d. If the position was last occupied by the retired member or another military incumbent, the request to change to civilian incumbency must meet a definable management need. It cannot be made solely to allow the retired member or military incumbent to remain in the position.

SECTION 4: CONTENT OF WAIVER PACKAGES

4.1. VERIFICATION OF MILITARY SERVICE. The waiver package must be submitted on organizational letterhead, with a cover memo, to the Director, WHS or Chief Human Resources Officer, HRD. The package will state the member's effective date of retirement from the U.S. Armed Forces, Military Service, rank, and pay grade at the time of retirement. The memo must also address this paragraph and, as appropriate, Paragraphs 4.3 through 4.5 of this issuance. The DD Form 214, "Certificate of Uniformed Service," confirms dates of service and discharge under honorable conditions. A "Certification of Service" may also be submitted in lieu of a DD Form 214. Agencies must accept applications and use veterans' preference for any Service member who submits a certification in lieu of a DD Form 214.

4.2. INFORMATION ABOUT THE POSITION INVOLVED.

- a. Date (in YYYYMMDD format) the position was established.
- b. Date (in YYYYMMDD format) the position was last occupied.
- c. Whether the position was converted from military to civilian status.
- d. If the position was converted, the date (in YYYYMMDD format) of conversion.
- e. If the position was converted, the reason for conversion.
- f. Whether the proposed appointee was the last military occupant.
- g. A current position description.
- h. Whether the position is permanent, term, or temporary.
- i. Statement regarding the qualification requirements, technical qualifications, and any selective placement factors used to qualify applicants for the position.
- j. Confirm efforts to fill the position have been continuous since it became vacant; if not, the reasons why not.

4.3. CONSIDERATION OF CAREER EMPLOYEES. To ensure that full consideration under merit placement and promotion procedures of WHS-serviced Components is given to eligible career employees, the selecting official must provide statements verifying:

- a. Career employees were given the opportunity to apply.
- b. The proposed appointee is the best qualified candidate of all qualified employees given consideration.

c. That placement and promotion procedures in this issuance were followed. If these procedures were not followed, the selecting official must provide the reasons why these procedures were not adhered to and the justification for not doing so.

4.4. APPOINTMENT FROM A DEU REGISTER. When the proposed appointee is eligible based on an appropriate DEU register and has been selected for appointment, the selecting official will provide:

a. The examination announcement under which the proposed appointee filed and the certificate of eligible candidates on which the proposed appointee's name appears, if it is not included on the certificate itself.

b. The request for the certification, including selective placement factors and names of nominees if selective certification or name request was involved.

c. A statement explaining how the proposed appointee is the best qualified candidate compared to any eligible candidates with a higher standing on the DEU certificate of eligible candidates.

4.5. APPOINTMENT FROM OTHER THAN A DEU REGISTER. When it is proposed to appoint a retired member from other than a DEU register, the selecting official will provide:

a. The authority (OPM regulation) under which the retired member will be appointed.

b. The request for a certificate of eligible candidates, including selective placement factors and a copy of the authority, if a temporary appointment pending establishment of register authority has been secured.

c. The proof of positive recruiting efforts made to seek out applicants for the position, including the methods used (including specific dates and places), the notices publicizing the vacancy, and any contacts with recruiting sources.

GLOSSARY

G.1. ACRONYMS.

DA&M	Director of Administration and Management
DEU	Delegated Examining Unit
DoDI	DoD instruction
GS	General Schedule
HRD	Human Resources Directorate
OPM	Office of Personnel Management
SES	Senior Executive Service
SL	Senior Level
ST	Scientific and Professional
U.S.C.	United States Code
WHS	Washington Headquarters Services

G.2. DEFINITIONS. Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

Certification of Service. Any written document from the Military Department or Service concerned that certifies the Service member is expected to be discharged or released from active duty under honorable conditions not later than 120 days after the date the certification is signed.

DoD Fourth Estate. OSD, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the DoD that are not in the Military Departments or the Combatant Commands.

retired member. A member or former member of the United States Armed Forces who is entitled to retired, retirement, or retainer pay.

United States Armed Forces. Defined in the DoD Dictionary of Military and Associated Terms.

REFERENCES

- Administrative Instruction 31, “Equal Employment Opportunity (EEO) and Diversity Programs,” August 19, 2013, as amended
- Code of Federal Regulations, Title 5, Part 330
- Deputy Secretary of Defense Memorandum, “Disestablishment of the Chief Management Officer of the DoD and Realignment of Functions and Responsibilities,” January 11, 2021
- Deputy Secretary of Defense Memorandum, “Re-establishment of the Assistant to the Secretary of Defense for Intelligence Oversight and the Director of Administration and Management,” January 11, 2021
- DoD Directive 1020.02E, “Diversity Management and Equal Opportunity in the DoD,” June 8, 2015, as amended
- DoD Directive 5105.53, “Director of Administration and Management (DA&M),” February 26, 2008
- DoD Instruction 1402.01, “Employment of Retired Members of the Armed Forces,” September 9, 2007
- Office of the Chairman of the Joint Chiefs of Staff, “DoD Dictionary of Military and Associated Terms,” current edition
- Public Law 116-283, “William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021,” January 1, 2021
- United States Code, Title 5