

EXECUTIVE ORDER GRANTS NON-COMPETITIVE ELIGIBILITYTO USG SPOUSES WORKING OVERSEAS

Executive Order 12362 which will offer U.S. Government (USG) spouses working in temporary positions abroad non-competitive eligibility for Civil Service career positions upon their return to the United States was signed on May 12, 1982 by President Reagan. The Executive Order will apply to all U.S. citizen family members who accumulate a total of two years experience overseas in appropriated fund positions (PITs, AFM/FSNs, LIRs, RHs, etc.) over a ten-year period. Upon return to the U.S., a family member is given two years in which to locate a federal Civil Service career-conditional position for which he/she is qualified and be hired directly by a federal agency without obtaining certification on an Office of Personnel Management (OPM) register.* Credit may be earned equally for full-time and part-time employment. E.O. 12362 is retroactive to January 1980, so many individuals have already earned their eligibility (see page 2).

A privilege granted to returned Peace Corps Volunteers in the early 1960's through a similar Executive Order, this E.O. will go far to alleviate the hardships imposed upon USG spouses who frequently have no other employment opportunities overseas than what the Mission has to offer. Many spouses thus build a long USG service record through intermittent USG employment in temporary non-career positions overseas which previously gave them no rights or privileges upon their return. In the past, depending on the spouse's skills and qualifications, she/he might have spent months (even a year or more) upon return to the U.S. obtaining certification on an OPM register and then locating the federal job opening. Even though the federal job market is retrenching in Washington, D.C., at least spouses will no longer have the added burden of having to compete for available jobs as "outsiders."

Interim regulations to implement E.O. 12362 were published July 2, 1982, in the Federal Register and are included on page 3. Until final regulations and procedures are issued, family members should retain all personnel action forms (SF-50s), efficiency reports, travel orders, etc. relating to overseas temporary employment since January 1980 in order to verify qualifying service under this E.O. For additional information, contact the Employment Program Coordinator, M/FLO, Room 1212A, Department of State, Washington, D.C. 20520. Telephone: 202-632-2387 or 3179.

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- * Note: Once in a career-conditional position, the individual must work satisfactorily for three years before earning permanent re-employment rights; however, should this three year period be interrupted by further overseas service, the new regulations recently issued by OPM in FMP Letter 315-18 (see pages 5&6) would apply. See also, State magazine, March 1982, p. 25.

SUBCHAPTER 6. CAREER OR CAREER-CONDITIONAL APPOINTMENT UNDER SPECIAL AUTHORITIES

6-15. APPOINTMENT OF FORMER OVERSEAS EMPLOYEES

a. Eligibility. A former overseas employee may be appointed on a career-conditional basis noncompetitively to a competitive service position in the United States under the authority of Executive Order 12362 provided that he or she:

- (1) is a United States citizen;
- (2) accumulated 24 months of creditable overseas service in an appropriated fund position(s) under an overseas local hire appointment(s) within a 10-year period beginning on or after January 1, 1980;
- (3) received a satisfactory or better performance rating for the period of creditable overseas service (this requirement applies to service accrued after January 1, 1984);
- (4) was a family member of a Federal civilian employee or of a member of a uniformed service (the civilian or uniformed sponsor) who was officially assigned to the overseas area during the period of creditable overseas service;
- (5) accompanied the civilian or uniformed sponsor on official assignment in the overseas area while serving in the overseas position during the period of creditable overseas service.
- (6) is appointed within two years of returning to the United States from the overseas tour of duty during which he or she acquired eligibility; and
- (7) meets all qualification requirements for the position in the United States for which he or she is applying.

-2-

b. Definitions.

(1) "accompanied the civilian or uniformed sponsor on official assignment in the overseas area" means a family member residing in the overseas area while their sponsor is officially assigned to an overseas post of duty. This definition does not require the family member to have physically resided with the sponsor at all times or to have travelled with the sponsor to or from the overseas area.

(2) "Creditable Overseas Service" means the period of employment, determined in accordance with applicable service crediting procedures for determining service computation date, when the employee was serving under a local hire appointment(s) with a satisfactory or better performance rating and residing in the overseas area as a family member of a Federal civilian employee or member of a uniformed service on official assignment.

(3) "Family member" means spouses and unmarried children (under 23 years of age) of a member of a uniformed service or Federal civilian employee officially assigned to the overseas area.

(4) "Federal civilian employee" means employees of the executive, judicial, and legislative branches of the Government of the United States who are officially assigned to the overseas area and serve in appropriated fund positions.

(5) "Local hire appointments" are excepted or competitive service appointments made from applicants residing in the overseas area which are not actually or potentially permanent. For purposes of this subpart only, this definition includes nonpermanent employment as a local national employee paid from appropriated funds, or under 50 U.S.C. 403j, Public Law 86-36, or the Berlin Tariff Agreement, overseas limited appointments under 5 CFR 301.201, nonpermanent excepted appointments under Schedule A

213.3106(b)(6) or Schedule A 213.3106(d)(1), or an "American Family Member" or "Part-time--Intermittent--Temporary" appointment in U.S. diplomatic establishments.

(6) "Member of a uniformed service" means personnel of the Armed Forces (including the Coast Guard), the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration officially assigned to the overseas area.

(7) "Overseas area" means duty locations outside the 50 States of the United States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands.

(8) "Sponsor" means a member of a uniformed service or civilian employee on official assignment to the overseas area who is the spouse or parent of the family member.

(9) "United States" means the 50 States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands.

c. Determining Creditable Overseas Service. To be creditable for non-competitive appointment under E.O. 12362, 24 months of overseas employment must have been served:

- (1) after January 1, 1980; and
- (2) under a local hire appointment(s) as defined in paragraph b.5 of this section; and
- (3) while the dependent was physically residing in the overseas area as a family member of a civilian employee or member of a uniformed service who was officially assigned to the overseas area; and,

- (4) for service accrued after January 1, 1984, with a satisfactory or better performance rating.

There is no authority to waive any of the above requirements. Service crediting procedures of FPM Supplement 296-33 for determining service computation date are applicable in determining whether former overseas employees meet the length of service requirements for non-competitive appointment. Creditable service may have been under several different appointments and need not have been continuous. Periods of leave without pay which occurred after the employee left the overseas area are not considered creditable overseas service for purposes of earning non-competitive appointment eligibility. Former overseas employees cannot use service under career-conditional or career appointments, or permanent appointments in the excepted service to meet service requirements under this order.

d. Overseas local hire appointments. Overseas local hire appointments are those forms of non-permanent employment designated in paragraph b (5) of this section. The requirement that local hire appointments be made from applicants residing in the overseas area does not preclude agencies from considering candidates, whose sponsors are being assigned overseas, in advance of their arrival in the overseas area. Non-permanent appointments in both the competitive and excepted service are usually indicated by placement of the employee in tenure group "0" or "3". Appointments under which the employee is assigned to tenure group 1 or 2 are not considered local hire appointments.



e. Documentation of overseas local hire employment with national security organizations. In rare cases, security considerations may preclude the disclosure of specific information on a former employee's overseas service. Where such employees meet the requirements for noncompetitive appointment under Executive Order 12362, the overseas employing agency will issue the employee a certification to this effect. Agencies in the United States may make noncompetitive appointments on the basis of this certification.

f. Satisfactory Performance Rating. For service after January 1, 1984, to be creditable for noncompetitive appointment, the employee must have received a performance rating of satisfactory or better. Periods of employment after January 1, 1984 for which the employee did not receive a satisfactory or better performance rating are not considered as creditable overseas service for purposes of meeting non-competitive appointment eligibility requirements under this section. Ratings must be determined in accordance with the agency's performance appraisal plan established under Chapter 43 of title 5, U.S. Code unless the overseas agency is exempt from provisions of this chapter. Periods of overseas employment after January 1, 1984, for which the employee did not receive a satisfactory performance rating are not considered as creditable overseas service for purposes of meeting non-competitive appointment eligibility requirements under this section.

g. Status as a Family Member. Eligibles must have been family members of U.S. Government civilian or military personnel only during the period of creditable overseas service. No credit can be given for periods of overseas service when the individual was not a family member. However,

eligibles need not be family members of U.S. personnel or unmarried and under 23 years of age at the time they apply for noncompetitive appointment in the United States.

h. Requirement for U.S. Citizenship. The requirement that eligibles be United States citizens applies only at the time they apply for noncompetitive appointment in the United States. Individuals who are otherwise eligible for noncompetitive appointment, but who were not U.S. citizens during the period of overseas employment, can be given noncompetitive appointments if they have since become U.S. citizens.

i. Qualifications Requirements. Eligibles may be appointed to any position or grade level for which they qualify, subject to meeting qualification requirements and time-in-grade restrictions. Eligibles must meet all qualification standards including any written test requirement for the position for which they are applying in the United States. If the eligible has served overseas in a higher grade of the same occupational series for which he or she is applying in the United States, the eligible is considered to meet the qualification requirements for all lower graded positions in the same series. Written test requirements for lower graded positions in the same series may be waived in such cases.

j. Time-in-Grade Restrictions. Time-in-grade restrictions (FPM Chapter 300) apply to employees appointed under this authority who have served in a General Schedule position during the previous year.

k. Appointment Eligibility. Individuals eligible for noncompetitive appointment under E.O 12362 may be considered for appointment on the same basis as candidates with civil service status. Eligibles may also receive noncompetitive, term, or temporary limited appointments (FPM Chapter 316). Eligibles may receive more than one appointment under this authority as long as all appointments are made within 2 years of returning to the United States. Legal authority code and legal authority to be shown on appointments are ZJK, E.O. 12362.

1. Status and Tenure. Upon nontemporary appointment, the former overseas employee is a career-conditional employee. Both initial appointment probation period and the 3-year period for conversion to career appointment begin with the date of the career-conditional appointment; service under a local hire appointment overseas is not creditable for either the probationary period or the service requirement for conversion to career tenure.

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PART 315 -- CAREER AND CAREER - CONDITIONAL EMPLOYMENT

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1. In subpart F, §315.608 is added to read as follows:

§315.608 Noncompetitive appointment of certain former overseas employees.

(a) An agency in the executive branch may appoint noncompetitively to a competitive service position within the United States a United States citizen who:

- (1) accumulated 24 months of creditable overseas service in an appropriated fund position(s) or equivalent under a local hire appointment(s) within any ten-year period beginning on or after January 1, 1980, ~~within a ten-year period from the date of initial appointment;~~
- (2) received a satisfactory or better performance rating for ~~such~~ the period of creditable overseas service;
- (3) ~~is currently was~~ was a family member of a civilian employee or of a member of a uniformed service (the civilian or uniformed sponsor) who was officially assigned to the overseas area ~~and was in this status while serving in the overseas positions(s)~~ during the period of creditable overseas service;
- (4) accompanied the civilian or uniformed sponsor on official assignment ~~to~~ in the overseas ~~post of duty~~ area while serving in the overseas position(s) during the period of creditable overseas service;
- (5) ~~exercises eligibility for noncompetitive appointment~~ is appointed within two years ~~of~~ after returning to the United States from the overseas tour of duty during which he or she acquired eligibility; and
- (6) meets all qualification requirements for the positions in the United States for which he or she is applying.

(b) Definitions

In this Subpart:

~~"Accompanied the civilian or uniformed sponsor on official assignment to an overseas post of duty" means a family member physically residing with a member of a uniformed service or Federal civilian employee officially assigned to the overseas area while serving in the overseas position or positions.~~

"Creditable Overseas Service means the period of employment, determined in accordance with applicable service crediting procedures, when the employee was serving under a local hire appointment(s) with a satisfactory or better performance rating and residing in the overseas area as a family member accompanying a civilian employee or member of a uniformed service on official assignment

"Family member" means spouses and unmarried children (under 23 years of age) of a member of a uniformed service or Federal civilian employee officially assigned to the overseas area.

"Federal "civilian employee" means employees of the executive, judicial, and legislative branches of the Government of the United States who are officially assigned to the overseas area and serve in appropriated fund positions.

~~"Local hire" appointments are overseas limited appointment, excepted appointments under Schedule 213.3125(b)(6), an "American Family Member" or "Part time Intermittent Temporary" appointment~~

~~in U.S. diplomatic establishments, or any other nonpermanent
appointment in the competitive or excepted service, so designated
by the Office of Personnel Management in the Federal Personnel
Manual, which is made from applicants residing in the over-
seas area.~~

"Local hire appointments" are appointments made from applicants
residing in the overseas area which are not actually or potentially
permanent. For purposes of this subpart, this definition includes
non-permanent employment as a local national employee paid from
appropriated funds, or under 50 U.S.C. 403~~g~~³ Public Law 86-36,
or the Berlin Tariff Agreement, overseas limited appointments
under 5 CFR 301.201, nonpermanent excepted appointments under
Schedule A 213.3106(b)(6) or Schedule A 213.3106(d)(1), an "American
Family Member" or "Part-time Intermittent Temporary" appointment
in U.S. diplomatic establishments or any other nonpermanent overseas
appointment in the competitive or excepted service so designated
by the Office of Personnel Management in the Federal Personnel
Manual.

"Member of a uniformed service" means personnel of the Armed Forces (including the Coast Guard), the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration officially assigned to the overseas area.

"Overseas area" means duty locations outside the 50 States of the United States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands.

"Sponsor" means a member of a uniformed service or civilian employee on official assignment to the overseas area who is the spouse or parent of the family member.

"United States" means the 50 States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands.

(c) Conditions

~~(1) OP" shall publish in the Federal Personnel Manual, uniform local hire procedures for assuring merit selection of eligible overseas employees as well as procedures for assuring that eligible employees have fully satisfactory or better performance ratings for their overseas service.~~

- (1) Selection of employees in the overseas area should be made on the basis of the ability, knowledge and skills of eligible candidates, in accordance with applicable law and regulation.
- (2) Any law, Executive order or regulation that disqualifies an applicant for appointment also disqualifies an applicant for appointment under this section.
- (3) As soon as practicable but not later than January 1, 1984, determination of satisfactory performance ratings for periods of creditable overseas service under this subpart must be made in accordance with the agency's performance appraisal plan established under Chapter 43 of Title 5, U.S. Code, unless the overseas employing agency is exempt from the provisions of this Chapter.

(d) Tenure of Appointment

A person appointed under this section becomes a career-conditional employee.

(e) Acquisition of Competitive Status

A person appointed under this section acquires competitive status automatically upon completion of probation.

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PART 316 -- TEMPORARY AND TERM EMPLOYMENT

2. In Subpart C, §316.302(c)(3) is revised to read as follows:

§316.302 Selection of term employees.

(c) * * *

(3) A person eligible for career or career-conditional appointment
under §§315.601, 315.605, 315.606, or §315.608 of this chapter;

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3. In Subpart D, §316.402(b)(2) is revised to read as follows:

§316.402 Authorities for temporary appointments.

(b) * * *

(2) A person eligible for career or career-conditional appointment
under §§315.601, 315.605, 315.606, 315.607 or §315.608 of this
chapter;

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