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PERSONNEL AND  
READINESS

DEC 10 2009

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
COMMANDERS OF THE COMBATANT COMMANDS  
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DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Clarification of Maximum Entry-Age Restrictions for Veterans' Preference Eligibles Applying for Firefighter, Law Enforcement Officer and/or Air Traffic Controller Positions in Department of Defense

Reference (a): Office of Personnel Management (OPM) Letter, Subject: Change in Maximum Entry-Age Requirements for Veterans' Preference Eligibility, dated August 26, 2009

This memorandum transmits guidance from the Office of Personnel Management (OPM) regarding a recent Merit Systems Protection Board (MSPB) decision which provides for the waiver of age restrictions for veterans' preference eligibles for entry into age-restricted positions under certain conditions. This OPM guidance is to be applied when filling DoD civilian age-restricted positions, irrespective of the guidance in the DoD Civilian Personnel Management System, DoDI 1400.25 Volumes, which provides policies and procedures governing civilian firefighters, law enforcement officers and air traffic controllers for selected DoD age-restricted positions. We are in the process of incorporating OPM guidance and changes into the respective DoDI 1400.25 Volumes.



The MSPB issued a final decision on July 2, 2008, in *Robert P. Isabella v. Department of State and Office of Personnel Management*, 2008 M.S.P.B. 146, which affects preference eligibles who apply for federal positions that have a maximum entry-age restriction. Based on the MSPB's decision in *Isabella*, OPM issued a memorandum dated August 26, 2009, reference (a), advising agencies that under certain circumstances qualified preference eligibles may now apply and be considered for vacancies regardless of whether they meet the maximum age requirements identified at 5 U.S.C. §3307.

In order to determine whether a maximum entry-age is required, the position must first be analyzed to determine whether age is essential to the performance of the duties of the position. If the DoD Component head, or designee, determines that *age is not essential* to the position, then the DoD component head, or designee, must waive the maximum entry-age requirement for veterans' preference eligible applicants. In instances where the maximum entry-age is waived, the corresponding mandatory retirement age for these individuals will also be higher because it will be reached after 20 years of law enforcement officer (LEO) service for the entitlement to an immediate enhanced annuity. The same principles set forth in the OPM memorandum of August 26, 2009 apply to appointment to other types of positions for which the setting of a maximum entry age is authorized under 5 U.S.C. §3307, including firefighters and air traffic controllers.

The Department has established a maximum entry age of age 37 under 5 U.S.C. §3307 for selected DoD civilian firefighter and law enforcement officer positions. Policies and procedures for DoD civilian firefighters and law enforcement officers are established under DoDI 1400.25-V336, "DoD Civilian Personnel Management System: Civilian Firefighters and Law Enforcement Officers", dated December 1996, through Change 11, December 19, 2001. The Department has established a maximum entry age of age 36 for selected DoD civilian air traffic controller positions. Policies and procedures for civilian air traffic controllers are established under DoDI 1400.25-V331, "DoD Civilian Personnel Management System, Civilian Air Traffic Controllers", dated December 1996, through Change 8, June 20, 2005.



Gail H. McGinn

Deputy Under Secretary of Defense (Plans)  
Performing the Duties of the  
Under Secretary of Defense  
(Personnel and Readiness)

Attachment:  
As stated