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Date

DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT
HUMAN RESOURCES (HR) BULLETIN #120, FY10

SUBJECT: Veterans' Preference Eligibles: Maximum Entry-Age Requirements

EFFECTIVE DATE: August 26, 2009

EXPIRATION DATE: Effective until canceled or superseded

SUPERSEDES: N/A

BACKGROUND: On August 26, 2009, the Office of Personnel Management (OPM) issued a Memorandum to Heads of Executive Departments and Agencies regarding the Merit Systems Protection Board's (MSPB) final decision in *Robert P. Isabella v. Department of State and Office of Personnel Management*, 2008 MSPB 146 (2008). The decision states that qualified preference eligibles may now apply and be considered for vacancies regardless of whether or not they meet the maximum entry-age requirements identified in Title 5, United States Code (U.S.C.) § 3307.¹

PURPOSE: The purpose of this HR Bulletin is to notify servicing human resources offices (SHRO) that qualified preference eligibles may now apply and be considered for law enforcement officer (LEO) and firefighter (FF) positions, regardless of whether they meet the maximum entry-age requirement or not, unless age is shown to be essential to the performance of the job.

MAXIMUM AGE REQUIREMENT: Non-preference eligibles are still subject to the Department of Commerce (Department) maximum entry-age requirement required for LEO and FF positions. For purposes of coverage under the special provisions of the Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS), the day immediately preceding an individual's 37th birthday is the last date for original appointment to a position as a LEO or FF. Candidates will be considered eligible if they have not attained age 37 by the closing date of the vacancy announcement, regardless of whether the age limit is subsequently passed during the selection process prior to actual entry on duty.

Exceptions to the Department's maximum entry-age policy are allowed in a few instances, such as when there are documented skills shortages in specific LEO or FF positions. In these cases, the day immediately preceding an individual's 40th birthday will be the last date for original appointment.

¹ As per Title 5, U.S.C. § 3307, the Secretary of Commerce has the delegated authority to determine and fix the maximum age limit for an original appointment to a position as a firefighter or law enforcement officer to the head of an agency.

Procedures for requests and approvals of exceptions can be found in Department Administrative Order (DAO) 202-958, "Law Enforcement Officers and Firefighters."

POSITION ANALYSIS: Hiring managers are responsible for analyzing the duties of the position to determine whether age is essential to the performance of the position.

If it is determined that age is not essential to a position, the maximum entry-age requirement for veterans' preference eligibles must be waived. SHROs are still required to apply suitability, occupational qualification standards, and medical qualification determinations when waiving the maximum entry-age requirement for veterans' preference eligibles.

VACANCY ANNOUNCEMENT: All LEO and FF position vacancy announcements must contain language stating that the maximum entry-age requirement *may* be waived.

DOCUMENTATION: All written determinations should be maintained in the recruitment case file.

MANDATORY SEPARATION: The mandatory separation age for LEOs is 57 and for FFs is 55 with a minimum of 20 years of LEO/FF service.² In instances where the maximum entry-age requirement is waived, the corresponding mandatory retirement age for these individuals will also be higher because it will be reached after 20 years of service for the entitlement to an immediate enhanced annuity. In instances where a LEO/FF attains the mandatory separation age but has not yet completed the required 20 years of service, he or she must be separated on the last day of the month in which he or she completes 20 years of service. Please refer to DAO 202-958 for more information regarding retirement eligibility and mandatory separation, as special retirement provisions may apply to LEOs and FFs covered by CSRS and under FERS.

REFERENCES: Title 5, U.S.C. § 3307; *Robert P. Isabella v. Department of State and Office of Personnel Management*, 2008 MSPB 146; Departmental Administrative Order (DAO) 202-958, "Law Enforcement Officers and Firefighters."

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² The Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA) may retain a LEO/FF until age 60 if the individual's continued service is in the public interest. A LEO/FF covered under CSRS may be retained beyond age 60 with OPM's permission, and a LEO covered under FERS may be retained beyond age 60 with permission of the President.