



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20510

October 26, 2018

The Honorable James Lankford
Chairman
Subcommittee on Regulatory Affairs
and Federal Management
Committee on Homeland Security
and Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Heidi Heitkamp
Ranking Member
Subcommittee on Regulatory Affairs
and Federal Management
Committee on Homeland Security
and Governmental Affairs
United States Senate
605 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Lankford and Ranking Member Heitkamp:

The U.S. Office of Personnel Management (OPM) worked with the U.S. Congress on language providing expedited hiring authorities for college graduates and post-secondary students for inclusion in Pub. L. 115-232, the Fiscal Year 2019 (FY19) John S. McCain National Defense Authorization Act (NDAA).

OPM consistently believed the U.S. Congress' intent was to provide the greatest legal flexibility for expedited hiring authorities for college graduates and post-secondary students within the applicable Title 5 authorities. This desire has also been expressed in public forums by members of Congress themselves. Congress included in the FY19 NDAA language that created a new 5 U.S.C. § 3115 (Expedited hiring authority for college graduates; competitive service) and 5 U.S.C. § 3116 (Expedited hiring authority for post-secondary students; competitive service).¹

The final language of 5 U.S.C. § 3116(d)(1), however, includes language that limits its application. Specifically, the paragraph states, "(1) IN GENERAL.—Except as provided in paragraph (2), the total number of students that the head of an agency may appoint under this section during a fiscal year may not exceed the number equal to 15 percent *of the number of students that the agency head appointed during the previous fiscal year to a position in the competitive service* at the GS-11 level, or an equivalent level, or below." (*emphasis added*).

Students currently come into Federal service by appointment to internships in the *excepted* service. This poses a problem for the formula in the new 5 U.S.C. § 3116(d)(1), which instructs the number of students an agency may appoint should be based on the number of *competitive* service student appointments by the agency in the previous fiscal year. Under the new law's formula, there may be no base of students appointed to the competitive service in the previous fiscal year by an agency, and zero students may be hired using the new authority.

¹ Pub. L. 115-232, Sec. 1108 (Aug. 13, 2018).

OPM can only surmise in the technical drafting process, a decision was made to have the language providing for limitations on appointments in the new 5 U.S.C. § 3115 and 5 U.S.C. § 3116 mirror one another. While the insertion of “competitive service” in 5 U.S.C. § 3115(e)(1) did not affect the paragraph, the same insertion in 5 U.S.C. § 3116(d)(1) meaningfully impacted that paragraph’s effectiveness. OPM does not believe the U.S. Congress intended this result. While such consistency is typically desired, here it is misplaced.

In order to realize what OPM believes may have been the U.S. Congress’s true intent, OPM recommends the simple removal of the words, “to a position in the competitive service” from 5 U.S.C. § 3116(d)(1). With this correction, agencies would be able to count the number of students appointed to excepted service positions for application of the new law’s formula in addressing their expedited hiring needs. The technical fix would also remove from the statute unnecessary language that may invite agency confusion.

OPM appreciates the opportunity to have worked with your offices on this language in the past and welcomes your consideration of the technical correction outlined above. If you have any additional questions or concerns, please do not hesitate to contact Jonathan J. Blyth, Director, Congressional, Legislative, and Intergovernmental Affairs at (202) 606-1300.

Sincerely,



Margaret M. Weichert
Acting Director