

## **3 FAM 2290**

# **LIMITED NONCAREER APPOINTMENTS UNDER SECTION 303 OF THE FOREIGN SERVICE ACT**

*(CT:PER-607; 01-15-2009)*  
*(Office of Origin: HR/CDA)*

## **3 FAM 2291 AUTHORITY**

*(CT:PER-607; 01-15-2009)*  
*(State Only)*  
*(Applies to Foreign Service and Civil Service Employees)*

Consistent with section 303 of the Foreign Service Act (22 U.S.C. 3943), the Secretary is authorized to appoint Civil Service employees and other individuals to the Foreign Service and, consistent with section 309 of the Foreign Service Act (22 U.S.C. 3949), such appointments may include limited noncareer appointments (LNAs). Pursuant to applicable delegations of authority, these authorities are exercised by the Director General.

## **3 FAM 2292 ELIGIBILITY REQUIREMENTS**

*(CT:PER-607; 01-15-2009)*  
*(State Only)*  
*(Applies to Foreign Service and Civil Service Employees)*

Limited noncareer appointment (LNA) appointees must meet the following eligibility requirements:

- (1) A candidate must be a citizen of the United States of America;
- (2) Because Foreign Service members generally are subject to mandatory retirement at age 65 (22 U.S.C. 4052), LNAs generally cannot be appointed or extend their LNA appointment beyond the appointee's 65<sup>th</sup> birthday;
- (3) A candidate for an LNA will be subject to any medical examination, suitability check and security background investigation otherwise appropriate to the particular assignment;

- (4) A candidate must meet the experience/education requirements of the position for which appointment is considered; and
- (5) A candidate must provide financial disclosure if applicable to the position to which appointed.

### **3 FAM 2293 TYPES OF LIMITED NONCAREER APPOINTMENTS UNDER SECTION 303 OF THE FOREIGN SERVICE ACT**

*(CT:PER-607; 01-15-2009)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

- a. Consistent with Section 502 of the Foreign Service Act (22 U.S.C. 3982), the Department's goal is to ensure that positions designated as Foreign Service positions are filled by assignment of career and career-conditional members of the Foreign Service. Consistent with Section 303 of the Foreign Service Act (22 U.S.C. 3943), the Secretary of State may also appoint Civil Service employees and other individuals to the Foreign Service, and, consistent with Section 309 of the Foreign Service Act (22 U.S.C. 3949), such appointments may include limited noncareer appointments (LNA)s.
- b. Pursuant to these authorities, the Department appoints Civil Service employees and other individuals from outside the Foreign Service to LNAs as:
  - (1) **Hard-to-Fill (HTF) Candidates:** Positions that have not attracted sufficient bidders through the Foreign Service assignments process and thus may be filled by State Civil Service employees. The procedures and eligibility requirements applicable to HTF positions as well as the scope and frequency of available positions may vary from year-to-year. Each HTF program will be announced by ALDAC after consultation with the Foreign Service's exclusive representative;
  - (2) **Expert Candidates:** For these positions, bureaus are to request temporary FTE from the Office of Resource Management (HR/RMA) before presenting an Action Memorandum to the Director, HR/CDA. For example, expert LNAs include, but are not limited to, certain attorney positions at embassies and missions that are filled by lawyers from the Office of the Legal Adviser;

- (3) **Developmental Assignment Candidates:** These assignments provide experience and exposure to Foreign Service operations for Civil Service personnel in a particular bureau. For example, developmental positions include, but are not limited to, Bureau of Administration (A) positions that are advertised via CS merit promotion announcements for A Bureau employees only. Developmental positions also include, but are not limited to, certain attorney positions at embassies and missions that are filled by lawyers from the Office of the Legal Adviser;
- (4) **Volunteer Cable Candidates:** Volunteer cables are sent, as agreed annually with the exclusive representative in the Bidding Instructions, when there are no qualified bidders for a vacancy that has been advertised. The regional bureaus initiate the volunteer cable exercise as a request to HR/CDA to send such a cable based on Foreign Service need. If a Civil Service candidate is selected, the Director General must prepare a Certificate of Need in accordance with 3 FAM 2295 (see also 3 FAM Exhibit 2295 for an example of this certificate);
- (5) **Schedule C and Other Outside-Hire Candidates:** These appointments include, but are not limited to, chief-of-mission office management specialists, eligible family members, and other outside hires;
- (6) **Exceptional Circumstance Candidates:** The Department's Director General of the Foreign Service and Director of Human Resources (Director General or DG) may designate certain positions as needing to be filled under an "Exceptional Circumstance" category.

The six categories in 3 FAM 2293, subparagraphs b(1) through b(6), are the only categories by which a Civil Service employee or other individual from outside the Foreign Service may be appointed to the Foreign Service pursuant to an LNA under Section 303 of the Foreign Service Act. The Department's procedures for appointing Civil Service employees and other individuals from outside the Foreign Service as LNAs outside of these categories are subject to negotiations between the Department and the Foreign Service's exclusive representative, prior to institution of further categories. (Information regarding the positions filled by LNAs in 3 FAM 2293, subparagraphs b(2), b(3) and b(5), are provided as background only.)

## **3 FAM 2294 FILLING POSITIONS UNDER “EXCEPTIONAL CIRCUMSTANCE”**

*(CT:PER-607; 01-15-2009)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

- a. In filling exceptional circumstance positions, the Department will advertise each such position via ALDAC and Department notice, either individually or with other open positions, to all Foreign Service employees available in the then-current Open Assignments Cycle, including those already paneled into an onward assignment. In addition, for positions not yet on FS Bid, the Department will place the position on FS Bid. The ALDAC and notice will advise that all eligible bidders in the current Open Assignments Cycle are eligible to bid, including those Foreign Service employees already paneled into an onward assignment. Fifteen working days after the transmission date of the ALDAC, the Department may review all bids received for the position. If the position was included in FS Bid prior to becoming an Exceptional Circumstance position, the Department’s review may include bids received prior to transmission of the ALDAC.
- b. In the event that no bids for Exceptional Circumstance positions are received from members of the Foreign Service after the positions have been advertised for the required 15 working days, or the Director General determines that the member(s) of the Foreign Service whose bid is (are) not suited to the assignment, the Department may select a Department Civil Service employee or other candidate for appointment to an LNA for assignment to this position, based on a Certificate of Need signed by the Director General in accordance with 3 FAM 2295.

## **3 FAM 2295 CERTIFICATE OF NEED**

*(CT:PER-607; 01-15-2009)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

- a. A Certificate of Need is required when the Department fills a position with an Exceptional Circumstance Candidate or fills a Volunteer Cable position with a Civil Service employee.
- b. The Certificate of Need must:

- (1) Describe the measures taken to find Foreign Service candidates to fill the position;
  - (2) Acknowledge that no bids were received from members of the Foreign Service when the position was advertised for 15 days or, alternatively, provide an explanation by the Director General as to why he or she determined the Foreign Service bids received were not from suitable bidders; and
  - (3) Explain why the Director General found that the selected candidate was best suited to fill the position.
- c. The Department will provide the signed Certificate of Need to the Foreign Service's exclusive representative two working days in advance of the selected candidate's being paneled into the position.

### **3 FAM 2296 DURATION OF LIMITED NONCAREER APPOINTMENTS**

*(CT:PER-607; 01-15-2009)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

- a. An appointment to a limited noncareer appointment (LNA) is normally limited to the duration of the specific assignment for which the candidate is hired and normally may not exceed five years in duration. In the event that the Director General proposes to extend a limited appointment beyond five years, as permitted by section 309(b) of the Foreign Service Act (22 U.S.C. 3949(b)), HR will advise the Foreign Service's exclusive representative of such proposed extension, typically two weeks in advance, so as to allow the exclusive representative an opportunity to comment on the proposed extension.
- b. Ordinarily, no LNA appointee will be reappointed to another position until at least one year has elapsed since the expiration of the previous appointment. However, in the event the Director General proposes an earlier reappointment, HR will advise the Foreign Service's exclusive representative, typically two weeks in advance, so as to allow the exclusive representative an opportunity to comment.

### **3 FAM 2297 THROUGH 2299 UNASSIGNED**

## **3 FAM EXHIBIT 2295 EXAMPLE OF A CERTIFICATE OF NEED**

*(CT:PER-607; 01-15-2009)*

*(State Only)*

*(Applies to Foreign Service and Civil Service Employees)*

In accordance with the Department's agreement with the American Foreign Service Association (AFSA) regarding the use of certain limited non-career appointment (LNA) authority, I hereby certify that there is a need for [name], a career GS-[ ] in the Department of State, to be appointed on a limited, non-career appointment (LNA) to the Foreign Service so that she or he can serve in the position as [position] officer in [post]. This is based upon her or his knowledge, skills and abilities, the need to fill the position immediately, and the lack of similarly qualified career Foreign Service employees expected to be available in the immediate future for this position.

**Justification: This section should include all information relevant to the appointment of the employee on a limited non-career appointment. This could include such information as the sample below.**

The [ ] section in [post] is comprised of four officers: [class and positions of incumbents]. The previous incumbent in the position of [title] curtailed to take a position in [post or office]. The position was advertised in FSBid on [date], but we received no Foreign Service bidders. [State here whether CDA issued a Volunteer Cable to fill this position and the results of the responses to that request.]

The [bureau/office] has struggled to fill positions in [post] over the past two years to include this position. Prior to the arrival of the last incumbent, the position had been vacant for close to [ ] months. The bureau feels the situation in [post] will stabilize upon filling this vacancy.

After a careful review of information on all the bidders, the [bureau/office] turned to [name], a Civil Service bidder. The bureau did not offer this position to the other bidder(s) due to the lack of [ ] experience as compared to that noted below.

[Name] is currently serving as a [position] in [bureau/office]. Prior to the current position, she or he served as [position] in [bureau/office]. Before joining the State Department, she or he held the position of \_\_\_\_\_ at \_\_\_\_\_. [Name] obtained a Masters Degree from the University of \_\_\_\_\_ in \_\_\_\_\_. [Provide information regarding applicable skills and experience in previous positions as well as any relevant education and training.]

As [position] officer, [name] will be responsible for directing and managing [duties] in the embassy. Due to the scope and responsibility of this particular assignment, the overall difficulty in filling positions in [post], the bureau's need for an experienced and seasoned candidate to fill this urgent vacancy, and the lack of qualified Foreign Service officers for this position, there is a need for [name's] LNA appointment.

In accordance with the agreement with AFSA, AFSA will receive a copy of this signed Certificate of Need two days in advance of being paneled into the position.

\_\_\_\_\_  
[Name and Signature]  
Director General of the Foreign Service and  
Director of Human Resources  
U.S. Department of State

\_\_\_\_\_  
[Date]