United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240
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PERSONNEL BULLETIN (INTERIM) NO: 16-03

SUBJECT: Interim Implementation Guidance: Land Management Workforce Flexibility Act (LMWFA)

Background

On August 7, 2015, the President signed the Land Management Workforce Flexibility Act (Act), P.L. 114-47. The Act allows certain individuals ("land management eligible") who currently or formerly were under time-limited competitive appointments at certain land management agencies to compete for permanent positions in the competitive service at a land management agency, or any other agency, under "internal" merit promotion procedures.

The U.S. Office of Personnel Management (OPM) published implementation guidance via Chief Human Capital Officers (CHCO) Memorandum, dated December 29, 2015. The CHCO transmittal, with questions and answers, may be viewed at https://www.chcoc.gov/content/implementing-policy-guidance-land-management-workforce-flexibility-act.

Purpose and Applicability

This Personnel Bulletin supplements the OPM's Questions and Answers (Attachment A) and provides Department of the Interior (DOI) interim guidance for bureaus to implement the provisions of the Act. Bureaus/offices shall implement this guidance immediately for permanent positions in the competitive service advertised under "internal" merit promotion procedures, as defined below.

Guidance on consideration and appointment of current and/or former Land Management Agency Employees meeting eligibility under the Act for positions announced under "internal" merit promotion procedures (as defined in OPM guidance) applies to all DOI bureaus, as appropriate.

Guidance pertaining to documenting eligibility of employees currently serving under appropriate time-limited competitive appointments pertains only to land management bureaus, as identified below.

Definitions

Land Management Agency:

- The Bureau of Indian Affairs (BIA)
- The Bureau of Land Management (BLM)
- The Bureau of Reclamation (BOR)
- The U.S. Fish and Wildlife Service (USFWS)
- The National Park Service (NPS)

- U.S. Forest Service (USFS)

Land Management Eligible Employees ("land management eligibles"). Two groups of individuals are potentially eligible for appointment, including current and/or former employees serving or served under time-limited competitive appointments at land management agencies (as defined above). "Land Management Eligibles" must meet the following eligibility criteria:

- Current land management agency appointees:
  - must have initially been hired under competitive examining procedures to the time-limited appointment,
  - must have served under one (1) or more time-limited appointments by a land management agency for a period totaling more than 24 months without a break in service of two (2) or more years, and
  - must have performed at an acceptable level during each period of service.

- Former land management agency appointees:
  - must have initially been hired under competitive examining procedures to the time-limited appointment,
  - must have served under one (1) or more time-limited appointments by a land management agency for a period totaling more than 24 months without a break in service of two (2) or more years,
  - must have performed at an acceptable level throughout the service period(s),
  - must apply for a position covered by these provisions within two (2) years after their most recent date of separation, and
  - must have been separated, with respect to their most recent separation, for reasons other than misconduct or performance.

Time-limited Appointments. A "time-limited appointment" is defined by the Act as including "a temporary and a term appointment, as defined by the Office of Personnel Management." OPM refers to two (2) such appointments in 5 CFR part 316, temporary limited appointments not to exceed 1 year and term appointments, which is an appointment of more than one (1) year but not to exceed four (4) years.

"Internal Merit Promotion Procedures." OPM defines the context of this phrase within the Act to refer to a situation where a hiring agency plans to prepare a list of candidates under merit promotion procedures and is accepting applications only from individuals inside its own workforce for that purpose, as provided in 5 CFR part 335. For example, the U.S. Geological Survey (USGS) announces a position open to only USGS employees or the Bureau of Ocean Energy Management announces a position open to anyone within DOI, in both instances a land management eligible could apply. Conversely, if a bureau/office announces a position and accepts applications from outside of DOI under merit promotion procedures, including Interagency Career Transition Assistance Plan (ICTAP), a land management eligible could not apply unless he/she had eligibility under a different authority than the Act.

Responsibilities

Department of the Interior, Office of Human Resources: Provides appropriate guidance and policy regarding the application of the Act.

Bureau/ Office Servicing Human Resource Offices: Implement guidance and processes to ensure compliance and integrity of the recruitment and hiring process with appropriate policies, regulations and other directives and agreements. HR servicing offices shall ensure that appropriate documentation of acceptable performance is part of the "off-boarding" process for employees serving under time-limited competitive appointments.

Land Management Bureaus: DOI's land management bureaus shall implement procedures to appropriately document performance and service of employees under time-limited competitive appointments.

Land Management Eligible Employees (LMEs): Eligible employees are responsible for maintaining records of their eligibility, including acceptable performance, and submit such documentation when applying for positions covered under the Act.

Vacancy Notification and Announcements

Bureaus must follow their usual practices consistent with their merit promotion plans and relevant and enforceable provisions of any applicable collective bargaining agreements (CBA). If such practices would normally require public notice, public notice will be provided. Bureaus are encouraged to include appropriate language within the "Area of Consideration/Who May Apply" section of "internal merit promotion announcements for permanent positions, which identifies application acceptance from "land management eligibles," e.g. *"Current career or career conditional competitive service employees with the National Park Service and current or former time-limited employees eligible under the Land Management Workforce Flexibility Act."*

Bureaus are also encouraged to include questions that help determine eligibility under the Act within their occupational questionnaires. Announcements should also request documents required to establish eligibility under the Act.

Bureaus should also request documentation of satisfactory performance such as performance evaluations or references by supervisors in the vacancy announcement.

Documenting and Verifying Acceptable Level of Performance and Eligibility

Bureaus will document eligibility based on time-limited competitive appointments and service requirements using the employees most recent SF50 and other appropriate documents. Bureau HR offices are responsible for reviewing and determining eligibility, including the twenty-four (24) months of eligible service within the time-limits established in the Act, based on documentation provided by the applicant.

Verifying and documenting a candidate's previous performance is/was at an acceptable level may be accomplished through:

- Review of annual performance reviews if available

- Reference checks
- Other documents, e.g. memorandums of record, whereas the supervisor documented an acceptable performance level provided by the applicant.

Land Management Bureaus (BIA, BLM, BOR, USFWS, NPS) will establish a consistent process to document an employee, serving under time-limited competitive appointments, meets an acceptable level of performance. This will include, at a minimum, completion of a memorandum for record such as the sample provided in Attachment B. Bureaus should also include the remark, ***"The employee's service was at an acceptable level of performance throughout this period of service"*** on the final SF50 for each period of time-limited competitive service an employee completes.

Consideration and Appointments

The Act allows eligible current and former land management eligible, including those from the U.S. Forest Service, to apply and compete for permanent positions in the competitive service when the hiring agency is otherwise accepting applications only from individuals inside its own workforce under merit promotion procedures. Bureaus must follow the processes and procedures for selection outlined within their merit promotion plans, CBAs, and regulations consistent with 5 CFR 335, as with any merit promotion recruitment action, including rating and ranking of candidates. Land management eligible candidates may only be given career or career-conditional appointments, which are appropriate only for permanent appointments.

Time-in-grade regulations in 5 CFR 300, subpart F, include exception for appointments based on special authority in law in accordance with all requirements applicable to new appointments specified in the law. As such, a LME is not subject to the time-in-grade restrictions. Further, under the Act, individuals selected for appointment automatically acquire non-probationary competitive status upon appointment to the permanent position.

LMEs do not have a hiring preference by virtue of their eligibility and must compete under merit promotion procedures, which require that a candidate be among the best qualified in order to be selected. Similarly, LMEs do not have selection priority over other qualified applicants.

LME candidates compete with other applicants and must meet eligibility and qualification standards, including specialized experience, for the position for which seeking consideration under the Act, and be determined to be among the group of best qualified candidates in order to be appointed under the Act.

Bureaus are required to clear Career Transition Assistance Program (CTAP) and any applicable Reemployment Priority List (RPL) before making any type of selection under these provisions.

The following authority codes are used to document appointments under the Act:

Nature of Action Code (5-A): 100 or 101
Nature of Action (5-B): Career Appointment or Career-Conditional Appointment
Authority code (5-C): ZLM
Legal Authority Code (5-D): P.L. 114-47

Maximum Entry Age

In accordance with the provisions of the Act, agencies must waive age requirements in determining eligibility, unless the age requirement is essential to the performance of the duties of the position. Accordingly, qualified LMEs may apply and be considered for DOI vacancies under internal merit promotion procedures without regard to maximum entry age or mandatory retirement age restrictions without an additional waiver, provided the age requirement is not essential to the performance of the duties of the position. This policy supplements Personnel Bulletin (PB) No: 12-16 (PB 12-16), paragraph 3. The other provisions of PB 12-16 remain in effect.

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Attachments

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The Land Management Workforce Flexibility Act: Implementing Policy Guidance

Questions and Answers

The Land Management Workforce Flexibility Act, P.L. 114-47 (the "Act") was signed into law on August 7, 2015, allowing certain individuals ("land management eligibles") who currently are or formerly were under time-limited competitive appointments at certain land management agencies to compete for permanent positions in the competitive service at a land management agency, or any other agency, under "internal" merit promotion procedures.

The questions and answers listed here are meant to provide guidance as to this law. OPM intends to issue regulations at 5 CFR 315 and 335 in due course.

General

Q1. What is the purpose of the Land Management Workforce Flexibility Act?

A: The purpose of the Land Management Workforce Flexibility Act is to allow certain current and former land management agency employees who are serving (or who have served) under a time-limited appointment to compete for any permanent position in the competitive service at a Land Management Agency, or any other agency, under "internal" merit promotion procedures.

Q2. Will OPM issue regulations to implement these provisions?

A. OPM intends to issue regulations to help agencies apply the provisions of the Act. In the interim, OPM encourages agencies using merit promotion procedures to review these Questions and Answers and apply the Act in accordance with its terms and the discussion in this document.

Q3. How does this new authority work? What does it provide?

A. The Act allows eligible current and former land management eligibles (see section on Eligibility below) to apply and compete for permanent positions in the competitive service when the hiring agency is otherwise accepting applications only from individuals inside its own workforce for purposes of merit promotion procedures.

Q4. Is this authority a non-competitive hiring authority?

A. No. This authority does not constitute a non-competitive hiring authority. The Act merely provides that land management eligibles may compete, in certain circumstances, under merit promotion procedures. This means that, in order to be selected, applicants must be determined to be among the group of best qualified applicants, consistent with 5 CFR part 335.

Q5. How do agencies consider and appoint individuals eligible under these provisions?

A. Agencies consider and appoint eligible individuals (see section on Eligibility below) under merit promotion procedures in accordance with 5 CFR part 335. The Act allows for eligible

individuals to apply and compete when the hiring agency is otherwise accepting applications only from individuals inside its own workforce for purposes of merit promotion procedures. When considering applicants under the Act, agencies must adhere to their merit promotion plans and any applicable collective bargaining agreements that the agency may have.

Q6. Should eligible applicants be rated and ranked along with other candidates under merit promotion procedures?

A. Yes. Under the Act, and OPM regulations at part 335 of the Code of Federal Regulations (CFR), eligible applicants must be rated and ranked with other merit promotion candidates under the same assessment criteria such as a crediting plan. The appointing official may select any candidate from among the best qualified group of applicants, consistent with the procedures in 5 CFR part 335. If selected, the individual is given a career or career-conditional appointment, as appropriate.

Q7. What does the phrase "inside the agency's workforce" mean?

A. For purposes of these provisions, the phrase, "inside the agency's workforce" means when the job being filled is open only to employees anywhere in that agency.

For example, if the Department of Interior (DOI) is filling a job open to anyone within DOI (i.e., employees at the Bureau of Land Management, National Park Service, Bureau of Indian Affairs, etc.), land management eligibles could apply.

Likewise, if the National Park Service (NPS) is filling a job open only to employees within NPS, land management eligibles could apply.

Conversely if DOI or NPS is accepting applications from individuals outside of DOI under merit promotion procedures, a land management eligible could not apply unless s/he had eligibility under a different authority than the Act.

Q8. We understand that land management eligibles are expected to compete with agency merit promotion eligibles under the agency's merit promotion plan. But, is the agency expected to create a different assessment or evaluation method for considering land management candidates?

A. No. Land management eligibles would be considered along with agency candidates and under the same assessment criteria or evaluation method as other applicants.

Q9. Do land management eligibles have a hiring preference under these provisions?

A. No. Land management eligibles do not have a hiring preference by virtue of their eligibility under these provisions. In order to be selected, eligible individuals must compete under merit promotion procedures, which require that a candidate be among the best qualified in order to be

selected. The Land Management Workforce Flexibility Act does not constitute, establish, or convey a hiring preference.

Q10. Do eligible individuals have selection priority under these provisions?

A. No. Land management eligibles are not entitled to a selection priority over other qualified applicants under the Act. The Land Management Workforce Flexibility Act allows for eligible individuals to apply and be considered under agency merit promotion procedures when the hiring agency is otherwise considering only applicants from within its own workforce; however, it does not convey selection priority to eligible individuals.

Q11. Does veterans' preference apply when selecting these individuals under this authority?

A. No. Land management eligibles would be considered and selected under merit promotion procedures. Veterans' preference is not a consideration when filling jobs under merit promotion.

Definitions

Q12. What is the definition of a Land Management Agency?

A. Under the Act, a Land Management Agency is defined as:

- the Forest Service of the Department of Agriculture;
- the Bureau of Land Management of the Department of the Interior;
- the National Park Service of the Department of the Interior;
- the Fish and Wildlife Service of the Department of the Interior;
- the Bureau of Indian Affairs of the Department of the Interior; and
- the Bureau of Reclamation of the Department of the Interior.

Q13. The Act allows land management eligibles to compete for jobs filled under the "internal merit promotion procedures" of the hiring agency. What is the meaning of this phrase?

A. In this context, we understand the term "internal merit promotion procedures" to refer to a situation where the hiring agency plans to prepare a list of candidates under merit promotion procedures and is accepting applications only from individuals inside its own workforce for that purpose as provided in 5 CFR part 335.

Q14. What is the definition of a "time-limited appointment"?

A. A "time-limited appointment" is defined by the Act as including "a temporary appointment and a term appointment, as defined by the Office of Personnel Management." OPM's regulations on temporary and term appointment refer to two such types of appointments: a temporary limited appointment, which is an appointment not to exceed 1 year, and a term

appointment, which is an appointment of more than 1 year but not to exceed 4 years, as set out in 5 CFR part 316.

Eligibility

Q15. Who is eligible for appointment under these provisions?

A. Two groups of individuals are potentially eligible for appointment: Certain individuals ("land management eligibles") who currently are or formerly were under time-limited competitive appointments at certain land management agencies.

Current land management agency appointees:

- must have initially been hired under competitive examining procedures to the time-limited appointment,
- must have served under 1 or more time-limited appointments by a land management agency for a period totaling more than 24 months without a break in service of 2 or more years, and
- must have performed at an acceptable level during each period of service.

Former land management agency employees:

- must have initially been hired under competitive examining procedures to the time-limited appointment,
- must have served under 1 or more time-limited appointments by a land management agency for a total period of more than 24 months without a break in service of 2 or more years,
- must have performed at an acceptable level throughout the service period(s),
- must apply for a position covered by these provisions within 2 years after their most recent date of separation, and
- must have been separated, with respect to their most recent separation, for reasons other than misconduct or performance.

Q16. How can agencies verify the eligibility of current or former employees of a land management agency?

A. Agencies should use the employee's most recent Standard Form 50 (the "SF-50") and performance rating (if applicable) to verify eligibility.

Q17. How do current and former land management agency applicants show they performed their duties at an acceptable level?

A. Typically, applicants can provide proof of their annual performance appraisal ratings. Applicants who may have worked for shorter periods of time (e.g., 10 weeks, or several months)

must be able to demonstrate by some means acceptable performance consistent with the employing agency's performance appraisal system for such abbreviated periods of employment. Such demonstration could be accomplished through a reference from a supervisor at each employing agency, for example, who is able to attest to satisfactory performance.

Q18. What if a land management eligible applicant had multiple periods of time-limited employment? How do these individuals show they performed their duties at an acceptable level?

A. An applicant who had multiple periods of time-limited employment must show proof of acceptable levels of employment for each of the periods of employment used to satisfy the 24-month requirement (see the first Q and A under this section).

Q19. Are all employees serving under time-limited appointments in a Land Management Agency eligible for appointment under this Act?

A. No. Only those time-limited employees who were initially appointed under competitive examining procedures to the time-limited appointment, and who meet the other requirements described above, are eligible for appointment. These provisions are to be codified at 5 U.S.C. section 9602(a)(1)-(3) and (d).

Q20. Are agencies required to waive the age requirements for individuals hired under this authority?

A. Yes. The Act provides that agencies must waive age requirements in determining eligibility, unless the agency can prove that age is essential to the performance of the duties of the position being filled.

Q21. Are agencies required to waive the maximum retirement age provisions (5 U.S.C. §§ 8336(c) or 8412(d)) for individuals hired under these provisions?

A. In instances where the maximum entry-age is waived, individuals are not subject to the mandatory retirement at age (57) for law enforcement or firefighter positions. The corresponding mandatory retirement age for these individuals will also be higher because they must work at least 20 years to be eligible for entitlement to an immediate or enhanced annuity under 5 U.S.C. §§ 8336(c) or 8412(d).

Q22. Are eligible applicants subject to time-in-grade restrictions?

A. No. The time-in-grade regulations in 5 CFR 300, subpart F, include an exception for appointments based on special authority in law in accordance with all requirements applicable to new appointments specified in the law.

<u>Conditions</u>

Q23. What type of appointment do individuals appointed into permanent positions receive?

A. Under this Act, individuals are given a career or career-conditional appointment as appropriate.

Q24. Are individuals appointed under these provisions required to serve a probationary period?

A. No. Under the Act, individuals selected for appointment automatically acquire competitive status upon appointment to the permanent position.

Q25. The Act requires that an eligible individual must have, among other things, served for a total period of more than 24-months without a break of service of 2 or more years. Is the 2 year "without a break of service" requirement cumulative over the qualifying period(s) of service, or is it considered one continuous break of 2 or more years of service?

A. To be eligible under these provisions, an individual must not have any one break of service that exceeds 2 years during the 24-month period for which the individual is establishing eligibility.

Miscellaneous

Q26. Can land management candidates be considered for temporary and term positions under this authority?

A. Land management candidates may not use the Act to compete for temporary limited or term appointments. The Act mandates that eligible individuals be given career or career conditional appointments, which are appropriate only for permanent appointments.

Q27. Are applicants eligible under these provisions required to meet government-wide qualification standards for the position being filled in order to be appointed under this authority?

A. Yes. Land management eligibles must be qualified for the position for which they are seeking consideration under the Act, and be determined to be among the group of best qualified candidates.

Q28. How do land management eligibles find out about job openings under this authority?

A. OPM intends to address this subject in regulation and will be interested to consider agency perspectives on this subject. At a minimum, agencies must follow their usual practices consistent with their merit promotion plans and relevant and enforceable provisions of any collective bargaining agreements that apply. If such practices would normally include public notice, public notice should be provided. In addition to following their usual practices, OPM recommends that each agency post the appropriate agency contact information on its Website so

that they may be contacted by land management eligibles who are interested in applying for positions for which the agency intends to use merit promotion procedures and is otherwise accepting applications only from individuals inside its own workforce.

Agencies must consider applicants eligible under the agency's Career Transition Assistance Plan (CTAP), and any reemployment priority list, in accordance with 5 CFR part 330, prior to selecting an eligible under these provisions

Q29. Are eligible individuals hired under this authority subject to any grade-level limitations on the positions into which they are hired?

A. No. Land management eligibles are not subject to any grade level limitations in conjunction with appointment under this authority. All applicants, including land management eligible, must meet applicable qualification standards for the position being filled.

Q30. Are there any limitations on the types of positions for which eligible individuals may apply?

A. No. There are no limitations on the types of positions for which land management eligibles may apply under this authority. Eligible individuals may apply to any permanent position in the competitive service whenever the hiring agency plans to use merit promotion procedures and to otherwise limit applications for this purpose to its own workforce. Applicants must meet applicable qualification standards for the position being filled.

Q31. Can eligible individuals compete for permanent positions at <u>any</u> agency which is receiving applications through merit promotion procedures in a manner otherwise limited to employees from inside its own workforce?

A. Yes. The Act allows eligible individuals to apply and be considered through merit promotion procedures otherwise limited to internal candidates for any position for which the individual is qualified.

Q32. Are agencies required to clear their Career Transition Assistance Plans (CTAP) and reemployment priority lists before making a selection under these provisions?

A. Yes. Agencies must clear CTAP and any applicable reemployment priority list before making any type of selection under these provisions.

Q33. Are eligible individuals permitted to apply for vacancies that are open to Inter-agency Career Assistance Transition Program (ICTAP) candidates only?

A. No. Because vacancies open to ICTAP candidates are open to candidates outside the agency, land management eligibles may not apply.

Q34. Which authority codes should agencies use to document appointments made under this authority?

PB 16-03 (Interim) Land Management Workforce Flexibility Act
Attachment A

A. Agencies should use the following authority codes:

Legal Authority Code: P.L. 114-47

Nature of Action Code: ZLM

PB 16-03 (Interim) Land Management Workforce Flexibility Act
Attachment B

Sample Memorandum of Record (Acceptable Performance)

Date

Memorandum for Record

Subject: Verification of Acceptable Performance

_____*(Employee)*_____worked from _____to_____under my supervision at _____*(office, organization, bureau)*_____. The employee's performance was at an acceptable level throughout their appointment. The below additional information is provided.

Date of entry on duty:_____(verify SF50)

Date separated: _____ (verify SF50)

Supervisors contact information:
Name:
Email:
Phone:

_____
Supervisor Signature and Date

cc:
Employee
Servicing Human Resource Office