

INTRODUCTION

Section 1132 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (P.L. 114-328), as amended by section 1107 of the NDAA for FY 2018 (P.L. 115-91) and section 1113 of the NDAA for FY 2022, (P.L. 117-81), provides eligibility for current and former time-limited employees at domestic Defense Industrial Base (DIB) Facilities or Major Range and Test Facilities Bases (MRTFB) who were initially hired under competitive procedures to a time-limited appointment to compete under merit promotion procedures and be selected for a permanent appointment in the competitive service within the Department of Defense (DoD) provided they meet the three statutory eligibility requirements in Section 1132 (discussed below). Further, this authority is also applicable at non-DoD agencies when the hiring agency is accepting applications from individuals outside its own workforce under merit promotion procedures. Appointments under this authority may not be made after September 30, 2026. These frequently asked questions (FAQs) are intended to assist HR Specialists to implement and administer this authority in accordance with the references cited below.

FREQUENTLY ASKED QUESTIONS

GENERAL INFORMATION

Q1. What is the purpose of section 1132 under the NDAA for FY 2017?

A1. In general, notwithstanding chapter 33 of title 5, U.S. Code (U.S.C.), or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, during FY 2017 and 2018, an employee of a domestic DIB or MRTFB serving under a time-limited appointment in the competitive service is eligible to compete for a permanent appointment in the competitive service at:

(A) any such DIB, MRTFB, or any DoD Component, when such DIB, MRTFB, or DoD Component (as the case may be) is accepting applications from individuals within the same entity under merit promotion procedures, or

(B) any Federal agency accepting applications from individuals outside their own workforce under their merit promotion procedures

(C) If:

- (1) the employee was appointed initially under open competitive examination under subchapter 1 of chapter 33 of such title to the time-limited appointment;
- (2) the employee has served under 1 or more time-limited appointments at a domestic DIB and/or MRTFB for a period or periods totaling more than 24 months without a break in service of 2 or more years; and
- (3) the employee's performance has been at an acceptable level of performance throughout the period(s) (as the case may be) as referenced above.

Q2. What was the purpose of section 1107 under the NDAA for FY 2018?

A2. To extend the period for making appointments under section 1132 of the NDAA for FY 2017. Section 1107 authority expired on September 30, 2021. Section 1107 also added a Congressional Reporting Requirement (CRR).

Q3. What is the purpose of section 1113 under the NDAA for FY 2022?

A3. To extend the period for making appointments under section 1132 of the NDAA for FY 2017. Section 1113 authority expires on September 30, 2026. It also extended the CRR until FY 2026.

Q4. Is this a non-competitive hiring authority?

A4. No. This does not constitute a non-competitive hiring authority. Section 1132 provides eligible current and former DIB or MRTFB employees with the ability to compete in certain circumstances, under merit promotion procedures and be selected if they are among the group of best qualified applicants, consistent with part 335 of title 5, Code of Federal Regulations (C.F.R.).

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

A5. DoD Components consider and appoint eligible individuals under merit promotion procedures in accordance with part 335 of title 5, C.F.R. Eligible individuals are authorized to apply and compete for permanent positions when the DoD activity is accepting applications from individuals inside the Department under merit promotion procedures. When considering applicants under section 1132 of the NDAA for FY 2017, as amended by section 1113, DoD Components must adhere to their merit promotion plans and any applicable collective bargaining agreements.

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

A6. Yes. Eligible applicants must be rated and ranked with other merit promotion candidates under the same assessment criteria. The appointing official may select any candidate from among the best qualified group of applicants, consistent with the procedures in part 335 of title 5, C.F.R. If selected, the individual is converted to a career or career-conditional appointment, as appropriate.

Q7. Do eligible individuals have selection priority under these provisions?

A7. No. DIB or MRTFB eligibles are not entitled to selection priority over other qualified applicants.

Q8. Does veterans' preference apply when selecting these individuals under this authority?

A8. No. DIB or MRTFB eligibles would be considered and selected under merit promotion procedures. Veterans' preference is not applicable when filling jobs under merit promotion.

DEFINITIONS

Q9. What is the definition of a DIB?

A9. This means any DoD depot, arsenal, or shipyard located within the U.S.

Q10. What is the definition of the MRTFB?

A10. Those ranges and facilities which, pursuant to DoD Instruction 3200.18, “Management and Operation of the Major Range and Test Facility Base,” comprise the list which is published and disseminated, at least annually, by the Director, Test Resource Management Center.

Q11. What is the definition of a “time-limited appointment”?

A11. Following U.S. Office of Personnel Management’s (OPM’s) regulations on temporary and term appointments: A temporary limited appointment is an appointment not to exceed 1 year, and a term appointment is an appointment of more than 1 year but not to exceed 4 years, as set out under part 316 of title 5, C.F.R.

ELIGIBILITY

Q12. How is the eligibility of a current or former employee of a DIB or the MRTFB verified?

A12. Refer to the Standard Form 50 (SF-50) and performance rating or equivalent supporting documentation. An individual is considered eligible if the employee meets the three statutory requirements listed above in A1(C).

Q13. How do eligible employees with multiple periods of time-limited employment show duties performed at an acceptable level?

A13. An applicant who had multiple time-limited appointments must show proof of acceptable levels of service for a period or periods totaling more than 24 months without a break in service of 2 or more years prior to appointment.

Q14. Can DoD Components waive age requirements for individuals hired under section 1132?

A14. Yes. In determining the eligibility of a time-limited employee under this section, the employing agency with examining authority or the OPM must waive age requirements unless the age requirement is essential to the performance of the duties of the position.

CONDITIONS

Q15. What type of appointment do individuals receive under this section?

A15. An individual appointed under this section is converted to a career or career-conditional appointment in the competitive service, as appropriate.

Q16. Are individuals appointed under these provisions required to serve a probationary period?

TEMPORARY PERSONNEL FLEXIBILITIES FOR DOMESTIC DEFENSE INDUSTRIAL BASE FACILITIES AND MAJOR RANGE AND TEST FACILITIES BASE CIVILIAN PERSONNEL

A16. In accordance with part 315, subpart H of title 5, C.F.R., as amended by section 1599e of title 10, U.S.C., for the DoD, employees who have not completed a competitive service probationary period are required to complete a new probationary period.

Employees who have completed a probationary period under an initial appointment in the competitive service, having attained full appeal rights to the Merit Systems Protection Board (MSPB), do not have to serve another probationary period.

Q17. Does Section 1132 of the NDAA for FY 2017 address benefits available for individuals serving under time-limited appointments at DIB or the MRTFB?

A17. Yes. Time-limited employees from DIB Facilities or MRTFBs converted to permanent positions in the competitive service must be provided with benefits that are comparable to the benefits provided to similar employees not serving under time-limited appointments including (a) professional development opportunities, (b) eligibility for awards programs, and (c) designation as status applicants for purposes of eligibility for positions in the civil service.

Q18. Are applicants eligible under this section required to meet government-wide qualification standards for the position being filled in order to be appointed?

A18. Yes. DIB or MRTFB eligibles must be qualified for the position for which they are seeking consideration and be determined to be among the group of best qualified candidates referred for consideration.

Q19. How do DIB or MRTFB eligibles find out about job openings?

A19. At a minimum, DoD activities 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. Additionally, the appropriate contact information should be included on the DoD Component website so that they may be contacted by DIB or the MRTFB eligibles who are interested in applying for positions for which the DoD Component intends to use merit promotion procedures and is otherwise accepting applications only from individuals inside its own workforce.

DoD Components must clear applicants eligible under the DoD Priority Placement Program; and any reemployment priority list, in accordance with part 330 of title 5, C.F.R., prior to selecting under these provisions.

Q20. Can eligible individuals compete for permanent positions at a DoD Component that accepts applications through merit promotion procedures limited to employees from inside its own workforce?

A20. Yes. As prescribed in Section 1132 of the NDAA for FY 2017, the authority allows eligible individuals to apply and be considered under merit promotion procedures otherwise limited to internal candidates for any position for which the individual is qualified.

Q21. Can DIB or MRTFB eligibles be considered for temporary and term positions under section 1132?

A21. No. Eligible candidates cannot compete for temporary, limited or term appointments under Section 1132. The authority allows eligibles to compete for a permanent appointment in the competitive service. However, they can apply for other time-limited appointments for which they are eligible.

Q22. Which authority codes should DoD Components use to document appointments made under this authority?

A22. DoD Components should use the following authority code:

Legal Authority Code: ZLMS/ NDAA FY22, PL 117-81, SEC 1113, TEMP PER FLEX DDIBF MRTFBCP, 12/27/2021.

REFERENCES

- Section 1132 of the NDAA for FY 2017, Public Law 114-328, “Temporary Personnel Flexibilities for Domestic Defense Industrial Base Facilities and Major Range and Test Facilities Base Civilian Personnel,” December 23, 2016
<https://www.congress.gov/114/plaws/publ328/PLAW-114publ328.pdf>
- Section 1107 of the NDAA for FY 2018 Public Law 115-91, “Extension of authority for temporary personnel flexibilities for domestic Defense Industrial Base Facilities and Major Range and Test Facilities Base Civilian Personnel, December 12, 2017
<https://www.congress.gov/115/plaws/publ91/PLAW-115publ91.pdf>
- Section 1113 of the NDAA for FY 2022, Public Law 117-81, “Extension of authority for temporary personnel flexibilities for domestic defense industrial base facilities and major range and test facilities base civilian personnel,” December 27, 2021
<https://www.congress.gov/117/plaws/publ81/PLAW-117publ81.pdf>
- OPM Chief Human Officers Memorandum, “NDAA for Fiscal Year (FY) 2017 – Eligibility of certain time-limited Defense Industrial Base Facility or the Major Range and Test Facilities Base,” dated March 6, 2019
https://chcoc.gov/sites/default/files/national-defense-authorization-act-ndaa-fiscal-year-fy-2017%E2%80%94eligibility-certain-time-limited_508.pdf

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