

*Office of Personnel Management*  
*Retirement and Insurance Service*



1920



1954



1959



1986

**Benefits Administration Letter**

*Number:* 96-107

*Date:* August 20, 1996

**SUBJECT**                    **Retirement Election Opportunity for Certain Employees  
Appointed to Civil Service Positions on or After August 10, 1996,  
Following Service in a Nonappropriated Fund Instrumentality of  
the Department of Defense or Coast Guard**

**A.            Introduction**

On August 9, 1996, the Office of Personnel Management published Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) regulations to implement section 1043 of Public Law 104-106, the National Defense Authorization Act for Fiscal Year 1996. The regulations took effect on August 10, 1996. Benefits Administration Letter 96-105, dated August 9, 1996, announced the publication of the regulations and provided information on how they may be obtained.

This Benefits Administration Letter (BAL) provides general information about section 1043 and the implementing regulations. It also provides specific instructions for election opportunities under section 1043 for certain employees who, on or after August 10, 1996, enter a retirement-covered position following service with a nonappropriated fund instrumentality (NAFI) of the Department of Defense (DoD) or Coast Guard. Section 1043 also provides other election opportunities for employees who entered a retirement-covered position before August 10, 1996. We will issue a BAL with detailed information about the latter election opportunities soon.

<p><b>IMPORTANT:</b>            An election opportunity is available for employees entering any agency with past service in a NAFI if they qualify under the conditions in this BAL. See procedure in paragraph L.</p>
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**B.            Background: Provisions in Effect Before August 10, 1996**

CSRS credit is allowed under limited circumstances for certain NAFI service performed between June 18, 1952, and January 1, 1966. See Chapter 20, Part 20A2 of The CSRS and FERS Handbook for Personnel and Payroll Offices. The new law has no effect on those provisions.

The Portability of Benefits for Nonappropriated Fund Employees Act of 1990, Public Law

101-508, allowed certain Department of Defense (DoD) and Coast Guard employees who moved from a NAFI position to a CSRS- or FERS-covered position, and vice versa, the opportunity to elect to remain in the retirement plan they had in their previous employment system. Eligible employees in the nonappropriated fund system of DoD or Coast Guard who moved into the civil service could continue NAFI retirement plan coverage. Eligible employees who moved from the civil service to the nonappropriated fund employment system could elect to retain their previous retirement coverage, that is, CSRS or FERS. These provisions applied to qualifying employment moves that occurred after December 31, 1986. The election opportunity was limited to 30 days after appointment in the gaining organization.

To qualify under the 1990 Act, the employee had to meet the following requirements:

- Vested in prior organization's plan. The employee making the employment move had to be vested in the plan applicable to the losing organization. For CSRS and FERS, vesting means the employee, upon leaving service under the plan, has enough civilian service to qualify for a deferred annuity, that is, 5 years of civilian service. Vesting under the NAFI plans must be determined by each of the several plans.
- Employment move within DoD or Coast Guard. The employment move that qualified the employee to make the election had to occur within DOD or Coast Guard, but once made, the employee continued under the elected plan in future service, even outside DoD or Coast Guard.
- Break-in-service of 3 days or less. If employment in the gaining organization followed a break of 4 days or more, the employee was disqualified from making the election.
- No prior opportunity. For employment moves occurring after initial implementation of the 1990 Act, an employee who had already had a qualifying employment move and, as a result, the opportunity to make an election under the 1990 Act, was disqualified from making an election based on a second qualifying move in the same direction. That is, an employee who had an opportunity to elect to continue NAFI plan coverage upon a move to the civil service employment system, but elected not to do so, could not elect to continue NAFI retirement plan coverage based on a second move. Such an employee could, however, elect to continue CSRS or FERS coverage based on a subsequent qualifying move back to a NAFI.

See Chapter 12, Part 12A5 of The CSRS and FERS Handbook for Personnel and Payroll Offices, for more information about elections under the 1990 Act.

### **C. Overview of Section 1043 of Public Law 104-106**

The general purpose of section 1043 is to allow more employees to combine, for retirement purposes, regular civil service employment with their employment in a NAFI. It does this in two ways. First, section 1043 loosens the 1990 Act's definition of a qualifying move for the purposes of remaining in the employee's prior retirement plan following a move to or from a NAFI. These changes are explained and additional information is provided in paragraphs D through O.

The second major thrust of section 1043 is to allow certain FERS and NAFI employees who had a qualifying move after December 31, 1965, and before the effective date of the new regulations (August 10, 1996), to combine all their service--both NAFI and regular civil service--toward a single retirement benefit. These elections will be the subject of an upcoming BAL.

### **D. Elections Available Based on Employment Moves on or After August 10, 1996**

Effective August 10, 1996, the requirements for eligibility to retain prior retirement coverage following an employment move have been changed as follows:

- Qualifying employment moves into any agency. The requirement that the employment move on which the election is based be a move within DoD or Coast Guard has been eliminated.
  
- 1-year break rather than 3-day break.

The vesting and no-prior-opportunity rules list in paragraph B are unchanged for these elections.

### **E. Who Is Eligible?**

A qualifying move that triggers a retirement coverage election opportunity under section 1043 of Public Law 104-106 must meet all of the following four criteria. These criteria apply to any move occurring on or after August 10, 1996, the effective date of the implementing regulations.

1. The employee did not have a prior opportunity to elect to continue the same retirement coverage based on a prior qualifying move.

As under the provisions of the 1990 Portability Act, an employee has only one opportunity to elect to retain NAFI or civil service retirement coverage. An employee who, upon a

qualifying move, has an opportunity to elect to continue NAFI retirement plan coverage will not have a future opportunity to continue NAFI plan coverage upon a subsequent employment move. Similarly, an employee who has had an opportunity to continue CSRS or FERS will not be given a second opportunity to elect CSRS or FERS upon a subsequent employment move. An opportunity to elect to continue CSRS or FERS does not disqualify an employee, however, from a future single opportunity to elect to continue NAFI coverage at the time of a subsequent qualifying move.

2. The employee was a vested participant in his or her retirement plan prior to the change in employment.

The amendments made by Public Law 104-106 provide only for a continuation of vested retirement coverage upon a change in employment. As stated above, the CSRS and FERS requirement for vesting is 5 years of creditable civilian service.

The retirement systems that cover NAFI employees have various vesting requirements. Before providing any employee the opportunity to elect to continue retirement coverage, agency personnel must first verify that the employee was vested in his or her prior NAFI retirement plan. Attachment 1 contains the names and addresses of the NAFI retirement plans which agency personnel may use to verify prior service under that plan and to obtain a certification that an employee was vested. Attachment 2 provides model language to use when contacting the previous retirement plan.

3. The employee moved from NAFI service in DoD or Coast Guard to a retirement-covered appointment in the civil service employment system, or vice versa.
4. The break in retirement-covered employment did not exceed 1 year.

A move is considered to have been made at the time the individual enters into the new position, not at the time of separation from the prior position. For example, an individual may have separated from a NAFI position with retirement coverage on December 31, 1995. The same individual received an appointment subject to FERS on September 29, 1996. If all other criteria are met, the individual has completed a qualifying employment move on September 29, 1996, and is eligible to elect to continue his or her NAFI retirement coverage instead of becoming covered by FERS.

An appointment during the 1-year break which is not subject to retirement coverage does not invalidate an otherwise qualifying move. The same individual in our example may have received a temporary appointment with no retirement coverage on May 12, 1996, and then converted to an appointment that allowed retirement coverage on September 29, 1996. Since the separation from a retirement-covered position occurred on December 31, 1995, the employee had 1 year and 1 day from the effective date of the separation, or January 1, 1997, to be appointed in a retirement-covered position in order to complete a qualifying move. (The employee's period of separation -- January 1 through December 31, 1996 -- is exactly 1 year.)

## **F. Election Form**

Attachment 3 contains the election form that must be used by agency personnel and employees to document an election of NAFI retirement coverage based on a qualifying move occurring on or after August 10, 1996. Instructions for completing the election form are also located in Attachment 3.

DoD and Coast Guard will issue guidance to NAFI employers concerning opportunities to elect CSRS or FERS upon a move to NAFI employment, consistent with OPM regulations and forms.

## **G. Effect of Election**

A retirement coverage election is irrevocable. Once an employee has elected coverage under a retirement system, he or she continues to be covered by that retirement system for all future periods of service not otherwise excluded from retirement coverage (such as a temporary appointment), whether employed in a civil service position or with a NAFI. The elected retirement coverage will also apply to any service the individual may perform as a reemployed annuitant.

An employee who declines his or her right to retain retirement coverage may again be covered by the "declined" retirement system. For example, a NAFI employee moves (under conditions which are qualifying) to a FERS-covered position. At the time of the move, the employee is given the opportunity to elect to be covered by the NAFI plan for all future service, including service that would normally be subject to FERS coverage. If the employee chooses not to retain his or her NAFI retirement coverage, he or she is covered by FERS for the duration of his or her current appointment. Should the employee move back to the NAFI position, he or she would be covered by the NAFI retirement plan unless the employee is eligible to continue vested FERS coverage following the move back to NAFI employment and elects to continue FERS.

## **H. Effective Date of Election**

Elections of retirement coverage are effective on the date of appointment to a retirement-covered position which completed the qualifying move. If an employee's election to continue NAFI retirement coverage while employed in the civil service is received after CSRS or FERS deductions have already begun, the personnel and payroll records must be corrected, retroactive to the date of the appointment, to reflect coverage under the NAFI retirement plan.

For example, an employee with the following service history elects to continue NAFI retirement coverage following a qualifying move:

FROM	TO	EMPLOYMENT AND COVERAGE
May 21, 1987	August 28, 1996	NAFI with vested coverage in a NAFI retirement plan
September 14, 1996	December 6, 1996	Temporary Appointment with FICA only
December 7, 1996	Present	Civil service with FERS coverage

Effective December 7, 1996, the employee completed a qualifying move from a retirement-covered NAFI position to a FERS-covered position. If this employee chooses to keep his NAFI retirement coverage rather than FERS, the effective date of the election of NAFI retirement coverage is December 7, 1996. Retirement deductions for the elected NAFI retirement plan coverage are required effective December 7, 1996.

**I. Time Limit for Elections**

At the time of employment in a position which completed a qualifying move, the employing agency must give eligible employees 30 days in which to make their election. This time limit may be extended if the agency fails to provide a timely opportunity for the employee to make the election (5 CFR § 847.206). However, since the election is effective on the date of the qualifying move, agency personnel should inform eligible employees of their election opportunity as soon as possible.

**J. Collection of Retirement Contributions**

OPM will issue additional guidance directly to NAFI payroll offices with information on withholding CSRS and FERS contributions from NAFI employees. OPM will also issue a Payroll Office Letter to payroll offices that will provide the names and addresses of each of the NAFI retirement plans as well as a contact person at each plan for questions concerning withholding and submitting NAFI retirement plan contributions.

**K. Thrift Savings Plan**

Employees moving into civil service positions who elect to retain coverage under a NAFI retirement plan are not eligible to participate in the Thrift Savings Plan. The Federal Retirement Thrift Investment Board's regulations are at 61 Fed. Reg. 41,485 (August 9, 1996) (to be codified at 5 C.F.R. part 1620, subpart G).

**L. Procedures**

<b>Elections of Retirement Coverage Based on Moves Occurring on or After August 10, 1996</b>	
<b>ACTION</b>	<b>PROCEDURE</b>
1. Determine if employee is eligible to elect to retain coverage.	See Paragraph E, Who Is Eligible. Review prior employment history to determine if employee has separated from a NAFI position within 1 year of appointment to the new position. Determine if employee had prior opportunity to elect to retain retirement coverage. Verify that employee was vested in the prior retirement system (sample request for verification in Attachment 2).
2. If employee is eligible, provide election opportunity.	See Instructions for Completing Election Form in Attachment 3. After agency completes Part 1 of Election Form, obtain employee's signature in Part 2 and retain one copy as acknowledgment of receipt by employee. If employee elects NAFI retirement coverage, correct personnel and payroll records to show that employee is covered by a NAFI retirement plan, and subject to that plan's deductions, effective with the date of his or her appointment.

**M. Notice Requirement**

Public Law 104-106 requires that all employees affected by the new provisions be notified of their election opportunity under the law and to receive any necessary assistance and counselling. The purpose of this Benefits Administration Letter (BAL) is to provide the information Benefits Officers will need to inform CSRS and FERS employees hired on or after August 10, 1996, of the change in the law, counsel eligible employees about the elections they may consider, and process any employee elections. If additional information is needed, headquarters level Benefits Officers should contact their liaison officer in the Agency Services Division. Agencies should not refer employees directly to the Agency Services Division.

**N. Appeals**

OPM regulations delegate to agencies the authority to issue final decisions to employees who claim an election right, but do not meet the eligibility criteria. Requirements for agency decisions may be found in 5 CFR §§ 847.106 and 847.107.

**O. Insurance coverage not affected**

The amendments made by Public Law 104-106 do not apply to eligibility for health and life insurance coverage. A NAFI employee's participation in CSRS or FERS does not allow him or her to participate in the Federal Employees Health Benefits Program or the Federal Employees Group Life Insurance Program. Likewise, a civil service employee who is participating in a NAFI plan is not eligible for a health or life insurance program established for NAFI employees.

John E. Landers, Chief  
Retirement Policy Division

Attachments:

1. Names and Addresses of Retirement Plans
2. Model Language for Use in Verifying that an Employee was Vested in the Previous Retirement System
3. Election Form



**ATTACHMENT 1**

**Names and Addresses of NAFI Retirement Plans**

To verify service subject to a NAFI retirement plan and/or that an individual is vested in the NAFI retirement plan, contact the appropriate NAFI Component:

Name of Retirement Plan	Address
<b>Department of the Army</b>	Assistant Secretary of the Army for Manpower and Reserve Affairs Civilian Personnel Policy Attn: SFCP-NF, Room 1N39 200 Stovall Street Alexandria, VA 22332-0300
<b>Department of the Air Force</b>	HQ Air Force Services Agency HQ AFSVA/SVXBR 10100 Reunion Place, Suite 502 San Antonio, TX 78216-4318
<b>U.S. Marine Corps</b>	Headquarters, U.S. Marine Corps Morale, Welfare, and Recreation Support Activity (MWP-B) 3044 Catlin Avenue Quantico, VA 22134-5099
<b>Department of the Navy, Bureau of Naval Personnel (BUPERS)</b>	Bureau of Naval Personnel Detachment Memphis MWR Division (PERS-653) Naval Support Activity Memphis 7800 3rd Avenue, Bldg 457 Millington, TN 38054
<b>Naval Exchange Service Command (NEXCOM)</b>	Navy Exchange Service Command Attn: Ms. Willette Brown, Employee Entitlement and Services 3280 Virginia Beach Boulevard Virginia Beach, VA 23452
<b>Army and Air Force Exchange Service (AAFES)</b>	Headquarters, Army and Air Force Exchange Service FA-T (Benefits) P.O. Box 660202 Dallas, TX 75266-0202
<b>U.S. Coast Guard</b>	Commandant (G-WPC-2) U.S. Coast Guard Headquarters 2400 2nd Street SW Washington, DC 20593

**ATTACHMENT 2**

**Model Request for Verification that Employee Was Vested in a NAFI Retirement Plan**

***[Insert name and address of previous retirement system.]***

Dear Retirement Plan Administrator:

The following individual was employed by this agency on ***[Insert date of employment subject to retirement coverage]***. So that we may determine if this individual is eligible to elect to retain NAFI retirement coverage based on a qualifying move occurring on or after August 10, 1996, please provide the effective date of the individual's separation from a retirement-covered position and verify whether the employee was vested in a retirement system on the date of separation. The employee's identifying information is as follows:

Employee's Name (Last, First, MI)	Other names used
Date of Birth	Social Security Number
Agency or component which employed	Location of Employment
Beginning Date	Ending Date
Please provide the following information:	
<input type="checkbox"/> Employee was a vested participant in the _____ retirement system. Dates of participation: _____.	
<input type="checkbox"/> Employee was not a vested participant in the _____ retirement system and is therefore not eligible to continue retirement coverage under this system.	
Signature of certifying official	Date
Title	
Address and telephone number	

Please return response to:

***[Insert name, address, and telephone number.]***

**Attachment 3**

**Election Form for Moves Ocurring on or After August 10, 1996**

**Instructions for Completing Election Form**  
**Elections of NAFI Retirement Coverage Based on a Move on or After August 10, 1996**

1. The personnel office completes Part 1 of the form if the employee was vested in the prior retirement plan and makes a copy of the form.
2. The personnel office gives both copies of the form to the employee and instructs the employee to read and acknowledge receipt of the form by signing Part 2 of one copy of the form. The personnel office collects and retains the copy of the form that the employee signed (both Parts 1 and 2 completed). The employee keeps the other copy with only Part 1 completed.
3. The personnel office files the signed copy on the left side of the Official Personnel Folder (OPF), or in some other temporary file, until the employee makes an election or the time limit for making an election expires.
4. When the employee makes an election by signing under either Option 1 or Option 2 in Part 3 of the form and returns it to the personnel office, the personnel office marks the date of receipt on the form and makes a copy of the form (with Parts 1 and 3 completed). The personnel office gives the employee the copy of the form that does not have the original signature in Part 3, files the form with the original signature in Part 3 on the right side of the OPF, and destroys the copy of the form with Part 2 completed.
5. If the time limit expires before the employee has returned the election form with Part 3 completed, the personnel office takes the form with Part 2 completed, makes a notation that the employee did not file a form with Part 3 completed, and files the form on the right side of the OPF.

# ELECTION TO RETAIN NAFI RETIREMENT COVERAGE AS A RESULT OF A MOVE FROM A NONAPPROPRIATED FUND POSITION TO A CIVIL SERVICE POSITION ON OR AFTER AUGUST 10, 1996

**INSTRUCTIONS:** The Personnel Office must verify that the employee was vested in the NAFI retirement plan before completing Part 1 of this form and giving it to the employee. The employee must indicate his/her election by signing in Part 3 and returning the signed form to the Personnel Office on or before the due date shown in Part 1.

<b>PART 1</b> (to be completed by agency)		I verify that in accordance with §§ 8347(q) and 8461(n) of title 5, U.S.C., and OPM regulations at 5 CFR 847.205, the employee is eligible to retain coverage in the NAFI retirement plan because he/she --	
Employee's name		(1) Has never previously had an opportunity to elect to retain coverage in a NAFI retirement plan;	
Date of Birth	Social Security Number	(2) Has moved, on or after August 10, 1996, from a NAFI position subject to a NAFI retirement plan to a civil service appointment covered by CSRS or FERS without a break of more than 1 year; and	
Name of NAFI Retirement Plan		(3) is vested in the NAFI retirement plan.	Date of Move
		Authorized Signature	Date signed
<b>Due Date:</b> Personnel Office Must Receive Election On or Before		Title	

<b>PART 2: ACKNOWLEDGEMENT OF RECEIPT AND NOTICE OF EFFECT OF FAILURE TO ELECT</b>	
I understand that I am eligible to retain retirement coverage in the NAFI retirement plan listed above. I acknowledge that the Personnel Office has completed Part 1 of this election form and given it to me on this date. I understand that if I fail to complete Part 3 and return the completed form to the Personnel Office before the close of business on the Due Date (shown in Part 1) I will automatically be considered to have chosen Option 2 in Part 3. I also understand that the option I choose below (or am automatically considered to have chosen) will restrict my retirement plan entitlement for the rest of my Government career and that I can never change this election.	
Employee's signature	Date

<b>PART 3: EMPLOYEE'S ELECTION (Instructions to employee: Sign only the box for the option that you elect.)</b>	
<b>OPTION 1:</b> I elect to retain retirement coverage in the NAFI retirement plan. I understand that because of this irrevocable decision, I will never be able to earn additional credit under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS). I understand that regardless of future moves between NAFI and civil service employment, breaks in service, and changes in employment or retirement status, my retirement coverage will remain with a NAFI retirement plan in accordance with the rules of that plan.	
Employee's signature	Date
<b>OPTION 2:</b> I do <u>not</u> elect to retain retirement coverage in the NAFI retirement plan. Because I have made this decision:	
<ol style="list-style-type: none"> <li>1) I will enter FERS (or CSRS Offset if appropriate) coverage without receiving any service credit in FERS (or CSRS Offset) for time spent under the NAFI plan.</li> <li>2) I will not be given another opportunity to retain coverage in a NAFI retirement plan, if I ever move from a NAFI position to a civil service appointment in the future. However, if I move back to a NAFI position, I will be subject to the NAFI plan in accordance with its rules.</li> <li>3) If in the future I move back to NAFI employment, including employment covered by the NAFI retirement plan that I am leaving, I will be given a one-time opportunity (if I never before have been given the opportunity) and if I have 5 years of creditable service under FERS or CSRS) to elect to retain coverage in FERS (or CSRS Offset), or to enter the appropriate NAFI plan without transfer of FERS (or CSRS Offset) service credit.</li> </ol>	
Employee's signature	Date

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