



Benefits Administration Letter

Number 10-101

Date: January 12, 2010

Subject: National Defense Authorization Act Retirement Changes

Purpose: The purpose of this Benefits Administration Letter (BAL) is to provide general guidance concerning the benefits under the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS) that have been affected by the "National Defense Authorization Act for Fiscal Year 2010", Public Law 111-84, signed on October 28, 2009. We are doing further analysis related to the effects of these changes. Informational materials and forms will be updated as needed. Additional BALs will be issued as warranted.

Background: The "National Defense Authorization Act for Fiscal Year 2010", Public Law 111-84, provides for the following benefits changes under CSRS and FERS.

- Part-Time Reemployment
- Credit for unused sick leave under FERS
- Limited expansion of the class of individuals eligible to receive an actuarially reduced annuity under the CSRS
- Computation of CSRS annuities based on part-time service
- Authority to deposit refunds under FERS
- Retirement credit for service of certain employees transferred from District of Columbia service to federal service
- Non-foreign area retirement equity assurance

General Guidance for Agencies: The following is general guidance for each provision in the order that they are listed in the bill. Please use this guidance in determining retirement eligibility and estimates for individuals retiring or considering retirement. Additional guidance and/or regulations will be provided by OPM after further analysis is completed.

Section 1122 and 1123 – Part-Time Employment

Section 1122 allows reemployment of CSRS and FERS annuitants on a limited basis with receipt of both annuity and salary. The provisions apply to Executive agencies

(excluding the Department of Defense and General Accountability Office), the Postal Service, the Judicial Branch, and Legislative Branch agencies (other than GAO, which is excluded under both the Executive and Legislative Branch provisions).

The authority may be used by agencies when they determine that use is necessary to—

- (A) fulfill functions critical to the mission of the agency, or any component of that agency;
- (B) assist in the implementation or oversight of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) or the Troubled Asset Relief Program under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.);
- (C) assist in the development, management, or oversight of agency procurement actions;
- (D) assist the Inspector General for the agency in the performance of the mission of that Inspector General;
- (E) promote appropriate training or mentoring programs of employees;
- (F) assist in the recruitment or retention of employees; or
- (G) respond to an emergency involving a direct threat to life of property or other unusual circumstances.

Individuals reemployed will serve under appointments limited to a year or less. An annuitant may not serve under the authority for more than 520 hours of service during the period ending 6 months following the individual's annuity commencing date; for more than 1040 hours of service during any 12-month period; or for more than a total of 3120 hours. Reemployment may not exceed 2.5 percent of the full-time workforce at any time, and if 1 percent is exceeded, agencies are required to provide an explanation and justification to the Congress and OPM. Individuals employed under these provisions will not be entitled to any additional annuity benefits based upon that employment.

Agencies may begin using these waivers now. This authority expires on October 27, 2014.

Section 1901 – Credit for unused sick leave under FERS

Section 1901 permits unused sick leave to be used as service credit in the computation of benefits under FERS, but not for establishing title to an annuity or in the computation of average salary. Sick leave will be used in the computations in the same manner it is used in CSRS computations. **Effective October 28, 2009, individuals separating with title to an immediate annuity or who die leaving a survivor eligible for a survivor annuity**

will be entitled to credit for 50 percent of their unused sick leave. Effective for separations and deaths occurring on or after January 1, 2014, 100 percent of the unused sick leave will be available.

The provisions apply to unused sick leave to the individual's credit under a formal leave system and for which the employee has not received payment. In the case of individuals who have annuities computed under the provisions of both CSRS and FERS, only sick leave not included in the CSRS part of the calculation will be available under FERS. In addition, in the case of an employee who is excepted from subchapter I of chapter 63 under section 6301(2)(x) through (xiii) of title 5, United States Code, (which applies to certain high level officers and employees) the days of unused sick leave include any unused sick leave standing to his or her credit when he or she was excepted from this subchapter.

This new provision is not applicable to Veterans Health Administration nurses who are already entitled to full credit for unused sick leave under prior legislation. The amendments made by section 1901 apply only to annuities based on a separation from service occurring on or after October 28, 2009.

Section 1902 – Limited expansion of the class of individuals eligible to receive an actuarially reduced annuity under the CSRS

Under existing law applicable only to CSRS, individuals who received refunds of retirement deductions for a period of service ending prior to October 1, 1990, may make a redeposit of the refund by actuarial annuity reduction in lieu of cash redeposit. Section 1902 now permits actuarial reductions in lieu of cash redeposit for refunds covering periods of service ending **prior to March 1, 1991.**

The amendment applies only to non-disability annuities based on a separation from service occurring on or after October 28, 2009.

Section 1903 – Computation of CSRS annuities based on part-time service

Previously, individuals retiring under CSRS who were employed on a part-time basis during their final three years of service have had their annuities computed using two different high-three average salaries. The annuity calculation for service performed on or after April 7, 1986, utilizes what is referred to as a "deemed high-three" average salary which is computed using the full-time equivalent rates of pay for the high-three period. The annuity calculation for service performed before April 7, 1986, utilizes a high-three average salary based upon the highest rates of pay actually received by the individual, which may be for a period prior to the final three years of service. In other words, under law prior to this amendment, one high-three average salary was based on the pay actually received and the other based on pay the individual would have received assuming they worked full-time (the deemed high-three).

Section 1903 provides that the “deemed high-three” average salary will be utilized for all service, regardless of when performed. Section 1903 does not change the other provisions applicable to calculation of annuities involving part-time service. The amendment applies only to annuities based on a separation from service occurring on or after October 28, 2009.

Section 1904 – Authority to deposit refunds under FERS

Since FERS was enacted, the law has provided that individuals who took refunds of their FERS employee contributions irrevocably lost service credit for the period of service covered by the refund. Section 1904 permits individuals who are subsequently reemployed to make a redeposit of the amount refunded, plus interest, and to have credit for the service reinstated. For the purpose of survivor annuities, redeposit may also be made by survivors.

Interest will be based upon the same basic rules applicable to CSRS. OPM will issue new regulations and revised forms prior to the redeposits being accepted.

Section 1904 applies to individuals who are employed under FERS on or after October 28, 2009. Individuals retiring on or after October 28, 2009, and employed under FERS will be given the opportunity to make the redeposit upon the adjudication of their benefit.

Section 1905 – Retirement credit for service of certain employees transferred from District of Columbia service to federal service

Section 1905 is a new and unique provision under CSRS and FERS. It affects certain specified service performed in District of Columbia positions that were subsequently brought under Federal benefits, and that was not previously creditable under CSRS or FERS. Such specified service will now be creditable for retirement eligibility purposes only, including specified service being creditable towards law enforcement officer retirement eligibility. However, such service will NOT be creditable in the computation of annuity benefits.

Credit for such service will be based upon certification of the appropriate personnel official of the government of the District of Columbia or other independent employing entity concerning whether an individual performed qualifying District of Columbia service and the length of the period of such service the individual performed. Individuals will be eligible for credit only if they are employed under CSRS or FERS on or after October 28, 2009.

Section 1911-1919 – Non-foreign area retirement equity assurance

For decades, individuals employed in certain non-foreign areas outside of the contiguous 48 states (Alaska, Hawaii, Puerto Rico, and other U.S. territories or possessions) have been eligible for a non-foreign Cost of Living Allowance (COLA). While such non-foreign COLA payments are not subject to income tax, they are also not basic pay for retirement purposes. Individuals receiving non-foreign COLA payments have not been eligible for locality pay, with the result that their basic pay has fallen further behind the rest-of-US (RUS) locality pay each year.

These provisions permit a phased conversion from non-foreign COLA to locality pay over a three year period beginning in 2010. **Individuals who separate from service from 2010 through 2012 will have the right to elect to have the non-foreign COLA allowances received during that period count towards retirement credit, to the extent that the non-foreign COLA allowances plus any locality pay received do not equal more than the RUS locality pay.** Such election must be filed not later than December 31, 2012. The statute makes provisions for agency and employee payments based upon those elections, which must be made to OPM. OPM will issue regulations to carry out the election and payment process.

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