

## **Guidelines for a Submitting Position Description for Special Retirement Coverage**

When developing new positions descriptions that include firefighter (FF) and/or law enforcement officer (LEO) duties, a key position management issue the Human Resources Specialist should discuss with the manager/supervisor is whether the position should be recommended for special retirement coverage under the Civil Service Retirement System (CSRS) 5 U.S.C. § 8336(c) and/or the Federal Employees Retirement System (FERS) 5 U.S.C. § 8412(d). Position descriptions (PDs) having firefighter and/or law enforcement duties should be submitted to the Firefighter and Law Enforcement Retirement Team (FLERT) for a review and recommendation. The PD is then processed for a final Department of the Interior (DOI) determination. The procedures outlined below must be used. The servicing personnel office should submit a recommendation for coverage to the FLERT office. All PDs (e.g., temporary or permanent) should be submitted for a review and coverage determination. However, temporary (non-deduction) appointments, under FERS rules, are not subject to retirement provisions<sup>1</sup>; as such, approved temporary/ non-deduction service cannot be used for annuity computation or retirement eligibility. Nonetheless, if the PD receives LE coverage, the individual may be entitled to the special LEO pay. **PDs that have not received a coverage determination are not “officially” covered. A listing of approved DOI positions can be found at: [http://flert.nifc.gov/position\\_descriptions.htm](http://flert.nifc.gov/position_descriptions.htm).**

### **Definitions:**

**Firefighter** - Under CSRS<sup>2</sup> rules, firefighter means an employee, whose duties are primarily to perform work directly connected with the control and extinguishment of fires *or* the maintenance and use of firefighting apparatus and equipment. However, under FERS<sup>3</sup> rules, firefighter means an employee occupying a rigorous position, whose primary/rigorous duties are to perform work directly connected with the control and extinguishment of fires. **Law Enforcement Officer** - Under CSRS rules a Law Enforcement Officer (LEO) means an employee occupying a primary position, whose primary duties are the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States. A FERS employee must meet the same LEO definition as previously stated, but primary/rigorous duties can also include the protection of officials of the United States against threats to personal safety.

The duties of the position must be so rigorous that employment opportunities are limited to young and physically vigorous individuals. Furthermore, the term “**investigation**” refers to “criminal investigation” which involves unusual physical hazards for the investigator, deriving from frequent contacts with criminals and suspected criminals and their desire to avoid criminal prosecution.

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<sup>1</sup> Under FERS, temporary service (non-deduction service) after December 31, 1988, for which no retirement deductions were made, is not creditable for retirement purposes. See CSRS/FERS Handbook, Chapter 20, Part 20B2, Section 20B2.1-1C and Part 20B3, Nondeduction Service. See also 5 U.S.C. § 8411.

<sup>2</sup> For further clarification see 5 C.F.R. § 831 Subpart I.

<sup>3</sup> For further clarification see 5 C.F.R. § 842 Subpart H.

A LEO covered by this special retirement program commonly: (1) has frequent direct contact with criminal suspects; (2) is authorized to carry a firearm; (3) interrogates witnesses and suspects, giving Miranda warnings when appropriate; (4) works for long periods without a break; (5) is on call 24 hours a day; and (6) is required to possess a Type I Law Enforcement Commission as well as meet the physical fitness standards to maintain that commission. The definition of LEO duties does not include an employee whose primary duties involve maintaining order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than persons who are suspected or convicted of offenses against the criminal laws of the United States.

Current guidance for meeting the definition and eligibility requirements as a LEO can be found in Watson v. Dept. of the Navy, 262 F.3d 1292 (Fed.Cir.2001). In Watson the Court held that the position-oriented approach used by the Merit Systems Protection Board (the Board) is consistent with the statutes and regulations of the FF/LEO retirement coverage program. The Office of Personnel Management regulations require assessment of the “basic reasons for the existence of the position”. Individuals seeking FF/LEO retirement coverage bear the burden of proving entitlement by preponderant evidence. Eligibility for FF/LEO retirement coverage must be “strictly construed” because the FF/LEO retirement program is more costly to the government than regular retirement plans and often results in the retirement of important people at a time when they would otherwise have continued to work for a number of years. In assessing why the position exists, factors such as an early mandatory retirement age and maximum entry age should be considered in determining whether the “basic reasons for the existence of the position” consists of duties that will make the employee FF/LEO eligible.

The most probative factors, the Court holds, are: (1) whether the officers are merely guarding life and property or whether the officers are instead more frequently pursuing or detaining criminals; (2) whether there is an early mandatory retirement age; (3) whether there is a youthful maximum entry age; (4) whether the job is physically demanding so as to require a youthful workforce; and (5) whether the officer is exposed to hazard or danger. **The Court and the Board have held that first responder duties are not LEO duties. Likewise, performing preliminary investigations and looking for possible criminal activity are not LEO duties.** See also: Fagergren v. Dept. of the Interior, 98 M.S.P.R. 649 (2005) *aff'd* 2006 U.S. App. Lexis 771 (Fed Cir 2006); Crowley v. U.S., 398 F.3d 1329 (Fed.Cir.2005); Bingaman v. Dept. of the Treasury, 127 F.3d 1431 (1997); Lott & Robillard v. Gen. Services Administration, 84 M.S.P.R. 324 (1999); and Ayres v. Dept. of Defense, 86 M.S.P.R. 593 (2000). Since firefighters and law enforcement officers are evaluated under the same statutory provisions, similar factors/standards can be applied.

**Primary Duties** - The “**primary duties**” of a position are those duties that: (a) are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position; (b) occupy a substantial portion of the individual’s working time over a typical work cycle; and (c) are assigned on a regular and recurring basis. Primary duties do not include duties of an emergency, incidental, or temporary nature, even if those duties occupy a substantial portion of the employee’s time over a typical work cycle. In general, if an employee spends an average of a least 50% of his/her time performing a duty or group of duties, they are his/her primary duties.

The fact that the position requires a law enforcement commission and the employee is authorized to carry a firearm is **not** sufficient evidence that their position is a primary LEO position. As previously stated, to meet the eligibility requirements, FF/LE duties **must** be: paramount in influence or weight; performed at least 50% or more of one’s working time; and assigned on a regular and recurring basis.

### **Submitting Position Descriptions (PDs) for Coverage**

All submittals must contain the following:

- a complete copy of the position description including the OF-8 (signed by the classifier);
- a breakdown of the percentage of time spent in each major duty (to equal 100%);
- classifier's evaluation statement (if available);
- performance standards (if available);
- organization chart indicating the location of the position;
- functional statement, if not included in the Introduction of the PD; and
- DOI checklist for recommendation of special CSRS/FERS coverage for law enforcement or firefighter positions. This should be completed by the Human Resources Officer or HR Specialist). The checklist can be found at: [http://flert.nifc.gov/forms/pd\\_checklist.pdf](http://flert.nifc.gov/forms/pd_checklist.pdf) .

### **Positions being submitted for primary/rigorous coverage must:**

- meet the definition of a primary/rigorous firefighter or LEO (as defined above); and
- show in Factor 8, **Physical Demands** that the duties of the position are rigorous and *include the requirement to meet the physical fitness/qualifications for arduous positions.*

### **Positions being submitted for secondary coverage must:**

- contain evidence that the position meets the requirements for secondary positions (*i.e.* position is clearly in the FF or LE field; in an organization having a FF or LE mission; and is either: (a) supervisory (first-level supervisor of primary firefighters or LEOs) or (b) administrative, of which prior FF or LE experience is a requirement).

## **Submit Completed Position Packages To:**

Department of the Interior,  
Office of the Secretary  
Office of Human Resources  
300 E. Mallard Drive, Suite 170  
Boise, ID 83706-6648.

(Complete PD package (with transmittal letter) may be faxed to 208-334-1558). Please refer to the DOI checklist. Incomplete packages may be returned without review or held up until the required information is submitted.

## **What happens after a position description has been approved for coverage?**

Once FLERT receives an approved PD package from the Department, the FLERT HR Specialist will stamp and sign the OF-8 and attach it to the "Certification of Approval for Special Retirement Coverage". A copy of the certification sheet and OF-8 is then sent to the Servicing Personnel Office. If a PD is not covered or denied coverage, a letter signed by the Secretary's Designee explaining the decision *is sent to the servicing personnel office with instructions for processing*.

When the SPO receives the certification and PD with appropriate annotation on the OF-8 from FLERT, copies of the PD (including the certification/letter) should be made and distributed as follows: OPF, PD book, supervisor copy, employee copy, and position file copy.

## **What to do if position is encumbered?**

PD's must have a coverage determination **BEFORE** they are used for placement; otherwise, you run the risk of having to remove an individual if he/she doesn't meet the regulatory requirements (e.g., Maximum Entry Age (MEA) for primary/rigorous positions only, transitional provisions, etc...). Check to see if the incumbent is eligible for coverage as follows:

- (a) **Primary/rigorous position** - Assure that the incumbent meets the MEA requirements. If not, contact the FLERT office for information on corrective action, which may include removal. If incumbent is already in the appropriate retirement code, no processing action is required; just document the Work History Form that should be on top of the right side of the OPF.

If the incumbent is not already in the appropriate retirement code, personnel actions will need to be processed to correct the retirement code back to the date the position was classified, or the date the employee entered the position, as appropriate. See processing special retirement covered service information. You also need to check special pay eligibility. File the PD on right side of OPF (it

supports retirement benefit) as required by CSRS & FERS Handbook, Chapter 46, Section 46A3.2-1A. Section 46B3.2-1A.

**(b) Secondary Position** - If a position is secondary, check to see if incumbent is eligible for coverage in a secondary position (i.e., made proper transition under either CSRS and FERS rules). **That is, the PD may be covered as secondary, but an individual may not be eligible for special retirement.** If employee does not meet the transfer requirements, he/she may not be eligible for coverage. In this instance, get a “Statement of Understanding” (for individuals selected for secondary positions, but not eligible for coverage-form attached) signed by the employee, and put the signed copy in the employee’s OPF. If the incumbent is eligible for coverage but not currently in the correct retirement code, personnel actions will need to be processed to correct the retirement code retroactive to the date the position was classified or the date the employee entered the position, as appropriate.

**For additional information on submitting PDs and processing PD information as well as other special retirement information, please visit our website at: <http://flert.nifc.gov>. In the left-hand side of the website, go the link titled “FLERT Training Resource Materials”. Then go to link titled “Firefighter and Law Enforcement Officer Special Retirement Training for HR Specialists, Managers, and Supervisors”. If you have any questions, please contact Alan Sizemore, HR Specialist at 208-334-1556.**

**Statement of Understanding (Individuals not in a covered position)**

I understand that if I am in a position description that is **NOT** covered by special retirement and I feel it should be under 5 U.S.C. § 8336(c) or 5 U.S.C. § 8412(d), I can file a claim for coverage with the Department of the Interior.

I also understand that time limits apply to a claim for current position coverage and claims for past service. Procedures for filing claims may be obtained from the Human Resource Office or the Firefighter and Law Enforcement Retirement Team.

**Individuals under the Civil Service Retirement System**

Individuals in the Civil Service Retirement System (5 U.S.C. § 8336(c)), coverage in a position or credit for past service will not be granted for a period greater than **1 year prior** to the date the individual claim is received by the Firefighter and Law Enforcement Officer Retirement Team.

If service is prior to the 1 year limitation, the agency head may extend this time limit for filing when, in the judgment of such agency head, or OPM, documentation is provided that the employee was prevented by circumstances beyond his/her control from making the request within the time limit. If the employee meets this criteria, he/she must submit a letter to the Firefighter and Law Enforcement Officer Retirement Team within **35 calendar days of the date of this statement**, stating his/her intent to file a claim and include in the letter an explanation of why he/she did not meet the time limit.

**Individuals under the Federal Employees Retirement System**

Individuals in the Federal Employee Retirement System (5 USC § 8412(d)), who are in a position that is not subject to the 1/2% higher withholding, but feel the position should be covered, must within 6 months of entering a position, or any significant change to that position, initiate formally, and in writing, a request for an agency determination that his/her position should be granted coverage. The agency head may extend this time limit when the individual provides sufficient evidence that he/she was unaware of his/her status or was prevented by circumstances beyond his/her control from requesting a determination of position coverage. If the individual's service falls within this category, he/she must submit a letter to the Firefighter and Law Enforcement Officer Retirement Team within **35 calendar days of the date of this statement**, stating why he/she did not meet the regulatory time limit.

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Individual's Name as shown on the SF-50 (Typed or printed)

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Individual's Signature

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Date

The original statement must be filed in the employee's OPF and a copy given to the employee.