



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
MANPOWER AND RESERVE AFFAIRS  
200 STOVALL STREET  
ALEXANDRIA, VIRGINIA 22332-0300

June 1, 1999

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Guidance on Processing Individual Requests for Law  
Enforcement Officer Special Retirement Coverage

I. Reference:

- a. 5 United States Code 8331(20), 8336(c)(Civil Service Retirement System)
- b. 5 Code of Federal Regulations 831, Subpart I
- c. United States Code 8401(17), 8412(d)( Federal Employees Retirement System)
- d. Code of Federal Regulations 842, Subpart H

II. Purpose

This guidance establishes a standard operating procedure to be followed in forwarding an application for individual service credit or individual position coverage to Headquarters, Department of the Army for determination and/or recommendation on special retirement coverage eligibility.

III. Requests Covered by this Guidance

Under 5 CFR 831.906 relating to the Civil Service Retirement System (CSRS), a current employee serving in a position which is not an approved law enforcement officer position (primary or secondary) may request a determination as to whether or not the employee's service should be credited under the special retirement provisions and, if it qualifies, whether the position should be deemed a primary or secondary position. Likewise, a current or former employee (or survivor of a deceased employee), who believes that a period of past service in an unapproved position qualifies as service in a primary or secondary position, may request such a determination from the agency where the claimed service was performed. Pursuant to 5 CFR 831.906(e), coverage in a position or credit for past service will ordinarily not be granted for a period greater than 1 year prior to the date the individual's request was received.



Under the Federal Employees' Retirement System (FERS), an employee in an unapproved position may seek a determination from the employing agency that his position is properly covered under the special retirement provisions for law enforcement officers. If the request is not made in writing and within 6 months after entering the position or after any significant change in the position, the agency head's determination that the position was not so covered at the time of the service is presumed to be correct. (Under 5 CFR 842.804(c), this presumption is rebuttable.)

This Memorandum is addressed to the above types of requests by individuals; it is not addressed to requests by Agency officials for global coverage of newly established or revised positions under the special retirement provisions for law enforcement officers.

#### IV. Processing Procedures

All requests for individual service credit and/or position coverage made pursuant to 5 CFR 831.906 or 5 CFR 842.804(c) shall be directed to the servicing Civilian Personnel Advisory Center (CPAC) for handling. The CPAC shall forward the request, thru the MACOM, to HQDA, with the following additional documentation and information:

- a. A statement as to when the request for individual service credit or position coverage was first received by the CPAC or other Agency official.
- b. The official Position Description and a statement as to whether the PD accurately reflects the duties of the position.
- c. A copy of the initial and any subsequent Classification Reviews, if available.
- d. A copy of the requester's current or most recent performance standards in the position (and the performance standards for the prior two years, if available).
- e. A copy of the Vacancy Announcement used to recruit for the position, if available.

f. Documentation, such as a SF-50, as to the date the requester entered the position. If there have been any substantial changes to the duties of the position since first held by the requester, indicate what those changes were and when they were effected.

g. Documentation as to which retirement system the requester is presently covered under and/or was covered under at the time of the service at issue.

h. For determinations under FERS, a statement as to whether the duties of the position are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals. If so, state the basis for this opinion.

i. A review and recommendation by the Legal Office servicing the requester's duty station as to eligibility for service credit or position coverage, and the bases, if any, for such eligibility.

j. The MACOM's recommendation on the eligibility determination.

k. Submit the following information, as applicable, depending on the bases for the request for coverage:

1. For Primary Positions

If available information suggests that the requester regularly spends (or spent, in the case of a request for past service credit) more than 50% of his time in the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, provide the following:

(a). A breakdown by percentage of the aggregate time incumbents in the requester's position at his/her duty location devote to the following activities in a typical work cycle: 1) patrolling; 2) security inspections; 3) enforcing traffic regulations (non-criminal); 4) investigation of federal crimes (including but not limited to misdemeanors, fish and game laws, punitive articles of the U.C.M.J., and applicable traffic offenses); 5) criminal or suspect apprehension and/or detention; 6) testifying in court pursuant to official duties; 7) accident investigations; 8) armed guard duties at Ammunition Supply Points or elsewhere; 9) maintenance of patrol vehicle(s), uniform, firearms and other

issued equipment; 10) public relations activities; 11) search and rescue operations; 12) supervisory duties; 13) administrative duties not covered above; and 14) other duties (specified, if possible).

(b). The legislative jurisdiction applicable at the relevant duty station(s).

(c). Whether the requester has been granted arrest authority and, if so, whether that authority exceeds the apprehension authority provided for at AR 190-56 para 5.2(a).

(d). Statistics regarding any Miranda rights warnings given by the requester or other incumbents in the position.

(e). Statistics regarding any search warrants executed by the requester or other incumbents in the position.

(f). Whether the requester is required to meet any physical fitness standards and, if so, a copy of the SOP or other documentation describing any required test and the procedures in the event of test failures.

(g). An indication of whether the criminal investigation work, if any, done by the requester or other incumbents in the position is short-term and whether it is conducted independently or under the direction and control of criminal investigators.

(h). An estimation of the frequency with which the incumbents encounter convicted or suspected criminals.

(i). Information regarding when, and if, the requester or other incumbents can or do take breaks.

(j). Historical data regarding the on-call status, if applicable, or emergency overtime worked by the requester or others encumbering the duty position.

(k). Organizational chart or other data identifying investigators, detectives or others assigned to or servicing the organization for purposes of criminal investigation, apprehension and detention.

(l). Any requirement for the use of bullet proof vests.

(m). Any authorization to carry a firearm and a copy of the SOP or other documentation on weapons qualifications requirements applicable to incumbents in the position (including procedures in the event of failure to qualify).

(n). Any other information management officials or the CPAC deem relevant to determining whether the requester is entitled to special retirement coverage or past service credit, including but not limited to the circumstances surrounding the creation of the position.

## 2. For Secondary Positions

(a). Verification, if applicable, that the position is in the law enforcement field.

(b). Verification, if applicable, that the position is in an organization having a law enforcement mission. Describe the organization, including the activity for which the requester immediately works, and define the law enforcement mission, if any.

(c). Verification as to whether the requester, while covered under the provisions for special retirement coverage, moved directly (that is, without a break in service exceeding 3 days) from a primary position to a secondary position.

(d). For special retirement coverage under FERS, verification as to whether the requester completed three years in a primary position, including any such service during which no FERS deductions were withheld.

(e). Verification as to whether the requester has been continuously employed in a secondary position(s) since moving from a primary position, without a break in service exceeding 3 days. In the event of any breaks in service, explain when they occurred.

(f). Verification as to whether any break in service from a secondary position exceeding 3 days was due to an involuntary separation (not for cause).

(g). For Supervisory Positions, verification as to whether the requester serves as a first-level supervisor of law enforcement officers in primary positions.

(h). For Administrative Positions (that is, executive, managerial, technical, semiprofessional or professional positions), documentation on whether experience in a primary law enforcement position, or equivalent experience outside the federal government, is a mandatory prerequisite.

### 3. For Detention Duties

(a). Verification as to whether the requester's duty station is inside detention facilities.

(b). An assessment of the frequency with which the requester has direct contact with inmates or detainees.

(c). An explanation, if applicable, of how the requester's duties relate to the detention, supervision, inspection, direction, training, employment, care, transportation and/or rehabilitation of inmates or detainees.

### V. Mailing Address for Submissions

Applications for individual service credit or position coverage, together with the additional information requested in this Memorandum, should be sent for determination to: Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), Policy and Program Development Division, ATTN: SAMR-CPP-SM, 200 Stovall Street, Alexandria, Virginia 22332-0340.

### VI. Decision Making Authority

Agency heads are authorized by 5 CFR Parts 831 and 842 to make special retirement coverage determinations under the CSRS and FERS systems for law enforcement officers. The Office of Personnel Management maintains an oversight function.

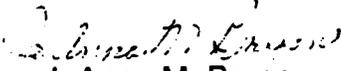
The Secretary of Defense has delegated to the heads of the military departments the authority to deny, but has retained the authority to approve, special retirement coverage for law enforcement officers. In the event

HQDA determines that a request for individual service credit or position coverage should be denied, this office will provide a written decision to the employee, including a notice of right to appeal the determination to the Merit Systems Protection Board. If this office believes that a particular request merits approval, we will forward the packet, together with our recommendation, to the Department of Defense for determination and direct reply to the requester.

VII. Burden of Proof

The employee bears the burden of proof with respect to credit and coverage under the special retirement provisions governing law enforcement officers. This office requires the submission of the additional information listed in this guidance, however, to increase the accuracy of any determination or recommendation we make. Since on appeal the Merit Systems Protection Board may consider documentary or testimonial evidence which the requester did not include in the initial request, this additional information will help us ensure that any determination we might make is supportable. CPACs should ensure that the employee's request, including any supporting documentation submitted by the employee, is clearly identified as such in the packet when forwarded to this office for a determination. We also recommend that you mark all documents created by Agency officials in response to this guidance "Compiled in reasonable anticipation of a civil action or proceeding," in order to more easily identify them as such when considering their release in the event of litigation or information requests.

If you have any questions regarding this action, please contact Debra Chiles at (703) 325-9985 or DSN 221-9985.

  
JoAnna M. Bryan  
Acting Chief, Policy and Program  
Development Division

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