

CSRS

FERS

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Important Notice

A series of court cases have changed the way the Office of Personnel Management (OPM) calculates disability annuities and survivor annuities that are based in whole or in part on service in positions that are usually tied to higher retirement deduction rates and to higher annuity accrual rates. Benefits Administration Letter (BAL) 10-105, ***Enhanced Disability and Survivor Annuity Computations Under CSRS and FERS***, July 7, 2010, provides information and guidance relating to those changes. The information in BAL 10-105 applies to both disability claims and survivor annuity claims (based on a death-in-service) under the Civil Service Retirement System (CSRS) and under the Federal Employees Retirement System (FERS) that involve employees who have performed service in the following positions:

- Law Enforcement Officer, Firefighter, and Nuclear Materials Courier, that is qualifying for retirement under 5 U.S.C. § 8336(c) or § 8412(d);
- Custom and Border Protection Officer that is qualifying for retirement under 5 U.S.C. § 8336(c) or § 8412(d);
- Member of the Supreme Court Police;
- Member of the Capitol Police; and
- Air Traffic Controller that is qualifying for retirement under 5 U.S.C. § 8336(e) or § 8412(e).

The information in BAL 10-105 supersedes the information in chapters 61 and 70 of the CSRS and FERS Handbook that references disability and survivor annuity computations for the employees working in positions listed above. It also supersedes the guidance provided in BAL 95-106, dated October 20, 1995, and BAL 02-104, dated May 10, 2002.

[Click here to read BAL 10-105.](#)

Table of Contents

Subchapter 46A CSRS

Part 46A1.1-1 General Information

Section 46A1.1-1 Overview	1
A. Introduction	1
B. Topics Covered	1
C. Organization of Subchapter	2
D. Statement of Authority	2

Part 46A2 Air Traffic Controllers (ATC)

Subpart 46A2.1 Determination of Coverage (ATC)

Section 46A2.1-1 Definition	3
A. Air Traffic Controller	3
Section 46A2.1-2 Who Determines Coverage	4
A. Secretary or Designee	4

Subpart 46A2.2 Retirement Eligibility (ATC)

Section 46A2.2-1 Eligibility Requirements	5
A. General	5
B. Minimum Age and Service	5
C. Separation from Covered Position	6
D. "One-Out-of-Two" Requirement	6
E. Erroneous Separations	6
Section 46A2.2-2 Mandatory Separation	7
A. General Rule	7
B. Automatic Exemptions from Mandatory Separation	7
C. Exemption from Mandatory Separation Until Age 61	7
D. Exemption from Mandatory Separation After Age 61	8
E. Notice Requirement	8
F. Appeal Rights	8

Part 46A3 Law Enforcement Officers and Firefighters (LEO/FF)**Subpart 46A3.1 General (LEO/FF)**

Section 46A3.1-1 Definitions	9
A. Agency Head	9
B. Firefighter	9
C. Law Enforcement Officer	9
D. Detention Duties	10
E. Frequent Direct Contact	10
F. Primary Duties	10
G. Primary Position	10
H. Secondary Position	11
I. First-Level Supervisors	11

Subpart 46A3.2 Determination of Coverage (LEO/FF)

Section 46A3.2-1 Conditions for Coverage	12
A. General	12
B. Primary Position Determination	12
C. Secondary Position and Coverage Determination	13
D. Delegation of Approval Authority	14
E. Service Under a Detail or Temporary Promotion	14
F. Nondeduction Service	14
G. Service Under Other Retirement Systems	15
Section 46A3.2-2 Evidence Requirements	16
A. Primary Positions	16
B. Secondary Positions	16
Section 46A3.2-3 Individual Requests for Past Service Credit	17
A. General	17
B. Burden of Proof	17
C. Where to File Request	18
D. Time Limit On Crediting of Prior Service	18
E. Retroactive Correction of Deduction	18
Section 46A3.2-4 Individual Requests for Position Approval	19
> A. Time Limit on Individual Requests	19
B. Agency Head Decision	19
C. Appeal Rights	19
D. Individual Request for Secondary Coverage Determination	20

Section 46A3.2-5 OPM Oversight of Coverage Determinations 21

A. OPM Authority to Overrule 21

B. Agency Records and Reporting 21

C. OPM Address 21

Section 46A3.2-6 Agency Review of Approved Positions and Certification to OPM 22

A. Significant Change in an Approved Position 22

B. When Position is Abolished 22

Subpart 46A3.3 Retirement Eligibility (LEO/FF)

Section 46A3.3-1 Eligibility Requirements 23

A. General 23

B. Minimum Age and Service 23

C. Separation from Covered Position 24

D. "One-Out-of-Two" Requirement 24

E. Erroneous Separations 24

Section 46A3.3-2 Mandatory Separation 25

A. General 25

B. Standard Mandatory Separation 25

C. Exemption From Mandatory Separation Until Age 60 25

D. Exemption From Mandatory Separation After Age 60 26

E. Notice Requirement 26

F. Appeal Rights 26

Part 46A4 National Guard Technicians

Section 46A4.1-1 National Guard Technicians 27

A. Definition 27

B. General 27

C. Special Rule for Disability Retirement 27

D. Termination of Disability Retirement 28

Part 46A5 Retirement Procedures

Section 46A5.1-1 Retirement Procedures 29

A. General 29

B. Employee Responsibility 29

C. Agency Responsibility 29

D. OPM Address 30

Section 46A5.1-2 Advice to Employee	31
A. Commencing Date of Annuity	31
B. Reemployment of Retired Law Enforcement Officers and Firefighters	31
C. Reemployment of Retired Air Traffic Controllers	31
D. Coverage of Reemployed Annuitants	31

Subchapter 46B FERS**Part 46B1 General Information**

Section 46B1.1-1 Overview	33
A. Introduction	33
B. Organization of Subchapter	33
C. Applicable CSRS Provisions	33
D. Statement of Authority	34

Part 46B2 Air Traffic Controllers**Subpart 46B2.1 Retirement Eligibility (ATC)**

Section 46B2.1-1 Eligibility Requirements	35
A. General	35
B. Applicable CSRS Provisions	35
C. Erroneous Separations	35
Section 46B2.1-2 Mandatory Separation	37
A. General	37
B. Effective Date	37
C. Applicable CSRS Provisions	37
D. Exemption from Mandatory Separation After Age 61	37

Part 46B3 Law Enforcement Officers and Firefighters**Subpart 46B3.1 General (LEO/FF)**

Section 46B3.1-1 Definitions	38
A. Firefighter	38
B. Law Enforcement Officer	38
C. Rigorous Position	39
D. Secondary Position	39
E. Applicable CSRS Definitions	40

Subpart 46B3.2 Determination of Coverage (LEO/FF)

Section 46B3.2-1 Conditions for Coverage 41

A. General 41

B. Rigorous Position Determination 41

C. Secondary Position and Coverage Determination 42

D. Delegation of Approval Authority 43

E. Service Under a Detail or Temporary Promotion 43

F. Nondeduction Service 43

G. Service Under the Foreign Service Pension System 44

H. Service Under Other Retirement Systems 44

Section 46B3.2-2 Evidence Requirements 45

A. Rigorous Position 45

B. Secondary Position 45

Section 46B3.2-3 Individual Requests for Position Approval 46

A. Time Limit on Individual Requests 46

B. Agency Head Decision 46

C. Appeal Rights 46

D. Individual Request for Secondary Coverage Determination 47

Section 46B3.2-4 OPM Oversight of Coverage Determinations 48

A. OPM Authority to Overrule 48

B. Agency Records and Reporting 48

C. OPM Address 49

Section 46B3.2-5 Transitional Provisions 50

A. General 50

B. When CSRS Definitions Apply 50

C. When FERS Definitions Apply 50

D. Creditability of Service Under CSRS 51

E. Application of Direct Transfer Requirement 51

F. Application of 3-Year Rigorous Service Requirement 51

G. Application of Continuous Secondary Coverage 51

Subpart 46B3.3 Retirement Eligibility (LEO/FF)

Section 46B3.3-1 Eligibility Requirements 52

A. General 52

B. Minimum Age and Service 52

C. Applicable CSRS Provisions 53

Section 46B3.3-2 Mandatory Separation	54
A. Applicable CSRS Provisions	54
B. Exemption From Mandatory Separation After Age 60	54

Part 46B4 Military Reserve Technicians

Section 46B4.1-1 Definition	55
A. Military Reserve Technician	55
B. Reserve Components	55
 Section 46B4.1-2 Eligibility Requirements for Retirement	 56
A. General	56
B. Special Rule for Early Retirement	56
C. Special Rule for Disability Retirement	56
D. Termination of Disability Retirement	57

Part 46B5 Retirement Procedures

Section 46B5.1-1 Retirement Procedures	58
A. General	58
B. Employee Responsibility	58
C. Agency Responsibility	58
D. OPM Address	59
 Section 46B5.1-2 Advice to Employee	 60
A. Commencing Date of Annuity	60
B. Reemployment of Retired Law Enforcement Officers and Firefighters	60
C. Applicable CSRS Provisions	60

Subchapter 46A CSRS**Part 46A1.1-1 General Information****Section 46A1.1-1 Overview**

A. Introduction

This subchapter covers special retirement provisions that apply to certain groups of CSRS employees: law enforcement officers, firefighters, air traffic controllers, and National Guard technicians.

NOTE: National Guard technicians are military reserve technicians; however, not all military reserve technicians are National Guard technicians. See definitions in section 46A.1-1 and section 46B4.1-1. The FERS subchapter addresses military reserve technicians generally.

B. Topics Covered

This subchapter covers --

- The rules and procedures for determining whether an employee is covered as an air traffic controller;
- The eligibility requirements that must be met for employees to retire under the special retirement provisions for air traffic controllers;
- The rules and procedures for determining whether an employee is covered as a law enforcement officer or firefighter;
- The eligibility requirements that must be met for employees to retire under the special retirement provisions for law enforcement officers or firefighters;
- The special conditions under which a National Guard technician can qualify for a disability retirement; and
- The procedures the employee and agency must follow when an employee is applying for retirement.

NOTE: See Chapter 30, Employee Deductions and Agency Contributions, subchapter A, for information on the special employee deduction and agency contribution rates that apply to CSRS law enforcement officers and firefighters. See Chapter 54, Special Computations for Law Enforcement

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46A1.1-1 Overview (Cont.)**B. Topics Covered
(Cont.)**

Officers, Firefighters, and Air Traffic Controllers, subchapter A, for information on the special annuity computation formulas that apply to CSRS law enforcement officers, firefighters, and air traffic controllers. See Chapter 61, Computation of Disability Annuity Benefits, subchapter A, for information on CSRS disability benefits.

**C. Organization of
Subchapter**

This subchapter has five parts:

PART	NAME OF PART	PAGE
46A1	General Information	1
46A2	Air Traffic Controllers	3
46A3	Law Enforcement Officers and Firefighters	9
46A4	National Guard Technicians	27
46A5	Retirement Procedures	29

NOTE: Subchapter 46B about special group provisions under FERS begins on page 33.

**D. Statement of
Authority**

This subchapter and its contents are based on the laws and regulations cited below.

- United States Code: 5 U.S.C. 2109; 8331 (20)-(21); 8335(a) and (b); 8336(c); 8337(h); 8345(b)
 - Public Laws: 92-297 (May 16, 1972); 93-350 (July 12, 1974); 96-347 (September 12, 1980); 99-556 (October 27, 1986); 100-92 (August 18, 1987); 101-509 (November 5, 1990)
 - Code of Federal Regulations: 5 CFR 831.503 and 5 CFR Part 831, Subpart I
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Part 46A2 Air Traffic Controllers (ATC)**Subpart 46A2.1 Determination of Coverage (ATC)****Section 46A2.1-1 Definition**

**A. Air Traffic
Controller**

1. "Air traffic controller" means a civilian employee of the Department of Transportation or the Department of Defense in an air traffic controller facility or flight service station facility who is actively engaged in --
 - The separation and control of air traffic; or
 - Providing pre-flight, in-flight, or airport advisory service to aircraft operators.
2. Also included in this definition is an employee who is the immediate (first-level) supervisor of an air traffic controller as defined above.

NOTE: Flight service station specialist service--that is, service that involves providing pre-flight, in-flight, or airport advisory service to aircraft operators--performed before 1987 is considered "air traffic controller service" only if the employee separated for retirement on or after January 1, 1987.

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46A2.1-2 Who Determines Coverage

**A. Secretary or
Designee**

The Secretary of Transportation and the Secretary of Defense are authorized to determine that an employee's service in a position is service as an air traffic controller. Also, the designee of one of these Secretaries may make this determination.

OPM accepts the certification of the Secretary (or designee) in determining the amount of service performed as an air traffic controller retiring under the special provisions.

Subpart 46A2.2 Retirement Eligibility (ATC)**Section 46A2.2-1 Eligibility Requirements****A. General**

CSRS air traffic controllers may retire voluntarily or involuntarily (except by removal for cause on charges of misconduct or delinquency) at an early age without a reduction in the basic annuity if all of the following conditions are met:

- Age and service requirements;
- Separation from a position subject to CSRS coverage; and
- "1-out-of-2" requirement.

NOTE 1: An air traffic controller's retirement may be triggered by mandatory separation based on age. See section 46A2.2-2.

NOTE 2: For the special annuity computation rules that apply to air traffic controllers who retire after meeting the above requirements, see Chapter 54, section 54A3.1-2.

B. Minimum Age and Service

An employee must meet one of the age and service requirements below at separation to be eligible for retirement under the special provisions for air traffic controllers:

Age:	Service Creditable Under Special Provisions for Air Traffic Controllers:
-------------	---

At least 50	20 years
Any Age	25 years

NOTE 1: Accrued and unused sick and/or annual leave cannot be used to meet the minimum service requirement.

NOTE 2: Military service, even if creditable under CSRS, cannot be credited as air traffic controller service under the special provisions. Thus, military service cannot be used to meet the minimum service requirement, except as discussed below.

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46A2.2-1 Eligibility Requirements (Cont.)

- | | |
|--|---|
| B. Minimum Age and Service (Cont.) | However, under certain circumstances, an individual entering military service directly from a civilian position is entitled to have that period of service treated as if it were civilian. (See Chapter 22, Creditable Military Service, part 22A6.) If the individual is in an air traffic controller position at the time of entry into the military, the period creditable as civilian service may be used toward satisfying the 20- or 25-year minimum service requirement. |
| C. Separation from Covered Position | The employee must be separated from a position covered by retirement deductions.

NOTE: An employee is not required to separate from a position as an air traffic controller to retire under the special provisions. Once an employee meets the minimum service requirement (that is, 20 or 25 years), he or she may exercise the right to retire under the special provisions even if the employee is no longer covered by these provisions at the time of retirement. |
| D. "One-Out-of-Two" Requirement | The employee must be covered by CSRS for at least 1 year within the 2-year period immediately preceding the separation on which the annuity is based. The 1 year of service does not have to be continuous. |
| E. Erroneous Separations | In the event an employee separates voluntarily with the expectation of qualifying for retirement as an air traffic controller, and OPM finds that the employee does not meet one of the above eligibility requirements, such separation may be found to be erroneous. See Chapter 40, Planning and Applying for Retirement, for additional information about erroneous separations. |
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Section 46A2.2-2 Mandatory Separation

A. General Rule

Except as provided in later paragraphs of this section, an air traffic controller is subject to mandatory separation upon reaching age 56, and the mandatory separation is effective on the last day of the month in which the employee becomes age 56. (For retirement purposes, an employee becomes age 56 on the day before his or her 56th birthday.)

NOTE 1: A CSRS air traffic controller is subject to mandatory separation even if he or she has not acquired sufficient years of air traffic controller service to qualify for retirement under the special provisions. However, mandatory separation does not apply to employees who are eligible for retirement under the special provisions but who are not currently occupying an air traffic controller position.

NOTE 2: A mandatory separation is considered an involuntary separation for purposes of other CSRS provisions.

B. Automatic Exemptions from Mandatory Separation

The following categories of CSRS air traffic controllers are automatically exempted from mandatory separation:

- Air traffic controllers who were first appointed by the Department of Transportation before May 16, 1972;
- Air traffic controllers who were first appointed by the Department of Defense before September 12, 1980; and
- Flight service station specialists who were first appointed before January 1, 1987.

C. Exemption from Mandatory Separation Until Age 61

The Secretary of Transportation or the Secretary of Defense may exempt an air traffic controller having exceptional skills and experience as a controller from mandatory separation until that controller reaches age 61.

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46A2.2-2 Mandatory Separation (Cont.)

- D. Exemption from Mandatory Separation After Age 61**
1. If the Secretary of Transportation or the Secretary of Defense wishes to secure an exemption from mandatory separation for an air traffic controller beyond that employee's 61st birthday, the Secretary must submit a recommendation to that effect to the Chief of the Retirement Policy Division at OPM. The recommendation must contain:
 - A statement that the employee is willing to remain in service;
 - A statement of facts tending to establish that his or her retention would be in the public interest;
 - The period (which may not exceed 1 year) for which the exemption is desired; and
 - The reasons why the simpler method of retiring the employee and not immediately rehiring him or her is not being used.

The recommendation must be accompanied by a medical certificate showing the physical fitness of the employee to perform his or her work.
 2. OPM may approve an exemption only before the mandatory separation date applicable to the employee. For this reason, the department or agency must forward the recommendation to OPM at least 30 days before separation.
-
- E. Notice Requirement**
- Once the date of mandatory separation is determined for an air traffic controller, the employing agency must notify the employee in writing of the date of separation at least 60 days in advance of the date. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.
-
- F. Appeal Rights**
- A mandatory separation is not an adverse action under 5 CFR Part 752 or a removal action under 5 CFR Part 359. In other words, a mandatory separation is not an appealable action.
-

**Part 46A3 Law Enforcement Officers and Firefighters (LEO/FF)
Subpart 46A3.1 General (LEO/FF)****Section 46A3.1-1 Definitions**

A. Agency Head

"Agency head" means, for the executive branch agencies, the head of an executive agency (as defined in 5 U.S.C. 105); for the legislative branch, the Secretary of the Senate, the Clerk of the House of Representatives, or the head of any other legislative branch agency; for the judicial branch, the Director of the Administrative Office of the United States Courts; for the Postal Service, the Postmaster General; and for any other independent establishment that is an entity of the Federal government, the head of the establishment.

NOTE: The head of a component agency within an executive department--such as the Department of the Army or the Internal Revenue Service--is not considered an agency head nor a headquarters-level official.

B. Firefighter

"Firefighter" means an employee in a position 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. Also included in this definition is an employee who moves directly from a primary firefighter position to a secondary position. (See definition of "secondary position" in paragraph H.)

NOTE: An employee whose primary duty is the performance of routine fire prevention inspections is excluded from this definition.

**C. Law Enforcement
Officer**

"Law Enforcement Officer" means an employee in a position whose duties are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who moves directly to a secondary position. (See definition of "detention duties" in paragraph D.)

The definition does not include an employee whose primary duties involve maintaining law and 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.

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46A3.1-1 Definitions (Cont.)

- D. Detention Duties** "Detention duties" means duties that require frequent direct contact in the detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation of individuals suspected or convicted of offenses against the criminal laws of the United States or the District of Columbia, or offenses against the punitive articles of the Uniform Code of Military Justice (10 U.S.C. chapter 47).
-
- E. Frequent Direct Contact** "Frequent direct contact" means personal, immediate, and regularly-assigned contact with detainees, while performing detention duties that are repeated and continued over a typical work cycle.
-
- F. Primary Duties** "Primary duties" are those duties of a position that --
1. Are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position;
 2. Occupy a substantial portion of the individual's working time over a typical work cycle; and
 3. Are assigned on a regular and recurring basis.
- Duties that are of an emergency, incidental, or temporary nature cannot be considered "primary" even if they meet the substantial portion of time criterion.
- In general, if an employee spends an average of at least 50 percent of his or her time performing a duty or group of duties, they are deemed to be his or her primary duties, without the need for further evidence or support.
-
- G. Primary Position** "Primary position" means a position whose primary duties are --
1. To perform work directly connected with controlling and extinguishing fires or maintaining and using firefighter apparatus and equipment; or
 2. Investigating, apprehending, or detaining individuals suspected or convicted of offenses against the criminal laws of the United States.
-

Section 46A3.1-1 Definitions (Cont.)**H. Secondary
Position**

"Secondary position" means a position that --

1. Is in the law enforcement or firefighting field;
 2. Is in an organization having a law enforcement or firefighting mission;
and
 3. Is either:
 - Supervisory, that is, a position whose primary duties are those of a first-level supervisor of law enforcement officers or firefighters in primary positions; or
 - Administrative, that is, an executive, managerial, technical, semiprofessional, or professional position for which experience in a primary law enforcement or firefighting position, or equivalent experience outside the Federal government, is a mandatory prerequisite.
-

**I. First-Level
Supervisors**

"First-level supervisors" are employees classified as supervisors who have direct and regular contact with the employees they supervise. First-level supervisors do not have subordinate supervisors. They are the first-line supervisors of primary law enforcement officers or firefighters.

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Subpart 46A3.2 Determination of Coverage (LEO/FF)

Section 46A3.2-1 Conditions for Coverage

A. General

To establish whether a CSRS employee's service is covered under the special provisions for law enforcement officers and firefighters, an agency must first determine whether the employee occupies a primary position or a secondary position. If the employee occupies a secondary position, he or she must also meet certain conditions to qualify for coverage, as explained in this section.

NOTE: A coverage determination issued by OPM or its predecessor, the Civil Service Commission, will not be reopened by an employing agency, unless the agency head determines that new and material evidence is available that, despite due diligence, was not available before the decision was issued. (See section 46A3-2.5 concerning OPM's oversight authority, and section 46A3.2-6 concerning agency review of approved positions.)

All determinations affecting an individual's coverage as a law enforcement officer or firefighter must be filed in the permanent (right) side of the employee's Official Personnel File.

Section 2-2 of this subpart describes the evidence requirements that apply to position determinations. Section 2-3 gives instructions on how individuals may request credit for past service. Section 2-4 describes how an individual employee may request a position determination (or reconsideration of a denial of secondary coverage). Section 2-5 describes OPM's oversight role and related agency responsibilities.

NOTE: Once it is established that an employee's service is covered under the special provisions for CSRS law enforcement officers and firefighters, the agency must withhold the required deductions from the employee's pay (one-half percent higher than regular deduction rate--currently, 7.5 percent instead of 7 percent). (See Chapter 84, Correction of Retirement Records, regarding retroactive corrections of coverage.)

**B. Primary Position
Determination**

An employee's service in a position that has been determined by the employing agency head to be a primary position is covered under the special group provisions for law enforcement officers and firefighters.

Section 46A3.2-1 Conditions for Coverage (Cont.)

B. Primary Position Determination (Cont.)

NOTE: A first-level supervisory position may be a primary position if it meets the definitions and conditions described in section 46A3.1-1E and F.

C. Secondary Position and Coverage Determination

An employee's service in a position that has been determined by the employing agency head to be a qualifying secondary position is covered under the special group provision, if the following requirements are met:

1. The employee, while covered under the special provision, moves directly (that is, without a break in service exceeding 3 days) from a primary position to a secondary position; and
2. If applicable, the employee has been continuously employed in a secondary position or positions since moving from a rigorous position without a break in service exceeding 3 days.

EXCEPTION: Do not count a break in employment in secondary positions that began before January 19, 1988, or a break that was based on an involuntary separation (not for cause) within the meaning of 5 U.S.C. 8336(d) in determining whether service in secondary positions is continuous for this purpose. (See Chapter 44, Discontinued Service Retirement.)

NOTE: The regulations establishing the above rule on secondary positions were published on December 17, 1987, and were effective on January 19, 1988. Under prior regulations published on January 4, 1980, which are now superseded, law enforcement officers and firefighters who were employed on or after December 31, 1979, were deemed to meet the transfer requirements for all subsequent employment in secondary positions (except as reemployed annuitants) if the initial transfer from a primary position met the requirements.

The head of the agency from which an employee was separated, or the agency head's representative (an agency official not below the level of Director of Personnel), must determine whether the separation qualifies as an involuntary separation. File the determination on the permanent (right) side of the employee's Official Personnel Folder.

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46A3.2-1 Conditions for Coverage (Cont.)

- D. Delegation of Approval Authority** Delegation of the agency head's authority to approve positions as rigorous and secondary positions is not allowed except in the 14 Cabinet-level departments in the Government, as listed in 5 U.S.C. 101. These agency heads may delegate this authority to a single headquarters-level official who reports directly to the department head or to the deputy department head, and who is the sole such representative for the entire department. This strictly limited delegation authority is intended to ensure that the deciding official is at a level where he or she is sensitive to the long-term budget and personnel implications of these coverage determinations, and in a position to ensure department-wide consistency. The head of a component of an Executive department--such as one of the military departments or a component agency such as the Internal Revenue Service under the Department of the Treasury--is not permitted to make these determinations.
- E. Service Under a Detail or Temporary Promotion** An employee's position of record determines whether his or her service is covered under the special retirement provisions for law enforcement officers and firefighters. Thus, while an employee who holds a primary or secondary position is detailed or temporarily promoted to a position that is not a primary or secondary position, the employee continues to be covered under the special provisions.
- Conversely, an employee who is not in a primary or secondary position, and who is detailed or temporarily promoted to a primary or secondary position, is not covered under the special provisions.
-
- F. Nondeduction Service** Service not subject to CSRS deductions (for example, service under a temporary appointment) may be creditable as law enforcement officer or firefighter service if the position is approved under paragraphs A or B. A deposit is **not** required for such service to be creditable in establishing **eligibility** for a law enforcement or firefighter retirement benefit.
- NOTE: If the service was performed on or after October 1, 1982, the employee must make a deposit equal to 7.5 percent of basic pay, with interest, for the service to be creditable in the annuity **computation.**
-

Section 46A3.2-1 Conditions for Coverage (Cont.)**G. Service Under
Other Retirement
Systems**

Service under other retirement systems for Government employees is creditable under CSRS if --

- The position is approved under paragraphs B or C; and
- the employee waives credit for service under the other retirement system, receives a refund of retirement deductions under that system and deposits the amount received plus interest accruing from the date of the refund. (See Chapter 20, Creditable Civilian Service.)

NOTE: In contrast to the deposit for nondeduction service, this deposit is not based on the special deduction rate that applies to law enforcement officers and firefighters after 1974. Instead, the deposit equals the refund from the other retirement system, plus interest.

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46A3.2-2 Evidence Requirements

- A. Primary Positions** An agency head's finding that a position is a primary position must be based solely on the official position description of the position in question and any other official description of duties and qualifications.
-
- B. Secondary Positions** A determination that a position is a secondary position must be based on the official position description and any other evidence deemed appropriate by the agency head for making the determination, such as evidence concerning the nature of law enforcement experience required for appointment to a position.
-

Section 46A3.2-3 Individual Requests for Past Service Credit

A. General

An employee 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 a determination that the service is creditable under the special provisions for law enforcement officers and firefighters.

The service credit determination affects only the individual making the request. It does not constitute a retroactive position determination that would convey coverage to all eligible persons holding the same position of record.

NOTE 1: For service to be creditable under the special provisions for law enforcement officers and firefighters, it must first be found creditable under CSRS generally. (See Chapters 20 and 21 regarding civilian service credit.) Nondeduction service and service under another retirement system for civilian Federal employees may be creditable under the special provisions if that service meets all applicable definitions and conditions, including the special deposit requirements described in section 46A3.2-1F and G, and the time limits in paragraph D of this section.

NOTE 2: Military service, even if creditable under CSRS generally, cannot be credited under the special provisions for law enforcement officers and firefighters, except as discussed in section 46A3.3-1B.

B. Burden of Proof

The employee bears the burden of proof with respect to credit under the special provisions covering law enforcement officers and firefighters. The employee must provide the agency or former agency with all pertinent information regarding duties performed.

- For law enforcement officers, this includes a list of the provisions of Federal criminal law the incumbent was responsible for enforcing and arrests made.
 - For firefighters, this includes the number of fires fought, names of fires fought, dates of fires, and position occupied while on firefighting duty.
-

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46A3.2-3 Individual Requests for Past Service Credit (Cont.)

- | | |
|--|---|
| C. Where to File Request | <p>The employee must submit a request for a determination to one of the following, as appropriate:</p> <ol style="list-style-type: none"> 1. Current employing agency--if the employee is requesting credit for past service performed in the current position or in a former position with the current employing agency; 2. Former employing agency--if the employee or former employee (or survivor) is requesting credit for past service performed at the former employing agency; or 3. OPM--if the employee or former employee (or survivor) is requesting credit for past service at an agency that no longer exists and for which there is no successor agency. |
| D. Time Limit On Crediting of Prior Service | <hr/> <ol style="list-style-type: none"> 1. Requests received by the employing agency, the agency where past service was performed, or OPM (as applicable), not later than September 30, 1989, could include any periods of previous service. 2. After September 30, 1989, law enforcement officer or firefighter credit for past service generally will not be granted for a period greater than 1 year prior to the date that the request from an individual is received by the employing agency, the agency where past service was performed, or OPM (as applicable). <p>Either the employing agency, former employing agency, or OPM, may extend the time limits for filing when, in its judgment the individual shows that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.</p> <hr/> |
| E. Retroactive Correction of Deduction | <p>Beginning in 1975, law enforcement officers and firefighters were required to contribute an additional one-half percent of pay for retirement. (See Chapter 30). If an employee obtains past service credit for periods of law enforcement and firefighter service after 1975, it will result in an under-deduction of employee contributions and a salary overpayment. (See Chapter 84 for instructions on how to make a retroactive correction.)</p> <hr/> |

Section 46A3.2-4 Individual Requests for Position Approval

A. Time Limit on Individual Requests If an employee is not in an approved law enforcement officer or firefighter position (primary or secondary), the employee may, at any time after entering the position or after any significant change in the position, formally seek a determination from the employing agency regarding his or her position. Credit, however, will be limited to 1 year before date of request if the request is not submitted within 1 year, unless the employee was prevented by circumstances beyond his or her control from requesting earlier. The individual's request must be in writing.

If the employee does not request a position determination within 1 year, the agency head's determination that the service was not covered under the special group provisions at the time the service was performed is presumed to be correct. This presumption may be rebutted by a preponderance of evidence that the employee was unaware of his or her status or was prevented by cause beyond his or her control from requesting that the official status be changed at the time the service was performed.

B. Agency Head Decision In response to an individual request for approval of a position as a law enforcement officer or firefighter position, the agency must issue a written decision.

If the agency head approves the position, it is designated as a primary or secondary position as of a specific date (including a retroactive date if appropriate). The position approval applies to all employees holding the same position.

NOTE 1: If an agency determines that an individual has performed qualifying service but that the official position description does not support approval, the agency must revise the individual position description, reclassify the position, or change the individual's duties, as appropriate. The past qualifying service will be deemed to be service in an approved position.

NOTE 2: See Chapter 84 for instructions on retroactive coverage corrections.

C. Appeal Rights An employee may appeal the final decision of an agency regarding a position determination to the Merit Systems Protection Board (MSPB) under the procedures prescribed by the MSPB.

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46A3.2-4 Individual Requests for Position Approval (Cont.)

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| D. Individual Request for Secondary Coverage Determination | If an employee occupies an approved secondary position, but has been found ineligible for secondary coverage for failing to satisfy one of the requirements listed in section 46A3.2-1, paragraph C, he or she may request agency reconsideration of the coverage decision within the time limits provided in the initial agency decision. The final agency decision may be appealed to MSPB. |
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-

Section 46A3.2-5 OPM Oversight of Coverage Determinations

- A. OPM Authority to Overrule** The Director of OPM retains the authority to overrule an agency head's determination that a position is a primary or secondary position, except determinations involving --
1. certain employees of --
 - the Bureau of Prisons or Federal Prison Industries, Inc.;
 - the Public Health Service, who are assigned to the field service of the Bureau of Prisons or the Federal Prison Industries, Inc.; or
 - the field service at Army or Navy disciplinary barracks or at any other confinement and rehabilitation facility operated by any of the armed forces;
- who are performing detention duties (see 5 U.S.C. 8331(17)(D)).
- B. Agency Records and Reporting**
1. Upon deciding that a position is a law enforcement officer or firefighter position, each agency head must notify OPM (see paragraph C) stating the title of the position(s), the number of incumbents, and whether the position is a primary or secondary position.
 2. Each agency must establish a file containing all coverage determinations made by an agency head, and all background material used in making the determination.
 3. Upon request by OPM, the agency will make available the entire coverage determination file for OPM to audit to ensure compliance with the provisions of this subpart.
 4. Upon request by OPM, an agency must provide to OPM a list of all approved positions and any other pertinent information requested.
- C. OPM Address** Send all correspondence regarding position determinations to:

**Office of Personnel Management
Attention: Associate Director for Retirement
and Insurance Service
1900 E Street, NW.
Washington, DC 20415**

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46A3.2-6 Agency Review of Approved Positions and Certification to OPM

- A. Significant Change in an Approved Position** An agency must review a currently approved primary or secondary position whenever there is a significant change that may affect its assessment that the position continues to warrant approval. If the agency review results in a finding that the position no longer qualifies as a law enforcement officer or firefighter position, the agency must notify OPM of the date of the change. (See 46A3.2-5C.)
- Beginning with the effective date of the revocation of approval, the agency must stop withholding the additional deductions. The agency must inform each affected employee of its action. The notice to the employee(s) must include a full explanation of the basis for the agency's determination, and state appeal rights to the Merit Systems Protection Board.
-
- B. When Position is Abolished** If the agency abolishes a primary or secondary position, the agency must notify OPM at the address given in section 46A3.2-5, paragraph C.
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Subpart 46A3.3 Retirement Eligibility (LEO/FF)**Section 46A3.3-1 Eligibility Requirements****A. General**

CSRS law enforcement officers and firefighters may retire voluntarily or involuntarily at an early age with entitlement to a special annuity computation if all of the following conditions are met:

- Age and service requirements;
- Separation from a position subject to CSRS coverage; and
- "1-out-of-2" requirement.

NOTE 1: A law enforcement officer or firefighter's retirement may be triggered by mandatory separation based on age. See section 46A3.3-2.

NOTE 2: For the special annuity computation rules that apply to law enforcement officers and firefighters who retire after meeting the above requirements, see Chapter 54, section 54A3.1-1.

B. Minimum Age and Service

An employee must be at least age 50 at the time of separation and have at least 20 years of service as a law enforcement officer and/or firefighter (but does not have to be in a law enforcement officer or firefighter position at separation) to be eligible for retirement under the special provisions.

NOTE 1: Accrued and unused sick and/or annual leave cannot be used to meet the minimum service requirement.

NOTE 2: Military service, even if creditable under CSRS generally, cannot be credited under the special provisions for law enforcement officers and firefighters. Thus, military service cannot be used to meet the minimum service requirement.

However, under certain circumstances, an individual entering military service directly from a civilian position is entitled to have that period of service treated as if it were civilian. (See Chapter 22, part 22A6.) If the individual is in a law enforcement or firefighter position at the time of entry into the military, the period creditable as civilian service may be used toward satisfying the minimum service requirement.

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46A3.3-1 Eligibility Requirements (Cont.)

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| B. Minimum Age and Service (Cont.) | <p>NOTE 3: The minimum age and service requirements apply even if the employee retires involuntarily or due to a disability, or dies before meeting the minimum age and service requirements. Thus, the disability annuity of someone who does not meet the special age and service requirements at the time of retirement is computed under the regular provisions. (See Chapter 50, Computation of Annuity Under the General Formula, Chapter 60, Disability Retirement, and Chapter 61, Computation of Disability Annuity Benefits.) If an employee qualifies for a disability retirement and also meets the age and service requirements for annuity under the special provisions, the employee may elect which benefit he or she wants to receive. If the employee elects the disability benefit, it is computed under the regular provisions. Also, the annuity paid to the survivor of an employee who dies in service without reaching these minimum age and service requirements is computed under the regular survivor provisions. (See Chapter 70, Spouse Benefits - Death of an Employee.)</p> |
| C. Separation from Covered Position | <p>The employee must be separated from a position covered by retirement deductions.</p> <p>NOTE: An employee is not required to separate from a law enforcement officer or firefighter position to retire under the special group provisions. Once an employee meets the minimum service requirement, he or she may exercise the right to retire under the special group provisions even if the employee is no longer covered by these provisions at the time of retirement.</p> |
| D. "One-Out-of-Two" Requirement | <p>An employee must be covered by CSRS for at least 1 year within the 2-year period immediately preceding the separation on which the annuity is based. The 1 year of service does not have to be continuous.</p> |
| E. Erroneous Separations | <p>If the employee is separated for retirement under the special provisions and OPM finds that the employee does not meet one of the above eligibility requirements, the separation may be found to be erroneous. See Chapter 40 for additional information about erroneous separations.</p> |

Section 46A3.3-2 Mandatory Separation

A. General

In general, all law enforcement officers and firefighters are subject to mandatory separation based on age. However, mandatory separation does not apply to employees who are eligible for retirement under the special provisions but who are not currently occupying a law enforcement officer or firefighter position.

NOTE 1: For retirement purposes, an employee is considered to reach a year of age on the day before his or her birthday.

NOTE 2: A mandatory separation is considered an involuntary separation for purposes of other CSRS provisions.

**B. Standard
Mandatory
Separation**

The standard mandatory separation age for law enforcement officers is age 57 and for firefighters it is age 55. Except as provided under later paragraphs of this section, the mandatory separation is effective as follows:

1. If the law enforcement officer or firefighter has completed 20 years of service under the special provisions, he or she must be separated on the last day of the month in which he or she reaches the standard mandatory separation age.
2. If the law enforcement officer or firefighter attains the standard mandatory separation age and has not yet completed the required 20 years of service under the special provisions, he or she must be separated on the last day of the month in which he or she completes the 20 years of service.

NOTE: The standard mandatory separation age for law enforcement officers was changed from 55 to 57 by Public Law 101-509 (November 5, 1990). The change applies to any separation that is effective on or after November 5, 1990.

**C. Exemption From
Mandatory
Separation Until
Age 60**

Agency heads are authorized to exempt law enforcement officers and firefighters from mandatory separation until age 60 if it is in the public interest.

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46A3.3-2 Mandatory Separation (Cont.)

**D. Exemption From
Mandatory
Separation After
Age 60**

1. If an agency wishes to secure an exemption from mandatory separation for one of its employees (other than a Presidential appointee) beyond the employee's 60th birthday, the Secretary must submit a recommendation to that effect to the Chief of the Retirement Policy Division at OPM. The recommendation must contain --
 - A statement that the employee is willing to remain in service;
 - A statement of facts that tend to establish that his/her retention would be in the public interest;
 - The period (which may not exceed 1 year) for which the exemption is desired; and
 - The reasons why the simpler method of retiring the employee and immediately rehiring him or her is not being used.

This recommendation must be accompanied by a medical certificate showing the physical fitness of the employee to perform his or her work.

2. OPM may approve an exemption only before the mandatory separation date applicable to the employee. For this reason, the department or agency must forward the recommendation to OPM at least 30 days before his or her separation date.

**E. Notice
Requirement**

Once the date of mandatory separation is determined for a law enforcement officer or firefighter, the employing agency must notify the employee in writing of the date of separation at least 60 days in advance of the date. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

F. Appeal Rights

A mandatory separation is not an adverse action under 5 CFR Part 752 or a removal action under 5 CFR Part 359. In other words, a mandatory separation is not an appealable action.

Part 46A4 National Guard Technicians

Section 46A4.1-1 National Guard Technicians

- A. Definition** "National Guard technician" means an individual employed under 32 U.S.C. 709(a) who, as a condition of employment, is required to be a member of the National Guard (Army or Air Force) with a specified military grade.
-
- B. General** In general, National Guard technicians must meet the same requirements as regular employees to be eligible for immediate unreduced retirement. (See Chapter 41, Voluntary Retirement Based on Age and Service, section 41A1.1-2.) However, under special conditions, a National Guard technician may qualify for retirement under the CSRS disability provisions even if he or she is not eligible for retirement under the regular disability retirement provisions.
-
- C. Special Rule for Disability Retirement** A National Guard technician who has performed at least 5 years of civilian service may retire under the disability provisions of CSRS (see Chapter 60) if he or she --
1. Is separated from employment as a National Guard technician because of a disability that disqualifies the individual from membership in the National Guard or from holding the military grade required for such employment;
 2. Is not considered to be disabled in his or her position under regular CSRS requirements;
 3. Is not appointed to another position in the Federal government; and
 4. Has not declined an offer of an appointment that meets the following requirements:
 - The offered position is within the commuting area of the former position;
 - The individual is qualified to serve in the offered position (as determined by the head of the agency); and
 - The offered position is at the same grade or equivalent level as the position from which the individual separated.

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46A4.1-1 National Guard Technicians (Cont.)

**D. Termination of
Disability
Retirement**

The annuity of a National Guard technician who retires under the provisions described in paragraph C terminates if the individual --

1. Is appointed to any position in the Federal government;
 2. Declines an offer of appointment that meets the conditions described in paragraph C4 above; or
 3. Is found restored to earning capacity (See section 60A7.1-2 of Chapter 60).
-

Part 46A5 Retirement Procedures

Section 46A5.1-1 Retirement Procedures

A. General

Chapter 40, Planning and Applying for Retirement, provides detailed instructions on the completion of the forms identified below and the information and guidance that must be given retiring employees.

B. Employee Responsibility

The employee must complete --

- Standard Form 2801, Application for Retirement and Schedules A, B, and C, when necessary (and, if applying for disability under the special provisions for National Guard technicians, OPM Form 2824A, Applicant's Statement of Disability); and
- OPM Form 2801-2, Spouse's Consent to Survivor Election, if applicable.

If the employee has been separated 30 days or less before the application is filed, the application and other forms must be filed with the agency. If the employee has been separated more than 30 days, the application must be filed directly with OPM.

C. Agency Responsibility

The agency must --

- Provide the employee with an Application for Retirement (SF 2801) and any other necessary forms (including disability application forms discussed in Chapter 60, section 60A4.1-2, if a National Guard technician is retiring for disability);
- Complete Certified Summary of Federal Service (SF 2801-1);
- Complete Agency Checklist of Immediate Retirement Procedures (SF 2801-Schedule D);
- Complete Standard Forms 2809, 2810, 2819, and 2821 concerning health and life insurance in accordance with The Federal Employees Group Life Insurance Handbook for Personnel and Payroll Offices and The Federal Employees Health Benefits Handbook for Personnel and Payroll Offices (formerly FPM Supplements 870-1 and 890-1);

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46A5.1-1 Retirement Procedures (Cont.)

**C. Agency
Responsibility
(Cont.)**

- Send the employee's Individual Retirement Record (SF 2806) to OPM (with the retirement application and all other applicable forms attached) within 30 days of separation;
 - For air traffic controller retirements, provide certification of air traffic controller service; and
 - For law enforcement officers and firefighters, provide a letter, signed by a responsible official of the employee's personnel office, listing in chronological order the title of each position, beginning with the first law enforcement officer or firefighter position, held by the employee, and the beginning and ending dates of the employee's service in each position. Service in supervisory or administrative positions should be noted as "supervisory" or "administrative."
-

D. OPM Address

Send all correspondence regarding an employee's retirement to:

**Office of Personnel Management
Civil Service Retirement System
Retirement Operations Center
Post Office Box 45
Boyers, PA 16017**

Section 46A5.1-2 Advice to Employee

A. Commencing Date of Annuity

1. Voluntary Retirement

If a law enforcement officer, firefighter, or air traffic controller retires voluntarily, the commencing date of annuity is the same as for other employees who retire under the optional retirement provisions. (See Chapter 41, section 41A2.1-1.)

2. Involuntary Retirement

If a law enforcement officer, firefighter, or air traffic controller retires involuntarily except by removal for cause on charges of misconduct or delinquency (including any retirement based on a mandatory separation), his or her annuity commences on (a) the day after separation or (b) the day after pay ceases and all the age and service requirements for the annuity are met. (See Chapter 44, section 44A3.1-1.)

3. Disability Retirement

The disability annuity payable to a National Guard technician commences on (a) the day after separation or (b) the day after pay ceases and all requirements for the annuity are met. (See Chapter 60, section 60A9.1-4, paragraph A.)

B. Reemployment of Retired Law Enforcement Officers and Firefighters

A retired law enforcement officer or firefighter who was mandatorily separated is barred from reemployment in a primary position after reaching age 60. However, he or she is not barred from reemployment in a secondary position or any other position.

C. Reemployment of Retired Air Traffic Controllers

A retired air traffic controller is barred from reemployment as an air traffic controller after reaching age 61. However, he or she is not barred from reemployment in any other position not covered by the special provisions.

D. Coverage of Reemployed Annuitants

Service by a reemployed annuitant is not covered by the special retirement provisions. Thus, any reemployed annuitant service credited in the computation of a supplemental or redetermined annuity is treated as regular service even when an individual is employed in an approved law enforcement, firefighter, or air traffic controller position. The agency must withhold the required deductions from the reemployed annuitant's pay (one-half percent higher than the regular deduction rate).

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46A5.1-2 Advice to Employee (Con't)

**E. Public Safety
Officers' Benefits**

The Public Safety Officers' Benefits (PSOB) Act of 1976, as amended, authorizes the Bureau of Justice Assistance, Office of Justice Programs, to pay a benefit to specified survivors of public safety officers found to have died as the direct and proximate result of a personal injury, traumatic injury involving external force sustained in the line of duty, and to claimant public safety officers found to have been permanently and totally disabled as the direct result of a catastrophic injury sustained in the line of duty. Currently, the amount of the benefit for a qualified survivor, or a qualified disabled public safety officer, is > \$138,473.00. < This amount is subject to annual cost of living adjustments. For information on the PSOB death benefit see Chapter 75.

A public safety officer is defined to be any individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, police, corrections, probation, parole and judicial officer, firefighter, rescue squad member or ambulance crew member. A public agency means an agency of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States, or any unit of State or local government.

Public safety officers found to have been permanently and totally disabled as the direct result of a catastrophic injury sustained in the line of duty are also entitled to the PSOB benefit if they are permanently unable to perform **any** gainful employment.

More information concerning the PSOB can be obtained by contacting the Bureau of Justice Assistance at the following address:

Public Safety Officers' Benefits Program
Bureau of Justice Assistance
633 Indiana Avenue, NW
Washington, D.C. 20531

Subchapter 46B FERS

Part 46B1 General Information

Section 46B1.1-1 Overview

A. Introduction

Subchapter 46B covers the special retirement provisions that apply to certain groups of FERS employees: law enforcement officers, firefighters, air traffic controllers, and military reserve technicians.

This subchapter explains how FERS differs from CSRS. It refers readers to the CSRS rule that applies or gives the FERS rule if it is different.

NOTE: See Chapter 30, subchapter A, for information on the employee deduction and agency contribution rates that apply to the special groups under FERS. See Chapter 54, subchapter B, for information on the special annuity computation formulas that apply to the special groups (except military reserve technicians whose annuity computation is addressed in either Chapter 50 or 61). See Chapter 51, Retiree Annuity Supplement, for information on the FERS retiree annuity supplement payable before age 62.

B. Organization of Subchapter

This subchapter has five parts.

PART	NAME OF PART	PAGE
46B1	General Information	33
46B2	Air Traffic Controllers	35
46B3	Law Enforcement Officers and Firefighters	38
46B4	Military Reserve Technicians	55
46B5	Retirement Procedures	58

C. Applicable CSRS Provisions

The CSRS subpart 46A2.1 on determining coverage of air traffic controllers applies entirely under FERS. Therefore, there is no parallel FERS subpart.

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46B1.1-1 Overview (Cont.)**D. Statement of
Authority**

This subchapter and its contents are based on the laws and regulations cited below.

- United States Code: 5 U.S.C. 2109; 8401 (14), (17) and 30; 8412(d) and (e); 8414(c); 8425; 8456; 8464(a)
 - Public Law 100-92 (August 18, 1987)
 - Code of Federal Regulations: 5 CFR 842.207-208 and 5 CFR Part 842, Subpart H
-

**Part 46B2 Air Traffic Controllers
Subpart 46B2.1 Retirement Eligibility (ATC)**

Section 46B2.1-1 Eligibility Requirements

A. General

FERS air traffic controllers may retire voluntarily or involuntarily (except by removal for cause on charges of misconduct or delinquency) at an early age with entitlement to a special annuity computation if the following conditions are met:

- Age and service requirements; and
- Separation from a position subject to FERS coverage.

NOTE 1: There is no "1-out-of-2" requirement under FERS as there is under CSRS. Thus, an employee who elects to transfer to FERS does not have to be under FERS for 1 year to be eligible to retire. It is possible for an employee's separation for retirement to occur on the same day (but not before) the FERS election becomes effective, provided that the employee meets the other requirements.

NOTE 2: An air traffic controller's retirement may be triggered by mandatory separation based on age. See section 46B2.1-2, which follows this section.

NOTE 3: See Chapter 54, section 54B3.1-1, for annuity computation rules that apply to FERS air traffic controllers.

B. Applicable CSRS Provisions

The following provisions of CSRS section 46A2.2-1 apply under FERS:

- Paragraph B: Minimum Age and Service
 - Paragraph C: Separation from Covered Position
-

C. Erroneous Separations

If an employee is separated for retirement under the special provisions and OPM finds that the employee does not meet one of the above eligibility requirements, the separation may be found to be erroneous. See Chapter 40 for additional information about erroneous separation.

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46B2.1-1 Eligibility Requirements (Cont.)

**C. Erroneous
Separations
(Cont.)**

NOTE: Under CSRS, an air traffic controller is subject to mandatory separation regardless of the number of years of air traffic controller service; however, under FERS, an erroneous mandatory separation can result from a miscounting of the years of air traffic controller service. Thus, the FERS rule is broadened to encompass erroneous mandatory separations. (Compare to CSRS rule in section 46A2.2-1, paragraph E.)

Section 46B2.1-2 Mandatory Separation

A. General

In general, all FERS air traffic controllers are subject to mandatory separation based on age. Unlike CSRS, there are no air traffic controllers who are automatically exempted from mandatory separation. (The exemptions granted to the employees listed in section 46A2.2-2, paragraph B, were not extended to employees retiring under FERS.)

NOTE: A mandatory separation is considered an involuntary separation for purposes of other FERS provisions.

B. Effective Date

Except as specifically provided elsewhere, the mandatory separation of a FERS air traffic controller is effective as follows:

1. If the air traffic controller has completed 20 years of service under the special provisions, he or she must be separated on the last day of the month in which he or she reaches age 56.
2. If the air traffic controller reaches age 56 and has not yet completed the required 20 years of service under the special provisions, he or she must be separated on the last day of the month in which he or she completes the 20 years of service.

NOTE: For retirement purposes, an employee is considered to reach an age on the day before his or her birthday. Thus, an employee reaches age 56 on the day before his or her 56th birthday.

C. Applicable CSRS Provisions

The following paragraphs of section 46A2.2-2 apply under FERS:

- Paragraph C: Exemption From Mandatory Separation Until Age 61
 - Paragraph E: Notice Requirement
 - Paragraph F: Appeal Rights
-

D. Exemption from Mandatory Separation After Age 61

The President, by Executive Order, may exempt an employee from mandatory separation if the President determines it is in the public interest to do so.

NOTE: Unlike CSRS, the President's authority to exempt an air traffic controller from mandatory separation has not been delegated to OPM.

**Part 46B3 Law Enforcement Officers and Firefighters
Subpart 46B3.1 General (LEO/FF)**

Section 46B3.1-1 Definitions

A. Firefighter

"Firefighter" means an employee occupying a rigorous position, whose primary duties are to perform work directly connected with the control and extinguishment of fires. Also included in this definition is an employee occupying a rigorous firefighter position who moves directly to a secondary position and meets the conditions of section 46B3.2-1, paragraph C.

NOTE 1: An employee whose primary duties are the performance of routine fire prevention inspection duties is excluded from this definition.

NOTE 2: In contrast to the CSRS definition of "firefighter," the FERS definition does not include employees in positions in which duties are primarily to maintain or use firefighting apparatus and equipment.

B. Law Enforcement Officer

"Law enforcement officer" means the following:

1. An employee occupying a rigorous 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, or the protection of officials of the United States against threats to personal safety.

NOTE: As under CSRS, detention duties also include duties requiring frequent direct contact with individuals suspected or convicted of offenses against the criminal laws of the United States, the District of Columbia, or offenses against the punitive articles of the Uniform Code of Military Justice.

2. An employee of the Department of the Interior or the Department of the Treasury (not otherwise included in paragraph 1 above) who occupies a position that, but for the enactment of FERS, would be subject to the District of Columbia Police and Firefighters' Retirement System, as determined by the Secretary of the Interior or the Secretary of the Treasury. (This includes certain officers in the U.S. Park Police and in the Uniformed Division of the Secret Service.)

Section 46B3.1-1 Definitions (Cont.)

- B. Law Enforcement Officer (Cont.)** 3. An employee occupying a rigorous law enforcement officer position (as described in paragraphs 1 and 2 above) who moves directly to a secondary position and meets the conditions of section 46B3.2-1, paragraph C. Except as provided above the definition 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 those who are suspected or convicted of offenses against the criminal laws of the United States.

- C. Rigorous Position** "Rigorous position" means a position the duties of which are so rigorous that employment opportunities should, as soon as reasonably possible, be limited (through establishment of a maximum entry age and physical qualifications) to young and physically vigorous individuals whose primary duties are --
- To perform work directly connected with controlling and extinguishing fires; or
 - Investigating, apprehending, or detaining individuals suspected or convicted of offenses against the criminal laws of the United States or protecting the personal safety of United States officials.

The condition in this definition that employment opportunities be limited does not apply with respect to an employee who moves directly (that is, without a break in service exceeding 3 days) from one rigorous law enforcement officer position to another or from one rigorous firefighter position to another.

NOTE: A "rigorous position" is also deemed to include a position held by a law enforcement officer as defined in subparagraph B2 above (relating to certain U.S. Park Police and Secret Service employees).

- D. Secondary Position** "Secondary position" means a position that --
1. Is in the law enforcement or firefighting field;
 2. Is in an organization having a law enforcement or firefighting mission; and

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46B3.1-1 Definitions (Cont.)**D. Secondary
Position (Cont.)**

3. Is either:

- Supervisory, that is, a position whose primary duties are as a first-level supervisor of law enforcement officers or firefighters in rigorous positions; or
 - Administrative, that is, an executive, managerial, technical, semiprofessional, or professional position for which experience in a rigorous law enforcement or firefighting position, or equivalent experience outside the Federal government, is a mandatory prerequisite.
-

**E. Applicable CSRS
Definitions**

The following definitions in CSRS section 46A3.1-1 apply under FERS:

- Paragraph A: Agency Head
 - Paragraph D: Detention Duties
 - Paragraph E: Frequent Direct Contact
 - Paragraph F: Primary Duties
 - Paragraph I: First-Level Supervisors
-

Subpart 46B3.2 Determination of Coverage (LEO/FF)

Section 46B3.2-1 Conditions for Coverage

A. General

To establish whether a FERS employee's service is covered under the special provisions for law enforcement officers and firefighters, an agency must first determine whether the employee occupies a rigorous position or a secondary position (as approved by the agency head). If the employee occupies a secondary position, he or she must also meet certain conditions to qualify for coverage, as explained in this section.

All determinations affecting an individual's coverage as a law enforcement officer or firefighter must be filed on the permanent (right) side of the employee's Official Personnel File.

Section 2-2 of this subpart describes the evidence requirements that apply to position determinations. Section 2-3 describes how an individual employee may request a position determination (or reconsideration of a denial of secondary coverage). Section 2-4 describes OPM's oversight role and related agency responsibilities. Finally, section 2-5 sets forth certain transitional rules that apply to FERS employees who had past Federal service as law enforcement officers or firefighters before becoming covered by FERS.

NOTE: Once it is established that an employee's service is covered under the special provisions for FERS law enforcement officers and firefighters, the agency must withhold the required deductions from the employee's pay (one-half percent higher than regular deduction rate--currently, 1.3 percent instead of .8 percent). In addition, the agency must make the special normal cost contributions at the rate that applies to law enforcement officers and firefighters. If the decision has a retroactive effective date, retroactive employee deductions and agency contributions are due the retirement fund. (See Chapter 30, subchapter B. Also see Chapter 84 regarding retroactive corrections of coverage.)

B. Rigorous Position Determination

An employee's service in a position that has been determined by the employing agency head to be a qualifying rigorous position is covered under the special group provisions for law enforcement officers and firefighters.

NOTE: A first-level supervisory position may be a rigorous position if it meets the definitional conditions.

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46B3.2-1 Conditions for Coverage (Cont.)**C. Secondary
Position and
Coverage
Determination**

An employee's service in a position that has been determined by the employing agency head to be a qualifying secondary position is covered under the special group provision, if all of the following requirements are met:

1. The employee, while covered under the special provision, moves directly (that is, without a break in service exceeding 3 days) from a rigorous position to a secondary position;
2. The employee has completed 3 years of service in a rigorous position, including any such service during which no FERS deductions were withheld; and

NOTE: Service as a temporary or intermittent employee may be counted toward the 3-year requirement if it is otherwise qualifying. (While under an intermittent tour of duty, only actual days worked are counted.) For purposes of applying the 3-year requirement, it does not matter whether the service is actually made creditable by payment of a deposit or whether the service cannot be made creditable. Thus, even post-1988 nondeduction service (which can never be creditable under FERS for the purpose of qualifying for or computing a benefit) can be used to meet the 3-year requirement. Also, Federal service under another retirement system for Government employees may be used to meet the 3-year requirement if it is otherwise qualifying.

3. If applicable, the employee has been continuously employed in a secondary position or positions since moving from a rigorous position without a break in service exceeding 3 days.

EXCEPTION: Do not count a break in employment in secondary positions that begins with an involuntary separation (not for cause) within the meaning of 5 U.S.C. 8414(b)(1)(A) in determining whether service in secondary positions is continuous for this purpose. (See Chapter 44.)

The head of the agency from which an employee was separated, or the agency head's representative (an agency official not below the level of Director of Personnel), must determine whether the separation qualifies as an involuntary separation. File the determination on the permanent (right) side of the employee's Official Personnel Folder.

Section 46B3.2-1 Conditions for Coverage (Cont.)

- D. Delegation of Approval Authority** Delegation of the agency head's authority to approve positions as rigorous and secondary positions is not allowed except in the 14 Cabinet-level departments in the Government, as listed in 5 U.S.C. 101. These agency heads may delegate this authority to a single headquarters-level official who reports directly to the department head or deputy department head, and who is the sole such representative for the entire department. This strictly limited delegation authority is intended to ensure that the deciding official is at a level where he or she is sensitive to the long-term budget and personnel implications of these coverage determinations, and in a position to ensure department-wide consistency. The head of a component of an Executive department--such as one of the military departments or a component agency such as the Internal Revenue Service under the Department of the Treasury--is not permitted to make these determinations.
- E. Service Under a Detail or Temporary Promotion** An employee's position of record determines whether his or her service is covered under the special retirement provisions for law enforcement officers and firefighters. Thus, while an employee who holds a rigorous or secondary position is detailed or temporarily promoted to a position that is not a rigorous or secondary position, the employee continues to be covered under the special provisions.
- Conversely, an employee who is not in a primary or secondary position, and is detailed or temporarily promoted to a rigorous or secondary position, is not covered under the special provisions.
- F. Nondeduction Service** Service not subject to FERS deductions (for example, service under a temporary appointment) that is performed before 1989 may be creditable as law enforcement officer or firefighter service if --
- the position is approved under paragraphs B or C; and
 - the employee made a deposit equal to 1.3 percent of basic pay for such service, with interest. (See Chapter 21, Service Credit Payments for Civilian Service.)
-

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46B3.2-1 Conditions for Coverage (Cont.)

- G. Service Under the Foreign Service Pension System** Civilian service that was creditable under the Foreign Service Pension System (FSPS) may be creditable as law enforcement officer or firefighter service if --
- the position is approved under paragraphs B or C; and
 - the employee waives credit for the service under the FSPS and makes a deposit equal to the amount that would have been deducted from pay if the employee has been covered under FERS, plus interest. (See Chapter 20.)
- NOTE: The deposit is based on the special deduction rates that apply to FERS law enforcement officers and firefighters. (See Chapter 30.)
-
- H. Service Under Other Retirement Systems** Service under other retirement systems (other than CSRS or FSPS) is creditable under FERS only if it was performed before 1989. (See Chapter 20.) Such pre-1989 service may be creditable as law enforcement officer or firefighter service if --
- The position is approved under paragraphs B or C; and
 - The employee waives credit for the service under the other retirement system and makes a deposit equal to 1.3 percent of basic pay for such service, with interest. (See Chapter 20.)
-

Section 46B3.2-2 Evidence Requirements

- A. Rigorous Position** An agency head's finding that a position is a rigorous position must be based solely on the official position description of the position in question and any other official description of duties and qualifications.

The official documentation for the position should as soon as reasonably possible, establish that the primary duties of the position are so rigorous that the agency does not allow individuals to enter the position if they are over a certain age or if they fail to meet certain physical qualifications (physical requirements and/or medical standards) as determined by the employing agency head based on the personnel management needs of the agency for the position in question.

NOTE: A temporary lag between approval of the position and establishment of a maximum entry age and physical qualifications is permitted if necessary. Justification for the lag should be documented.

- B. Secondary Position** A determination that a position is a secondary position must be based on the official position description and any other evidence deemed appropriate by the agency head for making the determination.
-

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46B3.2-3 Individual Requests for Position Approval

- A. Time Limit on Individual Requests** If an employee is not in an approved law enforcement officer or firefighter position (rigorous or secondary), the employee may, within 6 months after entering the position or within 6 months after any significant change in the position, formally seek a determination from the employing agency regarding his or her position. The individual's request must be in writing.
- If the employee does not request a position determination within 6 months, the agency head's determination that the service was not covered under the special group provisions at the time the service was performed is presumed to be correct. This presumption may be rebutted by a preponderance of evidence that the employee was unaware of his or her status or was prevented by cause beyond his or her control from requesting that the official status be changed at the time the service was performed.
- B. Agency Head Decision** In response to an individual request for approval of a position as a law enforcement officer or firefighter position, the agency must issue a written decision.
- If the agency head approves the position, it is designated as a rigorous or secondary position as of a specific date (including a retroactive date if appropriate). The position approval applies to all employees holding the same position.
- NOTE 1: If an agency determines that an individual has performed qualifying service but that the official position description does not support approval, the agency must revise the individual position description, reclassify the position, or change the individual's duties, as appropriate. The past qualifying service will be deemed to be service in an approved position.
- NOTE 2: See Chapter 84 for instructions on retroactive coverage corrections.
-
- C. Appeal Rights** An employee may appeal the final decision of an agency regarding a position determination to the Merit Systems Protection Board (MSPB) under the procedures prescribed by the MSPB.
-

Section 46B3.2-3 Individual Requests for Position Approval (Cont.)

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|---|---|
| D. Individual
Request for
Secondary
Coverage
Determination | If an employee occupies an approved secondary position, but has been found ineligible for secondary coverage for failing to satisfy one of the requirements listed in section 46B3.2-1, paragraph C, he or she may request agency reconsideration of the coverage decision within the time limits provided in the initial agency decision. The final agency decision may be appealed to MSPB. |
|---|---|
-

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46B3.2-4 OPM Oversight of Coverage Determinations

A. OPM Authority to Overrule

The Director of OPM retains the authority to overrule an agency head's determination that a position is a rigorous or secondary position, except determinations involving --

1. certain employees of the U.S. Park Police or the Uniformed Division of the Secret Service (see 5 U.S.C. 8401(17)(B) and section 46B3.1-1, paragraph B2 of this Chapter); and
2. certain employees of --
 - the Bureau of Prisons or Federal Prison Industries, Inc.;
 - the Public Health Service, who are assigned to the field service of the Bureau of Prisons or the Federal Prison Industries, Inc.; or
 - the field service at Army or Navy disciplinary barracks or at any other confinement and rehabilitation facility operated by any of the armed forces;

who are performing detention duties (see 5 U.S.C. 8401(17)(D)).

B. Agency Records and Reporting

1. Upon deciding that a position is a law enforcement officer or firefighter position, each agency head must notify OPM (see paragraph C) stating the title of the position(s), the number of incumbents, whether the position is a rigorous or secondary position, and, if the position is rigorous, the established maximum entry age (or the date by which it will be established).
2. Each agency must establish a file containing all coverage determinations made by an agency head, and all background material used in making the determination.
3. Upon request by OPM, the agency will make available the entire coverage determination file for OPM to audit to ensure compliance with the provisions of this subpart.

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46B3.2-4 OPM Oversight of Coverage Determinations (Cont.)

- B. Agency Records and Reporting (Cont.)**
4. Upon request by OPM, an agency must provide to OPM a list of all approved positions and any other pertinent information requested. For rigorous positions, the list must show the specific entry age requirement and physical qualifications (physical requirements and/or medical standards) for each position.
-

- C. OPM Address** Send all correspondence regarding position determinations to:

**Office of Personnel Management
Attention: Associate Director for Retirement
and Insurance Service
1900 E Street, NW.
Washington, DC 20415**

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46B3.2-5 Transitional Provisions

A. General Special transitional rules apply to employees who become covered by FERS (by automatic coverage or voluntary election) after already performing Federal service as law enforcement officers or firefighters.

B. When CSRS Definitions Apply The CSRS definitions of law enforcement officer and firefighter apply to any service performed --

- Before 1987; or
- After 1986 and before an employee first becomes subject to FERS deductions, if that service was either (1) covered by CSRS deductions at the time it was performed or (2) nondeduction service that is creditable in a CSRS component of a FERS annuity.

NOTE 1: Service under the CSRS Interim or Offset provisions is subject to the CSRS definitions even though that service becomes creditable under FERS (for annuity entitlement and computation purposes) when the employee becomes covered under FERS.

NOTE 2: The determination as to whether any service meets the CSRS definition of law enforcement officer or firefighter must be made in accordance with CSRS rules and procedures. (See subpart 46A3.2.)

C. When FERS Definitions Apply The FERS definitions of law enforcement officer and firefighter apply to any service performed after 1986 that is --

- subject to FERS deductions; or
- nondeduction service (before or after becoming covered by FERS) that is creditable under FERS annuity computation rules.

NOTE: Nondeduction service performed on or after January 1, 1989, is not creditable under FERS. (See section 46B3.2-1, paragraph C, concerning use of such service to satisfy the 3-year rule for continuation of coverage in a secondary position.)

Section 46B3.2-5 Transitional Provisions (Cont.)

- D. Creditability of Service Under CSRS** Any service as a law enforcement officer or firefighter under CSRS definitions that was performed before the date on which an employee becomes subject to FERS, is included in determining the employee's length of law enforcement and firefighter service under FERS for the purposes of retirement eligibility and mandatory separation.
-
- E. Application of Direct Transfer Requirement** An employee who met the direct transfer requirement under CSRS (see section 46A3.2-1, paragraph C) is considered to have met the FERS direct transfer requirement. (See section 46B3.2-1, paragraph C1.)
-
- F. Application of 3-Year Rigorous Service Requirement**
1. For employees who become covered by FERS after serving in a primary law enforcement officer or firefighter position under CSRS, service in the primary position can be counted as service in a rigorous position for purposes of the 3-year requirement discussed in section 46B3.2-1, paragraph C2.
 2. For employees who became covered by FERS while serving in a secondary law enforcement officer or firefighter position under CSRS, the 3-year rigorous service requirement is deemed to have been met.
-
- G. Application of Continuous Secondary Coverage** The employee is **not** covered as a FERS law enforcement officer or firefighter in a secondary position if he or she had a break in CSRS coverage as a law enforcement officer or firefighter exceeding 3 days immediately before becoming subject to FERS.
- However, for this purpose, do not count as a break in coverage a break in secondary positions occurring before the individual became subject to FERS, if the break began with an involuntary separation (not for cause). (See section 46B3.2-1, paragraph C3.)
-

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Subpart 46B3.3 Retirement Eligibility (LEO/FF)**Section 46B3.3-1 Eligibility Requirements****A. General**

FERS law enforcement officers and firefighters may retire voluntarily or involuntarily (except by removal for cause on charges of misconduct or delinquency) at an early age with entitlement to a special annuity computation if the following conditions are met:

- Age and service requirements; and
- Separation from a position subject to FERS coverage.

NOTE 1: There is no "1-out-of-2" requirement under FERS as there is under CSRS. Thus, an employee who elects to transfer to FERS does not have to be under FERS for 1 year to be eligible to retire. It is possible for an employee's separation for retirement to occur on the same day (but not before) the FERS election becomes effective, provided that the employee meets the other requirements.

NOTE 2: A law enforcement officer or firefighter's retirement may be triggered by mandatory separation based on age. See section 46B3.3-2, which follows this section.

NOTE 3: See Chapter 54, section 54B3.1-1, for annuity computation rules that apply to FERS law enforcement officers and firefighters.

B. Minimum Age and Service

An employee must meet one of the age and service requirements below at separation in order to be eligible for retirement under the special provision:

Age:	Service as Law Enforcement Officer or Firefighter:
50	20 years
Any Age	25 years

Section 46B3.3-1 Eligibility Requirements (Cont.)

B. Minimum Age and Service (Cont.) NOTE: Unlike CSRS, FERS law enforcement officers and firefighters may retire before age 50 if they have 25 years of service. The CSRS rules regarding noncreditability of unused leave and military service apply equally under FERS. Also, the CSRS rules regarding disability and death-in-service cases apply under FERS. (See NOTES 1, 2, and 3 in section 46A3.3-1, paragraph B.)

C. Applicable CSRS Provisions The following provisions of CSRS section 46A3.3-1 apply under FERS:

- Paragraph C: Separation from Covered Position
- Paragraph E: Erroneous Separations

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46B3.3-2 Mandatory Separation

- A. Applicable CSRS Provisions** The following paragraphs of CSRS section 46A3.3-2 apply under FERS:
- Paragraph A: General
 - Paragraph B: Standard Mandatory Separation
 - Paragraph C: Exemption From Mandatory Separation Until Age 60
 - Paragraph E: Notice Requirement
 - Paragraph F: Appeal Rights
-
- B. Exemption From Mandatory Separation After Age 60** The President, by Executive Order, may exempt an employee from automatic separation if the President determines it is in the public interest to do so.
- NOTE: Unlike CSRS, the President's authority to exempt an employee from automatic separation has not been delegated to OPM.
-

Part 46B4 Military Reserve Technicians

Section 46B4.1-1 Definition

A. Military Reserve Technician

"Military reserve technician" means a member of one of the reserve components of the armed forces specified in 10 U.S.C. 261(a) who --

1. Is assigned to a civilian position as a technician in the administration and training of such reserve components or in the maintenance and repair of supplies issued to such reserve components; and
 2. As a condition of employment in such position, is required to be a member of one of such reserve components serving in a specified military grade.
-

B. Reserve Components

The reserve components of the armed forces are --

- The Army National Guard of the United States;
 - The Army Reserve;
 - The Naval Reserve;
 - The Marine Corps Reserve;
 - The Air National Guard of the United States;
 - The Air Force Reserve; and
 - The Coast Guard Reserve.
-

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46B4.1-2 Eligibility Requirements for Retirement

- A. General** In general, military reserve technicians must meet the same requirements as regular employees to be eligible for an immediate unreduced retirement. (See Chapter 41, section 41B1.1-2.) However, military reserve technicians may qualify for early retirement under special conditions. These conditions are discussed below.
- B. Special Rule for Early Retirement** A military reserve technician who is involuntarily separated from technician service due to disability or other reason determined by the employing agency is entitled to an immediate annuity after attaining 50 years of age and completing 25 years of service.
- NOTE: A military reserve technician early retirement annuity is basically computed in the same way as a regular annuity. (See Chapters 50 and 51.)
-
- C. Special Rule for Disability Retirement** A military reserve technician who has performed at least 18 months of civilian service may retire under the disability provisions if he or she --
1. Is separated from employment as a military reserve technician due to a disability that disqualifies the individual from membership in a reserve component of the armed forces (specified in 10 U.S.C. 261(a)) or from holding the military grade required for such employment;
 2. Is not considered to be disabled in his or her position under FERS disability rules;
 3. Is not appointed to another position in the Federal government; and
 4. Has not declined an offer of an appointment that meets the following requirements:
 - The offered position is within the commuting area of the former position;
 - The individual is qualified to serve in the offered position (as determined by the head of the agency); and

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46B4.1-2 Eligibility Requirements for Retirement (Cont.)

**C. Special Rule for
Disability
Retirement
(Cont.)**

- The offered position is at the same grade or equivalent level as the position for which the individual separated.

NOTE 1: A military reserve technician who qualifies for retirement under the rule described in paragraph B may not retire under the disability provision described in this paragraph.

NOTE 2: See Chapters 60 and 61 for information on FERS disability retirement provisions and annuity computation rules.

**D. Termination of
Disability
Retirement**

The annuity of a military reserve technician who retires under the provisions described in paragraph C terminates if the individual --

1. Is appointed to any position in the Federal government;
 2. Declines an offer of appointment that meets the conditions described in paragraph C4; or
 3. Is found restored to earning capacity (see Chapter 60, section 60B5.1-1).
-

Part 46B5 Retirement Procedures**Section 46B5.1-1 Retirement Procedures**

A. General

Handbook Chapters 40 and 60 provide detailed instructions on the completion of the forms identified below and the information and guidance that must be given retiring employees.

**B. Employee
Responsibility**

The employee must complete --

- Standard Form 3107, Application for Retirement (and Schedules A, B, and C when necessary (and, if applying for disability under the special provisions for military reserve technicians, OPM Form 3105-A, Applicant's Statement of Disability); and
- OPM Form 3107-2, Spouse's Consent to Survivor Election, if applicable.

If the employee has been separated 30 days or less before the application is filed, the application and other forms must be filed with the agency. If the employee has been separated more than 30 days, the application must be filed directly with OPM.

**C. Agency
Responsibility**

The agency must --

- Provide the employee with an Application for Retirement (SF 3107) and any other necessary forms (including disability application forms discussed in Chapter 60, section 60B2.1-1, if military reserve technician is retiring for disability);
- Complete Certified Summary of Federal Service (SF 3107-1);
- Complete Agency Checklist of Immediate Retirement Procedures (SF 3107-Schedule D);
- Complete Standard Forms 2809, 2810, 2819, and 2821 concerning health and life insurance in accordance with The Federal Employees Group Life Insurance Handbook for Personnel and Payroll Offices and The Federal Employees Health Benefits Handbook for Personnel and Payroll Offices (formerly FPM Supplements 870-1 and 890-1);

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46B5.1-1 Retirement Procedures (Cont.)

**C. Agency
Responsibility
(Cont.)**

- Send the employee's Individual Retirement Record (SF 3100) to OPM (with the retirement application attached) within 30 days of separation;
- For air traffic controller retirements, provide certification of air traffic controller service; and
- For law enforcement officers and firefighters, provide a letter, signed by a responsible official of the employee's personnel office, listing in chronological order the title of each position, beginning with the first law enforcement officer or firefighter position, held by the employee, and the beginning and ending dates of the employee's service in each position. Service in supervisory or administrative positions should be noted as "supervisory" or "administrative."

NOTE: An SF 2806 is also required if the employee transferred to FERS and is eligible for a CSRS annuity component.

D. OPM Address

Send all correspondence regarding an employee's retirement to:

**Office of Personnel Management
Federal Employees Retirement System
Retirement Operations Center
Post Office Box 200
Boyers, PA 16017**

**Special Retirement Provisions for Law Enforcement
Officers, Firefighters, Air Traffic Controllers,
and Military Reserve Technicians
Chapter 46**

Section 46B5.1-2 Advice to Employee

Commencing date of Annuity

1. For air traffic controller, law enforcement officer, and firefighter annuities based on either an optional retirement or a mandatory separation, the annuity commences on the first day of the month after separation for retirement.

NOTE 1: If the separation occurs because of the expiration of a term for which the employee was appointed or elected, the annuity commences the day after separation for retirement. (See Chapter 41, part 41B2.)

NOTE 2: Unlike CSRS, the FERS commencing date rules for a discontinued service retirement (see Chapter 44) differ from those for a retirement based on a mandatory separation, even though both retirements are based on an involuntary separation.

2. For military reserve technicians entitled to an early retirement (see section 46B4.1-2, paragraph B), the annuity commences on the day after separation from service.
 3. For military reserve technicians entitled to a disability annuity (see section 46B4.1-2, paragraph C), the annuity commences on (a) the day after separation from service or (b) the date after pay ceases and the requirements for title to an annuity are met. (See Chapter 60, section 60B6.1-3, paragraph B.)
-

B. Reemployment of Retired Law Enforcement Officers and Firefighters

A retired law enforcement officer or firefighter is barred from reemployment in a rigorous position after reaching age 60. However, he or she is not barred from reemployment in a secondary position or any other position.

C. Applicable CSRS Provisions

The following paragraphs in CSRS section 46A5.1-2 apply under FERS:

- Paragraph C: Reemployment of Retired Air Traffic Controllers
 - Paragraph D: Coverage of Reemployed Annuitants.
 - Paragraph E: Public Safety Officers' Benefits
-