

Guidelines for Requesting Position Coverage under the Special Retirement Provisions for Law Enforcement Officers

References

- a) Title 5, United States Code, Part 8331(20)
- b) Title 5, United States Code, Part 8401(17)
- c) Title 5, Code of Federal Regulations, Part 831, Subpart I, Law Enforcement Officers and Firefighters
- d) Title 5, Code of Federal Regulations, Part 842, Subpart H, Law Enforcement Officers and Firefighters
- e) The CSRS (Civil Service Retirement System) and FERS (Federal Employees Retirement System) Handbook for Personnel and Payroll Offices (formerly FPM Supplement 830-1)
- f) Department of Defense, Civilian Personnel Manual, DoD 1400.25-M, Subchapter 830

General Procedures

The Under Secretary of Defense for Personnel and Readiness (USD (P&R)) must approve coverage determinations for LEO positions that satisfy the requirements under the Civil Service Retirement System (CSRS) or under the Federal Employees Retirement System (FERS). The CPO/HRO must send the request for USD (P&R) approval through appropriate channels to:

Civilian Personnel Management Service
Field Advisory Services
Benefits and Entitlements Branch
1400 Key Blvd., Suite B-200
Arlington, VA 22209-5144

The head of a DoD Component (or designee) may disapprove special retirement coverage in cases that do not satisfy the statutory and/or regulatory requirements.

Requests for coverage should include:

- 1) a statement from the head of the DoD Component (or his or her designee) recommending coverage,
- 2) a statement by headquarters classification personnel verifying the accuracy of the title, series and grade determination for the position description (note: the position description may be subject to a classification audit),
- 3) a review and recommendation by the legal office servicing the requester's duty station as to eligibility for coverage, and the basis, if any for such eligibility,
- 4) a statement that the budgetary consequence of the position coverage has been considered, and
- 5) supporting documentation, as applicable, for primary or secondary position coverage determinations.

Primary Positions

The duties listed in a position description submitted for determination of primary law enforcement officer (LEO) retirement coverage must meet the requirements under law and regulation. Without holding any single factor to be essential, the Merit Systems Protection Board (MSPB) has also identified several factors to consider when determining whether a position or employee qualifies as a law enforcement officer within the statutory provisions for LEO coverage. These factors were endorsed by the Court of Appeals for the Federal Circuit in *Bingaman v. Department of Treasury*, 127 F.3d 1431, Fed. Cir. 1997.

The following factors should be addressed when submitting documentation in support of the request for coverage in a primary LEO position:

- 1) Is the request due to reclassification of a position description?

Supporting Documentation

- a) Submit a copy of the prior position description and classification evaluation statement.
- b) Indicate the basis for the change in classification (i.e. attrition of duties, change in organizational mission or structure, etc.).
- c) Indicate the recruitment sources or methods that will be used to fill the position. Provide qualification standards, vacancy announcement, and performance standards.

- 2) Does the position description detail duties in the law enforcement field?

Supporting Documentation

- a) Submit a detailed organizational chart for the division, branch, and/or unit level. The organizational chart must indicate title, series, grade, and LEO status of all positions.
- b) Submit the position description, including the classification evaluation statement. (Note: the position description may be subject to a classification audit).
 - i) If possible, do not group LEO-related duties with non-LEO related duties within the same duty/element within the position description. Segregate the LEO duties of the position (duties which require experience as a primary law enforcement officer) from the non-LEO duties (supervisory, administrative or managerial for which experience as a primary law enforcement officer are not required, i.e. public relations; personnel management; budget planning; etc.)
 - ii) If LEO and non-LEO duties are grouped together in the position description, provide documentation indicating the percentage of time spent in performance of the LEO and non-LEO duties.
- c) Specify which duties involve physically rigorous activities, as well as the frequency and degree of the physical activity required.
- d) Provide supplemental documentation, as needed, to support that the duties of the position are in the law enforcement field.

3) Do the duties of the position accurately reflect the mission of the organization?

Supporting Documentation

- a) Submit mission and/or functional statements for the division, branch, and/or unit that document the law enforcement mission of the organization.
- b) Document the number and types of crimes investigated within the organization and/or unit, which lead to the detention, arrest, and/or criminal prosecution of criminal suspects (documentation can include sanitized copies of arrest reports, investigative reports, detention, arrest or prosecution statistics, etc.)
- c) Document the relationship between the duties of the position and the accomplishment of the organization's law enforcement mission.

4) Are the *primary duties* of the position to investigate, apprehend, and/or detain suspected or convicted criminals? *Primary duties* mean duties that (a) are paramount in influence or weight, that is, constitute the basic reason for the existence of the position; (b) occupy a substantial portion of the individuals working time over a typical work cycle; and (c) are assigned on a regular and recurring basis. Does the position or employee meet the following "Bingaman Factors"?

- ◆ has frequent direct contact with criminal suspects;
- ◆ is authorized to carry a firearm;
- ◆ interrogates witnesses and suspects, giving Miranda warnings when appropriate;
- ◆ works for long periods without a break;
- ◆ is on call 24 hours a day; and
- ◆ is required to maintain a level of physical fitness.

Supporting Documentation

- a) Provide information on the authority delegated to the positions related to the apprehension, investigation, and/or arrest of criminal suspects. Provide copies of procedures and limits on the authority delegated to the position.
- b) Specify which laws and statues are enforced by the position? Provide documentation related to enforcement actions taken by the position and/or unit employees for violations of these laws (documentation can include sanitized copies of arrest reports, investigative reports, detention, arrest or prosecution statistics, etc.).
- c) Clarify the nature and extent of the position's contact with suspected/convicted criminals.
- d) Provide statistics regarding any Miranda rights warnings given by the requestor or other incumbents in the position.
- e) Provide statistics regarding any search warrants executed by the requestor or other incumbents in the position.
- f) Indicate the frequency of physical apprehensions and arrests made by the position and/or unit employees.
- g) State the extent of the position's involvement in criminal investigations.
- h) Provide information on the type and frequency of investigative techniques used by the position.
- i) Provide information on the frequency, nature, and extent of coordination with military, Federal, or civilian law enforcement personnel and/or agencies.

- j) If applicable, specify which duties involve physically rigorous activities, as well as the frequency and degree of the physical activity required. Provide a copy of the physical standards and/or the physical fitness program for the position (including procedures in the event of failure to qualify).
- k) Specify which duties involve the use of firearms, as well as the frequency firearms are used. Provide information related to the authorization to use firearms and the weapons qualification requirements (including procedures in the event of failure to qualify).
- l) Provide documentation supporting the work schedule (i.e. overtime history, number of times incumbent has been recalled to duty during non-work hours, etc.) if the position requires the incumbent to work overtime, be recalled to duty, be on call 24 hours a day, or requires the incumbent to work long periods of time without a break,
- m) Document number of assaults or attacks on the position, frequency and nature of direct contact with armed or dangerous criminals, and frequency and nature of environmental hazards or adverse conditions to which the position is exposed.

Secondary Positions

The duties listed in a position description submitted for determination of secondary law enforcement officer (LEO) retirement coverage must meet the requirements under law and regulation. The following guidelines should be addressed when submitting documentation in support of the request for coverage in a secondary position:

- 2) Is the request due to reclassification of a position description?

Supporting Documentation

- a) Submit a copy of the prior position description and classification evaluation statement.
- b) Indicate the basis for the change in classification (i.e. attrition of duties, change in organizational mission or structure, etc.).
- c) Indicate the recruitment sources or methods that will be used to fill the position. Provide qualification standards, vacancy announcement, and performance standards.

- 3) Is the position clearly in the law enforcement field?

Supporting Documentation

- a) Submit a detailed organizational chart for the division, branch, and/or unit level. The organizational chart must indicate title, series, grade, and LEO status of all positions.
- b) Submit the position description, including the classification evaluation statement. (Note: the position description may be subject to a classification audit).
 - i) If possible, do not group LEO-related duties with non-LEO related duties within the same duty/element within the position description. Segregate the LEO duties of the position (duties which require experience as a primary law enforcement officer) from the non-LEO duties (supervisory, administrative or managerial for which experience as a primary law enforcement officer are not required, i.e. public relations; personnel management; budget planning; etc.)
 - ii) If LEO and non-LEO duties are grouped together in the position description, provide documentation indicating the percentage of time spent in performance of the LEO and non-LEO duties.

c) Provide supplemental documentation, as needed, to support that the position is clearly in the law enforcement field.

4) Is the position in an organization having a law enforcement mission?

Supporting Documentation

- a) Submit mission and/or functional statements for the division, branch, and/or unit that document the law enforcement mission of the organization.
- b) Document the number and types of crimes investigated within the organization and/or unit, which lead to arrest and/or criminal prosecution (documentation can include sanitized copies of police reports, investigative reports, arrest/prosecution statistics, etc.)
- c) Document the relationship between the duties of the position and the accomplishment of the organization's law enforcement mission.

5) Does the position include duties as a first-level supervisor to law enforcement officers in primary positions (secondary/supervisory)?

Supporting Documentation

- a) Submit position descriptions for subordinate positions (or equivalent documentation for military or contracted employees). Indicate whether subordinate positions are covered under the special retirement provisions for law enforcement officers (primary or secondary LEO coverage).
- b) Document frequency, nature, and extent of supervisory duties.

6) Are the duties of the position administrative (i.e. executive, managerial, technical, semiprofessional, or professional) for which the experience in a primary law enforcement officer position (or equivalent experience outside the Federal government) is a prerequisite?

Supporting Documentation

- a) Document the relationship between the duties of the position and the accomplishment of the organization's law enforcement mission.
- b) Document frequency and nature of contact with primary law enforcement officers.
- c) Document why direct experience as a primary law enforcement officer is a prerequisite for the position. What experience as a primary law enforcement officer will have groomed an employee to accomplish the duties of the position?
- d) Indicate which specific duties or assignments require experience as a primary law enforcement officer and why. Indicate the percentage of time spent in performance of those duties.

7) Is the position authorized to carry a firearm, subject to an unusual work schedule, physically rigorous activity, physical and/or environmental hazards?

Supporting Documentation

- a) Specify, if applicable, which duties involve physically rigorous activities, as well as the frequency and degree of the physical activity required. Provide a copy of the physical

standards and/or the physical fitness program for the position (including procedures in the event of failure to qualify).

- b) Specify which duties involve the use of firearms, as well as the frequency firearms are used. Provide information related to the authorization to use firearms and the weapons qualification requirements (including procedures in the event of failure to qualify).
 - c) Provide documentation supporting the work schedule (i.e. overtime history, number of times incumbent has been recalled to duty during non-work hours, etc.), if the incumbent of the position is required to work overtime, be recalled to duty, be on call 24 hours a day, or required to work long periods of time without a break,
 - d) Document the number of assaults or attacks on the position, frequency and nature of direct contact with armed or dangerous criminals, and frequency and nature of environmental hazards or adverse conditions to which the position is exposed.
- 8) Is the position responsible for accomplishment of primary LEO duties (i.e. the investigation, apprehension, and/or detention of individuals suspected or convicted of offenses against the criminal laws of the United States)?

Supporting Documentation

- a) Provide supporting documentation following the guidelines for primary LEO positions.
- b) Indicate which specific duties or assignments fall under the primary category for LEO coverage. Indicate the percentage of time spent in performance of those duties.