



**Retirement and Insurance Service
Benefits Administration Letter**

Number: 02-102

Date: May 1, 2002

**Subject: Retirement Election Opportunities for Former DoD or Coast Guard
Nonappropriated Fund Employees Under Public Law 107-107, the National
Defense Authorization Act for Fiscal Year 2002**

This Benefits Administration Letter (BAL) describes changes made in the *National Defense Authorization Act for Fiscal Year 2002*, Public Law 107-107, that affect certain employees Government-wide who have performed service with a Department of Defense (DoD) or Coast Guard Nonappropriated Fund (NAF) Instrumentality. It also provides guidance related to opportunities that certain civil service employees have to elect NAF retirement coverage after moving from a NAF position to a retirement covered civil service position on or after December 28, 2001.

How did Public Law 107-107 change the retirement law with respect to NAF service?

Public Law 107-107 makes two changes to the retirement law with respect to NAF service.

- Section 1131 makes it easier for employees to continue NAF retirement coverage after moving from DoD or Coast Guard NAF positions to civil service positions. Employees may now be able to continue NAF retirement coverage after such a move even if they were not vested in the NAF plan.
- Section 1132 permits employees in the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) to use prior NAF service to qualify for an immediate retirement. Credit for NAF service under this law **will not** result in higher CSRS or FERS annuity benefits.

The focus of this BAL is on the change made by section 1131. We will address the change made by section 1132 in a future BAL.

How do employees who move from NAF positions to civil service positions qualify to keep their NAF coverage under this new law?

Employees who move from NAF positions to civil service positions on or after December 28, 2001, will be eligible to elect to retain coverage in their NAF retirement plan if they:

<i>Civil Service Retirement System</i>	<i>Federal Employees' Group Life Insurance Program</i>	<i>Federal Employees Health Benefits Program</i>	<i>Federal Employees Retirement System</i>	<i>Long Term Care Insurance Program</i>
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- have not had a prior opportunity to elect to continue NAF coverage based on a prior qualifying move;
- were participating in a NAF retirement plan;
- move from NAF service in the DoD or Coast Guard to a *retirement-covered* appointment in the civil service employment system; and
- obtain their retirement-covered appointment in the civil service employment system within one year of their separation from covered NAF service.

These requirements were established in the *National Defense Authorization Act for Fiscal Year 1996*, Public Law 104-106, and are explained in detail in BAL 96-107. (That law also contained a requirement that employees be vested in a NAF retirement plan before they could elect to keep the NAF coverage. Public Law 107-107 eliminates that requirement for moves that occur on or after December 28, 2001.)

If we hired an employee on or after December 28, 2001, and did not allow that employee to make an election to continue NAF coverage because he or she was not vested in a NAF plan, what should we do now?

If you did not give an employee hired on or after December 28, 2001, an opportunity to elect to continue coverage in a NAF retirement plan solely because he or she was not vested in a NAF plan, you must now give that employee an election opportunity. Give the employee written notice explaining the options and a copy of the election form we've attached to this BAL. Follow the instructions on the election form to document that you gave the employee an election opportunity.

How long does an employees have to make an election?

An employee eligible to make an election to continue coverage in a NAF retirement plan has 30 days after entering a retirement-covered civil service position to make an election. This time limit may be extended if the agency fails to provide a timely opportunity for the employee to make the election. It may also be extended if the employee, despite due diligence, was prevented by circumstances beyond his or her control from making an election within the time limit.

You should extend this time limit for any employee hired on or after December 28, 2001, and before the date of this BAL who did not get an opportunity to elect NAF retirement coverage solely because he or she was not vested in a NAF plan. Give the employee 30 days from the date of your notice informing the employee of the election opportunity to make the election.

What do we need to do if the employee elects NAF retirement coverage?

If the employee elects coverage under the NAF retirement plan, file the election and the Notice of Election flag (attachment 4) in the employee's Official Personnel Folder. (Be sure to identify the appropriate NAF retirement plan on the Notice of Election flag by marking the box to the left of the plan.) Mail a copy of the election to the NAF benefits office. Correct the personnel and payroll records, retroactive to the date of the appointment, to reflect coverage under the NAF plan. Human Resources Offices should follow guidance in the *Guide to Processing Personnel Actions* to correct the personnel records. They should also forward a copy of the employee's election and a copy of the request referenced in the next question to the payroll office.

Payroll offices should follow guidance in Payroll Office Letter 96-06, dated November 5, 1996, to correct the payroll records. However, payroll offices should note in the *Remarks* section of the Individual Retirement Record that the employee elected NAF coverage under Public Law 107-107. (Note, Payroll Office Letter 96-06 is included with the 1997 Payroll Office Letters on our web site, www.opm.gov/benefits.)

Do we still need to request information from the NAF retirement plan administrator if we hire an employee after the date of this BAL who appears to be eligible to elect to continue NAF retirement coverage?

If it appears a newly hired employee may be eligible to elect to continue NAF retirement coverage under Public Law 107-107, you need to verify with the NAF retirement plan administrator that the employee was a covered participant in the NAF retirement plan. You also need to confirm the date the employee separated from the NAF position. Attached to this BAL is a model request that you can use to obtain this information from the NAF plan. Also attached is an updated list of names and addresses for the NAF plans.

If a CSRS or FERS employee moves to a DoD or Coast Guard NAF position, can that employee keep the CSRS or FERS retirement coverage in the NAF position?

Yes, under certain conditions. Employees moving from a civil service retirement covered position to a DoD or Coast Guard NAF Position on or after December 28, 2001, may elect to keep their civil service retirement coverage if:

- they did not have a prior opportunity to elect to continue their civil service retirement coverage based on a prior move to a NAF position;
- they move from a retirement covered civil service position to a retirement covered NAF position in the DoD or Coast Guard; and
- they move to the retirement covered NAF position within one year of leaving the civil service retirement covered position.

When a NAF employer hires an employee who appears eligible to continue civil service retirement coverage, the NAF Human Resources Office will provide the employee with an election opportunity. A copy of the election form they use is attached to this BAL for your information.

If we discover that an employee is eligible to elect to continue NAF retirement coverage based on a move prior to December 28, 2001, under the provisions of Public Law 104-106, what should we do?

If you discover that an employee is eligible to elect NAF retirement coverage based on a move prior to December 28, 2001, (and after August 9, 1996) follow the guidance outlined in BAL 96-107, dated August 20, 1996.

How does Public Law 107-107 change the way NAF service is credited under CSRS and FERS?

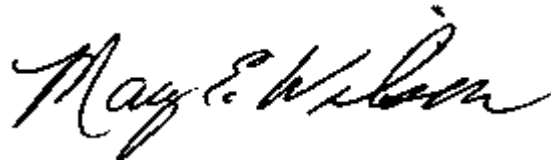
Prior to Public Law 107-107, credit for NAF service under CSRS or FERS was allowed only under limited circumstances. BAL 96-108, dated September 6, 1996, describes those circumstances.

Under Section 1132 of Public Law 107-107, CSRS and FERS employees may now elect to credit any NAF service (that is not otherwise creditable) if they need that service to qualify for an immediate retirement. Employees will only be able to make that election at the time they retire. Using NAF service to qualify for an immediate retirement **will not** increase the amount of the CSRS or FERS annuity benefit, however. The annuity must be reduced to ensure that it is actuarially equivalent to the present value of the deferred annuity an employee would receive if he or she left government service and didn't use the NAF time to qualify for an immediate retirement.

We will issue a BAL explaining how an employee may elect to use NAF service for CSRS or FERS retirement eligibility and how that employee's annuity will be computed after we issue our regulations pursuant to Public Law 107-107. If an employee wants to retire using NAF service to qualify for an immediate annuity before then, please have your headquarters level benefits officer contact our Benefits Officers Resource Center for assistance.

Does Public Law 107-107 make any changes to how NAF service is credited for leave and Reductions in Force (RIF)?

No. Section 1132 changes only the NAF service credit rules related to retirement. It does not change the rules related to leave and RIF.



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Attachments

- A Election to Retain NAF Retirement Coverage, RI 38-134
- B Names and Addresses of NAF Retirement Plans
- C Model Request for Verification that Employee Was a Participant in a NAF Retirement Plan
- D Notice of NAF Election Flag
- E Election to Retain CSRS, CSRS Offset, or FERS Coverage, RI 38-144