



## ***Benefits Administration Letter***

Number 17 - 101

Date: 1-27-2017

### **Subject: Additional Guidance on Military Deposits**

#### **Background**

This Benefits Administration Letter (BAL) replaces BAL 13-103 which was developed to remind agencies of the fact that, generally, an employee must pay military service credit deposit under Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) to the agency before separation. 5 U.S.C. § 8334(j) or 5 U.S.C. § 8422(e); see also 5 CFR 831.2104 and 842.307. However, 5 CFR §§ 831.2104(a) and 842.307 also provide that in the event of administrative error related to the military service credit deposit, a former employee has the opportunity to make or complete the military deposit after separation.

#### **What this BAL does**

- Provides a general discussion of what constitutes an administrative error related to a military service credit deposit
- Reminds Human Resource Specialists of the necessity of counselling employees about paying military deposits when they have or return from military service.
- Notifies Human Resource Specialists of the procedures that must be followed by a former employee if the former employee believes an administrative error occurred and prevented them from being able to make or complete a military deposit before separation from Federal civilian employment.
- Provides links to, and an analysis of several decisions that have impacted the treatment of military deposits.

#### **What this BAL does not do**

- Change any existing law or regulation
- Change any documentation necessary to determine the creditability of military service
- Delegate to any agency the authority to allow an individual to complete a belated military service credit deposit due to administrative error.

## General rules concerning military service

- In general, honorable, active duty military service is creditable for retirement purposes only when the employee pays a deposit for that service.
  - Exceptions:
    - Military service performed before 1957
    - Military service performed after 1956 that is credited under CSRS (either in a CSRS annuity or in a CSRS component of a FERS annuity) for an employee who was first covered under CSRS before October 1, 1982 if the employee is not eligible for social security benefits.
- Even if the employee pays a deposit for a period of military service, receipt of military retired pay may bar CSRS or FERS retirement credit for a period of military service, except as provided in 5 CFR 831.301(b)(2) and 842306(b).
- The deposit must be paid in full to the employing agency on or before the separation date on which title to annuity is based.
- Payments made via payroll deduction are considered to be made on or before the date of separation even if the date of the final salary payment is after the date of separation.
- Agencies are required to provide accurate and complete counseling to all employees who seek to make post-1956 military deposit; this includes counseling as to the effect of paying or not paying the deposit(s) as well as the proper calculation of the deposit(s).
- Agencies and payroll providers should promptly forward the retirement package to OPM, documenting the deposit status (paid in full, partially paid, unpaid) for all separate periods of post-1956 military service. Documentation should include all military earnings information and worksheets and/or printouts used in the computation (or showing the computation).
- Under no circumstances should the retirement package be delayed while awaiting an OPM decision on a claim of administrative error.
- A former employee who believes that an administrative error occurred and resulted in the inability to complete the military deposit before separation from federal civilian employment, may file a specific written request with OPM to make a belated post-1956 military deposit. Such a request is initiated by the former employee and not by the agency).
- Only OPM, U.S. Merit Systems Protection Board, and its reviewing court, may apply the administrative error regulations in any given retiree's case.
- If a belated deposit opportunity is approved by OPM or a reviewing entity, the retiree's last employing agency will be notified by OPM to provide the retiree with an opportunity to make or complete the deposit, **to the employing agency**, within the allotted time period.

## **Definition of Administrative Error for Military Service Credit Deposits**

In response to an employee's inquiry, the employing agency provides material misinformation concerning the deposit and the consequences of not making the deposit prior to separation.

Thomas v. Office of Pers. Mgmt., No. CH-0831-07-0040-I-1, 2007 WL 4239974 (M.S.P.B. Dec. 4, 2007)

Under the regulations for military service credit deposits, 5 CFR 831.2104 and 842.307, “administrative error” in the deposit process allows an individual to make a belated military deposit. Administrative error is only recognized as a basis for a belated military deposit and is cannot provide the basis for belated processing actions other than military deposits. What constitutes administrative error is not addressed in the regulations. The Merit Systems Protection Board has issued several decisions that establish a standard for administrative error. In general, an administrative error occurs when in response to an employee's inquiry, the employing agency provides material misinformation concerning the deposit and the consequences of not making the deposit prior to separation. Thomas v. Office of Pers. Mgmt., 107 M.S.P.R. 334 (2007). In addition, if an employee, at the time of election, affirmatively asks for information regarding the amount of the military deposit or the consequences of failing to make a deposit, the government commits administrative error if its response either misrepresents the dollar amounts in question, or is so indirect, inaccurate, or incomplete as to confuse the employee as to the amount of the deposit or the effect of any failure to make the deposit on the annuity recalculation. See McCrary v. Office of Pers. Mgmt., 459 F.3d 1344, 1349 (Fed.Cir.2006).

## **Employee and Agency Responsibilities**

In accordance with McCrary v. Office of Personnel Management agencies are required to provide direct, accurate, and complete information to employees about military service deposits. The responsibility of the employee is to initiate the request and assembly of evidence of creditable military service and to initiate a request to make a deposit through his or her employing agency.

### **Employee**

- It is the employee’s responsibility to seek counseling from the employing agency about the post-1956 military deposit requirement.
- It is the employee’s responsibility to assemble the pertinent supporting documentation of creditable active, honorable, military service as the term “military service” is defined at 5 USC §8331(13) and §8401(31).
  - The employee’s responsibility includes obtaining the actual or estimated military earnings for a given period of service from the military, through

## **Retirement Services**

*Quality Benefits for the Federal Family*

the Defense Finance & Accounting Service (DFAS). Frequently the employing agency assists the employee to obtain this information.

- It is the employee's responsibility to ensure that his/her military deposit is paid in full by the final separation date from civilian employment. This includes separations other than for retirement (resignations, removals, abandonments and terminations of appointment).

## **Agency**

- Each Federal employing agency or entity, in conjunction with its payroll provider, must have the capacity to counsel, calculate, collect and to post all payments related to employees' deposits for military service, and appropriate accounting support systems for the deposits and any applicable interest.
- Any request for deposit counseling by an employee must be accurate and complete, and must include a determination as to whether the military service for which service credit is requested, is potentially creditable for civil service retirement purposes. The employee should be advised that OPM's Retirement Service will ultimately decide if any particular period of military service is creditable for civil service retirement.
- For deposits involving the special Uniform Services Employment and Reemployment Rights Act (USERRA) calculation, the agency must calculate the version of the deposit based on the civil service retirement contributions for the civilian employment rates of pay that would be applicable if the employee had not been on active duty. The agency also calculates the deposit in the usual way using military earnings for the period. Interest is added if applicable. The results of the two methods are compared and the lower of the two is the amount used for the deposit. Under both methods of calculation, the individual is still making a military service credit deposit.
- Agencies are responsible for including accurate information about the accrual of interest on military deposits, and to accurately determine and apply the Interest Accrual Date in any given request to make deposit for a period of military service.
- As an additional counseling point, if it appears that an employee will not be able to complete payment of a military deposit before the employee's selected voluntary retirement date, the employee should be advised that he or she may accelerate payment to complete of the deposit before separation. Simply not having enough time to complete a military deposit based upon a voluntary separation does not constitute an administrative error. An employee who needs

more time to complete the deposit should consider selecting a later retirement date.

### **Full Payment of Military Deposit as of the Date of Retirement/Separation**

Military deposit payments must be completed at the employing agency/payroll provider before final separation from employment upon which the civil service annuity is based. “Completed” means the final payment has already been processed or will be processed in the final payroll closeout if done by payroll deduction.

For FERS employees and CSRS employees who began covered service on or after October 1, 1982, if military service is needed for title to a retirement, then these employees must pay the military service credit deposit in full before retirement in order to meet the eligibility requirements for immediate retirement.

Employing agencies and the supporting payroll provider are responsible for administering the agency’s military service credit deposit program, including any necessary corrections of civilian retirement documents (including Individual Retirement Records IRRs), and estimates for counseling. Payroll providers should include with the retirement package (or upon separation of an employee):

- Any fully paid or partially paid Military Deposit IRRs; or
- If there was no deposit with that agency in that period of employment, the final SF 3100 or SF 2806 clearly annotated with “No post-1956 military service deposit made with this agency.” This statement should also appear on the IRRs for all employees who did not have, or who did seek to claim credit for, military service.

### **OPM/Retirement Service Responsibilities**

Upon receipt of an application for retirement, OPM determines the creditability of military service. If military service is potentially creditable, OPM determines whether the individual has completed the appropriate military service credit deposit with interest for the period. In making its determination about a particular deposit, OPM primarily relies upon the submissions of records from the employing agency and its payroll provider, especially the Individual Retirement Records.

OPM finalizes an annuity claim with military service, subject to receipt of a fully paid deposit. In the absence of a fully paid deposit record, OPM cannot allow credit for the military service. In those instances where the retirement records include evidence of an incomplete (partial) deposit payment, OPM uses the partial payment to satisfy the deposit for one or more separate distinct periods of military service. If the partial deposit is

sufficient to pay the cost of one or more separate periods, any remaining portion of the deposit is returned to the employee.

If an employee alleges to OPM after retirement that his or her employing agency took an action, or neglected to take an action involving the military deposit, that influenced or caused the individual to not initiate or complete the deposit, then OPM will determine if the circumstances constitutes an administrative error. OPM will decide if the circumstances warrant allowing the individual to make a belated deposit to his or her former employing agency. If approved, or if denied but then subsequently ordered approved by Merit Systems Protection Board (MSPB) or a reviewing court, OPM will issue a notice to the individual describing a time limit by which he or she must complete his or her deposit through his or her former agency.

Upon payment of the belated deposit, the employing agency remits the deposit to OPM, and submits evidence of individual deposit to the Retirement Operations Center within the original time limit set by OPM. After receipt of the belated deposit, OPM approves or re-issues the annuity at the appropriate rate.

OPM will only consider individual requests for belated deposit due to administrative error.

### **Deemed Administrative Errors**

There are limited circumstances in which OPM will deem administrative errors to have occurred, and which would automatically enable an individual to belatedly complete payment of his or her military deposit to his or her prior employing agency after separation from employment.

- Federal Erroneous Retirement Coverage Correction Act (FERCCA): If a retirement plan coverage error that qualifies for correction is discovered after separation, and:
  - The deposit was not paid in full because the agency enrolled the employee in the wrong retirement plan, and/or,
  - The amount of deposit was misstated, then,

a request for belated military deposit can be granted, to be administered by the agency in conjunction with the FERCCA remedy.

- Deposit calculation errors discovered after separation. (e.g., a FERS deposit was computed instead of a CSRS deposit; failure to account for higher deduction years

in 1999/2000; the employing agency commenced interest as of the wrong Interest Accrual Date, etc.)

### **Request for Individual Finding of Administrative Error**

If an employee who did not complete payment of the military deposit, believes that the failure to pay was caused by an employer's administrative error, and wants to complete the payment after retirement, the employee/retiree may request a finding of administrative error.

#### **Submitting the request with the retirement package:**

The employee may submit the request with the retirement package. The request should include:

- **A signed statement** from the employee asserting in detail, in his or her own words: (a) what he or she believes the administrative error was, (b) how the error caused the employee to fail to make the timely deposit payment, and, (c) why the employee chose not delay his or her retirement separation in order to complete the deposit.
- **An agency statement**, should the agency wish to submit one with the retirement package at its discretion, explaining what action it took with respect to counseling the employee on making the military deposit. It may also include information on why the employee chose not to delay his or her retirement separation in order to complete the deposit. Any statement forwarded by the agency in this context becomes part of the retirement record and is reviewable in any subsequent litigation.
- **Input from the agency** that may support or dispute allegations by the employee of administrative error by the agency.

Agency input pertaining to administrative error is not required unless the agency issued a written decision to the employee denying eligibility to make deposit for one or more periods of military service.

### **Submitting the request after retirement:**

Alternatively, a separated employee may submit a request alleging administrative error directly to OPM. In such cases, the retirement applicant should wait until he or she has been assigned an OPM claim number so that his or her request can be associated correctly with his or her retirement file.

The request should be sent to:

OPM Retirement Operations Center  
P.O. Box 45  
Boyers, PA 16017-0045

### **Actions Taken by OPM Upon Receipt of Allegation of Administrative Error**

OPM/Retirement Operations will carefully evaluate an allegation of administrative error and determine the proper course of action based on policy guidance in the following section. There are three potential actions the Legal Administrative Specialist could take:

- a. Belated Deposit Approved
- b. Belated Deposit Denied
- c. Belated Deposit Referred for Clearinghouse Review

### **Involuntary Retirement, Disability Retirement and Survivor Annuities Resulting from Deaths in Service**

Because employees who retire under involuntary and disability retirements are not in control of their final separation date, a different standard for approving belated deposits applies.

A separating employee who asks OPM to make a belated deposit may qualify to complete a belated deposit, if:

- The fact that retirement was involuntary or as a result of a disability
- Documentation showing that it was not possible to have paid the military deposit in full by the time of the separation.



## **Opportunity to Complete Military Service Credit Deposits After Employee's Death in Service:**

The surviving spouse or former spouse of an employee who died in service as an employee is allowed to make or complete the deposit for military service of the employee. If the employee died while absent to perform Federal active duty (not National Guard under title 32, because such service is only potentially creditable if followed by reemployment in accordance with chapter 43 of title 38 U.S.C.), then the surviving spouse, or former spouse in some cases, may make the deposit for the employee's final period of military service. No special approval from OPM is required in such cases. However, survivors in such cases should be encouraged to obtain detailed counseling on post-death benefits from all Federal entities that may be involved (Military Retired Pay Center, Department of Veterans Affairs, Social Security Administration and the Federal civilian employer). The interplay of benefits upon the death of a military member can be quite complex. One key factor for the survivor is that payment of the military deposit does not always increase that person's benefit from OPM, due to statutory offsets of civil service survivor benefits due to military survivor benefits, and so forth.

### **Agency**

At its discretion, the agency may provide a statement saying it did not provide direct, accurate, or complete information to the deceased employee regarding the effects of making and not making a military deposit upon an employee's request for such information. The agency must support this statement with any documentation showing inaccurate or incomplete counselling.

### **OPM Actions Based on Determination of Administrative Error**

OPM will not delay processing retirement packages due to an applicant's allegation of administrative error with respect to a military deposit, unless it is determined that an administrative error exists (see below).

- If a belated deposit is approved, OPM will notify the employee/applicant for retirement of the specific time period granted to exercise the belated deposit option, and for the agency to complete its actions.
- OPM will also send a letter to the last employing agency.
- If a belated deposit is denied, the employee/applicant must be given an initial OPM decision, with reconsideration rights, and a copy of the denial will be forwarded to the Benefits Officer at the last employing agency after due process is exhausted.

**Payroll/Shared Service Center Actions**

- Any deposit must be administered by that agency's payroll provider.
- If completed, the military deposit must be remitted to OPM as soon as possible, so as to be received by OPM no later than the expiration date of the belated deposit election timeframe specified by OPM.

Kenneth J. Zawodny, Jr.  
Associate Director  
Retirement Services