



OFFICE OF THE DIRECTOR

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-1000

AUG 24 2005

Ms. Kathleen A. Breen
President
National Association of Air Traffic Specialists
11303 Amherst Avenue, Suite 4
Wheaton, MD 20902

Dear Ms. Breen:

Thank you for your letters regarding implementation of section 226 of Public Law 108-176, the "Vision 100—Century of Aviation Reauthorization Act." I regret that we have been unable to locate any record of your original letter to then-Acting Director Blair. You quoted the provisions of the new law, and asked several questions regarding its effect upon Air Traffic Controllers (ATCs) employed in flight service stations. I am pleased to explain section 226, and how it changed the law applicable to retirement for ATCs, including your members.

Section 226 expanded the class of individuals eligible for special ATC retirement benefits by adding second-level supervisors. It also added new benefit provisions applicable only to ATC retirement. Those provisions do not adversely affect benefits for any ATCs or former ATCs. As further explained below, they do enhance retirement benefits for certain ATCs and former ATCs, including some, but not all, flight service station ATCs. The FAA has no discretionary authority as to implementation of these provisions.

Under prior provisions of Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS) law, special retirement benefits were available to individuals who were ATCs, as defined by 5 U.S.C. §2109(a)(1), which provides:

- (1) "air traffic controller" or "controller" means a civilian employee of the Department of Transportation or the Department of Defense who, in an air traffic control facility or flight service station facility -
- (A) is actively engaged -
 - (i) in the separation and control of air traffic; or
 - (ii) in providing preflight, inflight, or airport advisory service to aircraft operators; or
 - (B) is the immediate supervisor of any employee described in subparagraph (A);

Your non-supervisory members are described by §2109(a)(1)(A)(ii).

Section 226 added a new 5 U.S.C. §8331 (29), which defines an ATC for CSRS as an individual

defined by 5 U.S.C. §2109(a)(1), or a civilian employee of the Department of Transportation or Defense who is an immediate supervisor of an individual described by §2109(a)(1)(B), i.e., a second-level supervisor of an employee actually performing air traffic control duties. Also added was an equivalent new 5 U.S.C. §8401 (33), defining an ATC for FERS. These would apply to service as a second-level supervisor of ATCs employed in flight service stations.

The provisions applicable to ATC mandatory retirement under CSRS and FERS were amended. Under those provisions, the newly-added second-level supervisor ATCs will not be subject to mandatory retirement.

New provisions were added that apply solely to ATCs, and former ATCs, who retire under 5 U.S.C. §8412(a), which permits retirement at minimum retirement age (MRA, from 55 to 57, depending upon year of birth) with 30 years of service. Under this provision, if an individual retiring under §8412(a) has at least 5 years of service as an ATC as defined by 5 U.S.C. §2109(a)(1)(A)(i) (i.e., actively engaged in the separation and control of air traffic) the individual's annuity will be computed at the rate of 1.7% for each year of such service in lieu of the 1% that would otherwise be applicable. Service as a flight service station ATC does not qualify under this provision.

The amendments took effect on February 10, 2004. They apply only to individuals who retire based on a separation on or after that date, but for those individuals the amendments will apply to service regardless of when performed.

There is a deposit requirement under FERS for second-level supervisory ATC service performed before the effective date of §226. For such service to be credited towards ATC retirement under FERS, the individual must deposit the difference in retirement contributions on such service between the regular contribution rate and the ATC rate (0.5% of basic pay), plus interest computed under 5 U.S.C. §8334(e)(2) and (3).

Thank you for the opportunity to respond to your questions. Please let me know if I can be of further assistance.

Sincerely,



Linda M. Springer
Director