



Benefits Administration Letter

Number 06 - 104

Date: June 12, 2006

Subject: Change in Crediting Physicians' Special Pay under Title 38, United States Code

The purpose of this Benefits Administration Letter (BAL) is to advise you of a change in crediting physicians' special pay under title 38 as a result of Public Law 108-445, "Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004."

BACKGROUND: Section 7431 special pay was authorized by Public Law 102-40 and allowed the Department of Veterans Affairs (VA) to pay bonus pay to their physicians and dentists who had physician/dentist service for at least 15 years. In order to receive the special pay, a physician or dentist entered into a special pay agreement with the VA. Each special pay agreement signed by the employee was for at least one year, but not more than four years. These agreements began on or after July 14, 1991. Prior to section 7431 special pay, many VA physicians and dentists received special pay under section 4118 of title 38, United States Code.

The amount of 7431 special pay that was creditable for average salary purposes depended on several factors, including the type of retirement and how much physician/dentist service was performed after July 13, 1991. In non-disability retirement cases, only a prorated amount of the special pay was creditable until the physician/dentist acquired eight years of physician/dentist service after July 13, 1991. As of this eight year mark, the total amount of special pay was credited in the average salary computation.

Although Public Law 102-40 was intended for physicians and dentists with the Department of Veterans Affairs, OPM extended the authority to delegate the use of section 7431 special pay to other agencies such as the Departments of Defense, Health and Human Services, and Justice.

Effective **January 8, 2006**, there is no more "special pay," as it previously existed. Public Law 108-445 eliminates the requirement that physician/dentists have 15 years of qualified service before their bonus pay can be used for retirement purposes. In addition to eliminating the 15 year service requirement, the legislation also eliminates the prorated crediting of special pay under title 38. Public Law 108-445 basically creates a whole new special pay system for VA physicians and for physicians in other agencies who were extended title 38 rules for special pay (such as Department of Defense, Department of Justice and Department of Health and Human Services). The new rules:

- eliminate the 15 year minimum service requirement for physicians and dentists in order for their special pay to be considered basic pay for retirement purposes;
- allow crediting of the full amount of special pay for the average salary computation regardless of the number of years the special pay was in effect (that is., we no longer prorate special pay based on the two, four, six, and eight year increments). Therefore, 100 percent of the special pay, no matter when it was earned can be applied to the base pay of a physician/dentist if it falls within the average salary period.

This law does not affect the crediting of physicians comparability allowance (PCA) under title 5 (see BAL 03-106 for rules that are still in effect for PCA bonus pay).

PROCEDURES:

- Effective January 8, 2006, we will apply 100 percent of the special pay paid to a physician or dentist **under title 38, United States Code.**
 - Physicians/dentists can separate from any position with any agency with title to an annuity on or after January 8, 2006.
 - His or her **full** title 38 special pay, including pay based upon employment with another agency that has had title 38 extended to them, must be included in the annuity computation.
 - This includes title 38 special pay earned prior to January 8, 2006.
- This new law eliminates the need for completing Form RI 38-133, "Certification for Title 38 Physicians and Dentists." The special pay should be reflected on the Individual Retirement Record (IRR).
- Note that generally, an individual's retirement rights are based on the laws in effect at the time he or she separates with title to annuity.
 - If an individual separated **prior** to the effective date of January 8, 2006, having received special pay but not meeting the requirements for retirement (for example, not eligible for an immediate retirement but eligible for a deferred benefit), this change in law does not apply. Crediting of their bonus pay would be done under the previous rules.
 - However, this new crediting will apply if the individual is subsequently reemployed and separates after the effective date with an annuity title based upon that separation.

- A FERS covered individual must be under FERS at the time of separation.
- A CSRS-covered individual must not only be separated from a CSRS covered position, but the one-out-of-two requirement must also be met.

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