

LAW REVIEW 11109

December 2011

Taking a Federal Early-Out Incentive and Returning to Active Duty

By Captain Samuel F. Wright, JAGC, USN (Ret.)

9.0--Miscellaneous

Because of the budget crisis, and for other reasons, some federal agencies are offering employees cash incentives to retire early or to leave federal service short of retirement. One such program is the Voluntary Separation Incentive Program (VSIP). If you accept the VSIP payment and resign from federal service, you must sign a standard form contract, promulgated by the Office of Personnel Management (OPM). That standard form contract includes the following sentence: “If you accept a buyout, you may not be re-employed *anywhere in the Federal service*, including employment on a personal services contract, for five years following your separation, unless you repay the full amount of the incentive (gross, before taxes and deductions) to [the agency from which you resigned].” (Emphasis supplied.)

If you accept the VSIP incentive and resign from a federal agency, and then you go back on active duty in the armed forces, will you have to pay back the VSIP payment that you received? Fortunately, OPM has made clear that the answer is *no*. I invite your attention to page 53 of the *Workforce Reshaping Operations Handbook*, published by OPM in July 2009. You will find the following paragraph:

Service in the Armed Forces or in the uniformed services (i.e., the Armed Forces, the Commissioned Corps of the Public Health Service and of the National Oceanic and Atmospheric Administration) is not considered Federal employment for purposes of invoking the VSIP repayment obligation. Also, service as a Peace Corps volunteer is not considered employment with the Federal Government for purposes of invoking the VSIP repayment obligation.