



Benefits Administration Letter

Number: 04-106

Date: December 22, 2004

**Subject: Federal Erroneous Retirement Coverage Correction Act (FERCCA):
Agency Administrative Issues – Frequently Asked Questions**

Introduction

This Benefits Administration Letter (BAL) consolidates questions and answers from both the FERCCA web page and from the regulatory provisions, and adds new questions and answers into one BAL that focuses on agency administrative issues. The questions and answers posted on the FERCCA page (www.opm.gov/benefits/correction) are mostly asked from the employee's point of view. This BAL is intended to provide general guidance to some of the most frequently asked questions (FAQ's), issues, and concerns from an agency's perspective about the error correction process. To view the full set of FERCCA FAQ's, go to www.opm.gov/benefits/correction/faq/faq.htm.

The questions and answers are grouped into the following categories:

- Allowable Corrections
- Time Limits
- Agency Responsibilities
- Thrift Savings Plan Issues
- Actuarial Reduction
- Employees Ready to Retire
- Election Opportunities
- FERCCA Database
- Retirement Contributions/Record Corrections
- Conner Cases
- FERS Elections
- Additional Information

Definitions of Acronyms Used in this BAL

BAL means Benefits Administration Letter.

CSRS means the Civil Service Retirement System.

CSRS Offset means the Civil Service Retirement System Offset plan.

*Civil Service
Retirement
System*

*Federal Employees'
Group Life
Insurance Program*

*Federal Employees
Health Benefits
Program*

*Federal Employees
Retirement
System*

*Long Term
Care Insurance
Program*

Deemed FERS means erroneous FERS coverage that lasted for more than 6 months and less than 3 years of service where the employee should have been put in CSRS, CSRS Offset, or Social Security (FICA)-only with a 6-month opportunity to elect FERS coverage.

FERCCA means the Federal Erroneous Retirement Coverage Corrections Act.

FERS means the Federal Employees Retirement System.

MSPB means the Merit Systems Protection Board.

Social Security Only means coverage under Social Security without concurrent coverage under CSRS, CSRS Offset, or FERS.

Retirement Fund means the Civil Service Retirement and Disability Fund.

TSP means the Federal Retirement Thrift Savings Plan.

Allowable Corrections:

1. What types of retirement coverage errors should we be correcting at this time?

Agency Personnel/Human Resource offices should correct the following types of retirement coverage errors:

- Administrative corrections. Administrative corrections are corrections of errors that lasted less than 6 months (e.g., tentative placement in FERS until a coverage determination can be made) and corrections of errors where there is no error in the coverage determination but the person must be moved from one type of coverage to another. An example of the latter type is to and from law enforcement officer/firefighter coverage within a retirement system (correcting retirement code 1 to 6, or 6 to 1).
- Erroneous FERS coverage that lasted for less than 3 years of service. BAL 02-103 provided detailed instructions for making these corrections.
- Errors that do not provide an election. BAL 03-104 provided detailed instructions for making these corrections.
- Corrections for individuals who are currently in the wrong retirement system and who have been provided with an election opportunity.
- Corrections for all retirement coverage errors identified after August 1, 2004.

2. I understand that I should be correcting erroneous FERS coverage that lasted for less than 3 years of service in accordance to BAL 02-103, but should I be correcting other types of errors that lasted for less than 3 years?

Yes, if you find a retirement coverage error that lasted for less than 3 years, then you should correct the error. The FERCCA does not change the correction actions for these retirement coverage errors. Remember, if the employee is in FERS by mistake for less than 3 years of service, you must correct the error in accordance to BAL 02-103.

3. I'm handling the coverage error corrections at my agency. I came across an employee who was erroneously covered under FERS in 1999. He left after working only 3 months. When he returned to work 4 years later, he was correctly placed under CSRS Offset.

What

should we do about the 3 month period in 1999 when the employee was erroneously in FERS? (The guidance in BAL 02-103 says erroneous FERS coverage can be corrected when the error is discovered during the time the employee would otherwise be eligible to elect FERS. This error was discovered 4 years after the fact.)

Since the erroneous FERS coverage lasted less than 6 months, you should correct it. It doesn't matter that the error was not discovered until the employee returned to work several years later. This situation does not fall under the deemed FERS guidelines, because the employee was not erroneously in FERS for more than 6 months.

4. The regulations (5 CFR 831.205) require agencies to submit any full CSRS coverage determinations to OPM for written approval. Does this regulation affect the guidance in any of the FERCCA BALs, for example BAL 03-104?

No, it doesn't. This regulation applies to coverage determinations that are outside the scope of processing an error correction under the FERCCA. If you are making a coverage error correction under the FERCCA following the guidance in a BAL, you do not need to obtain written approval from OPM.

Election Opportunities:

1. When does an individual have a choice to elect between retirement systems?

The individual must have a qualifying retirement coverage error, that is, they must have been in the wrong retirement plan for at least 3 years of service AFTER December 31, 1986. Keep in mind that it does not matter that your agency, or the prior agency, may have already corrected the error or that the employee is retired or no longer works for the Government. As long as the error was in effect for at least 3 years of Federal service after December 31, 1986, then the individual may benefit from FERCCA. Also, the individual need not be in the same wrong retirement plan during the entire 3-year period. If there is more than one type of erroneous retirement coverage, then the individual will have a retirement plan election under FERCCA if one of the errors is of a type that qualifies for an election.

There are seven types of retirement coverage errors that have a choice. The following chart summarizes the types of errors that trigger an election:

Employee is In:	But Belongs In:	May Elect Between:
CSRS	FERS	CSRS Offset or FERS
CSRS Offset	FERS	CSRS Offset or FERS
CSRS	Social Security Only	CSRS Offset or Social Security Only
CSRS Offset	Social Security Only	CSRS Offset or Social Security Only
FERS	CSRS	FERS or CSRS*
FERS	CSRS Offset	FERS or CSRS Offset*
FERS	Social Security Only	FERS or Social Security Only*

*If the employee already had this choice, then they do not have another opportunity to change their election under FERCCA. This is because certain employees who were put in FERS by mistake could choose to stay in FERS under the Deemed FERS provisions (see 5 CFR §846.204(b)(2)) when their error was discovered. If they declined FERS, they were placed in the correct retirement plan (CSRS, CSRS Offset, or Social Security only).

2. Are there any employees with retirement coverage errors who don't get a choice under FERCCA?

Yes, employees do not have a choice about their retirement coverage if:

The employee is in:	But belongs in:	Then their coverage must be corrected to:
CSRS Offset	CSRS	CSRS
CSRS	CSRS Offset	CSRS Offset
Social Security- Only	CSRS	CSRS
	CSRS Offset	CSRS Offset
	FERS	FERS

These employees have no choice about which retirement system to be under and these mandatory corrections are to be made by the employing agency according to the procedures in OPM’s Benefits Administration Letter 03-104, dated May 15, 2003.

Additionally, FERCCA does not give employees a choice of retirement plans if:

- your agency (or a prior agency) corrected the employee’s records to FERS when a retirement coverage error was discovered and the employee later separated and took a refund of all FERS retirement deductions, or
- the employee belonged in FERS and your agency (or prior agency) corrected the employee’s records when it discovered the error and the employee chose to withdraw his/her TSP contributions. See the next question below for the kinds of withdrawals that prevent employees from having a choice of retirement plans under FERCCA; or,
- the employee received a payment ordered by a court or provided as settlement of a claim for losses resulting from a retirement coverage error, the employee may not make an election under FERCCA unless the amount they received is repaid or OPM waives repayment.

3. What kinds of TSP withdrawals prevent employees from having a choice of retirement plans under FERCCA?

It depends on when the employees withdrew their TSP contributions and the kind of withdrawal they made.

Individuals can make an election under FERCCA if they:

- Separated from Government service after their records were corrected—but they did not retire—and the TSP automatically paid their account balance to them because it was \$3,500 or less;
- Retired and withdrew their TSP contributions; or
- Received a financial hardship in-service withdrawal, or a TSP loan.

Individuals **cannot** make an election under FERCCA if they:

- Separated from Government service after their records were corrected—but they did not retire—and withdrew their TSP contributions. This does not include the TSP automatic payment described above; or
- Received an age-based in-service withdrawal from their TSP account after their retirement coverage had been corrected to FERS.

Time Limits:

1. What are the time limits for making an election?

It depends on if the employee’s error has already been corrected or not. In general, if the employee’s qualifying retirement coverage error was previously corrected, the time limit for making an election expired on September 19, 2002. However, your agency (or OPM for separated employees, retirees, and survivors) can waive the time limit if it's determined that the employee exercised due diligence, but could not make an election within the time limit because of circumstances beyond his/her control. Due to the delays in processing election decision packages and providing detailed guidance to agencies, individuals identified as having a FERCCA error prior to the issuance of a BAL providing election decisions package guidance are deemed to have exercised due diligence and therefore, are automatically granted a waiver. You will need to prepare a document stating that the individual has automatically been granted a waiver of the time limit to make a FERCCA election because of the delay in issuing guidance. A copy of this notice needs to be documented in the employee’s Official Personnel File (OPF). A future BAL will provide instructions for processing waivers after that time.

If the employee’s qualifying retirement coverage error was **not** previously corrected, the regulations grant an employee 6 months from the date he/she receives notice of the error and a statement of his/her election options to make an election (5 CFR 839.611).

If no election is made within 6 months from the date of the notice to the employee, the following default elections apply:

Employee is In:	But Belongs In:	Default Election:
CSRS	FERS	CSRS Offset
CSRS Offset	FERS	CSRS Offset
CSRS	Social Security Only	CSRS Offset
CSRS Offset	Social Security Only	CSRS Offset
FERS	CSRS	FERS
FERS	CSRS Offset	FERS
FERS	Social Security Only	FERS

Employees, who do not make an election within the 6 month time limit, can be granted a waiver of the time limit. In order for your agency to grant a waiver of the time limit, the employee must submit, in writing, a request for a waiver. It is up to you, as the employer, to determine that the employee exercised due diligence, but could not make an election within the time limit because of circumstances beyond his control. If you do not grant the employee’s request for waiver, you

must provide written notice of the decision to the employee and notify the employee of his rights to request OPM to reconsider the decision. A copy of the waiver decision needs to be documented in the employee's OPF. Attachment 1 contains sample letters providing notice of the right to request a waiver and a sample denial of waiver letter.

2. When is an error considered corrected?

An error is considered to be corrected only after both the personnel and payroll records are corrected.

FERCCA Database:

1. Some of our employees have been registered in the FERCCA Database since it was first opened, some employees were registered in the FERCCA Database after the online registration process was closed, and some of our employees have newly discovered retirement coverage errors who haven't been registered anywhere. How will these employees make their FERCCA elections?

OPM will continue to provide reviews on eligibility/ineligibility, election packages, and counseling for those individuals who have been entered into the FERCCA Database. For newly discovered errors, your agency will be responsible for making the eligibility/ineligibility decision. The next question below discusses the process for when you determine an employee is eligible for relief under FERCCA.

2. OPM stopped accepting new names for the FERCCA Database on January 1, 2004. What do I do now when I discover an employee that has a retirement coverage error?

Although the FERCCA database is closed, OPM will continue to review retirement coverage records for those individuals that were registered in the database prior to January 1, 2004, for eligibility under FERCCA. After January 1, 2004, agencies are required to review the employee's retirement coverage records and issue decisions on eligibility for relief under FERCCA. Refer to Benefits Administration Letter (BAL) 04-108, Making Eligibility Determinations Under the Federal Erroneous Retirement Coverage Corrections Act (FERCCA), for detailed instructions on making eligibility determinations. FERCCA eligibility determinations and employee notifications of the decision must be made within 60 days of the discovery of the potential FERCCA error.

After you complete your review and issue a decision to the employee, you must notify OPM within 30 days if you find that the person is eligible under FERCCA whether they have an election opportunity or not. For more detailed instructions, refer to Benefits Administration Letter (BAL) 04-108, Making Eligibility Determinations Under the Federal Erroneous Retirement Coverage Corrections Act (FERCCA). The following information must be provided for employees found eligible under FERCCA:

- person's name, address and social security number
- the type of error, e.g. erroneously in FERS should be CSRS-Offset, and
- the name and contact information for an agency contact person.
- A copy of the written decision of eligibility under FERCCA.

Mail the identifying information and a copy of the decision letter to:

U.S. Office of Personnel Management
Operations Support Group
Attn: Joanne Herold
Room 4316
Washington, DC 20415

You may also fax the information and letter to 202-606-1163, to the attention of Joanne Herold. You can reach her by phone at 202-606-8182 or by email at Joanne.Herold@opm.gov.

If the employee has a FERCCA error that provides an election, and OPM was notified of the individual's error prior to August 1, 2004, OPM will send the employee an election summary package and provide counseling. Once the employee has made an election, OPM will notify you to make the correction. If the employee does not have an election under FERCCA, you must process the correction actions following the guidance in BAL 03-104. Retirement coverage corrections must be completed by the agency personnel/human resources office within 30 days after receipt of the employee's FERCCA election, or, within 30 days after receipt of notice from OPM of the employee's FERCCA election. Agency payroll offices must complete corrective actions within 90 days of receipt of the corrections from the personnel/human resources office.

If the employee's retirement coverage error was identified after August 1, 2004, then you are responsible for making the edibility determination, preparing the election package, providing counseling, and correcting the records.

If you find the employee is not eligible for relief under FERCCA, you must issue a written decision and provide the employee with appeal rights to the MSPB.

3. Since the FERCCA Database is now closed my agency must determine whether or not an employee with a retirement coverage error is eligible for relief under FERCCA. What guidelines are we to follow?

Refer to Benefits Administration Letter (BAL) 04-108, Making Eligibility Determinations Under the Federal Erroneous Retirement Coverage Corrections Act (FERCCA), for detailed instructions on making eligibility determinations.

4. What is the significance of August 1, 2004?

August 1, 2004, is the cutoff date for OPM to submit names to the FERCCA counseling contractor. After August 1, 2004, you will be responsible for making eligibility determinations, preparing election packages, and providing counseling for your employees in addition to making the actual corrections as you currently are doing.

Agency Responsibilities:

1. Am I required to find employees with a retirement coverage error?

Yes, the FERCCA requires your agency to take reasonable and appropriate measures to identify individuals affected by a qualifying retirement coverage error and notify them of their rights under the law.

2. I have been approached by several employees that believe they have been placed in the wrong retirement plan. Do I have to provide a written explanation to them regardless of whether or not they have a retirement coverage error?

Yes, you must provide your employees with a written notice of the error. The notice must include an explanation of the error, their options regarding the error, and any time limits that apply.

If you find that the employee does not have a retirement coverage error, you must provide the employee with a written decision. This decision must include the reason for the decision, and notice of the employee's right to appeal the decision to the Merit Systems Protection Board (MSPB) if they have not previously been given a right of appeal on the same issue. You must provide MSPB appeal forms to employees choosing to pursue this option. Employees will have 30 days from the date they are officially notified by you to file the appeal.

3. What if my agency fails to notify an employee of a retirement coverage error?

If the employee's retirement coverage error has not previously been corrected, the 6-month time limit on making an election of retirement coverage under the FERCCA does not begin to run until the employee receives the election package. On the other hand, if the employee's error was previously corrected, the 18-month time limit on making an election of retirement coverage ended on September 19, 2002; however, you (and OPM) may extend the time limit if the employee was prevented from making a timely election due to a cause beyond his/her control.

4. Some of our employees in the FERCCA Database received incorrect letters of their eligibility/ineligibility for relief under FERCCA. I understand that we, the employing agency, are responsible for reviewing the letter and to either confirm or deny the findings. What do we do if we disagree with the letter?

If you, the agency, disagree with the eligibility review letter, you will need to notify your agency's headquarters level Benefits Officer. The Benefits Officer will then contact OPM with this information. The employee's case file will be reviewed and if it is found that the finding was erroneous, a new letter will be issued rescinding the initial finding.

5. Who is responsible for correcting the records of employees with retirement coverage errors?

You are responsible for correcting the records for your employees in accordance with OPM instructions. You must not delay correcting the affected employee's records; you must make the corrections within 30 days after receipt of the employee's FERCCA election or, within 30 days after receipt of notice from OPM of the employee's FERCCA election. Agency payroll offices must complete corrective actions within 90 days of receipt of the corrections from the personnel/human resources office.

6. Who corrects the records for former employees and retirees?

The last employing agency must correct the personnel records for the entire period. The employing agency for each period of employment must correct the Social Security earnings records by completing a W2-C.

Retirement Contributions/Record Corrections:

1. Does my agency owe more money for employer retirement contributions for an employee's retirement coverage error if the employer contributions under the new retirement plan are more than what was already paid?

Yes, your agency must pay any additional retirement contributions to the Retirement Fund.

2. Will my agency get a refund of the employer retirement contributions for employees that had a qualifying retirement coverage error and the employer retirement contributions for their new retirement plan are less than what was already paid?

It depends. If the employee was erroneously in FERS, the FERCCA states that an employer may not remove FERS employer contributions from the Fund when correcting a qualifying retirement coverage error -- even if after the employee's election the agency owes less than what was originally paid. However, if the employee was erroneously in CSRS or CSRS Offset and elects Social Security-Only, then your agency can get the excess agency retirement contributions back.

3. Which agency is responsible for submitting the employee and employer retirement deductions and contributions and correcting the records for employees that had different employers?

The employee's current agency or most recent employer must correct the personnel records for the entire period. Even if the employee's current agency was not involved in the retirement coverage error, it must issue corrected records for the entire period of the retirement coverage error.

The employee's current payroll office will adjust the agency's contributions and the employee's retirement deductions, OASDI taxes and Social Security earnings records for the period of the coverage error while the employee was at the current agency. If the coverage error extended to another agency, the employee's current agency must coordinate adjustments with the prior employing agencies.

4. I have just discovered an error of an employee who should have been placed in CSRS, but was erroneously placed in CSRS Offset and subsequently placed in FERS in 1987. When we correct his records, what happens to the Social Security taxes he paid?

Except for the last 3 years, the money the employee erroneously paid into Social Security will remain to his credit in the Social Security fund. The Social Security Administration will include all but those last 3 years in determining his eligibility for, and the amount of, future benefits. Keep in mind that the employee only loses Social Security credit for the last 3 years of the error if you are able to retrieve the employee OASDI taxes. That is, if you fail to timely correct the error and can't recover all (or any) of the employee OASDI taxes, the employee may end up getting Social Security credit for the whole period.

Keep in mind that employees with this kind of error are now possibly eligible for Social Security benefits at age 62, so you will need to counsel them on the effects of making (or not making) a military deposit, if applicable.

Thrift Savings Plan Issues:

1. Does FERCCA change anything about employee make-up Thrift Savings Plan (TSP) contributions and lost earnings?

Yes, FERCCA changes the rules on employee make-up contributions to the TSP for some individuals.

Before FERCCA, individuals did not receive lost earnings (now termed breakage) on any make-up employee contributions they had withheld from their pay because of a retirement coverage error. However, they did receive lost earnings on the make-up agency contributions that were made to their TSP accounts.

Under FERCCA, affected individuals can receive lost earnings (breakage) on their make-up employee contributions if they choose to stay in FERS. They also continue to receive breakage on any contributions their agency makes to their TSP accounts.

2. I've heard that the new TSP record keeping system has changed the way lost earnings (now breakage) are computed. Is this true?

Yes. Breakage that covers any period before January 1, 2000, is computed differently than how it was computed prior to the implementation of the new record keeping system. Breakage will be computed based on the greater return each month of either the average return of all TSP funds or the G Fund rate of return.

For periods on or after January 1, 2000, the TSP will use/derive the participant's contribution allocation for the given month or date the contribution would have been made. If there is no contribution allocation on file then breakage is paid based on the G Fund rate of return.

3. How does an employee entitled to make-up contributions to the TSP make up missed contributions?

HR staff needs to work with the employee to set up a make up schedule under the provisions of the TSP error correction regulations. In setting up the schedule, the employee may decide how much to pay in TSP make-up contributions and how long he/she wants to take to make the payments. TSP make-up contributions are treated as tax-deferred compensation for the year in which they are made up, but are subject to the elective deferral limit(s) for the year(s) in which they could have been made. So, the make-up contributions will reduce the employee's taxable income for the year in which the contribution was actually made.

4. Once employees establish a schedule for make-up contributions, can they make changes to that schedule?

No. In determining their make up schedule, employees can vary the amount of their make-up contributions for each affected open season. But once the make up schedule has been created it cannot be changed.

5. What happens to an employee's TSP account when his or her error is corrected?

If the employee was erroneously covered by FERS and chooses to move out of FERS, FERCCA allows him or her to keep the employee contributions he or she made to his or her TSP account (plus the associated earnings) even if the contributions exceed the maximum allowable

percentage of his or her basic pay (i.e., 5% prior to 07/01/2001, 6% beginning 7/1/2001, 7% in 2002, 8% in 2003, and 9% in 2004). However, all agency contributions that were made to the employee's account and the associated earnings must be removed from the account if he or she does not choose FERS.

If the employee was erroneously covered under CSRS, CSRS Offset, or Social Security Only and chooses FERS coverage under FERCCA, he or she may make up those employee contributions that he or she could have made had he or she been correctly covered by FERS, as provided by the current TSP error correction legislation. In addition, he or she will receive the Agency Automatic (1%) Contributions and Agency Matching Contributions that he or she should have received had he or she been correctly covered by FERS. Finally, he or she will receive lost earnings (now breakage) on both the employee and make-up agency contributions. (Prior to FERCCA, lost earnings were payable only on make-up agency contributions.) The lost earnings on both employee and agency contributions will be determined the same way lost earnings are now determined on agency make-up contributions (that is, as provided by the current TSP regulations).

6. We have an employee erroneously under CSRS Offset who should be FERS. He retired under CSRS Offset and withdrew his TSP account. He wishes to elect FERS coverage and by doing so, we will owe the Agency Automatic 1% and Agency Matching Contributions plus the associated lost earnings (now breakage). I have read in the FERCCA regulations that his lost earnings will be paid to his TSP account, and if there is no account (which would be the case here), the lost earnings would be payable directly to him. Does this mean if he elects FERS he will receive breakage, but will not receive the retroactive Agency Matching Contributions and Agency Automatic 1% Contribution?

No. The employee will receive all of the TSP money that is due to him. If the employee's TSP account is closed, you have the option of paying the money directly to the employee (similar to an agency settlement), or you can pay it back through TSP (similar to a back pay award). Any questions concerning the submission process can be directed through the Federal Retirement Thrift Investment Board's TSP Operations Office in New Orleans.

Conner Cases:

1. I keep hearing the term "Conner case". What exactly is a Conner case?

Most employees are in the wrong retirement plan because someone made a mistake or didn't have a complete record of an employee's work history when deciding which retirement plan the employee belonged in. That's not true of Conner cases. In Conner cases, employees are in the wrong retirement plan because OPM's regulations and guidance were wrong.

In its simplest form, Conner cases are employees who worked for the Federal government in the past but never had retirement coverage under the old Civil Service Retirement System. Because they never had coverage under the old system, OPM believed that they had no vested right in that system. When they returned to work, their agencies automatically placed them under the new Federal Employees Retirement System, regardless of the amount of service they had. The courts, in the case of *Conner v. OPM*, ruled that OPM was wrong. FERS came into being on January 1, 1987. The courts said that anyone who had at least 5 years of civilian service before January 1, 1987 had a vested right in the Civil Service Retirement System and should not be

automatically put in FERS. Those who were put in FERS by mistake because OPM's guidance was wrong became known as Conner cases.

In 1997, OPM advised agencies about the new rules to use when deciding who belonged in FERS. There were no errors made because of erroneous OPM guidance after that.

2. Are there any Conner cases after 1997?

Once OPM published its guidelines on the new 5-year test, there were no new Conner cases. If an agency put an employee in FERS by mistake, it was due to the agency's error, not OPM's guidance. There should be no new Conner cases after 1997, although agencies continue to discover old errors due to Conner.

3. What is the relationship, if any, between Conner and FERCCA?

In Conner cases, employees were put in FERS by mistake. They belonged in CSRS Offset or Social Security only, depending on the type of appointment they had. If they were in the wrong retirement plan for at least 3 years of service, they would be entitled to relief under FERCCA. If they have not already done so, they can choose to stay in FERS or have their coverage corrected to the right retirement plan. In addition, if they have any unpaid deposits at retirement, they will receive credit for that time by taking an actuarial reduction in their retirement benefit instead of having to pay a deposit. If they were in FERS for less than 3 years, they fall under OPM's deemed FERS guidelines.

4. I have heard that some Conner cases have a second choice. Is that correct?

Yes, most individuals affected by the Conner decision have a chance to change their choice of retirement plans. That's because OPM changed the way interest accrued for service credit deposits.

Originally, OPM waived a portion of the interest in Conner cases only if the individual chose to remain in FERS. That policy led to some inequitable situations. In June 2000 (BAL 00-108), OPM changed its policy so that whether the employee elects CSRS Offset or FERS, the amount of the deposit for Conner employees would be the same. Most Conner employees had already made their election based on our earlier guidance. OPM directed agencies to contact all their employees affected by Conner, who had a choice between FERS and CSRS Offset, and allow them to make a new election in light of the new procedures for interest accrual.

FERCCA doesn't give these employees a second choice. The change in interest accrual procedures gives them that second choice.

Most Conner employees who were choosing between FERS and Social Security-only didn't get a second choice. That's because the change in interest rules didn't affect them because they didn't owe a deposit if they chose Social Security-only.

5. Do all Conner employees choosing between FERS and CSRS Offset get a second choice?

No. It depends on when they made their election. If they made their election before June 2000 when OPM published its change in interest accrual for service credit deposits, then they have a new election. If they made their election after June 2000, they don't get a second choice.

Actuarial Reduction:

1. What is an Actuarial Reduction?

The actuarial reduction is a permanent reduction in an employee’s benefit. It is an alternative to paying money an employee owes to the Retirement Fund in a lump sum. When employees take the actuarial reduction, OPM reduces their annuity in a way that, on average, allows the Retirement Fund to recover the amount of the missing lump sum over the employee’s lifetime. The amount of the actuarial reduction depends on the employee’s age and the amount owed to the Retirement Fund at the time of retirement.

2. How is the Actuarial Reduction Computed?

To compute the actuarial reduction, OPM divides the lump sum amount (the total amount of all the employee’s deposits – civilian and military) by the present value factor for the employee’s age at retirement. For example; Anna retires at age 55 on May1, 2004, and owes deposits totaling \$11,000 for her civilian and military service. She does not pay the deposit for this service. Her annuity will still include all this service in the computation, but her monthly annuity will be actuarially reduced as follows:

\$11,000, divided by
 211.4, present value factor for age 55 on Anna’s retirement date
 yields \$52.03 rounded up to \$53.00
 \$53.00 will be subtracted from her monthly annuity amount

3. Who gets the actuarial reduction under FERCCA?

Only individuals with certain types of coverage errors can receive credit for service by taking the actuarial reduction. It's limited to deposits (or redeposits) for service that was once under FERS rules and now falls under CSRS rules. The chart below shows situations where an employee will be subject to the actuarial reduction.

If the employee was erroneously put in:	But belongs in:	Then the employee will be subject to an actuarial reduction for any unpaid deposits if they choose:
CSRS or CSRS Offset	FERS (based on an automatic FERS coverage determination)	CSRS Offset, provided <ul style="list-style-type: none"> • their coverage was corrected to FERS before they were given the opportunity to elect CSRS Offset, or • their coverage has not been corrected to FERS, but they had FERS coverage at some point before they were erroneously put in CSRS or CSRS Offset

If the employee was	But belongs	Then the employee will be subject to
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erroneously put in:	in:	an actuarial reduction for any unpaid deposits if they choose:
FERS	CSRS or CSRS Offset	<ul style="list-style-type: none"> • CSRS or CSRS Offset. • FERS, and the service is part of a CSRS component.
FERS	Social Security Only	<ul style="list-style-type: none"> • Social Security Only and the employee later acquires CSRS or CSRS Offset coverage. • FERS, and the service is part of a CSRS component.

Additionally, employees who were put in FERS by mistake and can make (or made) a Deemed FERS election are subject to the actuarial election, even if they do not have a retirement coverage error that lasted over 3 years. In other words, these employees don't have to be erroneously in FERS for at least 3 years to be eligible for the actuarial reduction.

4. In deemed FERS cases, including Conner cases, can employees get the actuarial reduction if they already made their election and do not get a second choice?

Yes, even if the employee or retiree does not get a second choice under FERCCA, they may still be entitled to the actuarial reduction if, because of a coverage error, deposits and redeposits were subject to FERS rules and they are now subject to CSRS rules. This includes deemed FERS cases like Conner where the employee elects to remain in FERS but the time before the deemed election will be computed under CSRS rules.

5. In a Conner case, what deposit balance is used to compute the actuarial reduction?

For employees who do not pay the deposit, or fail to complete it, OPM will use the normal CSRS deposit an employee would typically owe for a period of non-covered service or post-56 military service when it computes the actuarial reduction. That deposit includes full interest and will reflect appropriate credit for any payments the employee may have made for the service. None of the interest is waived.

If the employee wants to pay the deposit to avoid the actuarial reduction, OPM will waive a portion of the interest.

6. We tentatively put new employees in FERS until we get their employment records and can determine which retirement plan they belong in. If we find they don't belong in FERS, and they owe money for civilian or military service, can they get credit for this service by taking an actuarial reduction?

It depends on how long they were in FERS. OPM doesn't consider a tentative placement in FERS an erroneous retirement coverage determination until after 6 months have passed. If the employee was in FERS for less than six months, then the actuarial reduction under FERCCA does not apply.

7. I have an employee who owes money for service he had before October 1, 1982, when no retirement deductions were taken from his salary. Normally, when he retires, he'll get credit for the CSRS service but OPM will reduce his benefit by 10 percent of the amount he owes. Has FERCCA changed this?

If, because of a retirement coverage error, the employee's annuity is subject to an actuarial reduction (see chart in question #3 above) because money is owed to the Retirement Fund, then the 10 percent reduction would not apply. Instead, OPM will divide the amount owed for the service before October 1, 1982, by the CSRS present value factor for the employee's age at retirement. For most retirees, this results in a smaller reduction in their annuities than the 10 percent reduction.

8. We have an employee who was put in FERS by mistake. If she elects FERS coverage under FERCCA, can she have her annuity actuarially reduced?

Well, it depends. If she now owes money for earlier civilian or military service that counts under CSRS rules, then she can get credit for that time by having her annuity actuarially reduced. If the service falls under FERS rules, she'll have to pay for it before the time can count.

9. I have an employee who had a term appointment and we should have put him in Social Security only, but instead, we put him in FERS by mistake. He now has a permanent appointment. If he chooses to have his coverage corrected, can he get the actuarial reduction for the time he had FERS coverage instead of Social Security only?

If he elects to have his coverage corrected, he will have Social Security only coverage during his term appointment and CSRS Offset coverage during his permanent appointment. Since FERS retirement deductions were taken from his salary by mistake during his term appointment, OPM will return those deductions to him.

The employee will owe money to the Retirement Fund for his term appointment. Since that time counts under CSRS rules, what he owes is larger than the FERS deductions. If he doesn't pay for the time, he'll get the actuarial reduction.

10. How can someone who was put in CSRS or CSRS Offset by mistake qualify for the actuarial reduction?

If the employee will owe a higher deposit for their service as a result of their coverage error, then they will get the actuarial reduction. For example, suppose an employee with military service and non-deduction service is put in CSRS by mistake. The coverage should have been automatic FERS. The agency corrects the coverage to FERS and now under FERCCA, the employee may elect to go back to Offset. If the employee elects offset, he will owe more for the military and non-deduction service than he would had he remained in FERS, therefore the actuarial reduction will apply if he elects Offset.

In another situation, suppose another employee with military service and non-deduction service was correctly determined to be automatically covered under FERS and was later put into Offset by mistake. Under FERCCA, the employee may elect to stay in Offset or be corrected to FERS. If the employee elects to stay in Offset, he will be eligible for the actuarial reduction because when he was initially in FERS he owed a FERS deposit for the previous service, but because of a coverage error, he now owes a CSRS deposit for that previous service.

FERS Elections:

1. We have an employee who was erroneously placed in FERS during his 6 month

opportunity to elect FERS. This occurred before FERCCA. We followed the "deemed" FERS procedures and the employee chose to be corrected to CSRS Offset and not to remain in FERS. The employee signed a statement to this affect. However, we never processed the correction action changing the retirement to CSRS Offset. Seven years later it is discovered that the employee is actually still in FERS. Should we make the correction now after counseling the employee, or is this a FERCCA error?

Yes, this is a FERCCA error. Because the election was never processed and the individual was (still is) in the wrong retirement plan for more than 3 years, this is a FERCCA error.

2. I have an employee who was erroneously placed in full CSRS instead of CSRS Offset when she returned to Federal service. Eight years later, while still under full CSRS, she elected FERS during the 1998 open season. Can she now cancel her FERS election after we make the correction from CSRS to CSRS Offset?

Yes. When this employee elected FERS she based her transfer decision on incorrect information, i.e., she thought she was choosing between CSRS and FERS coverage. Had she been in the correct retirement plan, her choice would have been between CSRS Offset and FERS. Because her election to transfer to FERS was based on incorrect information, she can choose to be corrected to CSRS Offset, or she can decide to let her FERS election stand. You need to find out if the employee wants to stay in FERS or not. If the employee wants to be corrected to CSRS Offset, you will need to contact Ray Kirk in OPM's Benefits Officers Training and Development Group, in writing, and explain the circumstances and ask that OPM find her election to be invalid.

Employees Ready to Retire:

1. I just discovered that one of our employees who is ready to retire is in the wrong retirement plan. Shouldn't we correct the records before the employee retires?

It depends. The first thing you need to do when you discover a retirement coverage error for an employee who is retiring is make a FERCCA eligibility decision and notify the employee of that decision prior to separating him or her for retirement. If it is a FERCCA error, you must notify OPM of the error (following the procedures outlined in Benefits Administration Letter (BAL) 04-107, Required Agency Actions for Retirement Coverage Error Corrections) whether they have an election opportunity or not. If it is not a FERCCA error, i.e., the error is less than 3 years, then you need to correct the error. If the employee retires before the corrections are done, you need to complete the correction actions before sending OPM the records and should alert the employees that there may be delays in processing the retirement. You should not unduly delay sending the retirement package to OPM while you correct retirement records.

If it is a FERCCA error and if the employee's retirement coverage error is one in which they have no election (for example, erroneously in CSRS, but should be in CSRS Offset) the error must be corrected in accordance with BAL 03-104 (Correction of Errors that do not Provide an Election) before separating the employee for retirement. If it is a Deemed FERS error less than 3 years, also make the correction following instructions in BAL 02-103 before separating the employee for retirement. Again, if the employee retires before the corrections are done, you need to complete the correction actions before sending OPM the records and should alert the employees that there may be delays in processing the retirement. You should not unduly delay sending the retirement package to OPM while you correct retirement records.

If the FERCCA error provides an election opportunity and the employee will be retiring after August 1, 2004, you are responsible for preparing the election package for the employee and you should attempt to complete the election package prior to the employee's separation for retirement. If you need assistance in preparing election packages, consult your agency's headquarters Benefits Officer; if necessary, the Benefits Officer will consult with their OPM liaison for additional help. If the employee separates prior to the completion of their election, separate the employee under their present retirement plan and flag the retirement application to notify OPM that correction actions are pending. OPM will maintain the retiree in interim pay until the election process is completed at your agency and OPM receives the corrected records. You will need to alert the employees that there may be delays in processing the retirement. You should not unduly delay sending the retirement package to OPM while you correct retirement records.

2. I have an employee who has a FERCCA retirement coverage error and is ready to retire. Can this employee make his FERCCA election before retiring?

Yes, but you will be responsible for providing the employee with an election package and for answering the employee's questions. If needed, OPM's Benefits Officers Training and Development Group can help you develop the election package. Please remember, once an employee makes an election, it is irrevocable.

3. I have an employee who is ready to retire, but he is in the wrong retirement plan and is eligible under FERCCA to choose between retirement plans. Since we are supposed to leave employees in their current retirement plan until they choose, what retirement application should they complete?

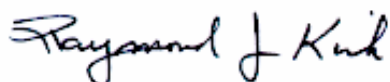
The employee should complete the retirement application for the plan that he is currently in. Additionally, they should make their decisions about survivor benefits, life insurance, paying a deposit, and others based on their current retirement coverage. You will need to flag the retirement package (as outlined in Benefits Administration Letter (BAL) 04-107, Required Agency Actions for Retirement Coverage Error Corrections) to alert OPM that the retiree falls under FERCCA. OPM will provide the retiree with an election package, and if they decide to change retirement plans, they will be provided with the opportunity to complete a new application for retirement and make all new elections.

Additional Information:

1. Who can I contact for more information concerning a specific FERCCA case, or the current FERCCA process and/or procedures?

The FERCCA Hotline is a toll-free telephone number we set up to help you with corrections or updates to information that has already been entered in the database and to answer general questions. The number for the FERCCA Hotline is 1-888-689-3233.

If you have questions concerning the status of a FERCCA case, please telephone Sheree Smith at OPM on (202) 606-4618 or email her at Sheree.Smith@opm.gov .



Raymond J. Kirk, Manager
Benefits Officers Training & Development Group
Human Capital Leadership & Merit Systems Accountability

Attachments:

Attachment 1 - Sample Letters: (1) Notice Of The Right To Request A Waiver Of The Election
Time Limit And (2) Denial Of Waiver.