

Office of Personnel Management
Retirement and Insurance Group



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Benefits Administration Letter

Number: 95-105

Date: October 20, 1995

SUBJECT: FERS and CSRS Offset Coverage During a Transfer to an International Organization

PURPOSE

This letter provides information about changes made by the Social Security Independence and Program Improvements Act of 1994, Public Law 103-296. Because of these changes, FERS and CSRS Offset employees may now continue retirement coverage during a transfer to an international organization under 5 U.S.C. § 3582. The Act uniformly extends Federal Insurance Contributions Act (FICA) coverage to Federal employees transferred to international organizations. Public Law 103-296 is effective for service with an international organization on and after January 1, 1995. Also, this letter announces that FERS employees who performed international organization service abroad before January 1, 1995, may receive credit under FERS for that service.

BACKGROUND

As explained in Chapter 12 of the CSRS and FERS Handbook for Personnel and Payroll Offices, employees under CSRS who transfer to an international organization under authority of 5 U.S.C. § 3582 have for many years been allowed to continue their retirement coverage (as well as health and life insurance) by electing continued coverage at the time of the transfer and by making current CSRS (and health and life insurance) contributions.

However, beginning in 1984, some CSRS-covered employees came under a plan that incorporated Social Security coverage (that is, CSRS Interim and, later, CSRS Offset); also, all FERS employees are covered by Social Security. When transferred to an international organization abroad, these employees could not continue Social Security coverage because, under the Internal Revenue Code, service with an international organization *outside* the United States was excluded from Social Security coverage. CSRS Interim and CSRS Offset employees could revert to CSRS (without Social Security) during a transfer abroad. FERS employees who transferred to international organizations were not allowed to retain FERS coverage during employment outside the United States, and had no Federal retirement coverage during the transfer. For CSRS Interim, CSRS Offset, and FERS employees who transferred to a public international organization *within* the United States, the Internal Revenue Code treated them as

covered by Social Security tax under the self-employment provision, and they were therefore allowed to continue their coverage during the transfer.

AMENDMENTS MADE BY PUBLIC LAW 103-296

Section 319 of Public Law 103-296 amends the Internal Revenue Code and the Social Security Act. The law requires that any service performed by a Federal employee during a transfer to a recognized international organization under 5 U.S.C. § 3582 is defined as employment for FICA purposes, including the Old-Age, Survivors, and Disability Insurance (OASDI) tax and Medicare, if both of the following conditions are met:

- (1) the employee was employed at a Federal agency and subject to FICA immediately prior to the transfer, and
- (2) the employee has Federal reemployment rights under section 3582.

Under these conditions, FICA coverage applies, regardless of where the service with the international organization is actually performed. Therefore, CSRS Offset or FERS employees who continue their FICA coverage during a transfer to an international organization may now continue their coverage (but see below concerning the Thrift Savings Plan). The requirement of an election and current payment of contributions must be met as under existing procedures.

The Internal Revenue Service has informed us that under the Internal Revenue Code, as amended by Public Law 103-296, FICA tax is required for these transferred employees even if they do not continue their CSRS Offset or FERS coverage during the transfer. While employed by an international organization, an employee's FICA tax, retirement and insurance contributions are based on the amount of pay the employee would have received had he or she remained at the transferring agency. Effective January 1, 1995, the salary of an employee who performs service with an international organization within the United States is no longer considered as self-employment income for Social Security purposes.

For international organization service both within and outside the United States, the Federal agency from which the employee transfers is responsible for computing and billing owed FICA tax, both employee and employer shares, and for the payment of collected FICA tax. An agency must submit the employer share of FICA tax even when an employee fails to submit payment of the employee portion of FICA tax.

RETIREMENT COVERAGE

The regulations of subpart C of part 352 of title 5, Code of Federal Regulations, apply to employees transferring to international organizations under section 3582. As long as the employee continues to make current employee contributions for retirement, health benefits, and life insurance, coverage for each benefit continues. If the employee fails to complete a deposit within the time limit, the retirement coverage terminates on the last day of the pay period for which the required contributions were deposited. Failure to pay retirement contributions currently, however, does not exempt an employee from FICA tax liability.

Employees transferring to an international organization must be given the opportunity to elect to continue retirement (other than the Thrift Savings Plan), health benefits, and group life insurance under section 352.309 of title 5, Code of Federal Regulations. In addition, any employee who is now employed under a transfer to an international agency abroad and who has not been given the right to elect continuation of FERS should be given the opportunity to elect FERS. In the case of a CSRS Offset employee who continued CSRS coverage, the employee must revert to CSRS Offset coverage effective January 1, 1995. FERS employees who elect coverage will be responsible for retirement contribution payments retroactive to the transfer to the international organization. CSRS employees reverting to CSRS Offset should have their payroll records adjusted effective January 1, 1995, to reflect CSRS Offset contributions.

Under the conditions stated above, FICA tax is mandatory for all CSRS Offset and FERS employees on a section 3582 transfer to an international organization, effective January 1, 1995. Whether or not the employee elects retirement coverage, the employee is no longer exempt from FICA tax during international organization service. Since FICA tax is mandatory, employees eligible to retroactively continue FERS or CSRS Offset coverage (regardless of their election decisions) are subject to FICA tax retroactive to January 1, 1995.

FERS EMPLOYEES WHO HAVE PRE-1995 SERVICE WITH AN INTERNATIONAL ORGANIZATION ABROAD

As stated above, FERS employees who transferred to international organizations abroad were not allowed to continue retirement coverage due to the lack of FICA tax during such a transfer. We have reviewed the applicable provisions, and have determined that FERS employees who transferred under section 3582 to an international organization abroad, and who were not allowed to continue their FERS coverage during the transfer, may receive FERS basic benefits coverage for the period.

To obtain this coverage, the employee must make the statutorily-required deposit equal to the amount of the FERS basic benefits deductions that would have been withheld from pay had he or she remained employed in the Federal agency. The deposit is paid to the employing agency and

recorded on Standard Form 3100, the FERS Individual Retirement Record. The appropriate employer share must be submitted to OPM by the employing agency under existing procedures.

THRIFT SAVINGS PLAN

The Federal Retirement Thrift Investment Board has determined that employees who transfer to international organizations are not eligible to participate in the Thrift Savings Plan. The Federal Retirement Thrift Investment Board has also determined that the amendments of Public Law 103-296 do not change the status of these employees for the purpose of contributing to the Thrift Savings Plan. Any inquiries concerning the Thrift Savings Plan should be directed to the Federal Retirement Thrift Investment Board.

CONTACT PERSON

Please direct any questions about this Letter (other than Thrift Savings Plan matters) to Patrick Jennings, 202-606-0299.

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