



United States
Office of Personnel Management
Retirement and Insurance Service

Benefits Administration Letter

Number: 98-114

Date: November 3, 1998

Subject: **Notifying Employees Who May be Affected by the Decision of the Court in the Case of *Conner v. OPM***

Background: Benefits Administration Letter (BAL) 97-107 advised agency personnel offices of the decision of the United States Court of Appeals for the Federal Circuit in *Conner v. U.S. Office of Personnel Management* (OPM).

Basically the court ruled that our regulations implementing a portion of the 5-year test in the Federal Employees Retirement System (FERS) law were incorrect. The 5-year test is used to determine whether an employee who is subject to Social Security is automatically covered by FERS. If an employee satisfies the 5-year test, he or she is not automatically covered by FERS, even though he or she may elect FERS coverage. The court's ruling applies only in cases in which employees were placed in automatic FERS coverage, not those who elected to join FERS.

Since the new 5-year test applies to all retirement coverage determinations made on or after January 1, 1987, any employee who was placed in automatic FERS, despite having completed 5 years of creditable civilian service before 1987, has been placed in the wrong retirement system. Therefore, personnel offices were advised that all affected employees were to be notified and provided with an election opportunity.

BAL 97-107 provided guidance on the actions required to ensure that all affected employees would be identified and notified of their options. Agencies were given discretion concerning the means they would use to identify these employees and the methods of notification they would use. As stated in BAL 97-107, when agencies become aware that an employee was erroneously placed in automatic FERS, they must apply the "deemed FERS" procedures contained in part 11A6 of the CSRS and FERS Handbook for Personnel and Payroll Offices.

Civil Service
Retirement
System

Federal Employees
Group Life
Insurance

Federal Employees
Health Benefits
Program

Federal Employees
Retirement
System

We conducted an informal survey of larger agencies to gauge the progress made in 1) identifying employees who are potentially affected by the *Conner* decision, 2) notifying affected employees of their options, and 3) taking action to effect employees' decisions. We found disparities in the degree of initiative shown by different agencies. Some agencies acted promptly to take actions, while others still have work to do.

This BAL is being issued to ensure that all affected employees are made aware of the *Conner* decision and receive equal consideration. The following sections provide detailed instructions on the **actions that must be taken** by each agency.

Identifying and Notifying Affected Employees

If not already done, agencies must take action to notify affected employees. You have discretion to determine the most effective means of identifying employees in your agency. A number of agencies have used general employee notices in the form of bulletins, newsletter articles, earnings statement messages and employee memorandums, while other agencies have chosen to use automated personnel reports or Official Personnel Folder (OPF) audits to identify employees. You may want to consider using more than one method to identify employees, because it increases the probability that potentially affected employees will be informed. During the survey mentioned earlier, we discovered that most cases were located through the combined use of employee self-identification and agency audits.

Once employees have been notified, some will request information. It is critical that employees receive complete information. Making an informed election of retirement coverage is a decision of great importance to employees. Agencies should ensure that employees are fully informed concerning the impact their decision will have on their future benefits. Toward this end, we are providing an attachment that lists necessary actions and highlights key areas of concern that should be addressed in notices, and provides sample employee letters. Every effort should be made to provide employees with a notice that is clear, concise, and fully informative.

Taking Corrective Actions

The employee's records must be corrected consistent with the election, including the Thrift Savings Plan account. If the employee opts not to be deemed to have elected FERS coverage, any contributions to the Thrift Savings Plan in excess of 5%, as well as any agency matching and automatic 1% contributions, must be backed out of the employee's account in accordance with the regulations of the Federal Retirement Thrift Investment Board.

If, while under FERS, the employee made a deposit under FERS rules for military service or for the nondeduction civilian service performed before erroneous coverage began, the amount due for

the deposit must be re-computed under Civil Service Retirement System (CSRS) rules, since both the military and civilian service will either be part of a CSRS component of a FERS benefit (if the employee elects to remain in FERS), or will be included in the computation of a CSRS Offset annuity, if the employee elects CSRS Offset. The employee must be informed of the corrected amount(s) due, and of his or her entitlement to choose to receive repayment of amounts already paid.

In cases where the coverage error was directly caused by an erroneous OPM regulation and an employee has made service credit deposits based on information that is now erroneous, OPM will waive a portion of the interest that normally accrues on the service credit deposit for employees who elect to remain in FERS. For employees who have fully completed payment of a deposit and elect to remain in FERS, no interest will be assessed on the additional principal now owed. If the employee has made partial payment of a deposit and elects to remain in FERS, interest on the additional principal amount will be assessed prospectively. Interest will fully accrue on deposits for which the employee has made no payments and if the employee elects CSRS Offset coverage. These interest rules apply only in cases where the FERS coverage is wrong as a result of the *Conner* decision where the court ruled that OPM's regulations implementing the 5-year test were incorrect. They do not apply to other deemed FERS elections where an employee can elect to remain in FERS because his or her agency erred in placing the employee under FERS.

In order to have a successful undertaking, there must also be careful coordination and communication between the personnel and payroll offices and the employee. Employees who will have their benefits and contributions adjusted based on their election should have a contact person in both personnel and payroll, who will be able to explain the changes to them, or the name of an individual who can address both personnel and payroll matters. Personnel should make sure that the employee is fully informed of the options available, and payroll must in turn ensure that the employee is kept abreast of any changes to his or her account. Each employee should receive a detailed written accounting of any changes to their funds. The attached procedures can help ensure that you take all necessary actions.

Reporting Requirements

Each agency headquarters will be responsible for coordinating the efforts of the field installations. By no later than **January 31, 1999**, each agency must submit a written report to OPM detailing the results of this undertaking. By that date, we expect that virtually all affected employees will have completed their elections. Please cover the following in your reports:

1. Identification method used (e.g., general employee notice, OPF review, etc.)
2. Total number of *Conner* cases identified
3. Total number of cases in which employees elected deemed FERS

4. Total number of cases in which employees elected CSRS Offset
5. Total number of cases in which employees elected FICA only
6. If all cases have not been corrected by the end of this year, state the date on which all actions are expected to be completed.

Completed reports should be forwarded to the following address by close of business January 31, 1999:

Office of Personnel Management
Agency Services Division
P.O. Box 57
1900 E Street, NW
Washington, DC 20415-0001

If there are questions about actions to be taken, please call your Agency Services Division liaison person. You may also submit questions and your completed reports by faxing us on (202) 606-1108, or emailing asd@opm.gov.



Mary M. Sugar, Chief
Agency Services Division

Attachment

Procedures for Processing *Conner* Cases

If you determine that the employee is in the wrong retirement system as a result of the *Conner v. OPM* decision, apply the deemed FERS regulations in Section 846.204(b)(1) of Title 5, Code of Federal Regulations. Affected employees can choose between a retroactive correction of retirement coverage to the appropriate retirement coverage or to be deemed to have elected FERS. For additional information, see part 11A6 of the *CSRS and FERS Handbook for Personnel and Payroll Offices*. Take the following steps:

1. Notify employee of the retirement coverage error. See sample letters—Attachments 1 and 2.
 - VI. Explain how you discovered the error and how the error occurred.
 - VII. Discuss *Conner* case and how it changed the 5-year test.
 - VIII. Advise employee that if s/he chooses to have coverage corrected, retirement coverage will be corrected retroactively from FERS to CSRS Offset (or Social Security only).
 - IX. Advise employee that unless s/he elects in writing within 60 days of the date of the notice to be corrected retroactively to CSRS Offset (or Social Security only) coverage, s/he will be deemed to have elected FERS.
 - X. Explain how *Conner* decision affects nondeduction service and any military service performed before the error occurred and any deposit paid for the service. See the following tables for more information.
 - XI. Explain how election will affect Thrift Savings Plan account.
 - XII. Give name and phone number of a counselor, preferably at a local level, who will be correcting the retirement coverage and the Thrift Savings Plan account.
2. Give employee a copy of the *FERS Transfer Handbook* and Standard Form 3109, Election of Coverage, or a form letter to document the election.
3. Do annuity projections for employee as of the earliest entitlement date to help him or her compare CSRS Offset and FERS benefits. (Also, do projections for an employee who is choosing between Social Security-only coverage and FERS.) Do **not** use the FERS Transfer Model: It will not let you enter retroactive FERS transfer dates.
4. Give employee 60 days from date of notice to make election.
5. Identify the counselor, preferably at a local level, who will be correcting the retirement coverage and the Thrift Savings Plan Account. This person needs to be someone who can answer the employee's questions and will be able to discuss the impact of correcting retirement coverage and its effect on future retirement benefits. The counselor should also be able to explain the payroll office process and keep the employee abreast of any changes to his or her account. If the counselor cannot answer questions about the payroll changes, identify a contact person in payroll who can answer those questions. It's the agency's

responsibility for counseling the employee about the consequences of the election.

6. Seek assistance, if necessary, from the Social Security Administration.

When An Employee Has More Than One Period of Erroneous FERS Coverage

Some employees may have more than one period of service following the erroneous FERS coverage. If the employee would have had an opportunity to transfer to FERS during the subsequent period of service, s/he can choose during which period of service a deemed FERS election would become effective.

Example

An employee was placed in FERS during her term appointment on January 6, 1989. (Although she had 8 years of prior service, she had no prior retirement coverage.) The term appointment ended on January 5, 1993. She had a 9-month temporary appointment with Social Security-only coverage in 1994. On July 5, 1996, she received a career-conditional appointment and was again placed in FERS.

As a result of *Conner*, her FERS coverage on January 6, 1989, and later on July 5, 1996, was erroneous because she had more than 5 years of creditable civilian service before 1987. She should have had only Social Security coverage on January 6, 1989, and been given a 6-month election opportunity to transfer to FERS.

Under the deemed FERS regulations, she can elect to remain in FERS or have her retirement coverage corrected to Social Security-only on January 6, 1989. If she chooses to have her coverage corrected to Social Security for that period of service, then she will have to choose whether she wants to remain in FERS on July 5, 1996, or have her coverage corrected to CSRS Offset. Regardless which she chooses, her service before July 5, 1996, will be credited under CSRS rules. That means that she can pay a CSRS deposit for both the 4-year term appointment and 9-month temporary appointment to have the service used in computing her retirement benefit even though both were after 1988. Under CSRS rules, no deposit is necessary for the service to count toward eligibility for retirement.

If, instead, she chooses to be deemed to have elected FERS on January 6, 1989, her 9 months of temporary service in 1994 falls under the rules for FERS. Therefore, the service is not creditable because it was performed after 1988. Her FERS coverage resumes on July 5, 1996.

The employee was automatically placed in FERS twice when she should have been given the opportunity to elect FERS. Therefore, if she wants FERS coverage, she can choose on which of those two appointments she wants her FERS coverage to begin.

The Next Steps

The next steps depend upon the type of retirement coverage the employee elects. An employee in a permanent position must choose between CSRS Offset coverage and FERS. An employee in a nonpermanent position that is excluded from CSRS but not from FERS (for example, term appointments, excepted indefinite appointments, or overseas limited appointments) must choose between Social Security-only coverage and FERS. An employee who was erroneously placed in FERS while in a CSRS-excluded position but who was later converted to a permanent position must choose between Social Security-only coverage and FERS on the date of the erroneous coverage. However, since the employee currently has a permanent position, if s/he chooses to have the retirement coverage corrected to Social Security only, that coverage becomes CSRS Offset effective on the date of the permanent appointment. The employee would not have a second opportunity to elect FERS coverage on the date of the conversion to a permanent position because there was no break in service.

The following sample letters and tables should help you notify and counsel employees about the effects of a coverage decision and also tell you what steps need to be taken based on the employee's decision.

Attachment 1: Sample Letter to Employee Who Was Erroneously Placed in FERS Rather Than CSRS Offset

The letter is only a sample and will have to be modified to fit each employee's particular situation. In the sample, the erroneous FERS coverage began on April 1, 1990; there was no break in service after the erroneous coverage; the employee is married; she has nondeduction service both before and after October 1, 1982; her deposit for her civilian service is computed at 7 percent of her base pay; she has no military service; and she contributed a full 10 percent of her pay to her Thrift Savings Plan account. The decision tables in Attachments 3, 5, and 6 will help you determine which issues to cover and how to modify your letter for each affected employee.

Attachment 2: Sample Letter to Employee Who Was Erroneously Placed in FERS Rather Than Social Security Only

The letter is only a sample and will have to be modified to fit each employee's particular situation. In the sample, the erroneous FERS coverage began on April 1, 1994, with the employee's term appointment; the term appointment has not ended; the employee is married; he has nondeduction service both before and after October 1, 1982; he has no military service; and he contributed 5 percent of his pay to his Thrift Savings Plan account. The decision tables in Attachments 4, 5, and 7 will help you determine which issues to cover and how to modify your letter for each affected employee.

Attachment 3: FERS versus CSRS Offset Coverage Decision Table

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- Attachment 4: FERS versus Social Security Only Decision Table
- Attachment 5: Thrift Savings Plan Account (If employee elects deemed FERS coverage)
- Attachment 6: Thrift Savings Plan Account (If employee elects to have retirement coverage corrected to CSRS Offset)
- Attachment 7: Thrift Savings Plan Account (If employee elects to have retirement coverage corrected to Social Security Only)

Sample Letter to Employee

(Who Was Erroneously Placed in FERS Rather Than CSRS Offset)

This letter is only a sample and will have to be modified to fit each employee's particular situation. In this sample, the erroneous FERS coverage began on April 1, 1990; there was no break in service after the erroneous coverage; the employee is married; she has nondeduction service both before and after October 1, 1982; her deposit for her civilian service is computed at 7 percent of her base pay; she has no military service; and she contributed a full 10 percent of her pay to her Thrift Savings Plan account. The decision tables in Attachments 3, 5, and 6 will help you determine which issues to cover and how to modify your letter for each affected employee.

Thank you for bringing your case to our attention.

We asked all employees who had been automatically placed in the Federal Employees Retirement System (FERS) and who had completed 5 years of creditable civilian service as of December 31, 1986, to contact us. After a careful review of your employment history, we found that you are in the wrong retirement system. You must now decide whether you want to remain where you are or have your retirement coverage corrected to Civil Service Retirement System (CSRS) coverage as a CSRS Offset employee.

You have 60 days from the date of this notice to decide whether you want to remain in FERS or have your coverage retroactively corrected to CSRS Offset coverage. If you make no election, you will be deemed to have elected FERS.

Both CSRS Offset and FERS are good retirement plans. Social Security is a part of both, so no matter which you choose your Social Security coverage continues. Each plan has advantages and disadvantages. Either way, your decision deserves careful thought.

The enclosed *FERS Transfer Handbook* will help you choose. It contains an overview of both retirement systems, discusses the differences between FERS and CSRS, and provides examples. Please read it carefully before making your decision.

Although the *FERS Transfer Handbook* provides a good comparison of CSRS and FERS, it was written for employees who are in the proper retirement system. There are a few things we want to point out before you make your decision. The enclosure, "Considerations In Choosing Between CSRS Offset and FERS Coverage," explains how the coverage error occurred. It also discusses how your decision will affect your benefits and provides additional information that should help you choose. All of the information in the enclosure applies to you, so consider the information carefully before making a choice.

Attachment 1

We can help, too. We can provide projections of your retirement benefits under both FERS and CSRS Offset. We can also project your Social Security and, based on assumed rates of return and future contributions, Thrift Savings Plan benefits, so you can compare your total benefits under both plans.

Your Official Personnel Folder has been forwarded to your local Human Resources Office for its temporary use. [Joan Smith], your Benefits Officer, will be able to counsel you regarding FERS and CSRS Offset benefits, do benefits projections, and explain your potential benefits under both retirement systems.

We included a copy of Standard Form 3109, Election of Coverage, with the *FERS Transfer Handbook*. Please sign Part 1 of the election form.* Your signature verifies that you received the election form and the *FERS Transfer Handbook*. It is not an election of retirement coverage. If you decide that you want to remain in FERS, complete Part 2 of the election form and return it to your Human Resources Office. Remember that if you choose to remain in FERS, you can't change your mind later, so you want to choose carefully.

We realize this error may cause you some concern, and we regret that. We want to make this as easy for you as we can. [Joan Smith] of your local Human Resources Office, extension 1234, is available to provide counseling and information to you about CSRS and FERS, Social Security, and the Thrift Savings Plan and to answer any questions you may have.

Please acknowledge receipt of this notice by returning a signed and dated copy of this letter.*

Enclosure

Signature

Date

** Note to agency representatives: You need to be able to document that you notified the employee of the coverage error and his or her options. Having the employee sign the receipt copy of the letter and SF 3109 is one way to accomplish this. However, you may use any method that accomplishes the purpose. See Section 11A6.1-1D in Chapter 11 of the **CSRS and FERS Handbook for Personnel and Payroll Offices** for more information about the documentation requirement.*

Considerations In Choosing Between CSRS Offset and FERS Coverage

How the Coverage Error Occurred

This coverage error is the result of a recent decision of the United States Court of Appeals for the Federal Circuit in the case of *Conner v. OPM*. The court ruled that the U.S. Office of Personnel Management's regulations that tell agencies how to apply the 5-year test were incorrect. The 5-year test is used to determine whether an employee who is subject to Social Security is automatically covered by FERS. If an employee satisfies the 5-year test, he or she is not automatically covered by FERS, even though the employee may elect FERS coverage.

Because of the ruling in *Conner*, a new rule now applies. It states that an employee who performed 5 years of creditable civilian service before January 1, 1987, is excluded from automatic FERS coverage. This new rule revises the 5-year test. The revised 5-year test applies to all retirement coverage determinations made on or after January 1, 1987. It affects you because you had more than 5 years of civilian service before 1987.

Below is a summary of your employment history.

Dept. of Interior	Temporary Appointment	June 27, 1976, to June 26, 1977
Dept. of Army	Term Appointment	March 1, 1980, to February 29, 1984
OPM	Temporary Appointment	September 14, 1985, to September 13, 1986
XYZ Agency	Career-Conditional Appointment	April 1, 1990, to present

On April 1, 1990, when you received a career-conditional appointment with us, we placed you in FERS. Based on the revised 5-year test, that retirement coverage is now wrong. You should have been placed under CSRS Offset coverage with the right to elect FERS.

CSRS Offset Benefits

Although your Social Security benefits will be the same under both systems, the amount of your Social Security benefit will affect a CSRS Offset annuity. (When a CSRS Offset employee retires, her annuity is computed under the same rules that apply to other CSRS retirees. However, when she becomes eligible for Social Security benefits, her annuity will be reduced, or offset, by the value of the Social Security benefit she earned during her CSRS Offset service.)

If you have a record of your Social Security earnings or an estimate of your Social Security benefits from the Social Security Administration, we can provide a more realistic projection of your CSRS Offset benefit when you become eligible for Social Security. If you don't already have that information, you can request a Personalized Earnings and Benefit Estimate Statement from the Social Security Administration. [Joan Smith] can help you request one. You can also do it

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yourself by accessing the Social Security web site at www.ssa.gov.

Correction of Your Records

If you elect to have your records corrected to CSRS Offset coverage, that coverage will be made retroactive to April 1, 1990. If you remain in FERS, the effective date of your FERS coverage will not change, but your Standard Form 50 showing your career-conditional appointment will be corrected to show that you elected FERS coverage effective April 1, 1990, rather than being automatically placed in FERS on that date. This changes how your service performed before April 1, 1990, is treated.

The amount withheld from your salary for Social Security and retirement is the same under FERS and CSRS Offset. However, if you choose to have your records corrected to CSRS Offset, the retirement money will have to be moved from your FERS account to a new CSRS account. The payroll office would take care of that.

[Note to agency representatives: The amount is the same except for highly compensated persons whose earnings exceed the Social Security maximum wage base in any calendar year. In those cases, you'll need to replace the above paragraph. CSRS Offset would be more expensive, since the CSRS contribution reverts to 7% when the employee's basic pay meets the maximum for retirement earnings. In addition, there can be a gap if the employee had earnings that aren't basic pay for retirement, for example, awards or overtime. Use language similar to the following: "The amount withheld from your salary for Social Security is the same under FERS and CSRS Offset. However, if you choose to have your coverage corrected to CSRS Offset, you will owe additional money to the retirement fund. That's because, under CSRS Offset, when an employee's earnings exceed the Social Security maximum wage base in any calendar year, his retirement contribution rate changes from .8% of his basic pay to 7%. This means that in calendar years 19xx through 19xx, your salary was overpaid when your earnings from your basic pay exceeded the Social Security maximum. If you elect CSRS Offset coverage, you would have been overpaid \$_____ for those years."]

Service Credited Under CSRS Rules Even If You Remain Under FERS

Whether you remain in FERS or elect to have your coverage corrected to CSRS Offset, your civilian service before April 1, 1990, is credited under CSRS rules. The "Service Credit Deposits and Refunds" section in the *FERS Transfer Handbook* explains how civilian service is credited under CSRS when no retirement deductions were withheld from your salary. Your service before October 1, 1982, is treated differently from your service on and after October 1, 1982. All of the service counts in deciding whether you have enough service to be eligible to retire, but the service on and after October 1, 1982, can be used to compute your retirement benefit only if you pay a deposit for the service. The service before October 1, 1982, is used to compute your retirement benefit even if a deposit is not paid for the service, but your annuity is reduced because the deposit is not paid.

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The deposit under CSRS is 7 percent of your earnings during the period when no deductions were withheld, plus interest. That's different from a FERS deposit which is 1.3 percent of your earnings. If you already paid a FERS deposit for the service, let us know. You will owe additional money. We will contact the U.S. Office of Personnel Management, so they can compute a CSRS deposit and give you credit for the deposit amount already paid. You also can choose to have the money you already paid returned to you.

Social Security Benefits Are Not Affected by Your Decision

The *FERS Transfer Handbook* discusses the Government Pension Offset and Windfall Elimination Formula. Both can affect the amount of Social Security benefits payable to certain Federal employees. The Government Pension Offset affects a spouse's share of a worker's Social Security benefit while the worker is living and the survivor benefit after the worker dies. If you expect to be eligible for spouse and survivor benefits from Social Security based on your husband's Social Security earnings, we want you to know that you do not need to consider the Government Pension Offset when making your decision. Because you are automatically covered by Social Security, neither the Social Security spouse benefit nor the survivor benefit will be subject to the Government Pension Offset whether you choose CSRS Offset or FERS coverage.

If you have always had Social Security deducted from your pay during your employment both inside and outside of the government, your Social Security benefit will not be subject to the Windfall Elimination Formula. This is true whether you elect CSRS Offset or FERS coverage.

Effect on Your Thrift Account

You have been contributing 10 percent of your pay to your Thrift Savings Plan (TSP) account and receiving agency automatic (1%) and agency matching contributions. You became eligible to participate in the TSP on *[insert date]*. However, as a FERS Transfer employee, you would have become eligible to participate in the TSP on April 1, 1990 *[insert effective date of deemed FERS election]*. Consequently, if you elect to remain in FERS, you are entitled to retroactive agency automatic (1%) contributions for the period April 1, 1990, *[insert effective date of deemed FERS election]* to *[insert date employee became eligible to participate in the TSP]*. You will also have the opportunity to make up employee contributions missed during this period. If you make up employee contributions, you will receive associated retroactive agency matching contributions. In addition, you are entitled to lost earnings on the retroactive agency contributions that are made to your account.

If you choose CSRS Offset coverage, you are not entitled to the agency contributions and attributable earnings to your account, and they will be removed from your account. Also, we will ask the TSP to remove the excess employee contributions from your account (i.e., employee contributions that exceed the CSRS five percent limit), and we will refund these excess employee contributions to you with your pay. In addition, you may request a refund of the remainder of the employee contributions in your TSP account, and if you do so, we will also ask the TSP to remove these contributions and refund them to you with your pay. All the employee contributions

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that are refunded to you will be taxable as ordinary income for the year in which they are refunded. The earnings attributable to your refunded employee contributions will remain in your TSP account. Please contact [Joan Smith] for additional information and assistance.

[Note to agency representatives: The employee's latest TSP Participant Statement will show the total amount of employee contributions and attributable earnings, agency automatic (1%) contributions and attributable earnings, and agency matching contributions and attributable earnings in the TSP account. If the employee requests updated amounts, please call the Federal Retirement Thrift Investment Board. Only the agency payroll office, however, can determine the amount of the excess employee contributions it deposited in the employee's account. For more information about correcting TSP accounts, see the TSP error correction regulations at 5 CFR part 1605 and the lost earnings regulations at 5 CFR part 1606.]

FERS Open Season

If you choose to have your retirement coverage corrected to CSRS Offset, you will be able to elect to transfer to FERS during the current FERS Open Season. However, this may not be a wise choice because all of your CSRS Offset service will be credited under FERS rules. That means you would be trading the more generous CSRS annuity formula for the FERS formula, but you would not get a Government match on your Thrift account for that service. If you want FERS coverage, then you should choose deemed FERS coverage effective April 1, 1990, the date you were erroneously placed in FERS.

Sample Letter to Employee

(Who Was Erroneously Placed in FERS Rather Than Social Security Only)

This letter is only a sample and will have to be modified to fit each employee's particular situation. In this sample, the erroneous FERS coverage began on April 1, 1994, with the employee's term appointment; the term appointment has not ended; the employee is married; he has nondeduction service both before and after October 1, 1982; he has no military service; and he contributed 5 percent of his pay to his Thrift Savings Plan account. The decision tables in Attachments 4, 5, and 7 will help you determine which issues to cover and how to modify your letter for each affected employee.

Thank you for bringing your case to our attention.

We asked all employees who had been automatically placed in the Federal Employees Retirement System (FERS) and who had completed 5 years of creditable civilian service as of December 31, 1986, to contact us. After a careful review of your employment history, we found that you are in the wrong retirement system. You must now decide whether you want to remain where you are or have your retirement coverage corrected to Social Security only.

You have 60 days from the date of this notice to decide whether you want to remain in FERS or have your coverage retroactively corrected to Social Security only. If you make no election, you will be deemed to have elected FERS. The following information may help you decide.

Your term appointment is excluded from coverage under the old Civil Service Retirement System, or CSRS. If you choose to have your records corrected, you will only have Social Security coverage. But, if you later get a permanent appointment, you will be covered by both CSRS and Social Security as a CSRS Offset employee. When a CSRS Offset employee retires, his annuity is computed under the same rules that apply to other CSRS retirees. However, when he becomes eligible for Social Security benefits, his annuity will be reduced, or offset, by the value of the Social Security benefit he earned during his CSRS Offset service.

So, your choice isn't just between FERS coverage and no retirement coverage, other than Social Security. You must also look at your future career expectations. You must decide whether to keep the FERS coverage you currently have or give it up with the expectation you will receive a permanent appointment in the future that would give you CSRS Offset coverage. Most people would probably choose to remain in FERS because of the unknown career future.

If you believe that, in the future, you will have a permanent appointment that would provide CSRS Offset coverage, then you need to compare the relative benefits of CSRS Offset and FERS. Your decision deserves careful thought, but remember no matter what you decide your Social Security coverage continues.

Attachment 2

The enclosed *FERS Transfer Handbook* may help you choose. It contains an overview of both retirement systems, discusses the differences between FERS and CSRS, and provides examples. Please read it carefully before making your decision.

Although the *FERS Transfer Handbook* provides a good comparison of CSRS and FERS, it was written for employees who are in the proper retirement system. There are a few things we want to point out before you make your decision. The enclosure, "Considerations In Choosing Between FERS and Social Security-Only Coverage," explains how the coverage error occurred. It also discusses how your decision will affect your benefits and provides additional information that should help you choose. All of the information in the enclosure applies to you, so consider the information carefully before making a choice.

We can help, too. We can provide a projection of your retirement benefit under FERS. We can also project your Social Security and TSP benefits, so you can compare your total benefits under FERS with Social Security alone.

Your Official Personnel Folder has been forwarded to your local Human Resources Office for their temporary use. [Joan Smith], your Benefits Officer, will be able to counsel you regarding Social Security, FERS and CSRS Offset benefits, do benefits projections, and explain your potential benefits.

We included a copy of Standard Form 3109, Election of Coverage, with the *FERS Transfer Handbook*. Please sign Part 1 of the election form.* Your signature verifies that you received the election form and the *FERS Transfer Handbook*. It is not an election of retirement coverage. If you decide that you want to remain in FERS, complete Part 2 of the election form and return it to your Human Resources Office. Remember that if you choose to remain in FERS, you can't change your mind later; so you want to choose carefully.

We realize this error may cause you some concern, and we regret that. We want to make this as easy for you as we can. [Joan Smith] of your local Human Resources Office, extension 1234, is available to provide counseling and information to you about CSRS Offset and FERS, Social Security, and the Thrift Savings Plan and to answer any questions you may have.

Please acknowledge receipt of this notice by returning a signed and dated copy of this letter.*

Enclosure

Signature

Date

Attachment 2

** Note to agency representatives: You need to be able to document that you notified the employee of the coverage error and his or her options. Having the employee sign the receipt copy of the letter and SF 3109 is one way to accomplish this. However, you may use any method that accomplishes the purpose. See Section 11A6.1-1D in Chapter 11 of the **CSRS and FERS Handbook for Personnel and Payroll Offices** for more information about the documentation requirement.*

Considerations In Choosing Between FERS and Social Security Only Coverage

How the Coverage Error Occurred

This coverage error is the result of a recent decision of the United States Court of Appeals for the Federal Circuit in the case of *Conner v. OPM*. The court ruled that the U.S. Office of Personnel Management's regulations that tell agencies how to apply the 5-year test were incorrect. The 5-year test is used to determine whether an employee who is subject to Social Security is automatically covered by FERS. If an employee satisfies the 5-year test, he or she is not automatically covered by FERS, even though the employee may elect FERS coverage.

Because of the ruling in *Conner*, a new rule now applies. It states that an employee who performed 5 years of creditable civilian service before January 1, 1987, is excluded from automatic FERS coverage. This new rule revises the 5-year test. The revised 5-year test applies to all retirement coverage determinations made on or after January 1, 1987. It affects you because you had more than 5 years of civilian service before 1987.

Below is a summary of your employment history.

Dept. of Interior	Temporary Appointment	June 27, 1976, to June 26, 1977
Dept. of Army	Term Appointment	March 1, 1980, to February 29, 1984
OPM	Temporary Appointment	September 14, 1985, to September 13, 1986
XYZ Agency	Term Appointment	April 1, 1994, to present

On April 1, 1994, when you received a term appointment with us, we placed you in FERS. Based on the revised 5-year test, that retirement coverage is now wrong. You should have been placed under Social Security alone with the right to elect FERS.

Personalized Earnings and Benefit Estimate Statement

If you have a record of your Social Security earnings or an estimate of your Social Security benefits from the Social Security Administration, we can provide more realistic projections of your benefits. If you don't already have that information, you can request a Personalized Earnings and Benefit Estimate Statement from the Social Security Administration. [Joan Smith] can help you request one. You can also do it yourself by accessing the Social Security web site at www.ssa.gov.

Correction of Your Records

If you elect to have your records corrected to only Social Security coverage, it will be made retroactive to April 1, 1994. If you remain in FERS, the effective date of your FERS coverage will not change, but your Standard Form 50 showing your term appointment will be corrected to

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show that you elected FERS coverage effective April 1, 1994, rather than being automatically placed in FERS on that date. This changes how your service performed before April 1, 1994, is treated.

If you choose to have your records corrected to Social Security only, the retirement money withheld from your pay and deposited into your account in the Civil Service Retirement and Disability Fund will be removed from your FERS account and returned to you. Since you have no retirement coverage, your FERS account will be closed out. The payroll office would take care of that. Your civilian service will not count toward a Federal retirement benefit, unless you are later covered by CSRS Offset or FERS.

In addition, your TSP account will be closed. If you choose to be covered by Social Security only, you are not, and should not have been, eligible to participate in the TSP. Consequently, we will ask the TSP to remove all contributions from your TSP account. We will refund your employee contributions to you along with your pay, and these contributions are taxable as ordinary income for the year in which they are refunded. The earnings on your employee contributions will also be paid to you by the TSP. These earnings are also taxable as ordinary income for the year in which they are paid. You are not entitled to receive the agency contributions or attributable earnings in your account.

Health and Life Insurance Coverage

You will keep your Federal health benefits and life insurance coverage if you are currently enrolled.

Service Credited Under CSRS Rules Even If You Remain Under FERS

If you remain in FERS, your civilian service before April 1, 1994, is credited under CSRS rules. That's because as a FERS Transferee, rather than someone automatically placed in FERS, your FERS annuity will have a CSRS component. The "Service Credit Deposits and Refunds" section in the *FERS Transfer Handbook* explains how civilian service is credited under CSRS when no retirement deductions were withheld from your salary. Your service before October 1, 1982, is treated differently from your service on and after October 1, 1982. All of the service counts in deciding whether you have enough service to be eligible to retire, but the service on and after October 1, 1982, can be used to compute your retirement benefit only if you pay a deposit for the service. The service before October 1, 1982, is used to compute your retirement benefit even if a deposit is not paid for the service, but your annuity is reduced if the deposit is not paid.

The deposit under CSRS is 7 percent of your earnings during the period when no deductions were withheld, plus interest. That's different from a FERS deposit which is 1.3 percent of your earnings. If you already paid a FERS deposit for the service, let us know. You will owe additional money. We will contact the U.S. Office of Personnel Management, so they can compute a CSRS deposit and give you credit for the deposit amount already paid. You also can choose to have the money you already paid returned to you.

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Social Security Benefits Are Not Affected by Your Decision

The *FERS Transfer Handbook* discusses the Government Pension Offset and Windfall Elimination Formula. Both can affect the amount of Social Security benefits payable to certain Federal employees. The Government Pension Offset affects a spouse's share of a worker's Social Security benefit while the worker is living and the survivor benefit after the worker dies. If you expect to be eligible for spouse and survivor benefits from Social Security, we want you to know that you do not need to consider the Government Pension Offset when making your decision. Because you are automatically covered by Social Security, neither the Social Security spouse benefit nor the survivor benefit will be subject to the Government Pension Offset under either CSRS Offset or FERS coverage.

If you have always had Social Security deducted from your pay during your employment both inside and outside of the government, your Social Security benefit will not be subject to the Windfall Elimination Formula. This is true under both CSRS Offset and FERS coverage.

Effect on Your Thrift Account

You have been contributing 5 percent of your pay to your Thrift Savings Plan account and receiving the agency automatic (1%) and agency matching contributions. You became eligible to participate in the TSP on [insert date]. However, as a FERS Transfer employee, you would have become eligible to participate in the TSP on [insert effective date of deemed FERS election]. Consequently, if you elect to remain in FERS, you are entitled to retroactive agency automatic (1%) contributions for the period [insert effective date of deemed FERS election] to [insert date employee became eligible to participate in the TSP]. You will also have the opportunity to make up employee contributions missed during this period. If you make up employee contributions, you will receive associated retroactive agency matching contributions. In addition, you are entitled to lost earnings on the retroactive agency contributions that are made to your account. Please contact [Joan Smith] for additional information and assistance.

FERS Open Season

We are currently in a FERS Open Season. If you want FERS coverage, you must decide whether you want the coverage to be retroactive to April 1, 1994, as a deemed FERS election or in the future, as a FERS Open Season election. Weigh your options carefully: Which one you choose will make a difference in your benefits. If you elect FERS as part of the open season, your current TSP account will be closed, but all of your service before the open season election becomes effective will be credited under the more generous CSRS rules. If you want your FERS coverage to become effective on the later date, then choose to have your retirement coverage corrected to Social Security only, and you will be able to elect to transfer to FERS during the FERS Open Season that began July 1, 1998, and ends December 31, 1998. Unless you have a break in service of 4 days or more, you will not have another opportunity to elect FERS coverage.

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FERS versus CSRS Offset Coverage

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to CSRS Offset,
Standard Form 50 Adjustments	Correct SF 50 (or equivalent personnel form) to show employee elected FERS on effective date of appointment or conversion of appointment, following the instructions in the <i>Guide to Processing Personnel Actions</i> . (If erroneous FERS coverage occurred before July 1, 1987, see Chapter 11, Part 11A6, in the <i>CSRS and FERS Handbook for Personnel and Payroll Offices</i> .)	Correct SF 50's (or equivalent personnel forms) to show CSRS Offset coverage on effective date of appointment or conversion of appointment, following the instructions in the <i>Guide to Processing Personnel Actions</i> .
Employee Retirement and Social Security Withholding Adjustments	Money withheld from salary for retirement and Social Security is correct. (If erroneous FERS coverage occurred before July 1, 1987, see Chapter 11, Part 11A6, in the <i>CSRS and FERS Handbook for Personnel and Payroll Offices</i> .)	XIII. Money withheld from salary for Social Security is correct. XIV. Money withheld for retirement will be correct unless the employee exceeded the Social Security maximum wage base in any calendar year. (Under CSRS Offset, the retirement deductions withheld from an employee's pay increases from 0.8% to 7% ¹ when the employee's basic pay for retirement reaches the Social Security maximum taxable wage base and Social Security deductions stop.)

¹ For special employee groups like law enforcement officers and firefighters, the rate increases from 1.3% to 7.5%. For Members of Congress, the rate increases from 1.8% to 8%. (See Section 30A2.1-2 in Chapter 30 of the *CSRS and FERS Handbook for Personnel and Payroll Offices* for the CSRS Offset rates for regular and special employee groups before 1990.)

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FERS versus CSRS Offset Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to CSRS Offset,
Agency Contributions Adjustments	Agency contributions for retirement (not TSP) are correct. (If erroneous FERS coverage occurred before July 1, 1987, see Chapter 11, Part 11A6, in the <i>CSRS and FERS Handbook for Personnel and Payroll Offices</i> .)	Agency contributions have been overpaid. Until October 1, 1997, the agency contribution for most CSRS Offset employees was 7%. The rate is temporarily increased to 8.51%. See Payroll Office Letter P-98-11 for further instructions on how to correct agency contribution.
Individual Retirement Record Adjustments	Individual retirement record is correct. (If erroneous FERS coverage occurred before July 1, 1987, see Chapter 11, Part 11A6, in the <i>CSRS and FERS Handbook for Personnel and Payroll Offices</i> .)	<p>XV. Agency payroll office corrects individual retirement record, redistributing the retirement deductions withheld from employee's salary so that the proper amount is credited under CSRS Offset. If employee exceeded Social Security maximum earnings limitation, adjust retroactive employee contributions amount.</p> <p>XVI. If employee was under the wrong retirement system at a previous agency, that agency's payroll office must correct the employee's retirement record for that period. Notify any former agency so it can correct employee's records.</p>

Attachment 3

FERS versus CSRS Offset Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to CSRS Offset,
Effect on Annuity	Advise employee that all service performed before effective date of deemed FERS election is subject to CSRS rules; it will make up a CSRS component of any future FERS benefit.	Advise employee that when s/he becomes eligible for Social Security benefits after retirement, the employee's annuity will be reduced, or offset, by the value of the Social Security benefit s/he earned during her or his CSRS Offset service. Service performed before effective date of CSRS Offset coverage will not be used in determining the amount of the offset.
Effect on Civilian Deposit for Nondeduction Service	Deposit for nondeduction service performed prior to the effective date of the deemed FERS election is computed under CSRS rules at 7% of earnings rather than 1.3%. ² XVII. Ask employee if deposit was already paid in full or in part under FERS rules. XVIII. Estimate CSRS deposit for employee, using guidance below.	Deposit for nondeduction service performed prior to the effective date of CSRS Offset coverage is computed under CSRS rules at 7% of earnings rather than 1.3%. ³ XIX. Estimate CSRS deposit for employee. Interest will accrue on the entire deposit under current rules (see Chapter 21 of the <i>CSRS and FERS Handbook</i>).

² For nondeduction law enforcement or firefighter service after December 31, 1974, the applicable deduction from basic pay is 7.5 percent. Different deduction percentages also may apply to nondeduction service performed by Congressional employees, Members of Congress, bankruptcy judges, U.S. Magistrates, and judges of the Court of Military Appeals. Nondeduction service performed before 1970 will have a different deduction rate.

³ See Footnote 2 above.

Attachment 3

FERS versus CSRS Offset Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to CSRS Offset,
<p>Effect on Civilian Deposit for Nondeduction Service (continued)</p>	<p>XX. If deposit was fully paid under FERS rules, employee owes only the additional 5.7% of earnings. No additional interest will be charged, but the payment must be completed before retirement.</p> <p>XXI. If deposit was partially paid, interest on the additional 5.7% of earnings will accrue prospectively.</p> <p>XXII. If no payments have been made, interest will accrue on the entire deposit under current rules (see Chapter 21 of the <i>CSRS and FERS Handbook</i>).</p> <p>Caution: These interest rules apply only in cases where the FERS coverage is wrong as a result of the Conner decision where the Court ruled that OPM’s regulations implementing the 5-year test were incorrect. They do not apply to other deemed FERS elections where an employee can elect to remain in FERS because his or her agency erred in placing the employee under FERS.</p> <p>See next page for guidance on return of civilian deposit payments to employee.</p>	<p>XXIII. If deposit for nondeduction service was partially or fully paid, inform employee that payments already made will be returned upon request.</p> <p>XXIV. If employee chooses to have money returned, send employee’s written request to OPM’s Retirement Operations Center and identify it as an election made under the <i>Conner</i> decision.</p>

Attachment 3

FERS versus CSRS Offset Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to CSRS Offset,
Effect on Civilian Deposit for Nondeduction Service (continued)	<p>XXV. If deposit for nondeduction service was partially or fully paid, inform employee that payments already made will be returned upon request.</p> <p>XXVI. If employee chooses to have money returned, send employee's written request to OPM's Retirement Operations Center and identify it as an election made under the <i>Conner</i> decision.</p>	
Effect on Military Deposit	<p>Military service will count toward retirement only if a military deposit is paid for the service. Military service performed before the erroneous coverage is part of a CSRS component and is credited under CSRS rules. If employee paid a FERS military deposit for that military service, s/he owes the difference between a CSRS military deposit at 7% and a FERS military deposit at 3%.</p>	<p>Military service will count toward retirement only if a military deposit is paid for the service. If employee paid a FERS military deposit for the military service, s/he owes the difference between a CSRS military deposit at 7% and a FERS military deposit at 3%.</p> <p>XXVII. Compute the additional military deposit the employee owes and advise the employee of the amount.</p>

Attachment 3

FERS versus CSRS Offset Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to CSRS Offset,
Effect on Military Deposit (continued)	<p>Compute the additional military deposit the employee owes as follows:</p> <p>XXVIII. If the post-1956 military deposit has been paid in full, do not compute interest on the additional 4% of military basic pay now needed to complete the deposit. Notify the employee of the additional principal due and of the need to make the payment in order to pay the deposit in full. The payment must be completed before retirement.</p> <p>XXIX. If the employee has made no post-1956 military deposit payments, recompute the deposit amount and interest. Interest accrues on the entire amount of the employee's post-1956 deposit beginning with the employee's initial Interest Accrual Date (IAD).</p> <p>XXX. If the post-56 military deposit is partially paid, then interest on the additional deposit amount accrues prospectively beginning with the employee's next IAD anniversary. Do not recompute the</p>	<p>XXXI. Give the employee credit for each FERS deposit payment made during an interest accrual period before adding interest to the unpaid balance.</p> <p>XXXII. If deposit for military service was partially or fully paid, inform employee that payments already made will be returned upon request: The election to make the military deposit will be considered invalid.</p> <p>If employee chooses to have money returned,</p> <p>XXXIII. Agency payroll office pulls back from the Civil Service Retirement & Disability Fund the amount of the FERS military deposit previously remitted.</p> <p>XXXIV. Payroll office voids and destroys any SF 3100 documenting the FERS military deposit.</p> <p>XXXV. Payroll office refunds the erroneous military deposit to the employee.</p> <p>XXXVI. If military deposit was paid when the employee was at a prior agency, contact OPM. OPM, not the current agency, refunds the military deposit to</p>

Attachment 3

FERS versus CSRS Offset Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to CSRS Offset,
Effect on Military Deposit (continued)	<p>Caution: These interest rules apply only in cases where the FERS coverage is wrong as a result of the Conner decision where the Court ruled that OPM’s regulations implementing the 5-year test were incorrect. They do not apply to other deemed FERS elections where an employee can elect to remain in FERS because his or her agency erred in placing the employee under FERS.</p> <p>If deposit for military service was partially or fully paid, inform employee that payments already made will be returned upon request: The election to make the military deposit will be considered invalid.</p> <p>If employee chooses to have money returned,</p> <p>XXXVII. Agency payroll office pulls back from the Civil Service Retirement & Disability Fund the amount of the FERS military deposit previously remitted.</p> <p>XXXVIII. Payroll office voids and destroys any SF 3100 documenting the FERS military deposit.</p> <p>XXXIX. Payroll office refunds the</p>	

Attachment 3

FERS versus CSRS Offset Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to CSRS Offset,
Effect on Military Deposit (continued)	XL. If military deposit was paid when the employee was at a prior agency, contact OPM. OPM, not the current agency, returns the military deposit to the employee.	
Effect on Credit for Service Under Another Retirement System for Federal Employees	Service under another retirement system for Federal employees, e.g., TVA, Federal Reserve Board, Foreign Service, etc., performed before the effective date of the deemed FERS election is potentially creditable under a CSRS component, provided the employee can waive entitlement to all benefits under the other system. This is true even if the service was performed after 1988. Generally, an employee must take a refund of any retirement deductions under the other retirement system and deposit the amount of the refund in the Retirement Fund, with interest. The actuarial reduction is available for pre-10-1-90 refunded service. See sections 20A2.2-7 & 8 and 21A3.1-3 in the <i>CSRS and FERS Handbook for Personnel and Payroll Offices</i> . The service does not move over to the FERS component, even if Social Security deductions were withheld from the employee's salary along with retirement deductions, such as for TVA employees.	Service under another retirement system for Federal employees, e.g., TVA, Federal Reserve Board, Foreign Service, etc, is potentially creditable service, provided the employee can waive entitlement to all benefits under the system. Generally, an employee must take a refund of any retirement deductions under the other retirement system and deposit the amount of the refund in the Retirement Fund, with interest. The actuarial reduction is available for pre-10-1-90 refunded service. See sections 20A2.2-7 & 8 and 21A3.1-3 in the <i>CSRS and FERS Handbook for Personnel and Payroll Offices</i> . The service is not used in determining the amount of the CSRS Offset annuity reduction, or offset, when the individual becomes eligible for Social Security benefits even if the employee was covered by Social Security while under the other retirement system, such as TVA service.

Attachment 3

FERS versus CSRS Offset Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to CSRS Offset,
Unused Sick Leave Documentation	Document employee's unused sick leave balance on date of deemed FERS election. For most employees, it would be the amount of recredited leave. ⁴ (All <i>Conner</i> cases will have a CSRS component so agencies must post the unused sick leave balance as a remark on the corrected SF 50 and individual retirement record.) Follow the same procedures you currently follow for documenting sick leave of employees who transfer to FERS from FICA-only positions.	Not Applicable
Effect on Designation of Beneficiary for Retirement	FERS designation of beneficiary is still valid. No action is necessary.	If there is a FERS designation (Standard Form 3102) in the employee's OPF, ask employee to complete a CSRS designation of beneficiary (Standard Form 2808) and have the employee send it directly to OPM. (Do not file CSRS designation in OPF.) The FERS designation is no longer valid. Temporarily retain the FERS designation in case something happens to employee before a new designation is completed and filed with OPM.

⁴ If the break in service was longer than 3 years and the employee returned to Federal employment before December 2, 1994, sick leave was not normally recredited on reemployment. If the return to Federal employment was on or after December 2, 1994, all unused sick leave may be recredited regardless of the length of the break, unless it was forfeited upon earlier reemployment.

Attachment 3

FERS versus CSRS Offset Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to CSRS Offset,
Effect on Government Pension Offset and Windfall Elimination Formula under Social Security	<p>XLI. Employee is not subject to the Government Pension Offset under Social Security because s/he is automatically covered by Social Security. (The Government Pension Offset affects the spouse and survivor benefits payable under Social Security based on the Social Security earnings of a Federal employee's spouse.)</p> <p>XLII. Employee's Social Security benefit based on his or her own earnings will not be subject to the Windfall Elimination Formula, if the employee has always had Social Security deducted from pay during employment both inside and outside the government.</p>	
TSP Adjustments	See Attachment 5: Thrift Savings Plan Account (If employee elects deemed FERS coverage)	See Attachment 6: Thrift Savings Plan Account (If employee elects to have retirement coverage corrected to CSRS Offset)

Attachment 4

FERS versus Social Security Only Coverage

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to Social Security Only,
Standard Form 50 Adjustments	Correct SF 50 (or equivalent personnel form) to show employee elected FERS on effective date of appointment or conversion of appointment, following the instructions in the <i>Guide to Processing Personnel Actions</i> . (If erroneous FERS coverage occurred before July 1, 1987, see Chapter 11, Part 11A6, in the <i>CSRS and FERS Handbook for Personnel and Payroll Offices</i> . Deemed FERS coverage cannot begin until the pay period after June 30, 1987.)	Correct SF 50's (or equivalent personnel forms) to show Social Security only (FICA) coverage on effective date of appointment or conversion of appointment, following the instructions in the <i>Guide to Processing Personnel Actions</i> .
Employee Retirement and Social Security Withholding Adjustments	Money withheld from salary for retirement and Social Security is correct. (If erroneous FERS coverage occurred before July 1, 1987, see Chapter 11, Part 11A6, in the <i>CSRS and FERS Handbook for Personnel and Payroll Offices</i> . Deemed FERS coverage cannot begin until the pay period after June 30, 1987.)	<p>XLIII. Money withheld from salary for Social Security is correct.</p> <p>XLIV. No money should have been withheld for retirement. Back out FERS retirement deductions from employee's retirement account and refund deductions to employee. Employee's salary was underpaid due to the erroneous FERS deductions.</p> <p>XLV. Notify former employing agency if retirement coverage error occurred during earlier employment, since that agency needs to correct its payroll records for the period the employee was on the agency's rolls.</p>

Attachment 4

FERS versus Social Security Only Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to Social Security Only,
Agency Contributions Adjustments	Agency contributions for retirement (not TSP) are correct. (If erroneous FERS coverage occurred before July 1, 1987, see Chapter 11, Part 11A6, in the <i>CSRS and FERS Handbook for Personnel and Payroll Offices</i> . Deemed FERS coverage cannot begin until the pay period after June 30, 1987.)	Agency contributions have been overpaid. Back out agency contributions from the Civil Service Retirement & Disability Fund. See Payroll Office Letter P-98-11 for further instructions on how to correct.
Individual Retirement Record Adjustments	Individual retirement record is correct. (If erroneous FERS coverage occurred before July 1, 1987, see Chapter 11, Part 11A6, in the <i>CSRS and FERS Handbook for Personnel and Payroll Offices</i> . Deemed FERS coverage cannot begin until the pay period after June 30, 1987.)	XLVI. Agency payroll office voids and destroys SF 3100, individual retirement record, maintained on the employee. XLVII. If employee was under the wrong retirement system at a previous agency, that agency's payroll office must correct the employee's retirement record for that period. Notify any former agency so it can correct employee's records.
Effect on Annuity	Advise employee that all service performed before effective date of deemed FERS election is subject to CSRS rules; it will make up a CSRS component of any future FERS benefit.	XLVIII. Employee is entitled to Social Security benefits only. XLIX. Employee has no annuity right based on Social Security-only service. L. Employee must gain CSRS Offset or FERS coverage in the future to be eligible for an annuity.

Attachment 4

FERS versus Social Security Only Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to Social Security Only,
Effect on Civilian Deposit for Nondeduction Service	<p>Deposit for nondeduction service performed prior to the effective date of the deemed FERS election is computed under CSRS rules at 7% of earnings rather than 1.3%.⁵</p> <p>LI. Ask employee if deposit was already paid in full or in part under FERS rules.</p> <p>LII. Estimate CSRS deposit for employee, using guidance below.</p> <p>LIII. If deposit was fully paid under FERS rules, employee owes only the additional 5.7% of earnings. No additional interest will be charged, but the payment must be completed before retirement.</p> <p>LIV. If deposit was partially paid, interest on the additional 5.7% of earnings will accrue prospectively.</p> <p>LV. If no payments have been made, interest will accrue on the entire deposit under current rules (see Chapter 21 of the <i>CSRS and FERS Handbook</i>).</p>	<p>Deposit for nondeduction service was erroneous. If employee has not gained retirement coverage under a subsequent appointment or conversion to appointment, the deposit amount must be returned to the employee.</p> <p>LVI. Ask employee if s/he made a deposit for her/his nondeduction service, or applied to make service credit payment.</p> <p>LVII. Contact OPM's Retirement Operations Center if FERS deposit was paid in part or in full, or if employee applied to make a service credit payment. Identify payment as erroneous as a result of the <i>Conner</i> decision and employee's election of only Social Security coverage.</p> <p>LVIII. Provide employee's current address.</p> <p>LIX. OPM will close out the employee's service credit account and refund any service credit payment directly to the employee.</p> <p>If employee has coverage under a subsequent appointment, see FERS versus CSRS Offset Coverage Table.</p>

⁵ Deposit for qualifying service under a special employee group like that for law enforcement officers, firefighters, congressional employees, or Members of Congress may be 7 ½ or 8 percent, rather than 7 percent.

Attachment 4

FERS versus Social Security Only Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to Social Security Only,
Effect on Civilian Deposit for Nondeduction Service (continued)	<p>Caution: These interest rules apply only in cases where the FERS coverage is wrong as a result of the <i>Conner</i> decision where the Court ruled that OPM's regulations implementing the 5-year test were incorrect. They do not apply to other deemed FERS elections where an employee can elect to remain in FERS because his or her agency erred in placing the employee under FERS.</p> <p>LX. If deposit for nondeduction service was partially or fully paid, inform employee that payments already made will be returned upon request.</p> <p>LXI. If employee chooses to have money returned, send employee's written request to OPM's Retirement Operations Center and identify it as an election made under the <i>Conner</i> decision.</p>	

Attachment 4

FERS versus Social Security Only Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to Social Security Only,
Effect on Military Deposit	<p>Military service will count toward retirement only if a military deposit is paid for the service. Military service performed before the erroneous coverage is part of a CSRS component and is credited under CSRS rules. If employee paid a FERS military deposit for that military service, s/he owes the difference between a CSRS military deposit at 7% and a FERS military deposit at 3%.</p> <p>Compute the additional military deposit the employee owes as follows:</p> <p>LXII. If the post-1956 military deposit has been paid in full, do not compute interest on the additional 4% of military basic pay now needed to complete the deposit. Notify the employee of the additional principal due and of the need to make the payment in order to pay the deposit in full. The payment must be completed before retirement.</p>	<p>Any deposit for military service was erroneous. If the employee has not gained retirement coverage under a subsequent appointment or conversion to appointment, the deposit amount must be refunded to the employee.</p> <p>LXIII. Agency payroll office pulls back from the Civil Service Retirement & Disability Fund the amount of the FERS military deposit previously remitted.</p> <p>LXIV. Payroll office voids and destroys any SF 3100 documenting the FERS military deposit.</p> <p>LXV. Payroll office refunds the erroneous military deposit to the employee.</p> <p>LXVI. If military deposit was paid when the employee was at a prior agency, contact OPM. OPM, not the current agency, refunds the military deposit to the employee.</p> <p>If the employee has coverage under a subsequent appointment, see the FERS versus CSRS Offset Coverage Table.</p>

Attachment 4

FERS versus Social Security Only Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to Social Security Only,
Effect on Military Deposit (continued)	<p>LXVII. If the employee has made no post-1956 military deposit payments, recompute the deposit amount and interest. Interest accrues on the entire amount of the employee's post-1956 deposit beginning with the employee's initial Interest Accrual Date (IAD).</p> <p>LXVIII. If the post-56 military deposit is partially paid, then interest on the additional deposit amount accrues prospectively beginning with the employee's next IAD anniversary. Do not recompute the deposit to include interest accrued from the employee's initial IAD.</p> <p>Caution: These interest rules apply only in cases where the FERS coverage is wrong as a result of the Conner decision where the Court ruled that OPM's regulations implementing the 5-year test were incorrect. They do not apply to other deemed FERS elections where an employee can elect to remain in FERS because his or her agency erred in placing the employee under FERS.</p>	

Attachment 4

FERS versus Social Security Only Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to Social Security Only,
Effect on Military Deposit (continued)	<p>If deposit for military service was partially or fully paid, inform employee that payments already made will be returned upon request: The election to make the military deposit will be considered invalid.</p> <p>If employee chooses to have money returned,</p> <p>LXIX. Agency payroll office pulls back from the Civil Service Retirement & Disability Fund the amount of the FERS military deposit previously remitted.</p> <p>LXX. Payroll office voids and destroys any SF 3100 documenting the FERS military deposit.</p> <p>LXXI. Payroll office refunds the erroneous military deposit to the employee.</p> <p>LXXII. If military deposit was paid when the employee was at a prior agency, contact OPM. OPM, not the current agency, returns the military deposit to the employee.</p>	

Attachment 4

FERS versus Social Security Only Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to Social Security Only,
Effect on Credit for Service Under Another Retirement System for Federal Employees	Service under another retirement system for Federal employees, e.g., TVA, Federal Reserve Board, Foreign Service, etc., performed before the effective date of the deemed FERS election is potentially creditable under a CSRS component, provided the employee can waive entitlement to all benefits under the other system. This is true even if the service was performed after 1988. See sections 20A2.2-7 & 8 and 21A3.1-3 in the <i>CSRS and FERS Handbook for Personnel and Payroll Offices</i> . The service does not move over to the FERS component, even when Social Security deductions were withheld from the employee's salary along with retirement deductions, such as for TVA employees.	Not applicable because employee has no retirement coverage.

Attachment 4

FERS versus Social Security Only Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to Social Security Only,
Unused Sick Leave Documentation	Document employee's unused sick leave balance on date of deemed FERS election. For most employees, it would be the amount of recredited leave. ⁶ (All <i>Conner</i> cases will have a CSRS component so agencies must post unused sick leave balance as a remark on the corrected SF 50 and individual retirement record.) Follow the same procedures you currently follow for documenting sick leave of employees who transfer to FERS from FICA-only positions.	Not Applicable
Effect on Designation of Beneficiary for Retirement	FERS designation of beneficiary is still valid. No action is necessary.	Employee has no retirement coverage. If there's a FERS designation (Standard Form 3102) in the employee's OPF, it no longer is valid. Mark it "Void," and destroy it. If the employee dies before the employee's retirement deductions can be returned to him/her, pay based on the order of precedence for unpaid compensation. The deductions were erroneously withheld, and they represent a salary underpayment.

⁶ If the break in service was longer than 3 years and the employee returned to Federal employment before December 2, 1994, sick leave was not normally recredited on reemployment. If the return to Federal employment was on or after December 2, 1994, all unused sick leave may be recredited regardless of the length of the break, unless it was forfeited upon earlier reemployment.

Attachment 4

FERS versus Social Security Only Coverage (Continued)

	If employee chooses to remain in FERS,	If employee chooses to have records corrected to Social Security Only,
Effect on Government Pension Offset and Windfall Elimination Formula under Social Security	<p>LXXIII. Employee is not subject to the Government Pension Offset under Social Security because the employee is automatically covered by Social Security. (The Government Pension Offset affects the spouse and survivor benefits payable under Social Security based on the Social Security earnings of a Federal employee's spouse.)</p> <p>LXXIV. Employee's Social Security benefit based on his or her own earnings will not be subject to the Windfall Elimination Formula, if the employee has always had Social Security deducted from pay during employment both inside and outside the government.</p>	Not Applicable. Employee is not covered by a Federal retirement system.
TSP Adjustments	See Attachment 6: Thrift Savings Plan Account (If employee elects deemed FERS coverage).	See Attachment 7: Thrift Savings Plan Account (If employee elects to have retirement coverage corrected to Social Security Only).

Thrift Savings Plan Account

(If employee elects deemed FERS coverage)

Opportunity to Make Up Employee Contributions	An employee who elects deemed FERS coverage should have become eligible to participate in the TSP with the effective date of the FERS election. Consequently, the employee should be given the opportunity to make up employee contributions missed during the period beginning with the effective date of the deemed FERS coverage to the date the employee actually became eligible to participate in the TSP (i.e., the first day of the pay period that the employee began receiving agency automatic (1%) contributions). See 5 CFR 1605.2.
Adjustments to Agency Automatic (1%) Contributions	Agency computes and reports to the TSP record keeper the amount of agency automatic (1%) contributions missed during the period described above. Agency must also submit lost earnings records for these retroactive agency contributions. See 5 CFR 1605.2.
Adjustments to Agency Matching Contributions	If employee makes up missed contributions, agency must compute and report to the TSP record keeper the associated matching contributions. Agency must also submit lost earnings records for these retroactive agency contributions. See 5 CFR 1605.2.
Notice to Employee	Advise employee regarding his/her opportunity to make up missed employee contributions and of the entitlement to retroactive agency contributions.
Written Explanation of Adjustments	Provide employee with written explanations of any adjustments made in his or her TSP account.

Attachment 6

Thrift Savings Plan Account (continued)

(If employee elects to have retirement coverage corrected to CSRS Offset)

Adjustments to Employee Contributions	The agency must submit negative adjustment records to the TSP record keeper to remove excess employee contributions. The agency must refund these contributions to the employee through the pay check process, and these contributions are taxable as ordinary income for the year in which they are refunded. Earnings on the excess contributions will remain in the employee's account. See 5 CFR 1605.3.
Adjustments to Agency Contributions	All agency contributions and attributable earnings will be removed from employee's account. Agency should submit negative adjustment records to retrieve those agency contributions that have been in the account for less than one year. Other agency contributions and attributable earnings will be forfeited to TSP and used to offset administrative expenses. See 5 CFR 1605.3.
Notice to Employee	Advise employee of ramifications to TSP account.
Written Explanation of Adjustments	Provide employee with written explanations of the adjustments made in his or her TSP account.

Thrift Savings Plan Account (continued)**(If employee elects to have retirement coverage corrected to Social Security Only)**

Adjustments to Employee Contributions	<p>The agency must submit negative adjustment records to the TSP record keeper to remove all employee contributions. The agency must refund these contributions to the employee through the pay check process, and these contributions are taxable as ordinary income for the year in which they are refunded. See 5 CFR 1605.3.</p> <p>The TSP will pay the earnings attributable to employee contributions directly to the employee. These earnings are also taxable as ordinary income for the year in which they are paid. See 5 CFR 1605.9.</p>
Adjustments to Agency Contributions	<p>All agency contributions and attributable earnings will be removed from employee's account. Agency should submit negative adjustment records to retrieve those agency contributions that have been in the account for less than one year. Other agency contributions and attributable earnings will be forfeited to TSP and used to offset administrative expenses. See 5 CFR 1605.3.</p>
Notice to Employee	<p>Advise employee of ramifications to TSP account and tax consequences (i.e., amounts received from agency and TSP are taxable as ordinary income).</p>
Written Explanation of Adjustments	<p>Provide employee with written explanations of the adjustments made in his or her TSP account.</p>