

CHAPTER 11. ELECTION OF FERS COVERAGE

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Subchapter 11A. FERS

Part 11A1. General Information

Subpart 11A1.1. Overview

Section 11A1.1-1. Introduction and Organization

A. Introduction

Employees who are covered by CSRS and certain others who have performed service that is creditable under CSRS may elect FERS coverage. This subchapter explains the circumstances under which employees may elect FERS coverage and explains how service before the date of a transfer to FERS is credited.

Because there is no provision for electing CSRS coverage, this chapter applies only to FERS elections. There is no CSRS subchapter on elections of coverage.

B. Topics Covered

This subchapter covers:

- Employee eligibility requirements to elect FERS coverage;
- Procedures an employee must follow to elect FERS;
- Procedures an agency must follow to process a FERS election;
- How a court order entitling a former spouse to benefits may affect an election of FERS;
- Belated FERS elections;
- Deemed elections of FERS coverage;
- Due process procedures for adverse decisions;
- The effect of an election of FERS coverage;
- Historical information about the FERS Open Season.

This subchapter does not cover elections of FERS coverage for senior officials. (See [Chapter 101](#), *Special Retirement Provisions for Senior Officials*.)

C. Organization of Subchapter

This subchapter is divided into nine parts.

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D. Statement of Authority

This subchapter is based on the laws and regulations cited below.

- Public Law 99-335, as amended
 - United States Code: 5 U.S.C. Chapter 84
 - Code of Federal Regulations: 5 CFR Part 846.
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Part 11A2. Election of FERS

Subpart 11A2.1. Rules for Elections

Section 11A2.1-1. Who and When

A. Employees Who May Elect FERS

1. An election of FERS coverage may be made by employees (including reemployed annuitants) who are reemployed after a break in service of more than 3 days, and:
 - a. Who are covered by the Civil Service Retirement System (CSRS, including CSRS Offset); or
 - b. Whose appointment is excluded from CSRS coverage but not from FERS coverage (for example, term appointments, TAPER, and certain indefinite appointments).

NOTE 1: If an employee has the minimum 5 years of creditable civilian service, creditable military service may be used to meet the balance of service necessary for a discontinued service retirement.

2. An election of FERS coverage may also be made by employees who:
 - a. Convert from appointments excluded from FERS coverage (such as temporary appointments not to exceed 1 year) to appointments that are not excluded and who do not automatically have FERS coverage upon conversion; or
 - b. Become eligible for Social Security coverage; or
 - c. Enter a senior official position with mandatory Social Security coverage (see [Handbook Chapter 101](#) for additional information).

B. Employees Who May Not Elect FERS

1. The following employees may not elect FERS coverage:
 - a. An employee or reemployed annuitant whose appointment is excluded from FERS coverage by law or regulation, such as a temporary (NTE 1 year) or an intermittent appointment other than career or career-conditional;
 - b. An employee who is ineligible for Social Security coverage (such as non-resident foreign national employees);
 - c. An employee of the government of the District of Columbia.
 - d. An employee who has missed the election period for electing FERS coverage (1 year from appointment or conversion.) (See [Part 11A5, Belated Elections](#), for additional information;) or
 - e. A Member of Congress who previously elected by written notice not to participate in FERS; may not elect FERS during the same continuous period of service.
 - f. An employee only has one FERS election opportunity during any continuous period of service.

C. Election Period

An eligible employee may elect FERS coverage during the 6-month period following the date he or she first becomes subject to an appointment described in [paragraph A](#) above. (See [Part 11A3](#) for

election procedures.)

An employee may have more than one opportunity to elect FERS coverage. Employees have a new opportunity to elect FERS coverage each time they return to Federal service after a break in service of more than 3 days and fall under any of the categories in paragraph A.

Once an employee becomes subject to FERS by election, he or she resumes FERS coverage in all future Federal employment, unless the future appointment is excluded from FERS coverage by law or regulation

D. Effective Date of FERS Election

An election of FERS coverage is effective the first day of the pay period beginning after the date the election and any required supporting documents (such as the former spouse's consent) are received by the employing agency.

A court order awarding benefits to a former spouse may delay the effective date of the FERS election. (See [Part 11A4](#), *Court Orders Affecting An Election of FERS Coverage*, for additional information on court orders.)

A FERS election takes effect only if the individual is an employee on the effective date of the election.

E. Withdrawing a FERS Election

An employee may withdraw a FERS election before it becomes effective.

Generally, once effective, an election of FERS coverage is irrevocable. (See [Part 11A3](#), *Election Procedures*, for additional information on election procedures.)

Part 11A3. Election Procedures

Subpart 11A3.1. Employing Office Responsibilities

Section 11A3.1-1. Opportunity and Processing

A. Providing Election Opportunity

When making or converting an appointment, the employing agency must determine whether the employee is eligible to elect FERS. (See [Part 11A2](#), *Employee Eligibility to Elect FERS*, for who is eligible to elect FERS coverage.) If the employee is eligible to elect FERS coverage, the agency must provide the employee with a [Standard Form 3109](#), *Election of Coverage*, and a copy of the [RI 90-3](#), *FERS Transfer Handbook*. In addition, the agency should include a statement regarding the FERS election opportunity in the remarks section of the *Standard Form 50, Notification of Personnel Action*, Remark Code B 60, documenting the appointment. Model language for this statement follows:

Eligible to elect coverage under the Federal Employees Retirement System (FERS) within 6 months of the effective date of this [personnel action](#). *SF 3109* provided to employee.

B. Processing the Election of Coverage SF 3109

1. It is the responsibility of the employing agency to ensure that:
 - a. Each employee eligible to elect FERS coverage is notified of his or her election right, including all employees in a non-duty status.
 - b. Receipt of the *SF 3109, Election of Coverage*, by the employee is documented in the employee's Official Personnel Folder (OPF) or Electronic Official Personnel Folder (EOPF). Acceptable documentation includes:
 - i. A statement of receipt signed by the employee (part 1 of the *SF 3109*) or
 - ii. A document signed and dated by the agency employee who gave the *SF 3109* to the employee, that verifies the employee's receipt of the *SF 3109*, and explains the reasons for the use of the document in lieu of part 1 of the *SF 3109* (for example, in a situation where the employee refused to sign part 1 of the *SF 3109*); or
 - iii. A signed postal return receipt showing that the *SF 3109* was received at the employee's address.
 - c. When it receives the completed Part 2 (OPF copy) of the *SF 3109*, it places the form as a permanent record on the right side of the employee's OPF or EOPF.

C. Showing the FERS Election on the SF 50

If the employee elects FERS coverage, the employing agency must show the change in retirement plan on the *SF 50*, according to instructions in *The Guide to Processing Personnel Actions*. If the employee will be eligible for an annuity with a CSRS component, the employing agency may include a remark on the *SF 50* indicating the sick leave balance as of the effective date of the FERS election for future retirement counseling purposes.

NOTE: Instructions on "freezing" or redesignating employees' Standard Form 2806, Individual Retirement Record, are contained in [Chapter 81](#), *Individual Retirement Records and Registers of Separations and Transfers*.

D. Irrevocability of a FERS Election

Agencies are **not authorized** to cancel an election of FERS coverage after it has become effective, regardless of the reason for the cancellation request.

While a FERS election is irrevocable, in certain circumstances OPM may find an election of FERS coverage invalid. If an employee is found to have been mentally incompetent at the time of the election, the election may be invalidated. (In effect, an "election" by an incompetent person is deemed not to be an election since the capacity to make a rational choice did not exist.) Further, an election of FERS coverage may be invalidated if the employee is found to have a court order acceptable for processing on file with OPM at the time the election was made and he or she did not obtain the former spouse's consent to the election of FERS coverage. (See [Part 11A4](#), *Court Orders Affecting An Election of FERS Coverage*, for additional information regarding court orders acceptable for processing.)

If the employee did not elect FERS, but was erroneously placed in FERS coverage due to an agency error, the length of this and all subsequent coverage errors will determine the steps that need to be taken in order to resolve this error. Please refer to Benefits Administration Letter (BAL) 04-108 for additional instructions.

E. Advising Employees of Effect of FERS Elections

The employing agency is responsible for counseling employees regarding the effect of their election of FERS coverage on future retirement benefits. An employee considering electing FERS coverage should be aware of how the election will affect their retirement benefit, especially service already performed that may become subject to FERS rules. For additional information regarding how service performed prior to the election of FERS coverage is credited, see [Part 11A8](#), *Effect of An Election of FERS Coverage*.

*Section 11A3.1-2. Employee Responsibilities***A. Forms(s) Needed to Elect FERS**

The employee must submit an [SF 3109](#), *Election of Coverage*, to the employing agency.

If there is a court order that would affect the election, the employee must also submit one of the following:

1. [SF 3110](#), *Former Spouse's Consent to FERS Election*; or
2. [SF 3111](#), *Request for Waiver, Extension or Search in Connection with Election of FERS Coverage*.

NOTE: If the employee has a former spouse, it is important that they complete Section 5 of the *SF 3109* accurately. If the employee answers "No" and it is later discovered that a court order was on file with OPM on the date of election of FERS coverage and the former spouse does not consent to the election, the election of FERS coverage will be voided. (See [Part 11A4](#), *Court Orders Affecting An Election of FERS Coverage*, for additional information on court orders that affect a FERS election.)

B. Time Limits

The employee must submit the SF 3109 within 6 months from the date they are first eligible to elect FERS coverage. (See [Part 11A2](#), *Employee Eligibility to Elect FERS*, for additional information.)

Requests for a waiver of the former spouse's consent requirement, an extension of time to elect FERS coverage in order to obtain a modification of a court order, or a search to determine if a court order acceptable for processing is on file with OPM must be made before the end of the 6-month period during which the employee would otherwise be eligible to elect FERS coverage. The employee must follow the instructions given in [Part 11A4](#), *Court Orders Affecting An Election of FERS Coverage*.

Part 11A4. Court Orders Affecting an Election of FERS Coverage

Subpart 11A4.1. Requirements for Election with Court Orders

Section 11A4.1-1. Requirements

A. General Requirement

A court order is any judgment or property settlement issued by or approved by the court of any State, district or territory in connection with the divorce, annulment of marriage or legal separation of a Federal employee or retiree. For the purposes of an election of FERS coverage, the court order is acceptable for processing if it meets the requirements given in subparts C and H of part 838 of title 5, Code of Federal Regulations. For additional information concerning court orders that are acceptable for processing, see [Chapter 5, Court Orders](#)

If an employee has a court order acceptable for processing that awards a portion of his or her retirement annuity or survivor benefits based on the employee's service, the employee must have the consent of the former spouse, if divorced, or current spouse, if legally separated, in order to elect FERS coverage.

B. When a Former Spouse's Consent is Not Required

A former spouse's consent to a FERS election is not required if:

- There is no court order acceptable for processing on file at OPM that gives a portion of the employee's annuity or a survivor annuity to the former spouse; or
- The employee's former spouse remarried before reaching age 55, regardless of the terms of the court order and whether or not the former spouse is still married.

C. Requirements if a Court Order Awarding Benefits is on File with OPM

If a court order acceptable for processing is on file with OPM, and the former spouse is entitled to benefits, one of the following forms must be submitted along with the [SF 3109](#):

- Written consent to election of FERS coverage from the former spouse on the [SF 3110](#), *Former Spouse's Consent to FERS Election*; or
- Request for extension or waiver of the consent requirement on the [SF 3111](#), *Request for Waiver, Extension or Search in Connection with Election of FERS Coverage* and the documentation to support the request as described in paragraphs D and E of this section.

D. Extension of the Election Period to Obtain Modification of the Court Order

An employee may request an extension of the election period from OPM on an [SF 3111](#), *Request for Waiver, Extension or Search in Connection with Election of FERS Coverage*. The employee must demonstrate to OPM's satisfaction that the extension is needed to obtain modification of a court order on file at OPM.

To request an extension, the employee should submit the [SF 3111](#) along with the [SF 3109](#) directly to the agency. Agency personnel should follow the processing instructions given on the reverse of the [SF 3111](#). The application for extension is deemed to be filed with OPM on the date it is received in the employing office. The employing agency must promptly forward the request to OPM.

An extension granted by OPM expires 6 months after the date it was granted. A maximum of two extensions may be granted by OPM upon application by the employee.

To request a second extension, the employee must file an [SF 3111](#) with the employing agency

before the end of the first extension and have initiated legal proceedings to obtain a modification of the court order. When requesting an additional extension, the employee must demonstrate to OPM that they have exercised due diligence in seeking to obtain the modification of the court order.

E. Waiver of the Former Spouse's Consent Requirement

An employee may request OPM to waive the requirement of the former spouse's consent by providing documentation that the former spouse's whereabouts are unknown, or that, due to exceptional circumstances, requiring the employee to obtain the former spouse's consent would be inappropriate. A request to waive the consent requirement must be submitted to the employing agency on an SF 3111 and must be accompanied by the following:

1. *SF 3109, Election of Coverage*; and
2. A judicial determination that the former spouse's whereabouts cannot be determined. In lieu of a judicial determination, the employee may submit three affidavits, one by the employee and two by other persons, at least one of whom is not related to the employee, attesting to the inability to locate the former spouse and stating the efforts made to locate the former spouse. The affidavits must be accompanied by documents, such as newspaper reports, that substantiate the former spouse's disappearance; or
3. A judicial determination regarding the former spouse that would warrant waiver of the consent requirement based on exceptional circumstances. The judicial determination must show that (1) the case before the court involves a Federal employee who is in the process of electing FERS coverage, and (2) the former spouse has been given notice and an opportunity to be heard regarding the order, and (3) the court has considered sections 301 and 302 of the FERS Act (Public Law 99-335) and 5 CFR 846.202 as they relate to waiver of the former spouse's consent requirement to elect FERS coverage, and (4) the court finds that exceptional circumstances exist justifying a waiver of the former spouse's consent requirement.

The request for waiver is deemed to be filed with OPM on the date it is received in the employing agency. The employing agency must promptly forward the request to OPM.

F. Requesting a Search for a Court Order Acceptable for Processing

An employee may request that OPM determine whether a court order awarding a former spouse a portion of the retirement annuity or survivor benefits based on the employee's service is on file, and acceptable for processing, by submitting an *SF 3111* along with the *SF 3109* to the employing agency.

The request for search is deemed to be filed with OPM on the date it is received in the employing agency. The employing agency must promptly forward the request to OPM.

G. OPM's Decision Regarding the Request for Waiver, Extension, or Search

Once an SF 3111 is forwarded to OPM for action, OPM will notify the employing agency of its decision regarding the request.

1. If the employee requested a search for a court order acceptable for processing and OPM does not have a copy of a court order acceptable for processing on file, its notification to the agency completes the employee's election of FERS coverage. The election becomes effective the beginning of the first pay period after the employing office receives OPM's notification.
2. If the employee requested an extension of the time to elect FERS coverage in order to obtain a modification of a court order acceptable for processing, OPM notifies both the employee and the employing agency of its determination regarding a request for extension.

3. If the employee requested a waiver of the requirement of the former spouse's consent, OPM notifies both the individual and the employing office of its decision. If the waiver is granted, OPM's notice to the employing office completes the individual's election of FERS coverage. The election becomes effective the beginning of the first pay period after the employing office receives OPM's notice that the waiver is granted.
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Part 11A5. Belated Elections

Subpart 11A5.1. Eligibility Requirements

Section 11A5.1-1. Authorities and Limits

A. Agency Authority

Employing agencies may accept a belated election of FERS coverage up to 6 months after an employee's election opportunity ends if:

1. The agency did not provide an [SF 3109](#) in a timely manner; or
2. The agency did not provide a copy of the [RI 90-3](#), *FERS Transfer Handbook*, to the employee in a timely manner; or
3. The employee was otherwise unable to make an election within the prescribed time limit due to causes beyond his or her control.

B. OPM Authority

OPM does not have the authority to allow a **retroactive** election of FERS coverage, or a **belated** election of FERS coverage made after the 1-year period following start of the employee's opportunity to elect FERS.

OPM formerly allowed employees to make retroactive elections of FERS coverage if OPM determined that relief was necessary to assure that the employee had an opportunity to make an informed election. In 1993, the United States Court of Appeals for the Federal Circuit determined that OPM did not have the authority to allow retroactive belated FERS elections made after June 30, 1988, on the basis that the employing agency provided incomplete information to the employee, or that the employee was otherwise prevented from making an informed election by circumstances beyond his or her control *Killip v. the Office of Personnel Management*, 991 F.2d.1564, 1569 (Fed. Cir. 1993)). Although the court decision technically applies only to elections that should have been made during the 1987 open season, the court's analysis is equally applicable to cases of employees rehired after the open season. OPM must deny any request to elect FERS coverage made beyond the 6-month period following the employee's statutory election period, regardless of whether the statutory election period was the 1987 open season, or the employee's 6-month opportunity after reinstatement or conversion of appointment.

For additional information on FERS elections for employees who were erroneously placed in FERS for less than 3 years see [Part 11A6. Deemed Elections of FERS Coverage](#). For employees who were erroneously placed in FERS for 3 years or more, see 5 CFR part 839, (a chapter on the Federal Erroneous Retirement Coverage Corrections Act (FERCCA) is under development).

C. Effective Date of a Belated Election

The effective date of a belated election of FERS coverage accepted under the agency's authority is prospective (effective at the beginning of the first pay period after receipt of the employee's election). Neither the agency nor OPM is authorized to approve retroactive effective dates for FERS elections.

D. Belated Elections that Are Not Permitted

Neither the agency nor OPM may allow belated elections (prospectively or retroactively) after the 6-month period provided for under paragraph A, above.

Part 11A6. Deemed Elections of FERS Coverage

Subpart 11A6.1. Acceptability of Deemed Elections

Section 11A6.1-1. Background and Eligibility

A. Background

The United States Court of Appeals for the Federal Circuit in *Killip v. OPM*, 991 F. 2d 1564, 1569 (Fed. Cir. 1993) determined that OPM lacks the authority to allow retroactive FERS elections made after June 30, 1988, by employees who had an opportunity to make a timely election, regardless of circumstances that may have prevented the employee from making an informed election. The court invalidated OPM's regulations under which OPM could allow retroactive FERS elections.

Although *Killip* addressed the case of an election that should have been made during the 1987 open season, the court's analysis is equally applicable to cases of employees rehired after the open season. The court decision does not address the situation of employees who were denied the right of election during the transfer periods provided by statute because they were automatically placed under FERS in error. To prevent the agency error from depriving such employees of their statutory right to have elected FERS coverage, these employees are deemed under OPM's regulations effective November 4, 1994, to have elected FERS coverage unless they notify the employing agency that they do not want FERS coverage.

Public Law 106-265, the *Federal Erroneous Coverage Corrections Act* was enacted on September 19, 2000. The FERCCA addressed the problems created when employees were in the wrong retirement system for an extended period of time, (generally at least 3 years). For detailed information on coverage errors that lasted for at least 3 years, see 5 CFR Part 839.

B. Eligibility

Employees who were erroneously placed in FERS either on January 1, 1987, or upon a rehire or conversion effective after this date, who should have been placed in CSRS, CSRS Offset, or only Social Security with a 6-month opportunity to elect FERS coverage, are deemed to have elected FERS coverage under OPM's regulations, provided the error lasted for more than 6 months and less than 3 years. The effective date of the deemed FERS election is the later of the employee's entry-on-duty date or the beginning of the first pay period commencing after June 30, 1987. Employees who decline FERS coverage will not have another opportunity to elect FERS coverage unless they become reemployed in a position subject to FERS after a break in service of more than 3 days.

Agencies should advise employees that deemed elections are only permitted for employees who were eligible to elect FERS and, the erroneous coverage lasted for more than 6 months and less than 3 years. The election period is either the July 1, 1987, through December 31, 1987, open season, or the rehired/converted employee's 6-month opportunity to elect FERS coverage. Therefore, if an employee has a former spouse who is entitled to a portion of their retirement annuity, or to survivor benefits, based on a court order dated before the end of the employee's election period, the employee must have the consent of the former spouse in order to be deemed to have elected FERS coverage. See [Part 11A4, Court Orders Affecting An Election of FERS Coverage](#), for additional information regarding court orders acceptable for processing.

Employees who were erroneously placed in any retirement coverage other than FERS are not eligible for deemed FERS elections. Deemed FERS elections are limited to employees who did not have a FERS election opportunity because they were erroneously placed in FERS.

The deemed FERS elections do not give employees who were placed in the correct retirement system a further opportunity to elect FERS. Under *Killip*, employees who were placed in the correct

retirement system are not affected by the deemed elections even if they were not informed of the right to elect FERS or were given inadequate information.

C. Notice Requirement

A current employee, separated employee, or retiree who was erroneously placed under FERS coverage when the individual should have been placed under CSRS, CSRS Offset, or only Social Security, with the right to elect FERS coverage, will remain covered by FERS unless he or she declines FERS coverage. The employing agency must provide written notice to each individual (regardless of whether currently employed, separated, or retired) who is deemed to have elected FERS. The notice must provide the individual a 60-day opportunity period, beginning when the individual receives the notice, to decline FERS coverage and be retroactively restored to the correct retirement coverage.

In situations where an employee transfers to another agency and the coverage error is discovered, the new agency is responsible for notifying the employee of the 60-day opportunity to decline FERS coverage.

If the employee has already separated and the coverage error is discovered by OPM, OPM will notify the last employing agency of the error. Agencies should strive to immediately notify these separated employees of their opportunity to decline FERS coverage and promptly correct the personnel and payroll records so that OPM may timely act upon the separated employee's application for benefits.

D. Documentation Requirement

The employing agency must document the records to reflect the employee's decision regarding retirement coverage. Because of the adverse consequences in correcting retirement records, agencies should develop procedures to fully document their counseling and notification efforts as well as employee elections. Agencies may document deemed elections on the SF 3109, or through other means, such as a form letter.

In the event an employee or former employee does not respond to the agency's notification of the 60-day opportunity to decline FERS coverage, the employee is deemed to have elected FERS coverage effective the earliest date he or she could have elected FERS coverage. Since it is likely that agency personnel will encounter a situation where the employee, or former employee, fails to respond to the 60-day notice, it is imperative that employing agencies develop a procedure for documenting the notice to the employee and the employee's failure to respond to the 60-day notice.

E. Death of Employee During the 60-Day Period

If the individual dies during the 60-day opportunity to decline FERS coverage, any person who would be entitled to receive a current or former spouse survivor annuity benefit had the error in coverage **not** occurred has the right to decline FERS coverage on the deceased's behalf. If no survivor annuity is payable, then the individual(s) entitled to receive the lump-sum credit had the error in coverage **not** occurred, may decline FERS coverage.

F. Time Limits

The time limit for declining FERS coverage is 60 days, beginning the date the employee, former employee, retiree, or survivor receives the notice of the right to decline.

G. Waiver of Time Limits

Section 846.204(b)(2)(ii)(c) of Title 5, Code of Federal Regulations, grants agencies broad authority to extend the 60-day time limit. Agencies may extend the 60-day time limit if the individual or

survivor exercised due diligence in declining the deemed coverage, but was prevented by circumstances beyond his or her control from declining in a timely manner. An agency's refusal to extend the time limit is subject to reconsideration by OPM and further appeal to the Merit Systems Protection Board.

Agencies can avoid problems concerning the time limit by providing adequate counseling, documentation, and follow-up procedures to assure that affected employees make informed choices during the 60-day period. Agencies are strongly encouraged to follow up on all cases involving deemed elections and to obtain and document written elections whenever possible.

H. Effective Date of Deemed FERS Election

In order to minimize the correction of records, the effective date of the deemed FERS election under OPM's regulations is the **later** of:

- the employee's entry-on-duty date; or
- the beginning of the first pay period commencing after June 30, 1987.

The need to correct the employee's personnel and payroll records will differ depending on when the employee was first eligible to elect FERS coverage.

1. Employees Erroneously Placed in FERS Before July 1, 1987

Employees who were erroneously placed in FERS between January 1, 1987, and June 30, 1987, were first eligible to elect FERS coverage during the 1987 open season. In this situation, the effective date of the deemed FERS election would be the beginning of the first pay period commencing after June 30, 1987.

2. Employees Erroneously Placed in FERS After June 30, 1987

Employees who were rehired or converted and erroneously placed in FERS after the 1987 open season (after June 30, 1987) were first eligible to elect FERS coverage on the effective date of the reappointment or conversion action. For these employees, the effective date of the deemed FERS election would be their entry-on-duty date.

I. Correction of Records

Records correction for employees who do not decline deemed FERS coverage, as well as those employees who do decline FERS coverage, must comply with procedures given in [The Guide to Processing Personnel Actions](#), and are discussed below.

NOTE: In situations where an employee is deemed to have elected FERS coverage, the first eligibility date for Thrift Savings Plan (TSP) participation will also change. Agencies should be aware of TSP eligibility rules and refer to Part 1605 of Title 5, Code of Federal Regulations, for additional information on correcting TSP errors.

1. Employees Erroneously Placed in FERS Before July 1, 1987

Since an election of FERS coverage cannot be effective earlier than the beginning of the first pay period after June 30, 1987, the personnel and payroll (including the TSP account) records prior to the correct effective date of the FERS election will need to be amended to show the proper retirement coverage. In addition, the agency should cite 5 CFR 846.204(b)(2)(i) as the authority for the election of FERS coverage.

EXAMPLE: An employee was automatically placed in FERS on 01/01/87. She should have remained in CSRS Offset. In 1995, her agency discovers the error and notifies the employee by certified mail that she is deemed to have elected FERS, unless she declines within 60 days. The employee completes an SF

3109, Election of Coverage, electing FERS coverage. Since the earliest date she could have elected FERS was the 1987 open season, her personnel and payroll records must be corrected retroactively from 01/01/87 to the beginning of the first pay period after 06/30/87 to show CSRS Offset coverage. Her corrected SF 50 showing the change to FERS coverage will be effective July 5, 1987.

2. Employees Erroneously Placed in FERS after June 30, 1987

If the employee was erroneously placed in FERS after June 30, 1987, as in the case of a rehire or conversion, the only correction action required will be an SF 50, Notification of Personnel Action, showing that FERS coverage, as of the entry-on-duty date was by election. The SF 50 should cite 5 CFR 846.204(b)(2)(i) as the authority for the action.

Elections of FERS coverage are normally effective the beginning of the first pay period after the employing agency receives the election. Under OPM's regulations, in order to minimize the need for corrections where the correction has an inconsequential effect, agencies are not required to correct the personnel and payroll records to reflect an initial pay period of non-FERS coverage for deemed FERS elections effective after June 30, 1987.

EXAMPLE: An employee was reinstated on 01/15/89. His agency erroneously placed him in FERS, not realizing he had over 5 years of prior CSRS-covered service. The error is discovered in 1994. Because the agency error denied the employee his 6-month election period to elect FERS, he is now deemed to have elected FERS coverage. The agency gives the employee written notice of his 60-day opportunity to decline FERS coverage and instructs him to complete the SF 3109, Election of Coverage, if he chooses to remain in FERS. Unless he declines FERS coverage, the agency will correct the employee's personnel records to show that FERS coverage was by election as of 01/15/89. His payroll records do not need to be changed.

3. Employees Who Decline FERS Coverage

If, after receiving notice, the employee declines FERS coverage, the agency must retroactively correct the personnel and payroll records to reflect the correct retirement code, Thrift Savings Plan, and as appropriate, Social Security records.

EXAMPLE: An employee was erroneously placed under FERS on 01/01/87. She should have been covered under CSRS Offset. Her employing agency discovers the error in 1996 when the employee requests a retirement estimate. The agency notifies the employee of the error and of her 60-day opportunity to decline FERS coverage. After discussing her options with the agency retirement counselor, the employee determines it would be in her best interest to decline FERS coverage and completes an [*SF 3109, Election of Coverage*](#), declining FERS. The agency must retroactively correct her personnel and payroll (including TSP) records to show that the employee was covered under CSRS Offset since 01/01/87.

Part 11A7. Due Process Procedures

Subpart 11A7.1. Due Process

Section 11A7.1-1. General and Types

A. General

Generally, a resignation is **not qualifying** for discontinued service retirement when an employee resigns because of illness.

However, an involuntary separation is **qualifying** for discontinued service retirement if an employee is removed by adverse action or equivalent procedures (or retires after receiving a decision to remove), under conditions not involving misconduct or delinquency, because of illness resulting in one or more of the following:

- Continued absence;
- Inability to perform his or her duties; or,
- Endangering his or her health or that of other employees.

B. Types of Decisions

The following agency decisions are subject to reconsideration by OPM:

- Eligibility to elect FERS coverage;
- Whether a belated election should be allowed;
- Effective date of FERS elections
- Whether a FERS election should be cancelled; and
- Denial of waiver of the 60-day time limit for declining deemed FERS coverage.

C. Agency Decision—Requirements

An agency decision concerning an individual's opportunity to elect FERS coverage or the effective date of an election of FERS coverage is subject to reconsideration by OPM. The agency decision must be in writing and include reasons for the decision and the right to request reconsideration.

D. Request for Reconsideration

An employee may request that OPM reconsider an employing office's denial of issues relating to the election of FERS (for example, the effective date of a FERS election, or cancellation of a FERS election that has become effective).

A request for reconsideration of an agency decision must be filed within the time limit given in [paragraph E](#) below. A request for reconsideration must be made in writing and must include the following information about the employee:

- Employee's name;
- Employee's address;
- Employee's date of birth and social security number;
- Name and mailing address of individual at agency who should receive the response;
- The reason for the request;

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- Copies of any election form completed by the employee (including the OPF copy of any election form that the employee completed when they first became eligible for FERS coverage; or, if no completed form is in the file, Part 1 of the form providing verification of receipt);
 - A copy of the agency's initial decision denying the request;
 - Copies of all *SF 50's*, *Notifications of Personnel Action*, documenting beginning and ending dates of appointments, and changes in appointment type;
 - Copies of any documents presented by the employee to support the request; and
 - The name and commercial telephone number of the person at the employing agency OPM can contact if more information is needed.

The employing office must forward the request to:

Office of Personnel Management
Retirement Services
Benefits Officers Liaison & Development
1900 E St. NW
FERS Reconsideration Request
Washington, DC 20415

E. Agency Decision—Requirements

A request for reconsideration of an agency decision must be filed within 30 calendar days from the date of the agency's decision, stating the right to reconsideration. OPM may extend the time limit when an individual documents that they were:

- Not notified of the time limit and not otherwise aware of the time limit; or
- Prevented by circumstances beyond their control from making the request within the time limit.

F. Request for Reconsideration

After reconsideration, OPM issues a final decision in writing. The decision is provided directly to the employee, with a copy to the employing agency.

G. Appeals to MSPB

If an individual's rights or interests are adversely affected by a decision made by OPM under this section, the employee may request that the Merit Systems Protection Board (MSPB) review the decision.

Part 11A8. Effect of an Election of FERS Coverage

Subpart 11A8.1. Result of Making a FERS Election

Section 11A8.1-1. General and Types

A. Cancellation of Designation of Beneficiary Upon Election of FERS

Any CSRS designation of beneficiary on file is cancelled on the effective date of an election of FERS coverage. The employee must complete a new designation of beneficiary under FERS on a [SF 3102, Designation of Beneficiary, Federal Employees Retirement System](#), if he or she wants any lump sum credit to be paid to someone other than the individual entitled under the order of precedence. The new FERS designation of beneficiary will apply to an employee's contributions under both CSRS and FERS.

The cancellation of a CSRS designation of beneficiary applies as well to employees who are deemed to have elected FERS coverage. See [Part 11A6, Deemed Elections of FERS Coverage](#), for additional information on deemed elections of FERS coverage.

B. Return of Excess Retirement Contributions

Upon election of FERS coverage, certain employees are entitled to a return of any CSRS deductions that exceed the appropriate FERS deductions required for a period of pre-transfer service that will be credited under FERS rules. See [Chapter 33, Return of Excess Contributions](#), for complete information on eligibility and amount of a return of excess contributions.

C. Commencing or Changing Thrift Savings Plan Contributions

A FERS employee hired after July 31, 2010, is automatically enrolled by the hiring agency in the TSP, and 3% of basic pay is deducted each pay period and deposited in the traditional balance of the TSP account, unless the employee made an election to change or stop contributions.

A FERS employee hired before August 1, 2010, should already have a TSP account with accruing Agency Automatic (1%) Contributions, and to any additional contributions elected by the employee as well as Agency Matching Contributions Thrift Savings Plan (TSP), please visit www.tsp.gov.

D. Application for Refund

For employees who have separated from the Federal service for at least 30 days and request a refund of their contributions an [SF 3106, Application for Refund of Retirement Deductions](#), is deemed to be an application for refund of both FERS and CSRS contributions.

If the former employee transferred to FERS with a CSRS annuity component, the former employee may request a refund of CSRS contributions only. The former employee must attach a statement to the FERS refund application specifying this request. See [Chapter 32, Refunds](#), for complete information on withdrawing contributions to the Civil Service Retirement and Disability Fund.

Section 11A8.1-2. Credit for Service Upon Election of FERS

A. General Rules

An employee who elects FERS coverage becomes subject to all provisions of law related to FERS. In general, all of the employee's prior service that was creditable under CSRS provisions is creditable toward length of service requirements for title to an annuity under FERS. Credit for prior service in computing a basic annuity under FERS depends on the type and amount of service before the election to transfer. For additional information regarding creditable service, refer to [Chapter 20, Creditable Civilian Service](#), Subchapter A, for CSRS service credit rules, and Subchapter B, for FERS service credit rules.

Some employees who transfer to FERS will have paid more in employee deductions than is required under FERS. For additional information, see [Chapter 33, Return of Excess Contributions](#).

B. Service Subject to Both CSRS and Social Security

For computation purposes, civilian service performed before FERS coverage begins that was subject to both CSRS deductions and Social Security deductions is creditable under FERS--as long as the employee does not receive a refund of deductions pertaining to that service. The employee may make a redeposit into the retirement fund if deductions were made and refunded.

NOTE: This provision applies only to service performed after December 31, 1983, that was subject to both CSRS and Social Security deductions (That is, CSRS Interim or Offset service).

The original FERS Act included provisions that allow FERS deposits for refunded CSRS service when an employee received a CSRS refund before becoming subject to FERS. Under those provisions, the refunded service was not creditable for any purpose unless the deposit was paid, and the deposit equaled the appropriate percentage of basic pay, plus interest. There were different rules regarding when interest commenced, but in most cases interest started to accrue as of the midpoint of the service period (rather than the date of the refund).

With the passage of the NDAA, refunded CSRS service is creditable for retirement eligibility whether or not the FERS redeposit (or FERS deposit for refunded CSRS service) is paid. There are now two separate provisions that could be used to compute the amount an employee owes for the period of refunded CSRS service the original FERS Act provisions and, the NDAA FERS redeposit provisions.

C. Service Subject to CSRS or Social Security Only

Crediting civilian service that was performed before the effective date of the election and that was subject to either CSRS or Social Security, but not both, depends on the length of such service. If the total amount of these two types of service performed before the effective date of the election of FERS totals:

- Less than 5 years, the service is creditable under FERS for computation purposes;
- 5 or more years, the service is credited under CSRS provisions for computation purposes (that is, the employee is entitled to a CSRS component in his or her FERS annuity).

D. Military Service

If the employee is entitled to a FERS annuity with no CSRS annuity component, all military service performed before the effective date of the FERS election is creditable under FERS rules.

If the employee is entitled to a CSRS annuity component in his or her FERS annuity, all military service performed prior to the effective date of the FERS election is creditable under CSRS rules.

E. Unused Sick Leave

Unused sick leave is creditable for annuity computation purposes under FERS, for separations occurring on or after 10-28-2009. Effective October 28, 2009, individuals separating with title to an immediate annuity or who die leaving a survivor eligible for a survivor annuity were entitled to credit for 50 percent of their unused sick leave. Effective for separations and deaths occurring on or after January 1, 2014, 100 percent of the unused sick leave is creditable. Employees who elect FERS coverage and will have a CSRS annuity component will also receive credit for unused sick leave in the computation of the retirement benefit. The amount credited in the CSRS component will be the lesser of:

- the unused sick leave balance as of the effective date of the FERS election; or
- the unused sick leave balance as of the date of retirement.

If the unused sick leave balance at separation is greater than the balance as of the FERS election, the amount credited in the FERS component will be the difference between the balance at separation and the balance as of the FERS election.

For additional information concerning crediting unused sick leave, see [Chapter 20](#).

Part 11A9. FERS Open Season

Subpart 11A9.1. History of the FERS Open Season

Section 11A9.1-1. Open Season

A. Introduction

During the FERS Open Season, July 1, 1987, to December 31, 1987, most employees covered under CSRS were eligible to transfer to FERS. Agencies provided employees with the [RI 90-3](#), *FERS Transfer Handbook*, to assist them in making their decision. OPM Form 1555, FERS Election of Coverage (now the [SF 3109](#), Election of Coverage), was used to document receipt of FERS election information and election of FERS coverage.

On December 22, 1987, Congress passed Public Law 100-203. This legislation allowed a belated open season until June 30, 1988, for employees who were prevented from switching to FERS on a timely basis for reasons beyond their control.

The FERS Open Enrollment Act of 1987 provides that a FERS open season be conducted from July 1, 1998, through December 31, 1998. Generally, any employee who was covered by the Civil Service Retirement System (CSRS) or by CSRS Offset could have elected to transfer to FERS during the open season. In addition, some employees who were covered by Social Security only may have also elected FERS coverage. The Act required that the open season be conducted in accordance with Section 302 of the Federal Employees Retirement System Act of 1986, the original FERS Act.

B. Employees Eligible to Transfer to FERS

The following employees were eligible to elect FERS during the 1987 Open Season:

1. Employees who were covered under CSRS on June 30, 1987;
2. Certain officials who were subject to Social Security coverage on January 1, 1984, and who elected not to be covered under CSRS, if they continued to hold the same type of position through December 31, 1986. See [Chapter 101](#), *Special Retirement Provisions for Senior Officials*, for more information;
3. Employees who were excluded from CSRS coverage by regulation (for example, term appointments), but were not excluded from FERS coverage and were not automatically covered by FERS on January 1, 1987, because they had at least 5 years of creditable civilian service as of December 31, 1986 (5-year test). (See [Chapter 10](#) for additional information regarding the 5-year test.)

NOTE 1: Reemployed annuitants were eligible to elect FERS coverage as long as the nature of their appointment did not exclude them from coverage by law or regulation.

NOTE 2: Employees who met the criteria in 1, 2, or 3 above and were in a non-duty status (whether or not in a pay status) from June through December 1987, were entitled to elect FERS coverage. Some examples of non-duty status are:

- Employees on extended sick leave;
- Employees in receipt of workers' compensation; Employees on military furlough;
- Employees assigned to State or local governments (only those who chose to continue retirement coverage while on assignment were eligible to make this election while on assignment); or

- Employees detailed to international organizations (an individual who transferred to an international organization was not eligible to transfer to FERS until he or she was reemployed in Federal service).

C. Eligible Employees during the 1998 Open Season

Generally, any active employee who was covered by CSRS or CSRS Offset on January 1, 1998, was eligible to transfer to FERS during the open season, including:

- reemployed annuitants; and
- Employees whose CSRS coverage was due to continuity of service from a normally covered appointment, to one that would normally not be covered, e.g., a temporary or term appointment;
- Employees serving under indefinite, term, and TAPER (Temporary Appointments Pending Establishment of Register);
- Employees in non-duty status on leave without pay (LWOP) or receiving workers' compensation from the Department of Labor;
- Employees who were detailed to international organizations or to State or local governments.

NOTE 1: While the open season opportunity was limited to people who were employees on January 1, 1998, the law creating the open season did not affect the regular opportunity of employees who were reinstated or converted to qualifying appointments after January 1, 1998 for the normal personal 6-month opportunity to elect FERS

Employees who were in a non-duty status had the same eligibility to transfer to FERS during the open season as employees who were in a duty status. Therefore, agencies had the same obligations to them as they had to employees who were in an active status. Employees' elections should have been processed promptly regardless of whether they were in a duty or pay status. For example, an employee who was on extended sick leave because of a terminal illness may have decided that the FERS disability and death benefits are more to his or her advantage than remaining under CSRS.

D. Ineligible Employees

There are some categories of employees that were not eligible to transfer to FERS. This included:

- Non-Federal employees who are covered by CSRS where the legislation covering them refers only to chapter 83 of Title 5, e.g., most employees of the District of Columbia;
- Employees who were serving in temporary appointments covered by Social Security only are not eligible to elect FERS;
- Employees on intermittent appointments other than career or career-conditional;
- Federal employees who were covered by retirement systems other than CSRS;
- Employees who are not eligible for Social Security (principally, non-resident aliens).

Employees who separated to work in international organizations and were still contributing to CSRS were not eligible to transfer to FERS during the open season, but would, (or will), have a personal opportunity to do so upon returning to Federal service.
