



# PAYROLL OFFICE LETTER

U. S. Office of Personnel Management

**Number: P-98-11**

**Date: November 20, 1998**

**Subject: Conner Decision**

This letter is to advise you of required payroll office actions as a consequence of a decision of the United States Court of Appeals in *Conner v. OPM*. As a result of *Conner*, some employees are erroneously covered by the Federal Employees Retirement System (FERS). You may already have received general information about *Conner* under the cover of our Financial Management Letter F-98-05; some of that is repeated here.

In addition, you are strongly encouraged to refer to the Benefits Administration Letter (BAL) 98-114 (dated November 3, 1998). This BAL provides an abundance of detailed guidance concerning the effects of *Conner*. It is available on OPM's web site at [www.opm.gov/asd](http://www.opm.gov/asd) or from your personnel officer.

## EFFECT OF *CONNER*

*Conner* requires a new rule be retroactively applied to all retirement coverage determinations made on or after January 1, 1987:

- Employees who were automatically placed under FERS, despite having completed five years of creditable civilian service before 1987, have been placed in the wrong retirement system.
- Most of these employees should have been placed under CSRS-Offset coverage, with a right to elect FERS. Those employees in non-permanent positions excluded from CSRS coverage should have been placed in Social Security only, with a right to elect FERS.

## EMPLOYEE ELECTIONS

Most employees affected by *Conner* will be afforded an opportunity to:

- ☛ remain in FERS; or
- ☛ have his or her coverage corrected to CSRS Offset

If the employee makes no election, he/she will be deemed to have elected FERS.

### ELECTION OF CSRS OFFSET COVERAGE

If the employee elects to have his or her records corrected to CSRS Offset coverage, payroll offices must:

- ☛ Correct the employee's payroll records to reflect CSRS Offset coverage *retroactively* to the effective date stated on the SF 50. This is the effective date of the appointment or conversion to appointment that placed the employee under FERS erroneously.
- ☛ Make the adjustment to the employee's Thrift Savings Plan account in accordance with the regulations of the Federal Retirement Thrift Investment Board, at 5 CFR 1605.3.
- ☛ If the employee received basic pay that exceeded the maximum taxable wage base for FICA, at any time he/she was covered by FERS, compute the additional agency contributions due for CSRS Offset coverage and collect from the employee.
- ☛ Amend withholdings and contributions reported to OPM via the Retirement and Insurance Transfer System (or, in now rare cases, the hard-copy SF 2812):
  - Report the *actual* amount of FERS deductions and agency contributions since the date the error occurred as a *negative*.
  - Report the *amount* of deductions and agency contributions that *should have been made* for CSRS Offset coverage, since the effective date of the CSRS Offset appointment, as a *positive* amount.
- ☛ Record the amount actually deducted for FERS as a negative on a separate line on the SF 3100; the amount of cumulative deductions should be zero. Void the SF 3100 and establish an SF 2806. The voided SF 3100 should not be sent to OPM until the employee separates. For agencies that maintain manual retirement records, the SF 3100

should be updated and attached to the new SF 2806. The amount that should have been deducted for CSRS coverage must be recorded on the SF 2806, with the amount applicable to each year of service on a separate line.

- ☛ Compute the additional amount due and interest thereon under CSRS rules, if, while under FERS, the employee made a deposit for military service or for nondeduction civilian service performed before the erroneous coverage began. For a FERS military deposit, the employee owes the difference between a CSRS military deposit at 7% and a FERS military deposit at 3%. 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%. Give the employee credit for each FERS deposit payment made during an interest accrual period before adding interest to the unpaid balance. In addition, inform the employee of the corrected amount(s) due, and of his/her entitlement to receive repayment of amounts already paid. If an 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 *Conner* decision. See Attachment 3 for example of partially paid military deposit.

#### ELECTION OF SOCIAL SECURITY ONLY

If an *employee elects to have his or her records corrected to Social Security only*, payroll offices must:

- ☛ Correct the employee's payroll records to reflect Social Security coverage only *retroactively* to the effective date shown on the corrected SF 50. (That is, the effective date of the appointment or conversion to appointment that placed the employee erroneously under FERS rather than Social Security only).
- ☛ Make the adjustments to the employee's Thrift Savings Plan account in accordance with the regulations of the Federal Retirement Thrift Investment Board, at 5 CFR 1605.3.
- ☛ Amend withholdings and contributions reported to OPM via the Retirement and Insurance Transfer System (or, in now rare cases, the hard-copy SF 2812):
  - Report the *actual* amount of FERS deductions and agency contributions since the date the error occurred as a *negative*.
  - Report the *actual amount* of any FERS military deposit as a *negative*. If the employee is not covered by CSRS Offset or FERS, the military deposit is erroneous, because the employee has no retirement coverage.
- ☛ Arrange for the return of all erroneous FERS deductions to the employee.
  - *Withholdings*. Refund erroneous FERS deductions to employee.

- *Service Credit Deposits.* Contact OPM's Retirement Operations Center if the employee made a deposit for his/her nondeduction service or applied to make a service credit payment. OPM will close out the employee's service credit account and refund any service credit payment directly to the employee.
- *FERS Military Deposits.* Refund erroneous FERS military deposits to employee. If a military deposit was made when the employee was at a prior agency, contact OPM. It is OPM that will refund the military deposit to the employee. Contact the Agency Services Division on (202) 606-0788 at OPM for assistance.
- ☛ Void the employee's regular (civilian service retirement deductions) SF 3100. Where applicable, also void the SF 3100 which documents the employee's FERS military deposits.

### ELECTION TO REMAIN IN FERS

If an *employee elects to remain in FERS*, payroll offices must:

- ☛ Post the employee's sick leave balance as of the effective date of deemed FERS election to his or her individual retirement record in the same manner as in other FERS transfer cases where the employee has a CSRS annuity component. (In most cases, the sick leave balance will be the amount of recredited leave, if any).
- ☛ Make the adjustments to the employee's TSP account and submit lost earning records for retroactive agency contributions in accordance with the regulations of the Federal Retirement Thrift Investment Board at 5 CFR 1605.2. Note that FERS transfer employees do not have to wait for the second open season to be eligible for TSP.
- ☛ Compute the additional amount due and interest thereon under CSRS rules, *as modified below*, if the employee made a deposit under FERS rules for military service or nondeduction service performed before the erroneous coverage began.
- ☛ Military deposits. Although the employee has chosen to remain in FERS, he or she may owe additional amounts for a post-1956 military deposit, if the military service will be credited in the CSRS component of the employee's future retirement benefit. This is because under FERS, the deposit is 3% of the military

basic pay, plus interest, versus CSRS, which requires a deposit equal to 7% of the military basic pay, plus interest. If the military service forms part of a CSRS component, the employee owes an additional 4% of military basic pay to complete the post-1956 military deposit. See example in Attachment 3 of a partially paid military deposit.

- 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.
  - 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).
  - If the post-1956 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.
- ☛ Service credit deposits. A 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%.
- If a deposit was fully paid under FERS rules, the employee owes only the additional 5.7% of earnings. No additional interest will be charged, but the payments must be completed before retirement.
  - If deposit was partially paid, interest on the additional 5.7% of earnings will accrue prospectively.
  - If no payments have been made, interest will accrue on the entire deposit under current rules. (See Chapter 21 of the *CSRS and FERS Handbook*).

**NOTE - these interest rules apply *only* in cases where the FERS 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.**

For your convenience, we have enclosed with this letter, historical information about FERS and CSRS Offset withholding and contribution rates in Attachments 1 and 2. These rates are also found in Chapter 30, "Employee Deductions and Agency Contributions" of the *CSRS and FERS Handbook for Personnel and Payroll Offices* along with the employee and normal cost percentages for special category employees.

## INQUIRIES

The effects of *Conner* are complex and we encourage you discuss the specifics of the rule changes with your

personnel counterparts. If you or your staff have any questions on revised reporting requirements, please contact us on (202) 606-0606, or send an email, [finance@opm.gov](mailto:finance@opm.gov).

A handwritten signature in black ink, appearing to read "Robert A. Yuran". The signature is fluid and cursive, with a horizontal line at the end.

Robert A. Yuran, Chief  
Financial Policy Staff  
Retirement and Insurance Service

Attachments (3)

FERS WITHHOLDING AND CONTRIBUTION RATES  
("Regular" Employees)

Date	FERS Normal Cost %	FERS Regular Employee Withholding Rate %	FERS Agency Contribution Rate %	Payroll Office Letter #
01/01/87	16.10	1.30	14.80	86-14
10/01/87	13.80	1.30	12.50	87-11
01/01/88	13.80	.94	12.86	87-18
01/01/90	13.8	.80	13.0	89-11
10/01/91	13.7	.80	12.9	91-13
10/01/94	12.2	.80	11.4	94-4
10/01/97	11.5	.80	10.7	97-7

CSRS OFFSET WITHHOLDING AND CONTRIBUTION RATES  
("Regular" Employees)

Year	CSRS Regular Employee W/H Rate % (Note 1)	Social Security Contribution & Benefit Base	CSRS Agency Contribution Rate % (Notes 2 & 3)
1987	1.30	\$43,800	7.0
1988	.94	45,000	7.0
1989	.94	48,000	7.0
1990	.80	51,300	7.0
1991	.80	53,400	7.0
1992	.80	55,500	7.0
1993	.80	57,600	7.0
1994	.80	60,600	7.0
1995	.80	61,200	7.0
1996	.80	62,700	7.0
1997	.80	65,400	7.0, 8.51
1998	.80	68,400	8.51

Notes:

- 1) CSRS-offset employees, whose year-to-date basic pay exceeds the Social Security contribution and benefit base, are subject to the full CSRS employee withholding rate (7% for regular employees).
- 2) Unlike FERS, the employing agency contribution rate for CSRS-offset employees is set by statute and does not change as a result of changes in the OASDI deduction rate.
- 3) CSRS agency contribution increased to 8.51% on the first pay period beginning on or after 10/1/97 under P.L. 105-33, "The Balanced Budget Act of 1997." (See Payroll Office Number 97-10 for additional information).

## EXAMPLE -- PARTIALLY PAID MILITARY DEPOSIT

Military Basic Pay:	\$6430.00		\$6430.00
Multiplied by 3%	<u>X .03</u>	Multiplied by 7%	<u>X .07</u>
	\$ 192.90		\$ 450.10
FERS Deposit:	\$ 193.00	CSRS Deposit:	\$ 450.00

Additional Amount Due: \$257.00 (\$450 - \$193.00)

Employee has been making payments, but deposit is not paid in full.  
Initial IAD: January 1, 1990

On January 1, 1999, the employee's original post-1956 deposit amount increases by interest accrued from January 1, 1998 through December 31, 1998. After increasing the original deposit by interest, add the additional principal due (\$257.00) to the unpaid post-1956 deposit balance. Interest accrued on the additional principal (\$257.00) will not be posted until the January 1, 2000 IAD anniversary.