



Benefits Administration Letter

Number: 04-108

Date: December 22, 2004

Subject: Making Eligibility Determinations Under The Federal Erroneous Retirement Coverage Correction Act (FERCCA)

1. Introduction

The Federal Erroneous Retirement Coverage Correction Act (FERCCA) provides for relief for employees, former employees, annuitants and their survivors with a retirement coverage error that existed for 3 years or more of service after December 31, 1986. The Office of Personnel Management (OPM) set up an on-line database for these individuals to register for FERCCA relief. OPM is reviewing retirement coverage records and making eligibility determinations for those registered in the database.

The FERCCA on-line database has been closed since January 1, 2003. However, we continued to accept registrations of newly discovered FERCCA errors from the agency headquarters benefits officers and we continued to make eligibility determinations through December 31, 2003. As of January 1, 2004, OPM no longer accepts new registrations for the FERCCA database. Agency personnel and human resources offices are now required to process FERCCA eligibility determinations for their employees and former employees, who were not registered with OPM by December 31, 2003. This Benefits Administration Letter (BAL) provides instructions for making FERCCA eligibility determinations.

2. Time Limits

- FERCCA eligibility determinations must be made and the employee notified of the decision within 60 days of discovery of a potential FERCCA error.
- After you complete your review and issue a written decision, you must notify OPM within 30 days if you find that the person is eligible under FERCCA. Notification is required for adjudication of out-of-pocket (OOP) expense reimbursement claims and to maintain records on FERCCA error corrections.
- Retirement coverage corrections of errors which do not provide an election must be completed by the agency personnel/human resources office within 30 days

<i>Civil Service Retirement System</i>	<i>Federal Employees' Group Life Insurance Program</i>	<i>Federal Employees Health Benefits Program</i>	<i>Federal Employees Retirement System</i>	<i>Long Term Care Insurance Program</i>
--	--	--	--	---

after the date of notification to the employee of the error. Agency payroll offices must complete corrective actions within 90 days of receipt of corrections from the personnel/human resources office.

3. FERCCA Eligibility Decisions

A FERCCA eligibility determination is simply a finding that an employee either did or did not have a retirement coverage error (or errors) that lasted for more than 3 years of service after December 31, 1986. When an employee claims that they are or have been in the wrong retirement plan or you discover that an employee may be in the wrong retirement plan, you must review their personnel records and make an eligibility determination under FERCCA. FERCCA eligibility determinations must be made and the employee notified of the decision within 60 days of discovery of a potential FERCCA error.

Attachment 1 – the FERCCA Eligibility Determination Worksheet explains the eligibility determination process and contains tables to assist you in making the determination. A sample case and completed worksheet is also included. As in making any retirement coverage determination, making coverage determinations under FERCCA can be complicated.

To determine if an employee is in the correct retirement plan, you must refer to the CSRS & FERS Handbook for Personnel and Payroll Offices (www.opm.gov/asd/htm/HOD.htm) for information about making retirement coverage determinations. Chapter 10 contains the rules for determining whether an employee is covered by the Federal Employees Retirement System (FERS) or the Civil Service Retirement System (CSRS). Chapter 10 also contains rules to determine whether an employee with CSRS coverage has regular CSRS coverage or CSRS Offset coverage. Chapter 11 explains the circumstances under which employees may elect FERS coverage. Chapter 12 explains special coverage rules. Chapter 100 explains the treatment of reemployed annuitants and Chapter 101 details the special provisions for senior officials.

We have found that the misapplication of the Social Security Amendments of 1983 and the misapplication of the 5-Year Test are the most common causes of retirement coverage errors.

- The Social Security Amendments of 1983 required all newly hired Federal employees, most employees rehired after a break in service of more than 365 days, the President, Vice President, Members of Congress, Federal judges, and certain other senior Federal officials to be subject to Social Security. Special care should be taken to make sure determinations of an employee's Social Security coverage after 1983 were made correctly. Chapter 10 of the Handbook contains the rules for FICA coverage. The FERCCA Eligibility Determination Worksheet Part 2a - FICA Coverage Determination Table can assist you with these determinations.
- The 5-Year Test is one of the tests to be applied before determining that an employee being rehired, transferred, or converted is automatically subject to

FERS. It applies to all retirement coverage determinations made on or after January 1, 1987, where the employee is subject to Social Security. Chapter 10 of the Handbook contains the rules for the 5-Year Test. The FERCCA Eligibility Determination Worksheet Part 2b – 5-Year Test Table can assist you with these determinations.

There are also numerous groups of employees who have special coverage rules which are detailed in the Handbook and may require you to seek assistance to properly handle.

These employees are:

- Senior Officials – see Chapters 10 and Chapter 101.
- Reemployed Annuitants – see Chapter 100.
- Legislative employees – see Chapter 10.
- DC Government Employee – see Chapter 12
- Employees with Service Under Other Federal Retirement Systems – see Chapter 12
- Conner v. OPM employees – see Chapter 10 and Benefits Administration Letters (BALs) 00-108 and 98-114.

Chapter 12 covers numerous other groups of employees with special coverage rules.

When making coverage determinations involving special coverage situations or any time you are unsure of the decision, you should contact your headquarters-level Retirement Counselor for assistance. A listing of all benefits officers is available at www.opm.gov/asd/htm/rc.htm. If you are a headquarters level benefits officer and need assistance, contact your liaison in the Benefits Officers Training and Development Group.

If you find that the employee is not eligible for relief under FERCCA and you discovered the potential error or initiated the review, employee notification is not required and no further action is necessary. If the employee initiated the error claim, you must issue a written decision and provide the employee with appeal rights to the Merit Systems Protection Board (MSPB). If you find the employee is eligible for relief under FERCCA, you must issue a written decision and you must notify OPM within 30 days. Attachment 2 provides sample letters for notifying employees of FERCCA eligibility decisions and providing MSPB appeal rights.

The following information must be provided to OPM for employees found eligible under FERCCA:

- employee's name, address and social security number;
- type of error, e.g. erroneously in FERS should be CSRS-Offset; and,
- name and contact information for an agency contact person.

In addition, a copy of the FERCCA Eligibility Determination Worksheet and a copy of the written decision of eligibility under FERCCA must be provided. The identification

information, a copy of the determination worksheet and a copy of the decision letter must be mailed within 30 days of the date of the decision to:

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

You may also fax the information and letter to the attention of Joanne Herold 202-606-1163. She may also be reached at 202-606-8182 or Joanne.Herold@opm.gov.

4. Actions To Take After Notifying Employee of FERCCA Eligibility

After notifying the employee of their eligibility for relief under FERCCA, you must take certain actions on that claim. The action to be taken depends on the type of error that you determine exists.

A. Errors That Do Not Provide An Election

The FERCCA legislation and OPM regulations do not give every individual who had a retirement coverage error a choice about which retirement system to be under. There are five types of retirement coverage errors that must be corrected. The following chart summarizes the types of errors that do not trigger an election:

The employee is in:	And the employee belongs in:	Employee’s coverage must be corrected to:
CSRS	CSRS Offset	CSRS Offset
CSRS Offset	CSRS	CSRS
Social Security Only	CSRS	CSRS
Social Security Only	CSRS Offset	CSRS Offset
Social Security Only	FERS	FERS

If the employee has a FERCCA error that does not provide an election under FERCCA, you must process the correction actions following the guidance in [BAL 03-104](#) within 30 days of notifying the employee of your decision. Agency payroll offices must complete corrective actions within 90 days of receipt of corrections from the personnel/human resources office.

B. Errors That Provide An Election

There are seven types of retirement coverage errors that provide an election under FERCCA. The following chart summarizes the types of errors that provide an election:

The employee is in:	And the employee belongs in:	Employee can elect between:
CSRS	FERS	CSRS Offset and FERS
CSRS Offset	FERS	CSRS Offset and FERS
CSRS	Social Security Only	CSRS Offset and Social

		Security Only
CSRS Offset	Social Security Only	CSRS Offset and Social Security Only
FERS	CSRS	CSRS and FERS
FERS	CSRS Offset	CSRS Offset and FERS
FERS	Social Security Only	FERS and Social Security Only

The handling of these errors depends on when the eligibility determination is made.

Employees who receive their eligibility determinations prior to August 1, 2004

Once you make an eligibility determination and issue a decision to the employee, you must notify OPM within 30 days if you find that the person is eligible under FERCCA whether they have an election opportunity or not, i.e., a choice of coverage. OPM will send election packages and provide benefits counseling for these employees. Once an employee has made an election, OPM will notify the agency to make the corrections.

Employees who receive their eligibility determinations on or after August 1, 2004

The employing agency will be responsible for preparing and issuing election packages, counseling, and making the actual corrections. A future BAL will provide guidance on preparing election packages and providing counseling to employees.

The employing agency should still notify OPM within 30 days when it makes a determination that the employee is eligible under FERCCA even though OPM will not be responsible for providing the employee with the election package. Notification is required for adjudication of out-of-pocket (OOP) expense reimbursement claims and to maintain records on FERCCA error corrections.

C. Erroneous Coverage That Lasted For Less Than 3 Years After December 31, 1986.

FERCCA provides relief for errors that last for at least 3 years after December 31, 1986. Agencies are responsible for correcting coverage errors that last for less than 3 years of service after December 31, 1986. In determining if an error lasted for less than 3 years, the controlling factor is the length of service during which the error actually existed after December 31, 1986.

- [BAL 02-103](#) provides detailed instructions for making corrections of erroneous FERS coverage that lasted for less than 3 years of service after December 31, 1986.
- If the error is not one where the employee is in FERS by mistake and can elect to stay in FERS, and lasted for less than 3 years of service after December 31, 1986, then the error should be corrected under existing procedures.

5. Out of Pocket (OOP) Expense Claims

Employees who have a qualifying FERCCA error are eligible to claim OOP expenses, whether or not the error provides an election. At the time the agency makes the FERCCA eligibility decision, they must notify the employee that they may be eligible for reimbursement of OOP expenses. OPM is responsible for making eligibility determinations for OOP expense reimbursement claims. Attachment 3 contains the FERCCA Out-of-Pocket Guidelines, which explain how an employee makes a claim. You can view the OOP guidelines on-line at <http://www.opm.gov/benefits/correction/out-of-pocket.asp>.

OPM will continue to make eligibility decisions and process claims for OOP expenses. OOP claims should be sent to:

US Office of Personnel Management
OOP Claims, Room 4H28
1900 E Street NW
Washington DC 20415

You may also contact Ibsen Morales at 202-606-0644 or Ibsen.Morales@opm.gov for information on OOP claims.

6. Retiring Employees

If you discover a FERCCA error for an employee who is retiring, you should make every attempt to make the FERCCA eligibility decision and notify the employee of that decision prior to separating him or her for retirement.

If the FERCCA error does not provide an election opportunity or if it is a Deemed FERS error less than 3 years, you should make every attempt to correct the error before the employee retires so that the employee is separated under the correct retirement plan.

If the employee retires before the corrections are completed, you should complete the corrections before sending OPM the retirement records. You should alert the retiring employee that there may be delays in processing his or her retirement claim. You should not unduly delay sending us the retirement package while you correct the employee's retirement records.

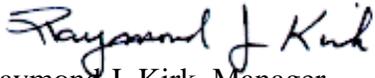
If the FERCCA error provides an election opportunity and the employee retired before August 1, 2004, you must notify OPM of the error and separate the employee under the present retirement plan. You should also annotate the employee's retirement records and supporting documentation to note their entitlement to FERCCA and relief and attach a copy of the eligibility letter. After you notify OPM of the FERCCA error, OPM will provide the individual with an election package.

If the FERCCA error provides an election opportunity and the employee will be retiring after August 1, 2004, you are responsible for preparing the election package for the

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

7. Summary

We recognize that FERCCA and other retirement error corrections are very complicated. If you need help determining whether an employee is in the correct retirement system or if you need assistance in providing a FERCCA eligibility decision or taking corrective actions, contact your headquarters level benefits officer. A listing of all benefits officers is available at www.opm.gov/asd/htm/rc.htm. If you are a headquarters level benefits officer and need assistance, contact your liaison in the Benefits Officers Training and Development Group.



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

Attachments:

- Attachment 1 - FERCCA Determination Eligibility Worksheet
- Attachment 2 - Sample Letters
- Attachment 3 – FERCCA Out-of-Pocket Guidelines

**BAL Making Eligibility Determinations Under The
Federal Erroneous Retirement Coverage Correction
Act (FERCCA)**

Attachment 1

**FERCCA Eligibility Determination
Worksheet**

Table of Contents

Instructions.....Page 2

Part 1 - FERCCA Service History Worksheet (Instructions).....Page 2

Part 1 - FERCCA Service History Worksheet (Form).....Page 3

Part 2A - FICA Coverage Determination Table.....Page 4

Part 2B –5-Year Test TablePage 6

Part 3 – FERCCA Eligibility Determination Table.....Page 7

Part 4 – Basis For Decision.....Page 9

Part 5 - Decision Certification.....Page 9

Attachment 1A – Common Retirement Plans and Corresponding Codes.....Page 10

Attachment 1B – FERCCA Determination Eligibility Worksheet Sample Case....Page 11

FERCCA ELIGIBILITY DETERMINATION WORKSHEET

Instructions: Use this worksheet to assist you in determining if there is a retirement coverage error for an employee and in determining what actions you should take under FERCCA.

Part 1 - FERCCA Service History Worksheet

Review the Notification of Personnel Action forms (SF 50 or equivalent) or other documentation of creditable civilian employment in the employee's Official Personnel Folder (OPF). You may need to look for service in places other than the employee's OPF. Some service may not be documented in the OPF but may be documented on a SF 171 or resume or some other source. To help you complete part of the service history worksheet, you may need to review retirement coverage rules in Chapters 10, 11, 12, 100, and 101 of the CSRS and FERS Handbook for Personnel and Payroll Offices. You may also find the FICA Coverage Determination Table (Part 2a) and the 5-Year Test Table (Part 2b) helpful in completing this worksheet. If you need additional help in determining whether an employee is in the correct retirement system, contact your headquarters level benefits officer. A listing of all benefits officers is available at www.opm.gov/asd/htm/rc.htm. If you are a headquarters level benefits officer and need assistance with a coverage determination, contact your liaison in the Benefits Officers Training and Development Group.

1. Enter the employee's identifying information (name, date of birth, Social Security Number)
2. List each period of service the employee performed. For each period of service performed, enter:
 - the name of the Agency where the service was performed
 - the type of appointment
 - the beginning and ending dates of each period of service
 - the length of service for that period of service in years, months, and days (convert time worked for WAE/intermittent tours)
 - the retirement code and coverage (see Attachment 1a - Common Retirement Plans and Corresponding Codes)

In addition, indicate if the coverage was correct and indicate if the employee elected FERS. If the employee elected FERS, you need to identify if the FERS election was a proper election made when the employee actually was permitted to make a FERS election.

List a period of service as a separate entry if the retirement coverage changed even if there is no break in service. There needs to be a separate entry every time the appointment changes (even if there is no break in service). For appointments that span 1/1/87, split that period of service into two separate entries with the first entry ending on 12/31/86 and the second entry beginning on 1/1/87.

3. Detail any notable information in the Comments section, such as if a deemed FERS election was made, if an improper FERS election was made, or if a coverage error was corrected, among other things.

FERCCA Service History Worksheet (Use additional sheets if necessary)

Employee Identifying Information

Employee's Name	Date of Birth	Social Security Number:
------------------------	----------------------	--------------------------------

Employing Agency	Type of Appointment	Beginning and Ending Dates	Length of Service (yrs-mos-dys)	Retirement Coverage and Code	Elect FERS (yes/no)	Coverage Correct (yes/no)

Comments:

PART 2A - FICA COVERAGE DETERMINATION TABLE

Use this table to assist you in making coverage determinations when you need to determine if an executive or judicial branch employee is subject to mandatory FICA coverage on and after January 1, 1984. Proceed as directed in the action blocks, until you determine if the employee is subject to mandatory FICA coverage.

This table does not capture the special rules that apply to legislative branch employees. Legislative employees can be subject to FICA coverage after 1983 even though they may not have had a break in Federal service or CSRS coverage of more than 365 days. If you have questions concerning a coverage determination made for a former legislative employee, you can contact the appropriate legislative component.

Step	Decision Factor	If yes, then:	If No, then:
1	Does employee qualify as a senior official? (See CSRS FERS Handbook section 10A1.3-6C and Chapter 101)	Subject to mandatory FICA.	Go to Step 2.
2	Was employee first hired as a Federal employee on or after January 1, 1984? *	Subject to mandatory FICA.	Go to Step 3.
3	Was employee first hired in a position covered by Federal retirement coverage on or after January 1, 1984?	Subject to mandatory FICA.	Go to Step 4.
4	Is employee receiving an annuity from a retirement system for Federal employees where they were excluded from FICA? **	Not subject to mandatory FICA.	Go to Step 5.
5	Did employee have a break in Federal service of at least 366 days that ended after 12-31-83? ***	Subject to mandatory FICA.	Go to Step 6.
6	Did employee have a break in Federal CSRS coverage (or other retirement coverage excluded from FICA for Federal employees) of at least 366 days that ended after December 31, 1983? ***	Subject to mandatory FICA.	Not subject to mandatory FICA

* DC Government employment subject to CSRS is not considered **Federal** employment for FICA purposes (see Handbook Section 12A4.1-1).

** This does not apply when reemployment terminates the annuity. This includes retirees from other Federal retirement systems such as the Foreign Service Retirement and Disability System, Secret Service and Park Policemen receiving annuities from the DC Police and Firemen Retirement System, among others (see Handbook Section 12A5.1-6).

*** DC Government employment covered under CSRS is not considered **Federal** employment for FICA purposes (see Handbook Section 12A4.1-1) and is therefore considered a separation in service for this purpose.

When a former employee who was receiving workers' compensation benefits under FECA, the Federal Employees Compensation Act, returns to duty, the time he or she was in receipt of FECA benefits is considered a leave of absence, not a separation from employment.

Service with the Armed Forces of the United States when the employee returns to his or her former position after exercising restoration rights, service under another retirement system for Federal employees, service with an international organization, and service with the American Institute in Taiwan do not count toward a 365-day break in service.

PART 2B - 5-YEAR TEST TABLE

Use this table to assist you in making coverage determinations when you need to determine if an employee meets the 5-Year Test. Proceed as directed in the action blocks, until you determine if the employee meets the 5-Year Test. Only apply the 5-year test for a period of service that begins on/after January 1, 1987.

Step	Decision Factor	If yes, then:	If No, then:
1	Does employee have 5 years of creditable or potentially creditable civilian service as of 12-31-1986?	Meets 5-year test	Go to Step 2.
2	Does employee have a break in service of more than 3 days ending after 12-31-86?	Go to step 3	Does not meet 5-year test
3	Does employee have 5 years of creditable or potentially creditable civilian service on the last day before his/her break in service?	Go to step 4	Does not meet 5-year test
4	Does employee have at least 1 day of coverage under CSRS or the Foreign Service Retirement and Disability System (FSRDS), or, for 5-year test determinations made on or after 12/12/99 , does employee have at least 1 day of coverage under CSRS, FSRDS, or the retirement benefit structure for Federal Reserve Board employees appointed prior to 1/1/84 , as of the last day before his/her break in service?	Meets 5-year test	Does not meet 5-year test

PART 3 – FERCCA ELIGIBILITY DETERMINATION

Once you have completed the **FERCCA Service History Worksheet** and have determined that an error(s) in retirement coverage exists, complete this part to determine if the employee is eligible for relief under FERCCA. Enter the period of service in which the coverage error occurred, the erroneous retirement coverage the employee was under, the correct coverage the employee should have been under, the date of the error, and if applicable, the date the error was corrected. Then, compute the total amount of time the employee worked after December 31, 1986, under the wrong retirement coverage. After you’ve made an entry for all periods of service with a coverage error, compute the total amount of time the employee worked under the wrong retirement system.

Period of Service (Beginning date/ending date)	Retirement Coverage was:	Retirement coverage should have been:	Date of error	Date error corrected, if applicable	Total length of error after 12/31/1986 (yrs-mos-days)
Total:					

After computing the total amount of time the employee worked under the wrong retirement system, complete the FERCCA eligibility determination table below. Proceed as directed in the action blocks until you reach an eligibility decision. Record your decision (employee is either eligible, partially eligible, or ineligible for FERCCA relief) in the block provided.

Step	Decision Factor	If yes, then:	If No, then:
1	Does employee have an error which lasted for more than 6 months?	Go to Step 2	Ineligible
2	Does employee have an error which lasted for more than 3 years after 12/31/86?	Go to step 4	Go to step 3
3	Was employee placed in FERS coverage by mistake during a time when he or she would have had a FERS election opportunity? *	See BAL 02-103	Ineligible
4.	Was the employee put in FERS by mistake when he or she should have been in CSRS, CSRS Offset, or FICA only?	Go to step 5	Eligible
5	Did employee make a valid FERS election or not respond within 60 days in response to a deemed FERS election opportunity? **	Partially Eligible	Eligible

* See BAL 02-103 - Retirement Coverage Error Correction: Erroneous FERS Coverage in Effect for Less than 3 Years for further instructions.

** A valid FERS election is one made during a FERS Open Season or in response to a deemed FERS election opportunity. In a Conner vs. OPM cases (see BAL 97-107 dated 9/25/97, BAL 98-114 dated 11/3/98 and BAL 00-108 dated 6/22/00 for information on Conner vs. OPM), an election is only valid if made after June, 2000.

Employee is: _____ for FERCCA relief. (*Eligible/partially eligible/ineligible*)

Ineligible:

Employee is ineligible for any relief under FERCCA. If the employee initiated the FERCCA review, send a decision letter within 60 days explaining that the employee is ineligible under FERCCA and the basis for your decision (see Attachment 2 - Sample Letter 1). Be sure to include an MSPB appeal package (<http://www.mspb.gov/foia/forms-pubs/applform.html>).

Eligible:

Review **Parts 3a** and **3b** in the main part of this BAL to determine if the error provides an election opportunity under FERCCA, and follow step 1 or 2 below, as appropriate.

- 1. Errors that provide an election.** Employee is eligible under FERCCA to make a coverage election and may be eligible for reimbursement of OOP expenses. Send a decision letter within 60 days explaining that the employee is eligible to make a coverage election, may be eligible for reimbursement of OOP expenses, and explain the basis for your decision (see Attachment 2- Sample Letter 2) Also send an OOP eligibility letter (see Attachment 2 – Sample Letter 5) and include the FERCCA OOP Guidelines (see Attachment 3).
- 2. Errors that do not provide an election.** Employee is eligible under FERCCA but that the error does not provide an election opportunity. Employee may be eligible for reimbursement of OOP expenses. Send a decision letter within 60 days explaining that the employee’s coverage is being corrected, they may be eligible for reimbursement of OOP expenses, and explain the basis for your decision (see Attachment 2 - Sample Letter 3). Also send an OOP eligibility letter (see Attachment 2 – Sample Letter 5) and include the FERCCA OOP Guidelines (see Attachment 3).

Partially Eligible:

Employee is ineligible to make a coverage election but may be eligible for reimbursement of OOP expenses. Send decision letter explaining that the employee is ineligible to make a coverage election but may be eligible to claim OOP expenses and explain the basis for your decision (see Attachment 2 - Sample Letter 4). Also send an OOP eligibility letter (see Attachment 2 – Sample Letter 5 and include the FERCCA OOP Guidelines (see Attachment 3).

PART 4 - BASIS FOR DECISION:

Write a brief narrative of the basis for your decision.

PART 5 – DECISION CERTIFICATION

Prepared By

Date

Title

Agency

ATTACHMENT 1a

COMMON RETIREMENT PLANS AND CORRESPONDING CODES

CODE	NAME/EXPLANATION	COMMENTS
1	Civil Service Retirement System (CSRS)	
2	Social Security System (FICA)	
4	None	
6	Civil Service Retirement System—Special (CSRS—Special)	For law enforcement officers and firefighters.
C	FICA and CSRS (Partial)	CSRS Offset. Full deductions are withheld for FICA, and partial deductions are withheld for CSRS.
E	FICA and CSRS—Special (Partial)	CSRS Offset for law enforcement officers and firefighters. Full deductions are withheld for FICA, and partial deductions are withheld for CSRS—Special.
K	Federal Employees’ Retirement System (FERS) and FICA	
L	FERS and FICA—Air Traffic Controllers	
M	FERS and FICA—Special	For law enforcement officers and firefighters.
N	FERS and FICA—Reserve Technicians	
R	FICA and CSRS (Full)	Full deductions are withheld for FICA, and full deductions are withheld for CSRS.

Reference: The Guide to Personnel Data Standards, Update 11, 3/00

ATTACHMENT 1b

FERCCA ELIGIBILITY DETERMINATION WORKSHEET SAMPLE CASE

Employee name: Bob White
Date of Birth: 07/01/55
SSN: 123-45-6789

Service History:

<u>Effective Date</u>	<u>Action</u>	<u>Agency</u>	<u>Coverage</u>
10/1/78	Temp. Appt.	OPM	FICA
07/1/80	Conv. Car.Cond.	OPM	CSRS
11/30/80	Resignation	OPM	CSRS
09/01/83	Temp. Appt.	Army	FICA
07/01/84	Conv. Car. Cond.	Army	CSRS&FICA
06/30/89	RIF	Army	CSRS&FICA
10/1/92	Term Appt. NTE 9/30/94	GSA	FERS
10/1/94	Conv. Car. Cond.	GSA	FERS

FERCCA Service History Worksheet (Use additional sheets if necessary)

Employee Identifying Information

Employee's Name Bob White	Date of Birth 07/01/55	Social Security Number: 123-45-6789
--	---	--

Employing Agency	Type of Appointment	Beginning and Ending Dates	Length of Service (yrs-mos-dys)	Retirement Coverage and Code	Elect FERS (yes/no)	Coverage Correct (yes/no)
OPM	Temp. Appt	10/1/78 – 6/30/80	1 y – 9 m – 0 d	FICA	N	Y
OPM	Conv. Car. Cond.	7/01/80 – 11/30/80	0 y – 5m – 0 d	CSRS	N	Y
Army	Temp. Appt.	9/01/83 – 6/30/84	0 y – 10 m – 0 d	FICA	N	Y
Army	Conv. Car. Cond.	7/1/84 – 12/31/86	2 y – 6 m – 0 d	CSRS Interim	N	Y
Army	Conv. Car. Cond.	1/01/87 – 6/30/89	2 y – 6m – 0d	CSRS Offset	N	Y
GSA	Term Appt. NTE 9/30/94	10/1/92 – 9/30/94	2 y – 0 m – 0 d	FERS	N	N
GSA	Conv. Car. Cond.	10/1/94 – 10/2/04	10 y – 0 m – 2 d	FERS	N	N

Comments: Employee was put in FERS by mistake on 10/1/92. There is no indication in his OPF that he was ever given an opportunity to elect to keep his FERS coverage or have his coverage corrected to CSRS Offset.

PART 2A - FICA COVERAGE DETERMINATION TABLE

Use this table to assist you in making coverage determinations when you need to determine if an employee is subject to mandatory FICA coverage on and after January 1, 1984. Proceed as directed in the action blocks, until you determine if the employee is subject to mandatory FICA coverage.

Step	Decision Factor	If yes, then:	If No, then:
1	Does employee qualify as a senior official? (See CSRS FERS Handbook section 10A1.3-6C and Chapter 101)	Subject to mandatory FICA	Go to Step 2.
2	Was employee first hired as a Federal employee on or after January 1, 1984? *	Subject to mandatory FICA.	Go to Step 3.
3	Was employee first hired in a position covered by Federal retirement coverage on or after January 1, 1984?	Subject to mandatory FICA.	Go to Step 4.
4	Is employee receiving an annuity from a retirement system for Federal employees where they were excluded from FICA? **	Not subject to mandatory FICA.	Go to Step 5.
5	Did employee have a break in Federal service of at least 366 days that ended after 12-31-83? ***	Subject to mandatory FICA.	Go to Step 6.
6	Did employee have a break in Federal CSRS coverage (or other retirement coverage excluded from FICA for Federal employees) of at least 366 days that ended after December 31, 1983? ***	Subject to mandatory FICA.	Not subject to mandatory FICA

* DC Government employment subject to CSRS is not considered **Federal** employment for FICA purposes (see Handbook Section 12A4.1-1).

** This does not apply when reemployment terminates the annuity. This includes retirees from other Federal retirement systems such as the Foreign Service Retirement and Disability System, Secret Service and Park Policemen receiving annuities from the DC Police and Firemen Retirement System, among others (see Handbook Section 12A5.1-6).

*** DC Government employment covered under CSRS is not considered **Federal** employment for FICA purposes (see Handbook Section 12A4.1-1) and is therefore considered a separation in service for this purpose.

When a former employee who was receiving workers' compensation benefits under FECA, the Federal Employees Compensation Act, returns to duty, the time he or she was in receipt of FECA benefits is considered a leave of absence, not a separation from employment.

Service with the Armed Forces of the United States when the employee returns to his or her former position after exercising restoration rights, service under another retirement system for Federal employees, service with an international organization, and service with the American Institute in Taiwan do not count toward a 365-day break in service.

Special Note: The rules for Legislative branch employees are different. A break in covered service (even if less than 1 year) occurring after December 31, 1983, while in the Legislative branch, or a refund of CSRS deductions that has been received after December 31, 1983, breaks continuity of service for Social Security determination purposes. The Legislative employee must be covered by FICA.

These exceptions apply to service in the Legislative branch only. The general rules apply when an employee leaves the Legislative branch and is later employed in the executive branch.

For Bob White, the Social Security coverage determination should have been applied on 7/1/84 when he converted to an appointment not excluded from CSRS. Since he was found to be subject to automatic Social Security coverage on 7/1/84, he had to be subject to automatic Social Security coverage during the rest of his career.

PART 2B - 5-YEAR TEST TABLE

Use this table to assist you in making coverage determinations when you need to determine if an employee meets the 5-Year Test. Proceed as directed in the action blocks, until you determine if the employee meets the 5-Year Test. Only apply the 5-year test for a period of service that begins on/after January 1, 1987.

Step	Decision Factor	If yes, then:	If No, then:
1	Does employee have 5 years of creditable or potentially creditable civilian service as of 12-31-1986?	Meets 5-year test	Go to Step 2.
2	Does employee have a break in service ending after 12-31-86?	Go to step 3	Does not meet 5-year test
3	Does employee have 5 years of creditable or potentially creditable civilian service on the last day before his/her break in service?	Go to step 4	Does not meet 5-year test
4	Does employee have at least 1 day of coverage under CSRS or the Foreign Service Retirement and Disability System (FSRDS), or, for 5-year test determinations made on or after 12/12/99 , does employee have at least 1 day of coverage under CSRS, FSRDS, or the retirement benefit structure for Federal Reserve Board employees appointed prior to 1/1/84 , as of the last day before his/her break in service?	Meets 5-year test	Does not meet 5-year test

For Bob White, apply the 5-year test on 1/1/1987 to determine he is excluded from automatic FERS coverage on 1/1/87. Since he did not elect FERS coverage in the 1987 FERS Open Season, he should not have been put in FERS in 1992. The correct coverage should have been FICA-only with an opportunity to elect FERS.

PART 3 – FERCCA ELIGIBILITY DETERMINATION

Once you have completed the **FERCCA Service History Worksheet** and have determined that an error(s) in retirement coverage exists, complete this part to determine if the employee is eligible for relief under FERCCA. Enter the period of service in which the coverage error occurred, the erroneous retirement coverage the employee was under, the correct coverage the employee should have been under, the date of the error, and if applicable, the date the error was corrected. Then, compute the total amount of time the employee worked after December 31, 1986, under the wrong retirement coverage. After you’ve made an entry for all periods of service with a coverage error, compute the total amount of time the employee worked under the wrong retirement system.

Period of Service (Beginning date/ending date)	Retirement Coverage was:	Retirement coverage should have been:	Date of error	Date error corrected, if applicable	Total length of error after 12/31/1986 (yrs-mos-days)
10/1/92 – 9/30/94	FERS	FICA	10/1/92	n/a	2 y – 0 m – 0 d
10/1/94 – 10/2/04	FERS	CSRS Offset	10/1/94	n/a	10 y – 0 m – 2 d
Total:					12 y – 0 m – 2 d

After computing the total amount of time the employee worked under the wrong retirement system, complete the FERCCA eligibility determination table below. Proceed as directed in the action blocks until you reach an eligibility decision. Record your decision (employee is either eligible, partially eligible, or ineligible for FERCCA relief) in the block provided.

Step	Decision Factor	If yes, then:	If No, then:
1	Does employee have an error which lasted for more than 6 months?	Go to Step 2	Ineligible
2	Does employee have an error which lasted for more than 3 years after 12/31/86?	Go to step 4	Go to step 3
3	Was employee placed in FERS coverage by mistake during a time when he or she would have had a FERS election opportunity? *	See BAL 02-103	Ineligible
4.	Was the employee put in FERS by mistake when he or she should have been in CSRS, CSRS Offset, or FICA only?	Go to step 5	Eligible
5	Did employee make a valid FERS election or not respond within 60 days in response to a deemed FERS election opportunity? **	Partially Eligible	Eligible

* See BAL 02-103 - Retirement Coverage Error Correction: Erroneous FERS Coverage in Effect for Less than 3 Years for further instructions.

** A valid FERS election is one made during a FERS Open Season or in response to a deemed FERS election opportunity. In a Conner vs. OPM cases (see BAL 97-107 dated 9/25/97, BAL 98-114 dated 11/3/98 and BAL 00-108 dated 6/22/00 for information on Conner vs. OPM), an election is only valid if made after June, 2000.

Employee is: Eligible for FERCCA relief. (*Eligible/partially eligible/ineligible*)

3. Employee is eligible under FERCCA to make a coverage election and may be eligible for reimbursement of OOP expenses. Send a decision letter within 60 days explaining that the employee is eligible to make a coverage election, may be eligible for reimbursement of OOP expenses, and explain the basis for your decision (see Attachment 2- Sample Letter 2) Also send an OOP eligibility letter (see Attachment 2 – Sample Letter 5) and include the FERCCA OOP Guidelines (see Attachment 3).
4. Notify OPM of error within 30 days.
5. OPM will send election package.

For Bob White, his error lasted for more than 3 years of service after 12/31/86 and although he was put in FERS by mistake he was never given a deemed FERS opportunity. Therefore, he is eligible under FERCCA.

BAL Making Eligibility Determinations Under The Federal Erroneous Retirement Coverage Correction Act (FERCCA)

Attachment 2

FERCCA Eligibility Sample Letters

This attachment contains 5 sample letters for notifying employees of their eligibility for FERCCA relief and 1 sample letter for OOP expenses. These letters are samples and are not intended to be used in every case. Each letter must be customized to the circumstances in the case you have made the determination on.

Each letter sent should either list the employee's service history or enclose a completed copy of the FERCCA Service History Worksheet and tell the employee to alert you if he/she detects any errors (in case some service is missing). Each letter should also give the employee the name and contact information (telephone number, e-mail address, etc.) for an agency contact person for questions.

TABLE OF CONTENTS

Sample Letter 1 – Ineligible for FERCCA – no error or non-deemed FERS less than 3 year error.....	Page 2
Sample Letter 2 – Eligible for FERCCA – election opportunity provided.....	Page 3
Sample Letter 3 – Eligible for FERCCA - no election opportunity provided.....	Page 5
Sample Letter 4 – Partially Eligible for FERCCA – deemed FERS more than 3 years already given valid deemed FERS election.....	Page 6
Sample Letter 5 – Eligible for Out-of-Pocket OOP Expenses.....	Page 7

Sample Letter 1 - Ineligible for FERCCA
No error or non-deemed FERS less than 3 year error

NAME
ADDRESS

Dear

A review of your retirement records indicates that you are not entitled to corrective action under the Federal Erroneous Retirement Coverage Corrections Act (FERCCA) due to an error in retirement plan coverage. We have carefully reviewed all of your official personnel records. This review disclosed that you do not have a retirement coverage error that lasted for 3 years of service after December 31, 1986.

[Briefly describe the situation – for example: You were appointed to a position covered by CSRS Interim (full social security and partial CSRS) from (date). On January 1, 1987 you were automatically converted to FERS because you did not have at least 5 years of civilian service as of December 31, 1986. Your retirement coverage is correct.]

We have enclosed a copy of the FERCCA Service History Worksheet, which outlines your career with the Federal government. Please review this summary of your service and contact us immediately if we've missed anything. Any change to your service record, no matter how minor, could affect the options you have regarding your retirement coverage.

This represents our final decision. If you disagree with our decision, you may file an appeal with the Merit Systems Protection Board (MSPB). Please note that you must file your appeal with the MSPB within 30 calendar days after the date of receipt of this letter. *[You must provide the employee with the address of the MSPB office in his or her region, and provide a copy of the Merit Systems Protection Board (MSPB) appeal form. Appeal forms can be accessed online at: <http://www.mspb.gov/foia/forms-pubs/applform.html> or www.mspb.gov.]*

[Insert name of contact person in your agency] will be able to answer any questions you have about your retirement benefits. *[He/She]* can be reached on *[insert telephone number, email, etc....]*. Please don't hesitate to contact us to ask any questions you have.

Sincerely,

Enclosures:
FERCCA Service History Worksheet
MSPB Appeal Package

**Sample Letter 2 – Eligible for FERCCA
Election Opportunity Provided**

NAME
ADDRESS

Dear

A review of your retirement records indicates that you are entitled to corrective action under the Federal Erroneous Retirement Coverage Corrections Act (FERCCA) due to an error in retirement plan coverage.

[Briefly describe the error – for example: You were appointed to a position covered by CSRS Interim (full social security and partial CSRS) on (date). You were previously covered under CSRS, but you had a break in service of more than 365 days before you were reinstated on (date). On January 1, 1987 you should have been automatically converted to CSRS Offset because you had at least 5 years of civilian service as of December 31, 1986. However, a review of your personnel records indicates that on (date) you were incorrectly placed under FERS.]

We have enclosed a copy of the FERCCA Service History Worksheet, which outlines your career with the Federal government. Please review this summary of your service and contact us immediately if we've missed anything. Any change to your service record, no matter how minor, could affect the options you have regarding your retirement coverage.

Because the error lasted over 3 years of service after December 31, 1986, you are entitled to relief under FERCCA. *[You can choose whether to stay under your current retirement plan or change to the plan you should have been placed under. – or – You were in CSRS in error and cannot remain in CSRS. You may elect either CSRS Offset or FERS.]* You also may be entitled to reimbursement of any eligible out-of-pocket (OOP) expenses you may have incurred as a result of this error. We have enclosed information for filing an OOP claim.

We will provide you with a FERCCA election package that will include a comparison of your retirement benefits under both plans as well as a comparison of Social Security and Thrift Savings Plan benefits. Preparing this package may take some time and we ask you to please be patient. We will contact you as soon as the package is prepared.

[Insert name of contact person at your agency] will be able to answer any questions you have about your retirement benefits. *[He/She]* can be reached on *[insert telephone number, email, etc....]*. Please don't hesitate to contact us to ask any questions you have.

Sincerely,

Enclosures:
FERCCA Service History Worksheet
Out-of-Pocket Expense Letter and Guidelines

**Sample Letter 3 – Eligible for FERCCA
No Election Opportunity Provided**

NAME
ADDRESS

Dear

A review of your retirement records indicates that you are entitled to corrective action under the Federal Erroneous Retirement Coverage Corrections Act (FERCCA) due to an error in retirement plan coverage.

[Briefly explain the error – for example: You were appointed to a position covered by CSRS retirement coverage on (date). Because you were previously covered under CSRS, but had a break in service of more than 365 days before you were reinstated on (date), and had more than 5 years of creditable civilian service as of December 31, 1986, you should have been placed in CSRS Offset (full social security and partial CSRS) coverage. However, a review of your personnel records indicates that on (date) you were incorrectly placed under CSRS.]

We have enclosed a copy of the FERCCA Service History Worksheet, which outlines your career with the Federal government. Please review this summary of your service and contact us immediately if we've missed anything. Any change to your service record, no matter how minor, could affect the options you have regarding your retirement coverage.

Because the error existed over 3 years, you are entitled to benefits under FERCCA. *[However, because the law required you to be covered under social security, you do not have a choice of whether to stay under your current retirement plan or change to the plan you should have been placed under.]* Your error must be corrected. Therefore, we are correcting your retirement records.

This represents our final decision. If you disagree with our decision, you may file an appeal with the Merit Systems Protection Board (MSPB). Please note that you must file your appeal with the MSPB within 30 calendar days after the date of receipt of this letter. *[You must provide the employee with the address of the MSPB office in his or her region, and provide a copy of the Merit Systems Protection Board (MSPB) appeal form. Appeal forms can be accessed online at: <http://www.mspb.gov/foia/forms-pubs/applform.html> or www.mspb.gov.]*

Although you do not have a choice of retirement coverage, you may be entitled to reimbursement of any eligible out-of-pocket (OOP) expenses you may have incurred as a result of this error. We have enclosed information for filing an OOP claim.

[Insert name of contact person in your agency] will be able to answer any questions you have about your retirement benefits. *[He/She]* can be reached on *[insert telephone number, email, etc....]*. Please don't hesitate to contact us to ask any questions you have.

Sincerely,

Enclosures:

FERCCA Service History Worksheet

Out-of-Pocket Expense Letter and Guidelines

**Sample Letter 4 – Partially Eligible FERCCA
Deemed FERS more than 3 years already given valid deemed FERS election**

NAME
ADDRESS

Dear

A review of your retirement records indicates that you had a retirement error but are not entitled to elect new coverage under the Federal Erroneous Retirement Coverage Corrections Act (FERCCA). However, you are entitled to partial relief under FERCCA. We have carefully reviewed all of your official personnel records. This review disclosed that although an error was made in your retirement plan that lasted for at least 3 years of service after December 31, 1986, you were already given an opportunity to elect to keep your erroneous coverage.

[Briefly describe the error – for example: You were appointed to a position covered by CSRS Interim (full social security and partial CSRS) from (date) to (date). On January 1, 1987 you should have been automatically converted to CSRS Offset because you had 5 years of civilian service as of December 31, 1986. However, a review of your personnel records indicates that on (date) you were incorrectly placed under FERS. You were given an election letter to remain in FERS or have your coverage corrected to CSRS Offset on (date). You elected (FERS or CSRS Offset) coverage on (date) – or – You did not make an election so your coverage remained in FERS.]

We have enclosed a copy of the FERCCA Service History Worksheet, which outlines your career with the Federal government. Please review this summary of your service and contact us immediately if we've missed anything. Any change to your service record, no matter how minor, could affect the options you have regarding your retirement coverage.

FERRCA does not provide another election opportunity to employees who already received an election opportunity. Although you are not entitled to an election, you are entitled to reimbursement of any out-of-pocket (OOP) expenses you incurred as a result of your coverage error. Under separate cover, we are sending you information for filing an OOP claim.

This represents our final decision. If you disagree with our decision, you may file an appeal with the Merit Systems Protection Board (MSPB). Please note that you must file your appeal with the MSPB within 30 calendar days after the date of receipt of this letter. *[You must provide the employee with the address of the MSPB office in his or her region, and provide a copy of the Merit Systems Protection Board (MSPB) appeal form. Appeal forms can be accessed online at: <http://www.mspb.gov/foia/forms-pubs/applform.html> or www.mspb.gov.]*

[Insert name of contact person in your agency] will be able to answer any questions you have about your retirement benefits. *[He/She]* can be reached on *[insert telephone number, email, etc....]*. Please don't hesitate to contact us to ask any questions you have.

Sincerely,

Enclosures:

FERCCA Service History Worksheet

Out-of-Pocket Expense Letter and Guidelines

Sample Letter 5 – Out-of-Pocket (OOP) Expenses

NAME
ADDRESS

Dear

You appear to be eligible for reimbursement of qualified Out-of-Pocket (OOP) expenses you may have incurred as a result of your retirement coverage error. The Office of Personnel Management (OPM) makes eligibility determinations for reimbursement of OOP expenses. The FERCCA Out-of-Pocket Guidelines are attached and contain model letters for your use in requesting a waiver and/or reimbursement of OOP expenses. Please read the guidelines carefully. You may use the model letters included or another format, but all the information outlined in the guidelines must be included. You should only file a claim for out-of-pocket expenses if you incurred an expense that was the direct result of your coverage error.

You bear the burden of proof. In order to be reimbursed for expenses, there must be clear and adequate documentation to show that the expenses claimed actually occurred, are reasonable, and that they were directly caused by the retirement coverage error.

Proof that the expense in question has been paid must accompany any claim for reimbursement of expenses. For example, for an expense that was paid directly out of your personal funds, the proof can be in the form of cancelled checks, receipts, credit card statements, and any other document that shows you paid the bill(s). If the amount in question was paid through a payroll deduction, payroll statements showing the amount that was deducted would be appropriate. Please refer to the section ‘Proving your case’ in the enclosed guidelines for information on the types of documentation to be included to support your claim.

The enclosed information about claiming Out-of-Pocket expenses is being sent to you so you may begin collecting documentation for submitting a claim. If you are eligible to make an election under FERCCA, you may submit a claim before your election or may wait until after you complete the FERCCA counseling and election process. Again, please only file a claim for out-of-pocket expenses if you incurred an expense that was the direct result of your coverage error.

Your claim for OOP expenses should be sent to:

US Office of Personnel Management
OOP Claims, Room 4H28
1900 E Street, NW
Washington DC 20415

OPM's decision will be final and will not be subject to appeal, or any other kind of administrative or judicial review.

Sincerely,

Enclosure:
FERCCA Out-of-Pocket Guidelines

**BAL Making Eligibility Determinations Under The
Federal Erroneous Retirement Coverage Correction
Act (FERCCA)**

Attachment 3

FERCCA Out-of-Pocket (OOP) Guidelines

TABLE OF CONTENTS

Introduction.....Page 2

Guidelines for Waiver.....Page 3

How to Apply.....Page 4

How OPM Makes its Decision.....Page 5

Request for Waiver Model Letter.....Page 6

Guidelines for Payment of Expenses.....Page 8

Attorneys’ Fees.....Page 12

Proving Your Case.....Page 14

How to Apply.....Page 16

How OPM Makes its Decision.....Page 17

Request for Reimbursement Model Letter.....Page 18

FERCCA Out-of-Pocket Guidelines

Introduction

Overview

Public Law 106-265, the "Federal Erroneous Retirement Coverage Corrections Act (FERCCA)," was enacted to relieve problems that had resulted from employees being placed in the wrong retirement system. Generally, the law gave certain employees who had been placed in the wrong retirement system the option of either remaining in that system or transferring to the retirement system in which they should have been participating. This approach allows employees to receive the retirement benefit they had expected to receive.

However, a small number of employees received some form of settlement payments from their agencies in compensation for the error and are barred from having an election unless the settlement payment is repaid or waived by OPM. Congress also recognized that merely correcting the retirement coverage error might not wholly compensate some of the affected employees for all the expenses arising from a coverage error. Therefore, section 2208 of FERCCA permits the Office of Personnel Management (OPM) to waive payments due from eligible employees or to reimburse eligible employees for out-of-pocket expenses incurred as a result of the retirement coverage error, or the correction of a retirement coverage error.

Eligibility of recipient

To be eligible to receive a waiver or reimbursement of an expense, you must first have had a qualifying retirement coverage error. This means you must have been erroneously placed in the wrong retirement system, either CSRS, CSRS Offset, FERS, or Social Security only, when you should have been in one of the other three. This erroneous retirement coverage must have:

- Been in effect at the beginning of 1987, or occurred subsequently.
- Lasted for at least 3 years of service after 1986.

Eligibility of amount

To be eligible for waiver, the obligation for payment must have been created by the correction of the retirement coverage error, or be a condition for correction of the coverage error. Also, the payment of the obligation must not be a candidate for reimbursement as an out-of-pocket expense.

Guidelines For Waiver

Waiver of interest

In some instances, a coverage error may change the nature of past service for which no retirement deductions were withheld from FERS service to CSRS service. The amount of the deposit due (principal and interest) to purchase credit for the non-deduction service subsequently increases. However, the value of the lifetime benefit payable under CSRS at retirement also increases significantly. Further, Congress provided that payment for the increased deposit could be made by actuarial reduction from your future annuity.

OPM may waive the additional interest you owe for a civilian or military deposit following correction of the coverage error if you demonstrate that the higher annuity benefit and the fact that you had use of the deposit monies during the error period do not fully compensate you for the error.

Waiver of settlement payment

You may, as a result of litigation over a retirement coverage error, have received a settlement payment or court-ordered payment for losses you sustained because of the retirement coverage error. Generally, you must repay that amount before you can benefit from the correction of a retirement coverage error under FERCCA. However, you may request that OPM waive collection of all or part of the settlement payment or court-ordered payment. To be entitled to waiver, you must demonstrate why the waiver is necessary to fully compensate you for your losses.

NOTE: Out-of-pocket expenses that are reimbursable under Section 2208 of FERCCA cannot be offset from the amount of a settlement or court ordered payment that must be repaid under FERCCA. Instead, you must apply separately for reimbursement of those expenses under the OPM's OUT-OF-POCKET EXPENSES instructions.

How to apply

Write a letter

You do not need to file a form. All you need to do is send OPM a signed letter. This letter should contain, or have attached, specific information that OPM needs before it can act on your request. The information OPM needs is:

1. A description of the retirement coverage error that you believe makes you eligible for waiver. This description should include:
 - The date (month, day and year) of the retirement coverage error.
 - The erroneous retirement coverage (CSRS, CSRS Offset, FERS, or Social Security only).
 - The date the retirement coverage error was corrected.
 - The corrected retirement coverage (CSRS, CSRS Offset, FERS, or Social Security only).
 - The dates of any break(s) in service that occurred during the period of the retirement coverage error.
2. A statement of the specific dollar amount you wish to have waived and why you think it should be waived.
3. Your name, address, telephone number, and Social Security number.
4. The name, address, and telephone number of your current or last Federal employer.
5. A copy of the court order or settlement agreement that awarded the payment, and any other document you believe that OPM should consider when reviewing your request.

Model letter

A model letter is provided for your convenience. Use of the model letter will assure that OPM has all the information it needs to process your request. The model letter is on page 6.

Address

Send your request for waiver to:

US Office of Personnel Management
OOP Claims, Room 4H28
1900 E Street NW
Washington DC 20415

How OPM Makes Its Decision

**Decision
made on
written
record**

OPM will base its decision on only the written record, including all of your submissions and other documentation in OPM's possession.

**Agency
report when
needed**

At OPM's discretion, OPM may request your latest employing agency, or a previous employing agency, if the qualifying retirement coverage error did not occur at your latest employing agency, to provide an administrative report. The report may include:

- A description of the retirement coverage error;
- The agency's recommendation for resolution of the claim; and
- Any other information the agency believes OPM should consider.

**No appeal of
final
decision**

The law provides that OPM's decision will be the final decision. It will not be subject to appeal, or any other kind of administrative or judicial review.

Request For Waiver Sample Letter

US Office of Personnel Management
OOP Claims, Room 4H28
1900 E Street, NW
Washington DC 20415

Re: Request for Waiver of under Section 2208 of FERCCA

Dear Sirs:

My name is: _____, my SS# is: _____,

and my address is: _____.

My phone number is: (Day) _____ (Eve) _____.

The name and address of my current or last Federal employer is:

_____.

Their phone number is: _____.

I was placed in the wrong retirement system (Circle one):

CSRS FERS CSRS Offset Soc. Sec. Only

on (date) _____.

My retirement coverage was corrected to (Circle one):

CSRS FERS CSRS Offset Soc. Sec. Only

on (date) _____.

OR

____ My retirement coverage has not been corrected (check if appropriate).

I request waiver of \$_____ of my settlement or court-ordered payment that totaled \$_____ and was made on ___/___/____. Please explain why the waiver is necessary to fully compensate you for the coverage error. (Attach additional sheets as necessary.)

I request waiver of interest or other amount owed to OPM. State why your election of a retirement plan under FERCCA does not fully compensate you for the error. (Attach additional sheets as necessary.)

Check if appropriate:

I have attached copies of documents that support my case.

I received a lump-sum settlement or court-ordered payment. A copy of the agreement or order is attached.

(Signature)

(Date)

Guidelines For Payment Of Expenses

Expense caused by retirement coverage error

Not all out-of-pocket expenses are reimbursable. To be reimbursable, an out-of-pocket expense must be directly caused by the retirement coverage error, or its correction. Certain expenses that are a direct result of the correction of a retirement coverage error, such as additional retirement deductions, are clearly caused by the retirement coverage error. However, when the out-of-pocket expense was not solely caused by the retirement coverage error, but also involved the employee's reaction to the retirement coverage error, then the causal connection is not so clear.

Expense is reasonable

In a case where the out-of-pocket expense is a result of the employee's reaction to the retirement coverage error, OPM must determine whether the employee's reaction, under the circumstances, was reasonable. An employee's reaction is reasonable when it is not taken rashly, but only after some thought, and on its face can be expected to mitigate a problem caused by the retirement coverage error, and when no less expensive action could have easily been identified to have the same consequence.

Expense is not contrary to long term retirement interests

In reaction to the retirement coverage error, the employee should have considered the long term effect on his or her retirement interests. In trying to correct one problem caused by the retirement coverage, the employee should not have created a greater problem. Therefore, as a general rule, a reasonable reaction is also one that is not contrary to the employee's long term retirement interests.

Unrelated expenses are not reimbursed

Expenses that are not directly caused by the retirement coverage error cannot be reimbursed, even though they occurred close in time to the retirement coverage error, or its correction. This is because the expense was either not caused by the retirement coverage error, or the retirement coverage was not the primary cause of the expense. In the latter case, while the retirement coverage error may have had some relationship to the expense, it was not the most significant or controlling factor.

Prohibited expenses

FERCCA specifically prohibits payment of losses related to foregone contributions and earnings under the Thrift Savings Plan (TSP). This would include, by inference, expenses incurred in connection with a non-governmental retirement investment program, meant to compensate for foregone TSP contributions and earnings, and

expenses incurred in the liquidation of property or other investments to fund makeup contributions to the TSP.

Examples

Examples not exclusive

Set out below are examples of the kinds of out-of-pocket expenses that may be reimbursed and may not be reimbursed. These examples do not exclude consideration of any kind of expense that is not listed. However, any claim for another kind of expense is expected to provide a persuasive rationale, consistent with the guidelines above, that the expense was reasonable.

Examples of reimbursable expenses:

FICA tax

OPM will reimburse you for FICA tax (social security deductions) on pay items which were not subject to CSRS deductions, such as overtime and awards, if you were erroneously covered by CSRS, and which, as a result of the correction of the retirement coverage error, are subject to retroactive FICA tax.

Retirement deductions

OPM will reimburse you for CSRS Offset or CSRS retirement deductions you were required to pay because your employer corrected a retirement coverage error. This will generally involve only retirement coverage errors that were corrected before FERCCA became effective. Your employer is required to pay any additional retirement deductions resulting from a retirement coverage error that is corrected under FERCCA.

Additional interest on deposit

In some instances, a coverage error may change the nature of past service for which no retirement deductions were withheld from FERS service to CSRS service. The amount of the deposit due (principal and interest) to purchase credit for the non-deduction service subsequently increases. However, the value of the lifetime benefit payable under CSRS at retirement also increases significantly. Further, Congress provided that payment for the increased deposit could be made by actuarial reduction from your future annuity.

OPM may reimburse you for the additional interest you paid for a civilian or military deposit following correction of the coverage error. This is if you demonstrate that the higher annuity benefit and the fact that you had use of the deposit monies during the error period does not fully compensate you for losses resulting from the error.

Financial planning

OPM will reimburse you for reasonable financial planning fees incurred because a retirement coverage error, or the correction of a

fees

retirement coverage error, resulted in a need to adjust your household budget and/or long term retirement planning. OPM's reimbursement will be limited to the amount normally paid for these services.

EXAMPLE: You should have been placed under FERS when you came to work, but were placed under CSRS instead. Later, your retirement coverage is corrected to FERS. In order to take full advantage of FERS, you want to pay makeup contributions to the TSP through payroll deduction. Before you can do that, however, you need to reduce the amount you spend monthly on other items. To accomplish this, you consult a financial management specialist on how to consolidate debt and/or set up a household budget. OPM will reimburse you for fees you pay for this service.

Expenses that are not reimbursable**Where there is no out-of-pocket loss**

Before OPM can reimburse an expense, there must be an actual, out-of-pocket loss on your part. When a retirement coverage error is corrected, funds may be transferred from one Government account to another. However, unless you have to pay out additional funds, there is no out-of-pocket expense.

EXAMPLE: A common situation involves retirement and social security deductions. If you were under CSRS you would pay 7 percent of your base pay in retirement contributions, while if you were under CSRS Offset you would pay 6.2 percent of your pay in social security deductions and .8 percent in retirement deductions, up to the social security maximum. For pay in excess of the social security maximum, you would pay 7 percent retirement deductions. You would pay the same total amount in retirement and social security deductions whether you were under CSRS or CSRS Offset. Consequently, if your CSRS retirement coverage is erroneous, and you are changed to CSRS Offset, the Government will move some of the money from the retirement deduction account to the social security deduction account. This is done at no additional expense to you, so there is no expense to be reimbursed. This is true whether your CSRS deductions are adjusted for FICA by your payroll office while you are an employee, or by OPM after you separate. The fact that you expected to receive a full refund of your CSRS retirement deductions when you separated does not convert this offset to an out-of-pocket loss. Further, you will receive full Social Security credit for all years covered by the error.

Indirect expenses

While OPM may reimburse you for expenses caused by a retirement coverage error, it will not reimburse you for expenses you incurred in paying the initial expense. That is because these other expenses are not

directly caused by the retirement coverage error.

EXAMPLES: If you paid a reimbursable expense with a credit card, OPM will not reimburse you for credit card interest. If you sell property to raise funds to pay your attorneys' fees, OPM will not reimburse you for commissions you paid and other expenses incurred in the sale of the property. If you obtain a debt consolidation loan as a consequence of financial counseling, OPM may reimburse you for the financial counseling fee, but it will not reimburse you for the loan origination fee.

**Expenses
caused by
inadequate
information**

You may have made a decision in regard to your retirement, or another benefit or investment program based on inadequate information that resulted in an unwanted expense. That expense cannot be reimbursed unless you can demonstrate that, despite due diligence, you were unable to obtain accurate retirement information from an appropriate source.

Attorneys' Fees

Reimbursable amounts Attorneys' fees, and other costs related to administrative and judicial action you incurred to correct or mitigate the adverse effects of the retirement coverage error may be reimbursed by OPM. This includes not only the actual attorneys' fees but also court costs, expert witness fees, and other litigation expenses. If the attorney bills separately for clerical or office expenses, those amounts would also be reimbursable.

Litigation not necessary Attorney fees incurred by you in an attempt to correct a retirement coverage error are reimbursable even if you did not go to court.

EXAMPLE: You believe that your agency has placed you in the wrong retirement system. You consult an attorney to see what can be done to correct the matter. The attorney researches the law, believes that you are correct, and writes a letter to your employer demanding that your retirement coverage be changed. Your employer denies the request. The attorney advises you that he will need a \$10,000.00 retainer before he can take the matter to court. Because you are unable or unwilling to pay the retainer, you drop the matter. Nevertheless, the amounts you paid the attorney for the initial consultation, to do the research, and write the letter to the agency are reimbursable by OPM.

You do not need to win If your legal efforts to correct your retirement coverage error did involve litigation, it is not necessary for you to have won in court for OPM to reimburse you for your attorneys' fees and other litigation expenses.

EXAMPLE: Your employer erroneously places you under CSRS instead of CSRS Offset. Four years later they make a retroactive correction. You ask OPM to refund your excess CSRS deductions, but it refuses. You appeal OPM's decision, but ultimately the court rules in OPM's favor. The attorneys' fees you incurred throughout the process may be reimbursed by OPM, even though you did not ultimately win.

Fees and expenses must be reasonable As required by the general guidelines outlined elsewhere in these instructions, reimbursable attorneys' fees and other litigation expenses must be reasonable. In determining whether the expenses are reasonable and necessary, OPM will consider the following factors:

- The type and the amount of the expense;
- The circumstances that gave rise to the expense;
- Whether the expense is directly related to litigation or other

- legal activity concerning a retirement coverage error, and
- Whether the charges are consistent with amounts usually charged in matters of similar complexity.

**Attorneys'
fees awards**

In making this determination, it will be necessary for OPM to review the attorney's itemized billing records. (See the section entitled [Proving Your Case](#) for further information.)

OPM will not pay for legal services that have already been reimbursed by another source, such as an attorneys' fees award by a court or agency, or legal insurance. However, if you only received partial reimbursement from an attorneys' fees award or legal insurance, OPM will consider reimbursing you for the remaining amount.

Proving Your Case

Burden of proof

You bear the burden of proof. If you wish to be reimbursed for expenses, you must show in a clear and convincing manner that the expenses you claimed actually occurred, are reasonable, and that they were directly caused by the retirement coverage error. The following paragraphs describe the minimum kind and amount of evidence that must be submitted before OPM may consider allowing your request.

Proof of Payment

Proof that the expense in question has been paid must accompany any claim for reimbursement of expenses. This proof can take many forms. If it is an expense that you paid directly out of your own funds, the proof could be cancelled checks, receipts, credit card statements, and any other documents which show that you paid the bill(s). If the amount in question was paid by payroll deduction, payroll statements showing the amount that was deducted would be appropriate.

Attorneys' fees and other litigation expenses

The following documents should be submitted with a request for payment:

- A copy of your fee agreement(s) with the attorney(s).
- Itemized statements or bills from your attorney(s). Each line item should describe the task performed to a sufficient degree that it can be determined that the task was related to the retirement coverage error, the amount of time spent on that task, and the rate at which that time was billed.
- If the matter went to litigation, a copy of the complaint or other pleading filed by the attorney with the court or administrative hearing body. This document should clearly state that the litigation has been initiated to either correct or recover damages for a erroneous retirement coverage decision.
- Itemized bills or statements from the clerk of the court and any other agencies or persons who collected fees and costs from you in connection with the litigation.
- A copy of any award for attorneys' fees and litigation expenses that reimbursed you for some or all of the expenses you incurred in connection with the litigation. This would include any payment resulting from a legal insurance policy. If there was no such award, you should state so in your letter.
- Affidavits or declarations made under penalty of perjury by the attorney(s) or other providers which cure any deficiencies in the itemized statements and other billing documents.

**FICA, CSRS
Offset or
FERS
deductions**

When claiming reimbursement for FICA tax charged on items that were not subject to CSRS deductions, or CSRS-Offset or FERS retirement deductions that were not withheld because of the retirement coverage error, but paid later, you should submit a copy of the letter from the agency demanding payment.

**Financial
management
planning
fees**

If you request reimbursement of financial planning fees, you should submit a statement that explains why the financial planning was necessitated by a retirement coverage error or the correction of a retirement coverage error, and a copy of the bill you received from the person or organization that provided the service.

**Additional
interest on
deposit**

The following documents should accompany a request for reimbursement of additional interest on a deposit for military service:

- The original bill, showing the deposit without interest, and the interest due.
- A corrected bill showing the deposit without interest, and the interest due.
- Proof of payment. If you are requesting reimbursement of additional interest on a deposit for civilian service, you need only provide your CSD account number.

In addition, you must explain why coverage under CSRS or CSRS Offset does not make you financially whole.

**Other
expenses**

To be reimbursed for expenses other than those enumerated above, you must submit a bill or other document you received at the time of the expense which states the amount of the expense and why it occurred, and a detailed explanation of why you believe that this expense was directly caused by the retirement coverage error.

How To Apply

Write a letter

You do not need to file a form. All you need to do is send OPM a signed letter. This letter should contain, or have attached, specific information that OPM needs before it can act on your request. The information OPM needs is:

1. A description of the retirement coverage error that you believe makes you eligible for reimbursement of a loss. This description should include:
 - The date (month, day and year) the retirement coverage error began.
 - The erroneous retirement coverage (CSRS, CSRS Offset, FERS, or Social Security only).
 - The date the retirement coverage error was corrected.
 - The corrected retirement coverage (CSRS, CSRS Offset, FERS, or Social Security only).
 - The dates of any break(s) in service that occurred during the period of the retirement coverage error.
2. A description of the specific dollar amounts you wish to have reimbursed and why you think they should be reimbursed.
3. Your name, address, telephone number, and Social Security number.
4. The name, address, and telephone number of your current or last Federal employer.
5. Any information or documents you believe that OPM should consider when reviewing your request. (For further information, see the following section, ["Proving Your Case."](#))

Model letter

A model letter is provided for your convenience. Use of the model letter will assure that OPM has all the information it needs to process your request. The model letter is on Page 17.

Address

Send your request for reimbursement to:

US Office of Personnel Management
OOP Claims, Room 4H28
1900 E Street NW
Washington DC 20415

How OPM Makes Its Decision

Written record only

OPM will base its decision on only the written record, including all of your submissions and other documentation in OPM's possession.

Agency report

At OPM's discretion, OPM may request your latest employing agency, or a previous employing agency, if the qualifying retirement coverage error did not occur at your latest employing agency, to provide an administrative report. The report may include:

1. A description of the retirement coverage error;
2. A statement as to whether a settlement or other court-ordered award was made;
3. The agency's recommendation for resolution of the claim; and
4. Any other information the agency believes OPM should consider.

Final decision: no right of appeal

The law provides that OPM's decision will be the final decision. It will not be subject to appeal, or any other kind of administrative or judicial review.

REQUEST FOR REIMBURSEMENT SAMPLE LETTER

US Office of Personnel Management
OOP Claims, Room 4H28
1900 E Street, NW
Washington DC 20415

Re: Request for Reimbursement of Out-of-Pocket Expenses

Dear Sirs:

My name is: _____, my SS# is: _____,

and my address is: _____.

My phone number is: (Day) _____ (Eve) _____.

The name and address of my current or last Federal employer is:

_____.

Their phone number is: _____.

I was incorrectly placed in the _____ retirement system
on (date) _____.

My retirement coverage was corrected to the _____
retirement system on (date) _____.

(OR)

My retirement coverage has not been corrected to the _____
retirement system.

For Social Security taxes (FICA) and CSRS retirement deductions paid, please provide
the amount paid and the agency to which payment was made.

For reimbursement of interest paid on a CSRS (Offset) deposit, please demonstrate why
your election of CSRS (Offset) does not fully compensate you for the error.

For all other expenses, please show (1) amount paid, (2) to whom paid, (3) why you
believe the expense resulted from the coverage error, and (4) how that course of action
would have corrected/mitigated the effect of the coverage error.

Use appropriate closing:

I have attached copies of the necessary documents to prove my case (see the OUT-OF-POCKET EXPENSE Instructions to determine what proof is necessary).

(Or)

I have attached proof that I have paid these expenses (see the OUT-OF-POCKET EXPENSE Instructions to determine what proof is necessary).

(Or)

I received a lump-sum settlement or court-ordered payment. A copy of the agreement or order is attached.

(Or)

I received an award or other payment to cover some or all of my attorney fees. A copy of the award or other document showing the details of the payment is attached.

(Signature)

(Date)