



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

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| <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.

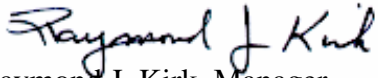
If the FERCCA error provides an election opportunity and the employee retired before August 1, 2004, you must notify OPM of the error and separate the employee under the present retirement plan. You should also annotate the employee's retirement records and supporting documentation to note their entitlement 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