

or other similar record of personnel actions.

Retirement plan means the same as *retirement coverage*.

Separated employee means a former employee or Member who has separated from service and who has not met all the requirements for retirement under CSRS or FERS.

Social Security coverage means service as a Federal employee that is employment under section 210 of the Social Security Act (42 U.S.C. 410) and is subject to Social Security taxes.

Social Security-Only means coverage under Social Security without concurrent coverage under CSRS, CSRS Offset, or FERS.

Social Security taxes means the Old Age, Survivors, and Disability Insurance taxes imposed on employees under section 3101(a) of the Internal Revenue Code of 1986 (31 U.S.C. 3101(a)) and on employers under section 3111(a) of the Internal Revenue Code of 1986 (31 U.S.C. 3111(a)).

Survivor means a person entitled to benefits under chapter 83 or 84 of title 5, United States Code, based on the service of a deceased employee, separated employee, or retiree.

Thrift Savings Plan or TSP means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, Pub. L. 99-335, 100 Stat. 514, which has been codified, as amended, primarily at 5 U.S.C. 8351 and 8401-8479.

Subpart B—Eligibility

GENERAL PROVISIONS

839.201 Do these rules apply to me?

(a) These rules apply to employees who had a qualifying retirement coverage error. For all purposes, a qualifying retirement coverage error must have lasted for at least 3 years of Federal service after December 31, 1986, as stated in the definitions section (§839.102). It does not matter whether you have left Federal service, retired, or have been reemployed as an annuitant, as long as you had a qualifying retirement coverage error. In addition, the survivor of an employee, separated employee, or retiree who had a quali-

fyng retirement coverage error is also covered by these rules.

(b) An error that lasted less than 3 years of Federal service after December 31, 1986, is not qualifying under the rules in this part.

(c) For errors lasting less than 3 years that involve erroneous placement in FERS during a period that the employee was eligible to elect FERS, see §846.204(b) of this chapter for guidance.

ELECTION OPPORTUNITY

§ 839.211 If these rules apply to me because I had a qualifying retirement coverage error, can I choose which retirement plan I want to be in?

The FERCCA does not provide an election opportunity in all situations where there was a qualifying retirement coverage error. Even if your error is one that provides an election opportunity under the FERCCA, certain events may disqualify you from making an election under the FERCCA. If you had a qualifying retirement coverage error, your eligibility to choose your retirement plan may be affected by the situations described in the next seven questions.

§ 839.212 May I make a retirement coverage election if I received a refund of my retirement deductions after I was corrected to FERS?

If your qualifying retirement coverage error was previously corrected to FERS and you then received a refund of your FERS retirement deductions, you are not allowed to elect retirement plan coverage under the FERCCA.

§ 839.213 May I make a retirement coverage election if I withdrew all or part of my TSP account after I was corrected to FERS?

(a) You may not make a retirement coverage election if your qualifying retirement coverage error was previously corrected to FERS, and you later received one of the following TSP withdrawals:

(1) A TSP annuity after separation from service, but before receiving a FERS annuity; or

(2) A single payment or monthly payments after separation from service; or

(3) An age-based in-service withdrawal.

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(b) If you received an automatic cashout of your TSP account after you separated (because your account balance was \$3,500 or less), or if you received a financial hardship in-service withdrawal, you may make a retirement coverage election.

§ 839.214 Am I disqualified from making an election of retirement coverage under the FERCCA if I withdrew my TSP account after I retired under FERS?

No, you may make an election of retirement coverage under the FERCCA if you made a TSP withdrawal as a retiree.

§ 839.215 May I make a retirement coverage election under the FERCCA if I received a payment as settlement of my claim for losses because of a qualifying retirement coverage error?

You can make a retirement coverage election under the FERCCA if OPM waives repayment of the entire amount under § 839.1202. If OPM does not waive the entire repayment, you must pay back the amount that OPM did not waive.

PREVIOUS ELECTION OPPORTUNITY

§ 839.221 If my qualifying retirement coverage error was that I was put into FERS by mistake and then, after the error was discovered, I chose my current retirement coverage, can I now make another election?

No, OPM regulations allow certain employees who were put in FERS in error to choose between remaining in FERS or being covered under their automatic retirement coverage. (See § 846.204(b)(2) of this chapter). If you already had this opportunity to choose your retirement coverage; then you may not make an election of retirement coverage based on the same error under these rules.

COURT-ORDERED BENEFITS FOR FORMER SPOUSES

§ 839.231 Can I make an election if my former spouse is entitled to a portion of my retirement benefits by qualifying court order?

Yes, but if you want to elect FERS you need your former spouse's consent to the election. If you are subject to a qualifying court order and want to elect FERS, the requirements in § 846.722 of this chapter (Former Spouse's Consent to an Election of FERS Coverage) apply to you.

§ 839.232 If a deceased employee's survivors include both a current spouse and a former spouse, or spouses, who are eligible for survivor annuities, must all of them consent to an election of FERS?

If the employee dies before making an election of retirement coverage under the FERCCA, all eligible potential survivors, that is, both the current and any former spouses, must consent to an election of FERS coverage. If they do not all consent, the election cannot be made.

ELECTIONS

§ 839.241 Am I eligible to make an election under the FERCCA if I had a qualifying retirement coverage error and none of the conditions mentioned in § 839.212 through § 839.232 apply to me?

If you were in CSRS or CSRS Offset and should have been in FERS or Social Security-Only, or if you were in FERS and should have been in CSRS, CSRS Offset, or Social Security-Only, then you have an election opportunity. This is summarized in the following chart:

You are or were in:	And you belong in:
CSRS or CSRS Offset	FERS.
CSRS or CSRS Offset	Social Security-Only.
FERS	Social Security-Only.
FERS	CSRS.
FERS	CSRS Offset.

§ 839.242 Do these rules apply to me if I had multiple errors?

You must be in the wrong retirement plan for at least 3 years of Federal service after December 31, 1986. You

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need not be in the same wrong retirement plan during the entire 3-year period. If you had more than one type of erroneous retirement coverage, then you will have a retirement plan election under these rules if one of the errors is of a type that qualifies you for an election.

Subpart C—Employer Responsibility to Notify Employees

§ 839.301 What should I do if I am not sure whether I am or was in the wrong retirement plan?

(a) If you are an employee, your employer has your personnel records and will review them to determine whether an error has been made. Therefore, you should notify your employer’s human resources office if you believe an error has been made in your case. Notify your current employer even if you believe the error occurred while you were employed at another agency.

(b) If you are not currently employed by the Federal Government, you should notify OPM at: U.S. Office of Personnel Management, Retirement Operations Center, Post Office Box 45, Boyers, Pennsylvania 16017. You can also contact us by electronic mail at FERCCA@OPM.GOV. Notify OPM regardless of whether you are a retiree, survivor, or separated employee.

(c) You may also get additional information about the FERCCA and whether or not you qualify at: www.opm.gov/benefits/correction.

§ 839.302 Will my employer give me a written explanation?

(a) Your employer must provide you with written notice of the error. The notice must include an explanation of the error, your options regarding the error, and any time limits that apply.

(b) Your employer must inform you if they find that you do not have a retirement coverage error.

§ 839.303 Is my employer required to find employees with a retirement coverage error?

The FERCCA requires your employer to take reasonable and appropriate measures to identify individuals affected by a qualifying retirement cov-

erage error and notify them of their rights under the law.

§ 839.304 What if my employer does not notify me?

(a) If your error has not previously been corrected, the 6-month time limit on making an election of retirement coverage under the FERCCA (see § 839.611(a)) does not begin to run until you are notified of the error.

(b) If your error was previously corrected, the 18-month time limit on making an election of retirement coverage ends on September 19, 2002. Employers and OPM may extend the time limit if you were prevented from making a timely election due to a cause beyond your control (see § 839.612).

Subpart D—Retirement Coverage Elections for Errors That Were Not Previously Corrected

ERRONEOUS CSRS OR CSRS OFFSET

§ 839.401 What can I elect if I was put in CSRS or CSRS Offset by mistake?

If you were placed in CSRS or CSRS Offset due to a qualifying retirement coverage error and you should have been in FERS, you may elect CSRS Offset or FERS. If you were placed in CSRS or CSRS Offset due to a qualifying retirement coverage error and you should have been in Social Security-Only, you may elect CSRS Offset or Social Security-Only. This is summarized in the following chart:

You are in:	And you belong in:	You may elect:
CSRS	FERS	CSRS Offset or FERS.
CSRS Offset	FERS, Social Security-Only.	CSRS Offset or Social Security-Only.
CSRS	Social Security-Only.	CSRS Offset or Social Security-Only.
CSRS Offset	Social Security-Only.	CSRS Offset or Social Security-Only.

ERRONEOUS FERS

§ 839.411 What can I elect if I was put in FERS by mistake?

If you were placed in FERS due to a qualifying retirement coverage error and you should have been in CSRS, you may elect FERS or CSRS. If you were placed in FERS due to a qualifying retirement coverage error and you should