

## Office of Personnel Management

## § 846.722

### § 846.703 Effective date of FERS coverage.

An election under this subpart is effective on the later of—

(a) The first day of the pay period beginning after the date the election and any required supporting documentation is received by the employing office; or

(b) The first day of the pay period beginning after July 1, 1998.

### § 846.704 Irrevocability of an election of FERS coverage.

(a) An election to be covered by FERS becomes irrevocable on the date it becomes effective.

(b) If, during the 1998 open enrollment period, an employee files an election on an SF 3109 to remain covered by CSRS, the employee may revoke such an election by filing another election during the 1998 open enrollment period.

#### WHO MAY ELECT

### § 846.711 Eligibility to elect FERS coverage during the 1998 open enrollment period.

An employee who is not covered by FERS, and who was an employee on January 1, 1998, and who is not otherwise ineligible for FERS coverage (under subpart A of part 842 of this chapter or § 846.722) may elect FERS coverage during the 1998 open enrollment period.

### § 846.712 Statutory exclusions.

(a) *DC government employees.* An individual employed by the government of the District of Columbia is not eligible to make an election, except—

(1) Non-judicial employees of the District of Columbia Courts, District of Columbia Department of Corrections Trustee or the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee under the National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Public Law 105-33, 111 Stat. 251, who meet the conditions of § 831.201(g)(2), (3), and (4) of this chapter; and

(2) Employees of the District of Columbia Financial Responsibility and

Management Assistance Authority under the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Public Law 104-8, 109 Stat. 97, as amended, who elected CSRS under § 831.201(g)(5) of this chapter.

(b) *Members of Congress.* A Member (as defined in section 2106 of title 5, United States Code) is not eligible to make an election.

(c) *Persons without social security eligibility.* An individual is not eligible to make an election if that individual is not eligible for social security coverage.

### § 846.713 Former spouse consent requirement.

An election of FERS coverage cannot become effective unless the election is made with the written consent of any former spouse(s) entitled to benefits under part 838 of this chapter.

#### ELECTION PROCEDURES

### § 846.721 Electing FERS coverage.

(a) To elect FERS coverage, an employee must submit a completed FERS Election of Coverage form (SF 3109) and any additional documentation that may be required under § 846.722 (relating to the former spouse consent requirement) to the employing office no later than the close of business on December 31, 1998.

(b) Any writing signed by the employee and filed with the employing office may be treated as an election for the purpose of establishing the date of the election of FERS coverage if the employee intends that document to be an election, but the employee (or, if the employee dies after filing the election but before completing the SF 3109, the survivor) must submit a completed SF 3109 to confirm any such election.

### § 846.722 Former spouse's consent to an election of FERS coverage.

(a) Employee actions. (1) If the employee is subject to a qualifying court order, the employee must submit to the employing office a completed—

(i) SF 3110, Former Spouse's Consent to FERS Election, to document the former spouse's consent to the FERS coverage; or

(ii) SF 3111, Request for Waiver, Extension, or Search, to request a waiver of the former spouse consent requirement or to request an extension of the time limit for obtaining a former spouse's consent or amendment of the court order.

(2) If the employee states on the SF 3109, the FERS Election of Coverage form, that he or she does not know whether he or she is subject to a qualifying court order, the employee must submit to the employing office a completed SF 3111, Request for Waiver, Extension, or Search, to request OPM to determine whether it has a qualifying court order relating to the employee.

(b) *OPM actions*—(1) *Waiver of former spouse consent requirement*—(i) *Grounds for waiver*. OPM's authority to approve a waiver of the former spouse consent requirement is limited to cases in which the former spouse's whereabouts cannot be determined or exceptional circumstances make requiring the former spouse's consent inappropriate.

(ii) *Whereabouts cannot be determined*. OPM will waive the former spouse consent requirement upon a showing that the former spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by—

(A) A judicial or administrative determination that the former spouse's whereabouts cannot be determined; or

(B)(1) Affidavits by the employee and two other persons, at least one of whom is not related to the employee, attesting to the inability to locate the former spouse and stating the efforts made to locate the spouse; and

(2) Documentary corroboration such as newspaper reports about the former spouse's disappearance.

(iii) *Exceptional circumstances*. OPM will waive the former spouse consent requirement based on exceptional circumstances if the employee presents a judicial determination finding that—

(A) The case before the court involves a Federal employee who is in the process of electing FERS coverage and the former spouse of that employee;

(B) The former spouse has been given notice and an opportunity to be heard concerning this proceeding;

(C) The court has considered sections 301 and 302 of the FERS Act, Pub. L. 99–335, 100 Stat. 517, and this section as they relate to waiver of the former spouse consent requirement for an employee with a former spouse to elect FERS coverage; and

(D) The court finds that exceptional circumstances exist justifying waiver of the former spouse's consent.

(iv) *Approval of a waiver*. If OPM grants a waiver of the requirement of paragraph (a) of this section, OPM will notify both the individual and the employing office of its decision. OPM's notice to the employing office is deemed to complete the individual's election, which becomes effective with the first pay period after the employing office receives OPM's notice that the waiver is granted.

(2) *Extension of the time limit to obtain a former spouse's consent*—(i) *First request*. If an employee who is ineligible to elect FERS coverage solely because of a qualifying court order files, prior to January 1, 1999, a completed SF 3111, Request for Waiver, Extension or Search, requesting an extension of the time limit to seek an amendment of a qualifying court order, OPM is deemed to have approved the extension through June 30, 1999.

(ii) *Second request*. OPM will grant one extension of the time limit to seek an amendment of a qualifying court order to an individual who has been granted an extension under paragraph (b)(2)(i) of this section if the individual—

(A) Files an application for the extension (SF 3109) with the employing office before July 1, 1999;

(B) Has initiated legal proceedings to secure the modification of the qualifying court order on file at OPM to satisfy the former spouse consent requirement;

(C) Demonstrates to OPM's satisfaction that the individual has exercised due diligence in seeking to obtain the modification; and

(D) If seeking an extension beyond December 31, 1999, demonstrates to OPM's satisfaction that a longer extension is necessary.

(iii) *Expiration date of a second extension*. An approved extension under

paragraph (b)(2)(ii) of this section expires on December 31, 1999, unless OPM's decision letter states a later expiration date.

(3) *Search for a qualifying court order.*

(i) When an employing office notifies OPM that it has received an employee's request for a determination of whether OPM has a qualifying court order on file, OPM will determine whether it has such an order.

(ii) If OPM does not have a copy of a qualifying court order in its possession, OPM's notice to the employing office that it has no qualifying court order completes the employee's election of FERS coverage and the election becomes effective at the beginning of the first pay period after the employing office receives OPM's notification.

(iii) If OPM has a copy of a qualifying court order, OPM will notify both the individual and the employing office that it has a qualifying court order and that an extension until June 30, 1999, has been granted.

**§ 846.723 Agency responsibilities.**

(a) The employing office must determine whether the employee is eligible to elect FERS coverage.

(b)(1) As close as practicable to the beginning of the open enrollment period, the employing office must provide each employee eligible to elect FERS coverage with notice of that employee's right to make an election.

(2) The employing office must provide each employee eligible to elect FERS coverage with a copy of or ready access to the FERS Transfer Handbook.

(c) An election received by an employing office before July 1, 1998, is deemed to have been received by the employing office on July 1, 1998.

(d) An agency decision that an employee is not eligible to elect FERS coverage or refusing to accept a belated election under § 846.724 must be in writing, must fully set forth the findings and conclusions of the agency, and must notify the employee of the right to appeal the decision under this section to the Merit Systems Protection Board, including all information required under the Board's regulations. See 5 CFR 1201.21.

**§ 846.724 Belated elections and correction of administrative errors.**

(a) *Belated elections.* The employing office may accept a belated election of FERS coverage if it determines that—

(1) The employing office did not provide adequate notice to the employee in a timely manner;

(2) The agency did not provide access to the FERS Transfer Handbook to the employee in a timely manner; or

(3) The employee was unable, for cause beyond his or her control, to elect FERS coverage within the prescribed time limit.

(b) *Correction of administrative errors.* Failure to begin employee deductions and Government contributions on the effective date of coverage must be corrected in accordance with § 841.505 of this chapter.

**§ 846.725 Appeal to the Merit Systems Protection Board.**

(a) A person whose rights or interests under this part are affected by an agency decision that an employee is not eligible to elect FERS coverage or an agency refusal to accept a belated election under § 846.724, or an OPM decision denying an extension or waiver under § 846.722, may request the Merit Systems Protection Board (MSPB) to review such decision in accord with procedures prescribed by MSPB. MSPB regulations relating to appeals are contained in chapter II of this title.

(b) Paragraph (a) of this section is the exclusive remedy for review of agency decisions concerning eligibility to make an election under this subpart. An agency decision must not allow review under any employee grievance procedures, including those established by chapter 71 of title 5, United States Code, and 5 CFR part 771.

**§ 846.726 Delegation of authority to act as OPM's agent for receipt of employee communications relating to elections.**

The employing office is delegated authority to act as OPM's agent for the receipt of any documents that employees are required by this subpart to file with OPM. Such documents are deemed received by OPM on the date that the employing office receives them.