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AUTHORITY: 5 U.S.C. 8461(g); §§842.104 and 842.106 also issued under 5 U.S.C. 8461(n); §842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); §842.106 also issued under section 102(e) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; §§842.604 and 842.611 also issued under 5 U.S.C. 8417; §842.607 also issued under 5 U.S.C. 8416 and 8417; §842.614 also issued under 5 U.S.C. 8419; §842.615 also issued under 5 U.S.C. 8418; §842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, 104 Stat. 1388–328; §842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; §842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239, 103 Stat. 2135, and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, 104 Stat. 1388–327; subpart H also issued under 5 U.S.C. 1104.

Subpart A—Coverage

SOURCE: 51 FR 47197, Dec. 31, 1986, unless otherwise noted.

§842.101 Purpose and scope.

(a) This subpart contains regulations concerning automatic coverage under the Federal Employees Retirement System (FERS). References to FERS coverage in this subpart are to automatic, as opposed to elective, FERS coverage.

(b) Part 846 of this chapter contains regulations concerning elective FERS coverage. FERS elections are available under limited circumstances to employees not subject to automatic FERS coverage.

[59 FR 64282, Dec. 14, 1994]

§842.102 Definitions.

In this subpart—

CSRS means the Civil Service Retirement System as described in subchapter III of chapter 83 of title 5, United States Code;

Employee means the following individuals listed in 5 U.S.C. 8401(11) whose service is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954:

(a) An employee as defined by 5 U.S.C. 2105;

(b) A U.S. Commissioner whose total pay for services performed as Commissioner is not less than $3,000 in each of the last three consecutive calendar years ending after December 31, 1954;

(c) An individual employed by a county committee established under 16 U.S.C. 590h(b);

(d) An individual employed by Gallaudet College;

(e) An individual appointed to a position on the office staff of a former President under section 1(b) of the ''Act of August 25, 1958'' (72 Stat 838);

(f) An alien (1) who was previously employed by the Government; (2) who is employed full time by a foreign government to protect or further the interests of the United States during an interruption of diplomatic or consular relations; and (3) for whose services reimbursement is made to the foreign government by the United States;

(g) A Congressional employee as defined in 5 U.S.C. 2107, including a temporary Congressional employee and an employee of the Congressional Budget Office; and

(h) The following individuals are excluded from the definition of ''employee'' in 5 U.S.C. 8401 (11):

(1) A justice or judge of the United States as defined by 28 U.S.C. 451;

(2) A temporary employee of the Administrative Office of the United States Courts or of a court named by 28 U.S.C. 610;

(3) A construction employee or other temporary, part-time, or intermittent employee of the Tennessee Valley Authority;

(4) A student employee as defined by 5 U.S.C. 5351;

(5) Teachers in dependents' schools of the Department of Defense in overseas areas with respect to Federal employment, other than teaching, performed during a recess period between two school years;

(6) An individual subject to another retirement system for Government employees (other than an employee of the United States Park Police, or the United States Secret Service) any of whose civilian employment after December 31, 1983, is employment subject to social security; and

(7) An individual excluded by OPM regulation in § 842.105.

FERS means the Federal Employees Retirement System as described in chapter 84 of title 5, United States Code.

Member has the same meaning provided in 5 U.S.C. 2106, except that the term does not include an individual who irrevocably elects, by written notice to the official by whom such individual is paid, not to participate in FERS.

NAF employee means an employee of an instrumentality described in section 2105(c) of title 5, United States Code.

OPM means the Office of Personnel Management.

Social security means coverage under the Old Age, Survivors, and Disability Insurance (OASDI) programs of the Social Security Act.

[51 FR 47197, Dec. 31, 1986, as amended at 52 FR 25197, July 6, 1987; 56 FR 4931, Feb. 7, 1991]

§ 842.103 General.

To be covered under FERS, an individual must:

(a) Be an employee, Member, or specifically covered by another provision of law;

(b) Be covered by social security;

(c) Have retirement deductions withheld from pay and have agency contributions made; and

(d) Be paid based on units of time.

Except as provided in § 842.104 and as excluded by § 842.105, an employee or Member is covered by FERS.

§ 842.104 Statutory exclusions.

(a) *Lack of social security coverage.* An individual not covered by social security (title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954), including an individual covered by full CSRS (and thereby excluded from social security coverage), is excluded from FERS coverage.

(b) *Senior officials subject to social security coverage despite continuous service.* An individual who has served without a break in service of more than 365 days since December 31, 1983, in one or more of the following positions is excluded from FERS coverage.

(1) The Vice President;

(2) A Member of Congress;

(3) A non-SES appointee to a position listed in 5 U.S.C. 5312 through 5317;

(4) A Senior Executive Service or Senior Foreign Service noncareer appointee; or

(5) An individual appointed by the President (or his designee) or the Vice President under section 105(a)(1), 107(a)(1), or (b)(1) of title 3, United States Code, to a position for which the maximum rate of basic pay payable is at or above the rate for Level V of the Executive Schedule.

(c) *Employees rehired after December 31, 1986, following a break in service.* An employee who is rehired after December 31, 1986, who has had a break in service and who, at the time of the last separation from the service, had at least 5 years of civilian service creditable under CSRS rules, any part of which was covered by CSRS or the Foreign Service Retirement System, is excluded from FERS coverage.

(d) *Employees who have not had a break in service ending after December 31, 1986.* An employee who has not had a break in service of more than 3 days ending after December 31, 1986, and who, as of December 31, 1986, had at least 5 years of credible civilian service under CSRS rules (even if none of this service was covered by CSRS), is excluded from FERS coverage.

(e) *Break in service.* For the purposes of paragraph (c) and (d) of this section, ''break in service'' means a separation from CSRS-covered service lasting at least 4 days, or a transfer or separation of less than 4 days when the employee becomes subject to automatic coverage under social security (title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954).

(f) *Coverage under a retirement system for NAF employees.* An employee who has elected coverage under a retirement system for NAF employees in accordance with part 847 of this chapter is excluded from FERS coverage during that and all subsequent periods of service, including service as a reemployed annuitant.

[59 FR 64283, Dec. 14, 1994, as amended at 61 FR 41720, Aug. 9, 1996]

§ 842.105 Regulatory exclusions.

(a) OPM is authorized in 5 U.S.C. 8402(c)(1) to ''exclude from the operation of this chapter an employee or group of employees in or under an Executive agency, the United States Postal Service, or the Postal Rate Commission, whose employment is temporary or intermittent, except an employee whose employment is part-time career employment (as defined in section 3401(2)).'' Therefore, under this authority, OPM is excluding the following:

(1) Employees serving under appointments limited to 1 year or less, unless such appointments meet the definition of provisional appointments contained in §§ 316.401 and 316.403 of this chapter; and

(2) Intermittent employees serving under other than career or career conditional appointments.

(b) When an employee who is covered by FERS moves to a position listed in paragraph (a) of this section without a break in service or after a separation of 3 days or less, his or her FERS coverage will continued.

(c) Paragraph (a) of this section does not deny FERS coverage to an employee who receives an interim appointment under § 772.102 of this chapter and was covered by FERS at the time of the separation for which interim relief is required.

[51 FR 47197, Dec. 31, 1986, as amended at 56 FR 10143, Mar. 11, 1991; 57 FR 3714, Jan. 31, 1992]

§ 842.106 Elections of retirement coverage under the District of Columbia Financial Responsibility and Management Assistance Act of 1995.

(a) *Who may elect*—(1) *General rule.* Any individual appointed by the District of Columbia Financial Responsibility and Management Assistance Authority (the Authority) in a position not excluded from FERS coverage under § 842.105 may elect to be deemed a Federal employee for FERS purposes unless the employee has elected to participate in a retirement, health or life insurance program offered by the District of Columbia.

(2) *Exception.* A former Federal employee being appointed by the Authority on or after October 26, 1996, no more than 3 days (not counting District of Columbia holidays) after separation from Federal employment cannot elect to be deemed a Federal employee for FERS purposes unless the election was

made before separation from Federal employment.

(b) *Procedure for making an election.* The Authority or the agency providing administrative support services to the Authority (Administrative Support Agency) must establish a procedure for notifying employees of their election rights and for accepting elections.

(c) *Time limit for making an election.* (1) An election under paragraph (a)(1) of this section must be made within 30 days after the employee received the notice under paragraph (b) of this section.

(2) The Authority or its Administrative Support Agency will waive the time limit under paragraph (c)(1) of this section upon a showing that—

(i) The employee was not advised of the time limit and was not otherwise aware of it; or

(ii) Circumstances beyond the control of the employee prevented him or her from making a timely election and the employee thereafter acted with due diligence in making the election.

(d) *Effect of an election.* (1) An election under paragraph (a) of this section is effective on the commencing date of the employee's service with the Authority.

(2) An individual who makes an election under paragraph (a) of this section is ineligible, during the period of employment covered by that election, to participate in any retirement system for employees of the government of the District of Columbia.

(e) *Irrevocability.* An election under paragraph (a) of this section becomes irrevocable when received by the Authority or its Administrative Support Agency.

(f) *Employee deductions.* The Authority or its Administrative Support Agency must withhold, from the pay of an employee of the District of Columbia Financial Responsibility and Assistance Authority who has elected to be deemed a Federal employee for FERS purposes, an amount equal to the percentage withheld from Federal employees' pay for periods of service covered by FERS and, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund the amounts deducted from an employee's pay.

(g) *Employer contributions.* The District of Columbia Financial Responsibility and Assistance Authority must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund amounts equal to any agency contributions required under FERS.

[61 FR 58459, Nov. 15, 1996]

Subpart B—Eligibility

SOURCE: 52 FR 4473, Feb. 11, 1987, unless otherwise noted.

§ 842.201 Purpose.

This subpart regulates the statutory provisions on eligibility for nondisability retirement under the Federal Employees Retirement System (FERS).

§ 842.202 Definitions.

In this subpart—

Commuting area has the same meaning given that term in § 351.203 of this chapter.

Minimum retirement age means an age based on an individual's year of birth, as follows:

Year of Birth	Minimum Retirement Age
Before 1948	55 years.
1948	55 years and 2 months.
1949	55 years and 4 months.
1950	55 years and 6 months.
1951	55 years and 8 months.
1952	55 years and 10 months.
1953–1964	56 years.
1965	56 years and 2 months.
1966	56 years and 4 months.
1967	56 years and 6 months.
1968	56 years and 8 months.
1969	56 years and 10 months.
1970 and after	57 years.

§ 842.203 General eligibility requirement.

An employee must have at least 5 years of civilian service creditable under FERS to be eligibile for an annuity under this subpart, except as provided under part 846 of this chapter.

§ 842.204 Immediate voluntary retirement—basic age and service requirements.

(a) An employee or Member who separates from service is entitled to an annuity—

(1) Except as provided in paragraph (d) of this section, after attaining the