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is ineligible for social security coverage.

(e) *Effective date.* An election made under this section is effective with the first pay period beginning after the date the election is properly filed with the employing office.

(f) *Irrevocability.* An election made under this section is irrevocable.

[52 FR 19235, May 21, 1987, as amended at 57 FR 3714, Jan. 31, 1992; 61 FR 58459, Nov. 15, 1996]

§846.202 Condition for making an election.

(a) An election under §846.102 of this part may not become effective unless the election is made with the written consent of any former spouse(s) entitled to benefits under subpart F of part 831 of this chapter or part 838 of this chapter. As provided in section 301(d)(2)(A) of the FERS Act of 1986, this section applies only if OPM has been duly notified concerning any qualifying court order and has received the documentation required in §838.211, §838.721, or §838.1005 of this chapter. This section does not apply with respect to a former spouse who has ceased to be so entitled because of remarrying before age 55.

(b) OPM may waive the requirement of paragraph (a) of this section upon a showing that the former spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by—

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

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

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

(c) OPM may waive the requirement of paragraph (a) of this section based on exceptional circumstances if the employee or Member presents a judicial determination regarding the former spouse that would warrant waiver of the consent requirement based on exceptional circumstances.

(d)(1) OPM shall, upon application of an individual, grant an extension for such individual to make an election under §846.201 of this part, if the individual—

(i) Files an application for the extension with OPM before the end of the period during which the individual would otherwise be eligible to make the election; and

(ii) Demonstrates to OPM's satisfaction that the extension is needed to secure the modification of a decree of divorce or annulment (or court ordered or court-approved property settlement incident to any such decree) on file at OPM in order to satisfy the consent requirement under paragraph (a) of this section.

(2) The application for extension is deemed to be filed with OPM on the date it is received in the employing office.

(3) An extension granted under this paragraph expires 6 months after the date it was granted. OPM may grant one further extension upon application by the individual seeking to make an election of FERS coverage.

(e) An electing individual who has a former spouse who may be entitled to benefits as described in paragraph (a) of this section must submit with the election either—

(1) The consent of the former spouse in a form prescribed by OPM,

(2) A request for an extension as described in paragraph (f) of this section,

(3) A request for a waiver of the consent requirement and the documentation to support the request as described in paragraph (d) or (e) of this section, or

(4) A request for a determination as to whether a qualifying court order as described in paragraph (a) of this section is on file with OPM.

(f) The request for waiver or extension described in paragraphs (b), (c), and (d) of this section must be in a form prescribed by OPM. The employing office must forward the request to OPM promptly.

(g) If OPM does not have a copy of a qualifying court order in its possession, OPM's notice to the agency that it has no qualifying court order is deemed to complete the individual's election of FERS, which becomes effective with

the first pay period after the employing office receives OPM's notification.

(h) If OPM has a copy of a qualifying court order, OPM will notify both the individual and the employing agency of its determination regarding a request for extension.

(i) If OPM has a copy of a qualifying court order in its possession and 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.

[52 FR 19235, May 21, 1987, as amended at 57 FR 33599, July 29, 1992]

§ 846.203 Agency responsibilities.

(a) Employing offices must distribute the election forms provided by OPM to each eligible individual, including all individuals in a nonduty status.

(b) An employing office must obtain documentation of the individual's receipt of the election form specified in paragraph (a) of this section and retain the documentation permanently in the individual's official personnel folder (or the equivalent). Acceptable documentation includes—

(1) A statement of receipt signed by the individual, or

(2) A signed postal return receipt showing that the election form was received at the individual's address.

§ 846.204 Belated elections and correction of administrative errors.

(a) *Belated elections.* On determination by an employing office that the FERS transfer handbook issued by OPM was not available to an individual in a timely manner or an individual was unable, for cause beyond his or her control, to elect FERS coverage within the prescribed time limit, the employing office may, within 6 months after the expiration of the individual's opportunity to elect FERS coverage under §846.201, accept the individual's election of FERS coverage.

(b)(1) *Correction of administrative errors related to election.* During the 6-month period after the expiration of an individual's opportunity to elect FERS coverage under §846.201, the employing office may make prospective corrections of administrative errors regarding an individual's opportunity to elect FERS coverage, including failure to provide the election form specified in §846.203(a) to an individual.

(2)(i) For an employee, separated employee, or retiree whose employing agency erroneously determined that the individual was covered by FERS during the period under §846.201 when the individual was eligible to elect FERS, and the employing agency should have placed the individual in CSRS, CSRS Offset, or Social Security only, under conditions that would have included an opportunity to elect FERS coverage, the employee, separated employee, or retiree is deemed to have elected FERS coverage and the individual will remain covered by FERS, unless the individual declines under paragraph (b)(2)(ii) of this section to be covered by FERS.

(ii)(A) The employing agency must provide written notice to each individual who is deemed to have elected FERS under paragraph (b)(2)(i) of this section that the individual may, within 60 days after receiving the notice, decline to be deemed to have transferred to FERS.

(B) If the individual dies during the election period established by paragraphs (b)(2)(ii) (A) and (C) of this section, the right of election under paragraph (b)(2)(i) of this section may be exercised by any person who would be entitled to receive a current spouse survivor annuity or a former spouse survivor annuity under CSRS (or CSRS Offset), if any, if the error had not occurred (the election by any one such current or former spouse not to have the election of FERS coverage deemed is controlling); otherwise, by the individual or individuals entitled to receive the lump-sum credit under CSRS (or CSRS Offset) if the error had not occurred (the election by any individual entitled to a share of the lump-sum credit not to have the election of FERS coverage deemed is controlling). The time limit for making an election under this paragraph is 60 days after the date of the agency's notice to the