

**§ 550.1407 Forfeiture of unused compensatory time off.**

(a) *After 26 pay periods.* (1) Except as provided in paragraphs (a)(2) and (e) of this section, an employee must use accrued compensatory time off by the end of the 26th pay period after the pay period during which it was earned. If an employee fails to use the compensatory time off within 26 pay periods after it was earned, he or she must forfeit such compensatory time off.

\* \* \* \* \*

(e) *Exception due to an exigency.* If an employee fails to use his or her compensatory time earned under § 550.1404(a) by the end of the 26th pay period after the pay period during which it was earned due to an exigency of the service beyond the employee's control, an authorized agency official, at his or her sole and exclusive discretion, may extend the time limit for using such compensatory time off for travel for up to an additional 26 pay periods.

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**OFFICE OF PERSONNEL  
MANAGEMENT**
**5 CFR Part 890**
**RIN 3206-A162**
**Waiver of Requirements for Continued Coverage During Retirement**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final Rule.

**SUMMARY:** Under current Federal Employees Health Benefits (FEHB) Program regulations, the Office of Personnel Management (OPM) may waive the eligibility requirements for health benefits coverage as an annuitant for an individual when, in its sole discretion, it determines that it would be against equity and good conscience not to allow a person to be enrolled in the FEHB Program as an annuitant. The regulations state that an individual's failure to satisfy eligibility requirements must be due to exceptional circumstances. They also list specific situations where a waiver will not be granted by OPM such as when an individual's retirement is based on a disability or an involuntary separation, or when an individual was misadvised by his/her employing office. This final regulation eliminates these specific situations from the regulation. This final regulation provides OPM with more flexibility when granting waivers.

**EFFECTIVE DATE:** May 17, 2007.

**ADDRESSES:** This document is available for viewing at the U.S. Office of Personnel Management, 1900 E Street, NW., Washington DC 20415. Send all comments to Michael Kaszynski, Insurance Policy, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3415, Washington DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Michael Kaszynski, Policy Analyst, at 202-606-0004.

**SUPPLEMENTARY INFORMATION:** Under 5 U.S.C. 8905(b), OPM may waive the eligibility requirements for health benefits coverage as an annuitant for an individual when, in its sole discretion, it determines that it would be against equity and good conscience not to allow a person to be enrolled in the FEHB Program as an annuitant. Under 5 CFR 890.108, an individual's failure to satisfy eligibility requirements must be due to exceptional circumstances. An individual requesting a waiver must provide OPM with evidence that (1) the individual intended to have FEHB coverage as an annuitant (retiree); (2) the circumstances that prevented the individual from meeting the requirements of 5 U.S.C. 8905(b) were beyond the individual's control; and (3) the individual acted reasonably to protect his or her right to continue coverage into retirement.

Section 890.108 lists specific situations where a waiver will not be granted by OPM such as when an individual's retirement is based on a disability or an involuntary separation, or an individual was misadvised by his/her employing office. This final regulation eliminates these specific situations from 5 CFR 890.108 to provide more flexibility to the waiver process.

On August 7, 2006, a proposed regulation was published in the **Federal Register** at 71 FR 44592. We received no comments on the proposed rule. We have made no changes to this rule from its proposed version.

**Collection of Information Requirement**

This final rule does not impose information collection and recordkeeping requirements that meet the definition of the Paperwork Reduction Act of 1995's term "collection of information" which means obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on ten or more

persons, other than agencies, instrumentalities, or employees of the United States; or answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies with revenues of \$11.5 million or less in any one year. This final rulemaking affects FEHB Program health insurance eligibility requirements which do not impact the dollar threshold. Therefore, I certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

**Regulatory Impact Analysis**

We have examined the impact of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the RFA (September 16, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995, (Pub. L. 104-4), and Executive Order 13132. Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects (\$100 million or more in any one year). This rule is not considered a major rule, as defined in section 804(2) of title 5, United States Code, because we estimate its impact will only affect federal government employment offices. Any resulting economic impact would not be expected to exceed the dollar threshold.

**Executive Order 12866, Regulatory Review**

This final rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

**List of Subjects in 5 CFR Part 890**

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

**Linda M. Springer,**

*Director.*

■ For the reasons set forth in the preamble, OPM is amending 5 CFR part 890 as follows:

**PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM**

■ 1. The authority citation for part 890 continues to read as follows:

**Authority:** 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c-1; subpart L also issued under sec. 599C of Pub. L. 101-513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), 11246 (b) and (c) of Pub. L. 105-33, 111 Stat. 251; and section 721 of Pub. L. 105-261, 112 Stat. 2061, unless otherwise noted.

■ 2. Section 890.108 is revised to read as follows:

**§ 890.108 Will OPM waive requirements for continued coverage during retirement?**

(a) Under 5 U.S.C. 8905(b), OPM may waive the eligibility requirements for health benefits coverage as an annuitant for an individual when, in its sole discretion, it determines that due to exceptional circumstances it would be against equity and good conscience not to allow a person to be enrolled in the FEHB Program as an annuitant.

(b) The individual's failure to satisfy the eligibility requirements must be due to exceptional circumstances. An individual requesting a waiver must provide OPM with evidence that:

(1) The individual intended to have FEHB coverage as an annuitant (retiree);

(2) The circumstances that prevented the individual from meeting the requirements of 5 U.S.C. 8905(b) were beyond the individual's control; and

(3) The individual acted reasonably to protect his or her right to continue coverage into retirement.

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**DEPARTMENT OF HOMELAND SECURITY****8 CFR Parts 103, 204, 214, 245, 245a**

[CIS No. 2287-03]

RIN 1615-AB13

**Removal of the Standardized Request for Evidence Processing Timeframe**

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule amends Department of Homeland Security regulations to provide flexibility to U.S. Citizenship and Immigration Services in setting the time allowed to applicants and petitioners to respond to a Request for Evidence or to a Notice of Intent to Deny. This rule also describes the circumstances under which U.S. Citizenship and Immigration Services will issue a Request for Evidence or Notice of Intent to Deny before denying an application or petition, but United States Citizenship and Immigration Services will continue generally to provide petitioners and applicants with the opportunity to review and rebut derogatory information of which he or she is unaware. This rule also clarifies when petitioners and applicants may submit copies of documents in lieu of originals.

In addition to these changes, this rule removes obsolete references to legacy agencies, and it removes obsolete language relating to certain legalization and agricultural worker programs.

**DATES:** This final rule is effective June 18, 2007.

**FOR FURTHER INFORMATION CONTACT:** Rodger Pitcairn, Program and Regulations Development, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3000, Washington, DC 20529, telephone (202) 272-8427.

**SUPPLEMENTARY INFORMATION:****I. Background****II. Comments Received in Response to the Proposed Rule**

- A. Standards and Timeframes for RFE and NOID Responses
- B. Not Issuing at Least One RFE; Making Decisions on the Record
- C. Uniform Application of the "Preponderance of Evidence" Standard
- D. Relationship to Premium Processing Regulations
- E. Substitution of Form DS-2019; Submitting Copies
- F. Application of the Rule
- G. Use of the Term "Biometrics Capture"
- H. Technical Correction to Final Rule

**III. Statutory and Regulatory Reviews****I. Background**

An applicant or petitioner seeking immigration benefits from U.S. Citizenship and Immigration Services (USCIS) must establish eligibility for such benefits. 8 CFR 103.2(b)(1). A Request for Evidence (RFE) is a notice issued by USCIS to an applicant or petitioner seeking immigration benefits requesting initial or additional evidence to establish eligibility. *Id.*, 103.2(b)(8). Currently, USCIS must issue an RFE when evidence is missing from an application or petition. *Id.* In addition, USCIS must provide twelve weeks for an applicant or petitioner to respond to an RFE. *Id.*

A Notice of Intent to Deny (NOID) is a written notice issued by USCIS to an applicant or petitioner that USCIS has made a preliminary decision to deny the application or petition. A NOID may be based on evidence of ineligibility or on derogatory information known to USCIS, but not known to the petitioner or applicant. USCIS cannot, however, issue a NOID based on missing initial evidence if an RFE has not first been issued. The NOID provides the applicant or petitioner with an opportunity to inspect and rebut the evidence forming the basis of the decision to deny the petition or application. An applicant or petitioner usually is provided thirty days to respond to the evidence.

On November 30, 2004, USCIS published a proposed rule to remove absolute requirements for, and fixed times to respond to, RFEs and NOIDs. 69 FR 69549. USCIS received thirteen comments from individuals, community-based groups that assist nonimmigrants and immigrants pursue applicants for benefits, law firms, and a national association representing immigration attorneys. This final rule adopts the proposed rule with minor changes as discussed below.

**II. Comments Received in Response to the Proposed Rule**

This final rule addresses requirements that are procedural in nature and does not alter the substantive rights of applicants or petitioners for immigration benefits. This final rule, therefore, is exempt from notice and comment requirements under 5 U.S.C. 553(b)(A), and could have been promulgated without public notice and comment. USCIS' decision to promulgate a proposed rule does not alter the authority to promulgate this rule as a final rule. For example, the proposed rule contained a presumptive thirty-day minimum time frame for responses, but, after considering the