

# Rules and Regulations

Federal Register

Vol. 75, No. 236

Thursday, December 9, 2010

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 890 and 892

RIN 3206-AL95

#### Federal Employees Health Benefits Program Miscellaneous Changes

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing a final regulation to provide for continuation of Federal Employees Health Benefits (FEHB) coverage for certain former Senate Restaurant employees who transferred to employment with a private contractor; to add a new opportunity for eligible employees to enroll in the FEHB, or to change FEHB enrollment status, under provisions of the Children's Health Insurance Program Reauthorization Act of 2009; and to allow eligible FEHB plans to offer three options, without the requirement that one of the options be a high deductible health plan.

**DATES:** Effective December 9, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ronald Brown, Policy Analyst, at (202) 606-0004 or e-mail: [ronald.brown@opm.gov](mailto:ronald.brown@opm.gov).

**SUPPLEMENTARY INFORMATION:** On April 19, 2010, OPM published proposed regulations (75 FR 20314) with miscellaneous changes, clarifications, and corrections. We received several comments requesting that the proposed change to FEHB Open Season dates begin in 2011 rather than in 2010. We received several comments that changing the FEHB Open Season dates to November 1st through November 30th each year may result in employee confusion and additional administrative inconvenience because the Open Season will end immediately after the

Thanksgiving holiday weekend, instead of ending the second full work week in December. Additionally, there was one comment that the Open Season could begin or end on a weekend, instead of a week day as is currently the case. We also received a comment that enrollees eligible for Medicare would have less flexibility to make health plan decisions if the FEHB Open Season dates ended in November. Currently, Medicare enrollees have from November 15 to December 31 to make changes in their Medicare coverage. Changing the FEHB Open Season dates would adversely affect this important segment of the FEHB population. Therefore, we have decided not to amend this provision of the FEHB regulations.

One commenter asked that we continue the High Deductible Health Plans (HDHPs), including Health Savings Accounts, within the FEHB. We do not have any plans to discontinue offering HDHPs as a choice under the Program.

We received one comment from an FEHB Plan requesting permission to offer two benefit levels or, alternatively, three options without offering an HDHP. However, the Plan is allowed by Federal law to only offer two levels of benefits. The authority to permit the Plan to offer more than two levels of benefits is a matter for Congress to consider and enact, if it chooses to do so. While we continue to look for ways to ensure that the FEHB offers choice and value, we are unable to permit a carrier any flexibility not allowed by law. We have no administrative authority to permit this change by revised ruling.

#### Background

##### *Senate Restaurants Employees*

Public Law 110-279, enacted July 17, 2008, provides for certain Federal employee benefits to be continued for certain employees of the Senate Restaurants after the operations of the Senate Restaurants are contracted to be performed by a private business concern. The law provides that a Senate Restaurants employee, who was an employee of the Architect of the Capitol on the date of enactment and who accepted employment by the private business concern as part of the transition, may elect to continue certain Federal benefits during continuous employment with the business concern. We are revising the FEHB regulations to

address coverage for these individuals pursuant to relevant of Public Law 110-279. We are adding § 890.112 to subpart A.

#### *New Enrollment Opportunities*

Public Law 111-3, the Children's Health Insurance Program (CHIP) Reauthorization Act of 2009 (the Act), enacted on February 4, 2009, allows States to subsidize health insurance premium payments for certain low-income children who have access to qualified employer-sponsored health insurance coverage. FEHB-eligible enrollees who meet the criteria for child health assistance are eligible to receive State premium subsidy assistance payments to help them pay for their FEHB plan premiums. Current FEHB Program regulations already allow an eligible enrollee who loses coverage under the FEHB Program or another group health plan, including loss of eligibility or assistance under Medicaid or CHIP, to enroll or change enrollment from self only to self and family within the period beginning 31 days before and ending 60 days after the date of loss of coverage. The Act provides new opportunities for eligible employees to enroll in the FEHB Program or to change enrollment from self only to self and family when the employee or an eligible family member becomes eligible for premium assistance under CHIP. Employees must request the change in enrollment within 60 days after the date the employee or eligible family member is determined to be eligible for assistance. Employees may make these enrollment changes regardless of whether they are covered under premium conversion (pay premiums with pre-tax dollars). We are amending the regulations to reflect this enrollment opportunity. We are adding § 890.301(m).

#### *Change in Options Offered*

The current regulations state that an FEHB plan shall not have more than two options and a high deductible health plan. We are revising the regulations to allow employee organization plans and health maintenance organizations to both offer two options and a high deductible health plan or to offer three options, without the requirement that one of the options be a high deductible health plan. These plans are eligible by statute to offer more than two options.

This change will provide for more flexibility in contracting with health plans for modern types of benefits. These changes can be found in 890.201(b)(3)(i) and 890.201(b)(3)(ii).

#### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of this final rulemaking would result in new collection of information requirements within the meaning of the PRA. The Office of Personnel Management (OPM) therefore is revising a health benefits election form, Standard Form 2809.

In the future, the OPM intends to publish a 60-day **Federal Register** Notice including the revised form that ties to this final rulemaking. The information collected in the notice will be submitted to the Office of Management and Budget (OMB) for review. The OMB assigned collection control number for this form is: 3206-0160.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects health insurance benefits of Federal employees and annuitants. Executive Order 12866,

#### Regulatory Review

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

#### Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or Tribal governments.

#### List of Subjects in 5 CFR Parts 890 and 892

Administrative practice and procedure, Employee benefit plans, Government employees, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

**John Berry,**  
Director.

■ Accordingly, OPM is amending 5 CFR part 890 and part 892 as follows:

### PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

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

**Authority:** 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111-03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104-106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110-279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 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; Sec. 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.

#### Subpart A—Administration and General Provisions

■ 2. Add § 890.112 to subpart A to read as follows:

##### § 890.112 Continuation of coverage for certain Senate Restaurants employees.

(a) A Senate Restaurants employee who was an employee of the Architect of the Capitol on July 17, 2008, who accepted employment with the private business concern to which the Senate Restaurants' food service operations were transferred as described in section 1 of Public Law 110-279, and who elected to continue his or her Federal employee retirement benefits is deemed to be an employee for purposes of this part during continuous employment with the private business concern or its successor. The individual shall be entitled to the benefits of, and be subject to all conditions under, the FEHB Program on the same basis as if the individual were an employee of the Federal Government.

(b) Cessation of employment with the private business concern or its successor for any period terminates eligibility for coverage under the FEHB Program as an employee during any subsequent employment by the private business concern.

(c) The private business concern or its successor must make arrangements for the withholding from pay of an individual described by paragraph (a) of this section of an amount equal to the premiums withheld from Federal employees' pay for FEHB coverage and, in accordance with procedures established by OPM, pay into the Employees Health Benefits Fund the amounts deducted from the individual's pay.

(d) The private business concern or its successor shall, in accordance with procedures established by OPM, pay into the Employees Health Benefits Fund amounts equal to any agency

contributions required under the FEHB Program.

#### Subpart B—Health Benefits Plans

■ 3. Revise § 890.201(b)(3) to read as follows:

##### § 890.201 Minimum standards for health benefits plans.

\* \* \* \* \*

(b) \* \* \*

(3)(i) Have more than two options and a high deductible health plan (26 U.S.C. 223(c)(2)(A)) if the plan is described under 5 U.S.C. 8903(1) or (2); or

(ii) Have either more than three options, or more than two options and a high deductible health plan (26 U.S.C. 223(c)(2)(A)) if the plan is described under 5 U.S.C. 8903(3) or (4).

\* \* \* \* \*

#### Subpart C—Enrollment

■ 4. Add a new paragraph (m) to § 890.301 to read as follows:

##### § 890.301 Opportunities for employees who are not participants in premium conversion to enroll or change enrollment; effective dates.

\* \* \* \* \*

(m) An employee or eligible family member becomes eligible for premium assistance under Medicaid or a State Children's Health Insurance Program (CHIP). An eligible employee may enroll and an enrolled employee may change his or her enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes when the employee or an eligible family member of the employee becomes eligible for premium assistance under a Medicaid plan or CHIP. An employee must enroll or change his or her enrollment within 60 days after the date the employee or family member is determined to be eligible for assistance.

### PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENT OF HEALTH BENEFITS PREMIUMS

■ 5. The authority citation for part 892 is revised to read as follows:

**Authority:** 5 U.S.C. 8913; 5 U.S.C. 1103(a)(7); 26 U.S.C. 125; Sec. 892.101 also issued under sec. 311 of Pub. L. 111-3, 123 Stat. 64.

#### Subpart A—Administration and General Provisions

■ 6. In § 892.101, amend the definition of *qualifying life event* by adding a new paragraph (13) to read as follows:

##### § 892.101 Definitions.

\* \* \* \* \*

*Qualifying life event \* \* \**

(13) An employee or eligible family member becomes eligible for premium assistance under Medicaid or a State Children's Health Insurance Program (CHIP). An eligible employee may enroll and an enrolled employee may change his or her enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes when the employee or an eligible family member of the employee becomes eligible for premium assistance under a Medicaid plan or a State Children's Health Insurance Program. An employee must enroll or change his or her enrollment within 60 days after the date the employee or family member is determined to be eligible for assistance.

[FR Doc. 2010-30962 Filed 12-8-10; 8:45 am]

BILLING CODE 6325-39-P

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**FEDERAL HOUSING FINANCE BOARD**
**12 CFR Parts 950 and 980**
**FEDERAL HOUSING FINANCE AGENCY**
**12 CFR Parts 1264, 1266, 1269, and 1272**

RIN 2590-AA24

**Use of Community Development Loans by Community Financial Institutions To Secure Advances; Secured Lending by Federal Home Loan Banks to Members and Their Affiliates; Transfer of Advances and New Business Activity Regulations**

**AGENCY:** Federal Housing Finance Board, Federal Housing Finance Agency.

**ACTION:** Final rule.

**SUMMARY:** Section 1211 of the Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Home Loan Bank Act (Bank Act) to expand the types of eligible collateral that community financial institution (CFI) members may pledge to secure Federal Home Loan Bank (Bank) advances to include secured loans for community development activities and to allow Banks to make long term advances to CFI members for purposes of financing community development activities. Section 1211 further provides that the Federal Housing Finance Agency (FHFA) shall define the term "community development activities" by regulation. To implement these provisions, FHFA is amending the advances regulation to allow CFI

members to pledge community development loans as collateral for advances and is adopting a definition of "community development" as proposed. The final rule also will transfer the advances and new business activities rules from parts 950 and 980 of the Federal Housing Finance Board (FHFB) regulations, to new parts 1266 and 1272 of the FHFA regulations, respectively, and make other conforming amendments. Finally, the final rule will make a change to the advances regulation to incorporate a long-standing policy previously established by the FHFB that secured lending to a member of any Bank is an advance that must meet the requirements of the advances regulation. The final rule language has been clarified to assure that certain types of transactions, such as derivatives, will not be considered secured lending for the purposes of this provision. The new provision addressing secured lending does not include a prohibition on secured transactions with affiliates of members, as was initially proposed.

**DATES:** The final rule is effective on January 10, 2011.

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Joseph, Senior Attorney Advisor, [thomas.joseph@fhfa.gov](mailto:thomas.joseph@fhfa.gov), (202) 414-3095 (not a toll-free number); Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552; or Julie Paller, Senior Financial Analyst, [julie.paller@fhfa.gov](mailto:julie.paller@fhfa.gov), 202-408-2842 (not a toll-free number); Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Establishment of FHFA*

Effective July 30, 2008, Division A of HERA, Public Law 110-289, 122 Stat. 2654 (2008), created FHFA as an independent agency of the Federal government. HERA transferred the supervisory and oversight responsibilities over the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises), the Banks, and the Bank System's Office of Finance, from the Office of Federal Housing Enterprise Oversight (OFHEO) and the FHFB to FHFA. FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner, including being capitalized adequately,

and that they carry out their public policy missions, including fostering liquid, efficient, competitive, and resilient national housing finance markets. The Enterprises and the Banks continue to operate under regulations promulgated by OFHEO and FHFB until FHFA issues its own regulations. See section 1302 Public Law 110-289, 122 Stat. 2795.

*B. Statutory and Regulatory Background*

Each Bank is a cooperative institution that is owned by its members. Any eligible institution (generally a federally insured depository institution or state-regulated insurance company) may become a member of a Bank if it satisfies certain criteria and purchases a specified amount of the Bank's capital stock. 12 U.S.C. 1424, 1426; 12 CFR part 1263. Only members or certain eligible housing associates (such as state housing finance agencies) may obtain access to secured loans, known as advances, or other products provided by a Bank. 12 U.S.C. 1426(a)(4), 1430(a), 1430b.

Prior to HERA, CFIs were defined under the Bank Act as depository institutions insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*) with average total assets of less than \$500 million, as adjusted annually for inflation thereafter. 12 U.S.C. 1422(13) (2008). Section 1211 of HERA raised the \$500 million average total assets cap to \$1 billion. See section 1211 Public Law No. 110-289, 122 Stat. 2790 (amending 12 U.S.C. 1422(10)). By Notice published in the **Federal Register** in February 2009, FHFA adjusted the \$1 billion figure for inflation to \$1.011 billion. 74 FR 7438 (Feb. 17, 2009). As part of FHFA's separate rulemaking addressing Bank membership for community development financial institutions, FHFA included a technical amendment to the definition of "CFI" to implement the average total asset cap increase to \$1 billion made by HERA.<sup>1</sup> See 74 FR 22848, 22857 (May 15, 2009); 75 FR 678, 691 (Jan. 5, 2010).

Under the Bank Act, any member, including a CFI, that wishes to borrow from its Bank must pledge certain types of collateral to secure its repayment obligation on advances, and must otherwise demonstrate to the Bank that it is creditworthy. 12 U.S.C. 1430(a). Each Bank sets its own lending and collateral policies, which may vary from Bank to Bank and will apply to all borrowing members of that Bank. Prior to HERA, section 10(a)(3) of the Bank

<sup>1</sup> FHFA also relocated the part 925 regulations to part 1263 of the FHFA's regulations. 75 FR 678.