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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 890 and 892

RIN 3206-AJ34

Federal Employees Health Benefits Children's Equity

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement the Federal Employees Health Benefits Children's Equity Act of 2000, which was enacted October 30, 2000. This law mandates the enrollment of a Federal employee for self and family coverage in the Federal Employees Health Benefits (FEHB) Program, if the employee is subject to a court or administrative order requiring him or her to provide health benefits for his or her child or children and the employee does not provide documentation of compliance with the order.

DATES: *Effective Date:* October 25, 2004.

FOR FURTHER INFORMATION CONTACT: Nataya Battle (202) 606-0004, or e-mail to nataya.battle@opm.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2003, OPM issued interim regulations in the **Federal Register** (68 FR 56523) to mandate compliance with court or administrative orders requiring Federal employees to provide health benefits for their children. The interim regulations were effective on October 31, 2003, and are located at parts 890 and 892.

On October 30, 2000, the Federal Employees Health Benefits Children's Equity Act of 2000 (Pub. L. 106-394, 114 Stat. 1629) was enacted. This law mandates compliance with court or

administrative orders requiring Federal employees to provide health benefits for their children.

Before the enactment of Pub. L. 106-394, a court or State administrative agency could issue an order for an individual to provide health benefits for his or her child or children; however, there was nothing in the FEHB law to require compliance. While the issuance of such an order was an event that allowed an employee to enroll or to change from self only to self and family, the enrollment was voluntary on the employee's part.

The law now makes compliance with the court or administrative order mandatory. A Federal employee subject to such an order must enroll for self and family coverage in a health plan that provides full benefits in the area where the children live or provide documentation to the agency that he or she has obtained other health benefits for the children. If the employee does not do so, the agency will enroll the employee involuntarily as follows: (1) If the employee has no FEHB coverage, the agency will enroll him or her for self and family coverage in the option of the Blue Cross and Blue Shield Service Benefit Plan that provides the lower level of coverage; (2) if the employee has a self only enrollment in a fee-for-service plan or in an HMO that serves the area where the children live, the agency will change his or her enrollment to self and family in the same option of the same plan; (3) if the employee is enrolled in an HMO that does not serve the area where the children live, the agency will change his or her enrollment to self and family in the lower option of the Blue Cross and Blue Shield Service Benefit Plan.

As long as the court or administrative order is in effect, and the employee has at least one child identified in the order who is still eligible under the FEHB Program, the employee may not cancel his or her enrollment, change to self only, or change to a plan that does not serve the area in which the child or children live, unless he or she provides documentation that he or she has other coverage for the children. If the court or administrative order is still in effect at the time the employee retires, and if at least one child is still eligible for FEHB, the employee must continue FEHB into retirement (if eligible) and may not make any of these changes after

retirement for as long as the order remains in effect and the child continues to be eligible under 5 U.S.C. 8901(5).

If such an employee goes into a nonpay status, or if his or her salary becomes insufficient to make the premium withholdings, he or she may not choose to terminate the enrollment. Instead, the employee must continue the coverage and either make direct premium payments or incur a debt to the Government. (By law, an employee's enrollment still terminates after 1 year in nonpay status.) If the annuity of an employee who remained subject to such a court or administrative order upon retirement becomes insufficient to make the premium withholdings, the annuitant may not choose to terminate the enrollment. Instead, he or she must continue the coverage and make direct premium payments for as long as the order remains in effect and the child continues to be eligible under 5 U.S.C. 8901(5).

OPM received comments from one Federal agency, three State agencies, and one independent organization. Several of the comments addressed the same issue concerning mandating that the National Medical Support Notice (NMSN) be accepted as an administrative order for medical support orders. OPM has addressed this issue in a Benefits Administration Letter instructing agencies to recognize the NMSN as an administrative order and to respond to the questions therein. Two comments suggested establishing an interagency procedure to determine health coverage requirements, including requesting copies of policies. The Public Law requires employees to provide evidence of full health benefits coverage and services in the location in which the child resides. It is not the intent of OPM to require agencies to analyze that coverage to compare benefits. One comment addressed the need for edits in the National Finance Center (NFC) system to prevent affected employees from making unlawful changes in their enrollment. The NFC has had these edits in place for nearly two years. One comment addressed the need to extend health care coverage to all eligible children of non-custodial parents and to assure that the coverage covers siblings that may live in different geographical locations. Custodial parents must look

to the court system or administrative agency to issue an order for an individual to be required to provide health benefits for his or her children. This regulation stipulates that the health coverage provided must cover all eligible children wherever they may live. Another suggestion was that employees who allow their alternate health benefits coverage to lapse should then lose the option to provide alternate coverage and be restricted to enrollment in the FEHB Program only. We do not believe the final regulations needs to impose such a restriction. OPM is not aware that lapses in coverage occur with any frequency. In addition, it is clearly the intent of the law that employees be allowed to provide alternate coverage.

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 will only affect health benefits of certain Federal employees and retirees.

Executive Order 12866, Regulatory Review

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

List of Subjects

5 CFR Part 890

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

5 CFR Part 892

Administrative practice and procedure, Government employees, Health insurance, Taxes, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, the interim rule amending 5 CFR parts 890 and 892, which was published at 68 FR 56523 on October 1, 2003, is adopted with only minor editorial changes for greater clarity 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; § 890.303 also issued under 50 U.S.C. 403(p), 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), and 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. In § 890.301 revise paragraphs (e)(1)(ii), (f)(3) and (g)(4)(i) to read as follows:

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

* * * * *

(e) * * *

(1) * * *

(ii) An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) may not make this change as long as the court or administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation to the agency that he or she has other coverage for the child(ren).

* * * * *

(f) * * *

(3) With one exception, during an open season, an eligible employee may enroll and an enrolled employee may change his or her existing enrollment from self only to self and family, may change from one plan or option to another, or may make any combination of these changes. *Exception:* An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) may not cancel his or her enrollment, change to self only, or change to a comprehensive medical plan that does not serve the area where his or her child or children live as long as the court or administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation to the agency that he or she has other coverage for the child(ren).

* * * * *

(g) * * *

(4) * * *

(i) If the court or administrative order requires an earlier effective date, the effective date will be the 1st day of the pay period that includes that date. Effective dates may not be retroactive to a date more than 2 years earlier, or prior to October 30, 2000.

* * * * *

■ 3. In § 890.304 revise paragraph (d)(1) to read as follows:

§ 890.304 Termination of enrollment.

* * * * *

(d) *Cancellation or suspension.* (1)(i) An employee who participates in health

insurance premium conversion as provided in part 892 of this chapter may cancel his or her enrollment only during an open season or because of and consistent with a qualifying life event defined in § 892.101 of this chapter.

(ii) Subject to the provisions of paragraph (d)(iii) of this section, an enrollee who does not participate in premium conversion may cancel his or her enrollment at any time by filing an appropriate request with the employing office. The cancellation is effective at the end of the last day of the pay period in which the employing office receives the appropriate request canceling the enrollment.

(iii) An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3), or an annuitant who was subject to such a court or administrative order at the time of his or her retirement, may not cancel or suspend his or her enrollment as long as the court or administrative order is still in effect and the enrollee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee or annuitant provides documentation to the agency that he or she has other coverage for the child or children.

* * * * *

■ 4. In § 890.306 revise paragraphs (e)(1) and (f)(1)(i) to read as follows:

§ 890.306 When can annuitants or survivor annuitants change enrollment and what are the effective dates?

* * * * *

(e) *Enrollment change to self only.* (1) With one exception, an annuitant may change the enrollment from self and family to self only at any time.

Exception: An annuitant who, as an employee, was subject to a court or administrative order as discussed in § 890.301(g)(3) at the time he or she retired may not change to self only after retirement as long as the court or administrative order is still in effect and the annuitant has at least one child identified in the order who is still eligible under the FEHB Program, unless the annuitant provides documentation to the retirement system that he or she has other coverage for the child or children.

* * * * *

(f) * * *

(1) * * *

(i) With one exception, an enrolled annuitant may change the enrollment from self only to self and family, may change from one plan or option to another, or may make any combination of these changes. *Exception:* An annuitant who, as an employee, was

subject to a court or administrative order as discussed in § 890.301(g)(3) at the time he or she retired may not cancel or suspend his or her enrollment, change to self only, or change to a comprehensive medical plan that does not serve the area where his or her children live after retirement as long as the court or administrative order is still in effect and the annuitant has at least one child identified in the order who is still eligible under the FEHB Program, unless the annuitant provides documentation to the retirement system that he or she has other coverage for the child or children.

* * * * *

■ 5. In § 890.502 revise the second sentence in paragraph (b)(2) and revise paragraph (b)(4)(ii) to read as follows:

§ 890.502 Employee withholdings and contributions.

* * * * *

(b) * * *

(2) * * * *Exception:* An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) may not elect to terminate his or her enrollment as long as the court/administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation that he or she has other coverage for the child or children. * * *

* * * * *

(4) * * *

(ii) If the employee is subject to a court or administrative order as discussed in § 890.301(g)(3), the coverage may not terminate. If the employee does not return the signed form, the coverage will continue and the employee will incur a debt to the Government as discussed in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

* * * * *

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

■ 6. The authority citation for part 892 continues to read as follows:

Authority: 5 U.S.C. 8913; 26 U.S.C. 125.

■ 7. Revise § 892.207 to read as follows:

§ 892.207 Can I make changes to my FEHB enrollment while I am participating in premium conversion?

(a) Subject to the exceptions described in paragraphs (b) and (c) of this section, you can make changes to your FEHB enrollment for the same reasons and with the same effective dates listed in § 890.301 of this chapter.

(b) However, if you are participating in premium conversion there are two exceptions: you must have a qualifying life event to change from self and family enrollment to self only enrollment or to drop FEHB coverage entirely. (See § 892.209 and § 892.210.) Your change in enrollment must be consistent with and correspond to your qualifying life event as described in § 892.101. These limitations apply only to changes you may wish to make outside open season.

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, your employing agency can limit a change to your enrollment as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children. See also § 892.208 and § 892.209.

■ 8. Add a new paragraph (c) to § 892.208 to read as follows:

§ 892.208 Can I change my enrollment from self and family to self only at any time?

* * * * *

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, you may not change your enrollment to self only as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children. See also § 892.207 and § 892.209.

■ 9. Revise paragraph (c) to § 892.209 to read as follows:

§ 892.209 Can I cancel FEHB coverage at any time?

* * * * *

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, you may not cancel your coverage as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children.

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FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. OP-1211]

Rules of Practice for Hearings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the Board) is amending its rules of practice and procedure to adjust the maximum amount, as set by statute, of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

EFFECTIVE DATE: October 12, 2004.

FOR FURTHER INFORMATION CONTACT:

Katherine H. Wheatley, Assistant General Counsel (202/452-3779), or Katrina P. Sukduang, Senior Attorney (202/452-3351), Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD) only, contact 202/263-4869.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. 2461 *note* (FCPIA Act), requires each Federal agency to adjust each CMP within its jurisdiction by a prescribed cost-of-living adjustment at least once every four years. This cost-of-living adjustment is based on the formula described in section 5(b) of the FCPIA Act. The Board made its last adjustment in October 2000 (*see* 65 FR 60583).

The required cost-of-living adjustment formula is based on the difference between the Consumer Price Index (CPI) for June of the year preceding the adjustment (in this case, June 2003) and the CPI for June of the year when the CMP was last set or adjusted. To calculate the adjustment, the Board used the Department of Labor, Bureau of Labor Statistics—All Urban Consumers tables, in which the period 1982–84 was equal to 100, to get the CPI values.

The calculations performed for the 2004 adjustment consisted of three categories, depending on the year in which the penalty was last set or adjusted. For penalties that changed in 2000, the relevant CPIs were June 2003 (183.7) and June 2000 (172.4), resulting in a CPI increase of 6.6 percent. For