

PART 95—PERSONAL RADIO SERVICES

■ 13. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

■ 14. Section 95.192 is amended by revising paragraph (d) introductory text to read as follows:

§ 95.192 (FRS Rule 2) Authorized Locations.

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(d) Anyone intending to operate an FRS unit on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra in a manner that could pose an interference threat to the Arecibo Observatory, shall notify the Interference Office, Arecibo Observatory, HC3 Box 53995, Arecibo, Puerto Rico 00612, in writing or electronically, of the location of the unit. Operators may wish to consult interference guidelines, which will be provided by Cornell University. Operators who choose to transmit information electronically should e-mail to: prcz@naic.edu.

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■ 15. Section 95.206 is amended by revising paragraph (c) introductory text to read as follows:

§ 95.206 (R/C Rule 6) Are there any special restrictions on the location of my R/C station?

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(c) Anyone intending to operate an R/C station on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra in a manner that could pose an interference threat to the Arecibo Observatory shall notify the Interference Office, Arecibo Observatory, HC3 Box 53995, Arecibo, Puerto Rico 00612, in writing or electronically, of the location of the unit. Operators may wish to consult interference guidelines, which will be provided by Cornell University. Operators who choose to transmit information electronically should e-mail to: prcz@naic.edu.

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■ 16. Section 95.405 is amended by revising paragraph (d) introductory text to read as follows:

§ 95.405 (CB Rule 5) Where may I operate my CB station?

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(d) Anyone intending to operate a CB station on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra in a manner that could pose an interference threat to the Arecibo Observatory shall notify the Interference Office, Arecibo Observatory, HC3 Box

53995, Arecibo, Puerto Rico 00612, in writing or electronically, of the location of the unit. Operators may wish to consult interference guidelines, which will be provided by Cornell University. Operators who choose to transmit information electronically should e-mail to: prcz@naic.edu.

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■ 17. Section 95.1003 is amended by revising paragraph (c) introductory text to read as follows:

§ 95.1003 Authorized locations.

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(c) Anyone intending to operate an LPRS transmitter on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra in a manner that could pose an interference threat to the Arecibo Observatory shall notify the Interference Office, Arecibo Observatory, HC3 Box 53995, Arecibo, Puerto Rico 00612, in writing or electronically, of the location of the unit. Operators may wish to consult interference guidelines, which will be provided by Cornell University. Operators who choose to transmit information electronically should e-mail to: prcz@naic.edu.

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■ 18. Section 95.1303 is amended by revising paragraph (c) introductory text to read as follows:

§ 95.1303 Authorized locations.

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(c) Anyone intending to operate a MURS unit on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra in a manner that could pose an interference threat to the Arecibo Observatory shall notify the Interference Office, Arecibo Observatory, HC3 Box 53995, Arecibo, Puerto Rico 00612, in writing or electronically, of the location of the unit. Operators may wish to consult interference guidelines, which will be provided by Cornell University. Operators who choose to transmit information electronically should e-mail to: prcz@naic.edu.

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PART 97—AMATEUR RADIO SERVICE

■ 19. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

■ 20. Section 97.205 is amended by revising paragraph (h) introductory text to read as follows:

§ 97.205 Repeater station.

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(h) The provisions of this paragraph do not apply to repeaters that transmit on the 1.2 cm or shorter wavelength bands. Before establishing a repeater within 16 km (10 miles) of the Arecibo Observatory or before changing the transmitting frequency, transmitter power, antenna height or directivity of an existing repeater, the station licensee must give written notification thereof to the Interference Office, Arecibo Observatory, HC3 Box 53995, Arecibo, Puerto Rico 00612, in writing or electronically, of the technical parameters of the proposal. Licensees who choose to transmit information electronically should e-mail to: prcz@naic.edu.

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[FR Doc. 05–10658 Filed 5–31–05; 8:45 am]

BILLING CODE 6712–01–P

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1601, 1602, 1604, 1615, 1631, 1632, 1644, 1646, and 1652

RIN 3206–AJ20

Federal Employees Health Benefits Acquisition Regulation: Large Provider Agreements, Subcontracts, and Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing this final regulation to amend the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). It establishes requirements, including audit, for Federal Employees Health Benefits Program (FEHB) experience-rated carriers' Large Provider Agreements. It also modifies the dollar threshold for review of carriers' subcontract agreements; revises the definitions of Cost or Pricing Data and Experience-rate to reflect mental health parity requirements; updates the contract records retention requirement; updates the FEHB Clause Matrix; and conforms subpart and paragraph references to Federal Acquisition Regulation (FAR) revisions made since we last updated the FEHBAR.

DATES: Effective July 1, 2005.

ADDRESSES: This document is available for viewing at the U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT:

Anne Easton, Manager, at 202-606-0770 or e-mail aseaston@opm.gov.

SUPPLEMENTARY INFORMATION:

The primary purpose of this rulemaking is to provide for additional OPM oversight of the FEHB Program carriers' contract costs that are charged to the Government. Since the beginning of the Program, we have maintained oversight of FEHB carriers' costs, including subcontractor costs. We have specified standard contracting requirements for review and audit of costs and have routinely updated our requirements as necessary. Historically, we have not considered providers of healthcare services or supplies to be subcontractors, as the term is defined in the Federal Acquisition Regulation (FAR), because hundreds of thousands of such agreements between carriers and providers are in place, and until recently, the dollar value of each agreement was relatively small.

However, the healthcare delivery system has changed and new large healthcare delivery entities now play a significant role in the industry. FEHB carriers now contract with these entities for services that represent a significant portion of individual carriers' total costs charged to the FEHB Program, and in the aggregate represent a sizeable portion of overall Program costs. Because of the impact of these costs on the FEHB Program, we are expanding our oversight in this area. Even though Large Providers of healthcare services or supplies are not defined as subcontractors under the FEHB Program, these regulatory changes would bring them under the umbrella of the FEHBA and subject them to audit requirements currently applicable to carriers and their subcontractors. Some, but not all, FEHB carriers' Large Provider Agreements already provide for a limited right to audit. We believe this provision should be in regulation rather than in individual contracts to make the context clear and consistent for all experience-rated carriers by mirroring the regulatory requirements for oversight of FEHB subcontracting arrangements. As with audit findings in subcontract arrangements, any audit findings regarding Large Providers would be referred to the FEHB carrier holding the Large Provider Agreement.

For FAR audit purposes, we define a "Large Provider Agreement" as an agreement between (1) an FEHB carrier, at least 25 percent of whose total enrollee contracts are comprised of FEHB enrollee contracts, and (2) a provider of services, where the total costs charged to the FEHB carrier for a

contract term for FEHB members, including benefits and services, are reasonably expected to exceed five percent of the carrier's total FEHB benefits costs, or five percent of the carrier's total FEHB administrative costs (where the provider is not responsible for benefits costs under the agreement). We will use the FEHB Program Annual Accounting Statement for the prior contract year to determine the five percent threshold.

Large Provider Agreements include mail order pharmacy services, pharmacy benefit management services, mental (behavioral) health and/or substance abuse management services, preferred provider organizations (including organizations that own and/or contract with direct providers of medical services and supplies), utilization review services, and/or large case or disease management services. Large Provider Agreements do not include carriers' contracts with hospitals.

This regulation requires experience-rated carriers to meet minimum notification and information requirements with respect to any new procurement, renewal, significant modification, or option relating to a Large Provider Agreement. Information to be provided includes: a description of the supplies or services required, basis for reimbursement, reason the proposed provider was selected, method of contracting and competition obtained, methodology used to compute profit, and provider risk provisions. This new oversight reflects OPM's need to be informed of the types of carriers' Large Provider Agreements and their terms and conditions because of the value and cost of such agreements to the FEHB Program. The clause describing the Large Provider Agreement review requirement is applicable to Large Provider Agreements and significant modifications effective January 1, 2004. However, to allow for an appropriate transition period, OPM will apply this requirement only to those Agreements and modifications that take effect on or after 90 days following the effective date of this final regulation.

This regulation authorizes the contracting officer to request additional information after he or she receives the carrier's notification and required information prior to the award of a Large Provider Agreement, as well as any time during the performance of the agreement. The contracting officer will give the carrier either written comments on the agreement, or written notice that there will be no comments. If the contracting officer provides comments, the carrier must inform the contracting

officer how it intends to address those comments.

Under the regulation, Large Providers must retain and make available for Government inspection all records applicable to the carrier's Large Provider contractual agreement. The Government will have audit rights with respect to Large Provider Agreements that are the same for all carriers. The contract clauses at 1652.204-74, Large Provider Agreements, and 1652.246-70, FEHB Inspection, contain provisions that require carriers to insert the applicable clauses in their Large Provider Agreements.

This regulation also updates our policy on FEHB Program subcontracting consent which previously required advance approval of carriers' subcontracts or modifications when the amount charged to the FEHB Program was at least \$100,000 and at least 25 percent of the total subcontract costs. Consistent with FAR changes, we are increasing the threshold to require advance approval if the amount charged to the FEHB Program equals or exceeds \$550,000 and is at least 25 percent of the total subcontract costs. The regulation also clarifies the cost components the carrier must consider in determining the \$550,000 threshold. 1644.170, Policy for FEHB Program subcontracting, has been clarified to reflect that (a) General Policy and (b) Consent work together, along with the FEHB Program Clause Matrix.

We have added a new section to Part 1631, Contract Cost Principles and Procedures, concerning the inferred reasonableness of a subcontract's costs. If the carrier follows the notification and consent requirements of 1652.244-70, Subcontracts, and later obtains the contracting officer's consent or ratification of the subcontract's costs, then the reasonableness of the subcontract's costs will be inferred.

We have modified the definitions of Cost or Pricing Data and Experience-rate to incorporate mental (behavioral) health benefits capitation rates, thereby reflecting the implementation of mental (behavioral) health parity in the FEHB Program as of the 2001 contract year. Mental (behavioral) health capitation rates are considered to be cost or pricing data and are included as actual paid claims and administrative expenses in experience rating.

We have updated the contractor records retention requirement for carrier rate submissions, patient claims, Large Provider Agreements, and subcontracts to six years. Earlier in the history of the Program when virtually all records were maintained in paper format, we established a requirement for carriers to

retain claims records for three years and financial records for five years. Since electronic data storage significantly reduces the maintenance burden and the Program can benefit from having records available for a slightly longer period, we have modified and standardized the records retention requirement. Carriers' records are subject to the Health Insurance Portability and Accountability Act (HIPAA) standards for privacy of individually identifiable health information.

To conform to current FAR sections, we have re-designated and/or re-titled certain sections and references in FEHBAR Parts 1615, 1632, and 1652. No material changes were made to these three Parts. Old FEHBAR 1615.1, General Requirements for Negotiation, is retitled "Source Selection Processes and Techniques." Old FEHBAR 1615.170, Negotiation authority, is now Section 1615.070. Old FEHBAR 1615.4, Solicitations and Receipt of Proposals and Quotations, is now 1615.2, Solicitations and Receipt of Proposals and Information. Old 1615.401, Applicability, is now 1615.270. Old FEHBAR 1615.6, Source Selection, is now 1615.3. Old FEHBAR 1615.602, Applicability, is now 1615.370. We moved the provisions in old FEHBAR Subparts 1615.8, Price Negotiation, and 1615.9, Profit, to Subpart 1615.4, Contract Pricing, to correspond with the FAR. We removed and reserved sections 1615.8 and 1615.9 because there are no longer corresponding references in the FAR. Old Section 1615.802, Policy, is now 1615.402, Pricing policy. Old paragraph 1615.804-70, Certificate of accurate cost or pricing data for community-rated carriers, is now 1615.406-2, Certificate of accurate cost or pricing data for community-rated carriers. Old paragraph 1615.804-72, Rate reduction for defective pricing or defective cost or pricing data, is now 1615.407-1. Old paragraph 1615.805-70, Carrier investment of FEHB funds, is now 1615.470. Old paragraph 1615.805-71, Investment income clause, is now 1615.470-1. Old Section 1615.902, Policy, is now 1615.404-4, Profit, and old Section 1615.905, Profit analysis factors, is now 1615.404-70.

In 1632.170, Recurring premium payments to carriers, we removed paragraph (c) relating to the 3-Year Department of Defense (DoD) Demonstration Project (10 U.S.C. 1108) because the term of the demonstration project expired December 31, 2002.

In 1632.771, Non-commingling of FEHB Program funds, and 1632.772, Contract clause, we removed the incorrect reference to paragraph

1652.232-70 and replaced it with the reference to 1652.232-72.

We removed the reference to "1615.804-72" in the introductory text of "1652.215-70, Rate reduction for defective pricing or defective cost or pricing data," and replaced it with "1615.407-1." In the same section, we removed the reference to "15.804-2(a)(1)" and replaced it with "15.403-4(a)(1)." We also replaced the clause date with "2003." In paragraph (a) of the clause, we replaced "1615.804-70" with "1615.406-2." We also removed paragraph (d) relating to the 3-Year DoD Demonstration Project (10 U.S.C. 1108) because the term of the demonstration project expired December 31, 2002.

In the introductory text of 1652.215-71, Investment income, we replaced "1615.805-71" with "1615.470-1."

In 1652.216-70, Accounting and price adjustment, we changed the clause date to "2003" and removed paragraph (c) because the term of the 3-Year DoD Demonstration Project (10 U.S.C. 1108) expired December 31, 2002.

In 1652.216-71, Accounting and allowable cost, we changed the clause date to "2003" and removed paragraph (d) because the term of the 3-Year DoD Demonstration Project (10 U.S.C. 1108) expired December 31, 2002.

In 1652.222-70, Notice of significant events, we revised paragraph (d) of the clause to increase the threshold for inserting the clause in the carrier's subcontracts and subcontract modifications.

In 1652.232-70, Payments—Community-rated contracts, we changed the clause date to "2003" and removed paragraph (f) because the term of the 3-Year DoD Demonstration Project (10 U.S.C. 1108) expired December 31, 2002.

In 1652.232-71, Payments—Experience-rated contracts, we changed the clause date to "2003" and removed paragraph (f) because the term of the 3-Year DoD Demonstration Project (10 U.S.C. 1108) expired December 31, 2002.

We updated the FEHB Program Clause Matrix by removing three clauses that relate to the Cost Accounting Standards (FAR 52.230-2, FAR 52.230-3, and FAR 52.230-6) that are waived and no longer apply.

On August 15, 2003, OPM published a proposed rule in the **Federal Register** (68 FR 48851). OPM received comments from an association representing fee-for-service health plans participating in the FEHB Program, three individual FEHB fee-for-service health plans, and one Federal employee union. The fee-for-service association recommended that we change the term "Large Provider

Agreements" to "Managed Care Agreements" because certain preferred provider organization contractors and utilization review contractors do not want to be referred to as health providers because of liability concerns. The association also recommended that we clarify the organizations that would be considered Large Providers. We believe the Large Provider definition adequately reflects our intent but for clarification, we have added a representative sample of providers to the definition of Large Provider Agreement in FEHBAR 1602.170-15.

The association also commented that most "Managed Care Agreements" are price analysis based contracts, not cost reimbursement contracts, are not subject to the inclusion of FAR 52.215-2, "Audit and Records—Negotiation" clause, and the flow down provision to Large Provider Agreements would not apply. They stated that the FEHBAR already contains FEHB Inspection clauses at 48 CFR 1646.301, 1652.246-70, for underwriting and administrative services and recommended that we revise these clauses to include review of "Managed Care Agreements". This would permit audit of cost analysis contracts under the Audit and Records—Negotiation clause, and price analysis contracts under the FEHB Inspection clause. We agree with the association's comment and have revised the regulation accordingly. This same principle applies to both Large Provider and subcontract arrangements.

The association commented that Large Provider audit findings should be treated pursuant to the overpayments clause of the fee-for-service contract (§ 2.3(g)) because they are not defective pricing situations under the Truth in Negotiations Act (TINA) which calls for liability to be placed initially on the prime contractor. We agree these audit findings are not defective pricing situations under TINA. However we do not agree that findings are overpayments. Rather, we will consider findings to be unallowable costs to the contract. The association stated that they select many vendors using price-analysis/price reasonableness, including competitive bidding, which by definition do not include evaluation of the underlying costs and profit. They recommended we revise the subcontract notification requirement on describing the vendor's profit to "only when applicable". We believe that this is not necessary because if there are no costs or profit to be described, the carrier can so state.

The association commented that the additional notice requirements for subcontracts should be defined more

narrowly (e.g., when the price change in the subcontract is above the threshold, not when the price change plus the initial price exceeds the threshold). We believe it is appropriate to review a subcontract modification that causes the total outlay for the subcontract to equal or exceed the \$550,000 threshold.

The association stated that the 60-day advanced notice for subcontract consent is commercially unworkable. We have revised the notice period to 30 days for subcontracts. The association recommended that the \$550,000 threshold be adjusted by the same amount and at the same time as any change to the threshold for application of the "Truth in Negotiations Act" (TINA). We agree and have made the appropriate change to the regulation. The association commented that it did not think the \$550,000 threshold should apply to evergreen contracts, e.g., contracts that renew automatically unless terminated by one of the parties and recommended we clarify that evergreen contracts not be considered option contracts. We expect advance notification of any subcontract (initial, option or evergreen) where the total price equals or exceeds the \$550,000 threshold. Evergreen contracts and contracts that include an initial contract term with options for renewal would meet the requirement for advance approval when the \$550,000 threshold is expected to be met. For example, if an initial contract is for \$547,000, and a subsequent year's option is for \$5,000, OPM would expect to receive a request for advance approval upon receipt of the \$5,000 option. OPM would need to obtain copies of both the initial and option components of the contract to conduct its review.

The association commented that OPM eliminated the threshold that the subcontract amount charged to the FEHB must be no less than 25 percent of the subcontract's cost. We have restored the 25 percent threshold to the final regulation. The association commented that Federal procurement law does not require TINA's certified cost or pricing data to be submitted to the contracting officer when the subcontract's cost is based on adequate price competition or subcontracts whose price is set by law or regulation, as well as those for commercial items. We agree and have revised the regulation accordingly.

The association commented that our proposed regulation appears to require carriers to comply with the FAR in conducting subcontracting activities. The association stated that the FAR's contract formation rules are directly applicable only to the Federal

Government. We disagree and have not made revisions to the regulation. The association objected to increasing the records retention period from three to six years for patient records and from five to six years for operations records, but recommended that any change to the retention period be made prospectively. We have maintained the uniform six year retention period consistent with existing FAR requirements, but agree to apply the requirement prospectively. Further, any carrier that believes this additional requirement may increase costs may ask the contracting officer for consideration during negotiations on the annual administrative cost ceiling.

We also received comments from a large FEHB fee-for-service plan which agreed with the fee-for-service association's comments and made additional comments of its own. The plan recommended that we clarify the definition of Large Provider Agreement to ensure the requirements applied only to the plan's parent association and not to its individual servicing entities. The plan further indicated that none of its servicing entities constitutes 25 percent of the plan's enrollment. The Large Provider Agreement requirement is intended to apply to carriers' contracts, not local plans that serve under an umbrella arrangement with a carrier. Therefore, we have clarified the definition. Further, since the definition of Large Provider Agreement contains a 25 percent of FEHB enrollment threshold, none of the individual servicing entities in the FEHB would be impacted by our new notice and audit requirements. This means the Large Provider Agreement requirement would apply to such entities as the Blue Cross and Blue Shield Association's Federal Employee Program.

The plan also commented that we should include the 25 percent threshold to the flow-down provision at 1652.222-70, Notice of Significant Events, because without this clause the plan would be required to insert the clause into many subcontracts with minor impact on the Federal contract. We agree and have added the 25 percent threshold.

We received comments from two of the fee-for-service plan's servicing entities that stated if the Large Provider contract auditing requirement was applied to them individually, it would be so administratively onerous as to potentially prohibit their continued participation in the program. As noted above, we have clarified the definition.

We also received comments from a Federal employee union that stated the definition of Large Provider Agreement could result in inequitable results. The

union stated that a relatively small provider could be subject to the definition merely because its subscriber base is disproportionately comprised of FEHB members and a very large insurer could be excluded because its FEHB subscribers do not comprise 25 percent of the plan's enrollees. The union recommended that no provider be considered a Large Provider unless it has a minimum of \$25 million in FEHB subscriber income and any provider with \$50 million or more of FEHB subscriber income be considered a Large Provider. We believe it is reasonable that we should have input on any Large Provider contract that affects a large number of Federal enrollees relative to the health plan's commercial business, regardless of the actual dollar amount of the contract. On the other hand, we do not believe that it is reasonable for us to try and influence a Large Provider contract where FEHB enrollment comprises a minor proportion of the contract's enrollees, compared to the health plan's other commercial business. The union disagreed with our newly proposed section 1631.205-81, Inferred Reasonableness and stated the clause weakened existing procurement law. We believe it is in the best interest of the FEHB Program to provide an incentive to carriers to obtain advanced notification of subcontracts. The union also disagreed with the removal of the three Cost Accounting Standards clauses from the FEHB Program Clause Matrix. The Federal Acquisition Regulation 30.201-5(b)(2) permits the head of an agency to waive the Cost Accounting Standards (CAS) for a particular contract or subcontract under exceptional circumstances when necessary to meet the needs of the agency. We determined that there are sufficient reasons and granted waivers for certain health plans under the FEHB Program. In October 2002, OPM determined that it was appropriate to grant CAS waivers for certain health plans under the FEHB Program for the reasons outlined below. First, OPM determined that the Program has adequate cost accounting requirements in its Federal Employees Health Benefits Acquisition Regulations (FEHBAR), which supplement the Federal Acquisition Regulation. The FEHBAR requires carriers to file annual financial statements. The carriers, and their third party servicing agents, must also adhere to financial and other related standards, comply with an FEHB Program audit guide, and submit to audits by Independent Public Accountants. Second, because OPM has contracted with carriers for twenty to forty years,

it has been able to collect extensive data on each carrier, thus making disclosure statements superfluous. Their existing systems are and have been their benchmarks. Third, the OPM Office of the Inspector General audits health carriers on a regular basis; contract rates, which are negotiated annually, are subject to adjustment for audit findings. Fourth, insurance carriers are subject to State regulatory authorities and must meet State statutory reserve requirements in order to conduct business; in addition, many carriers are required to submit to State rate setting procedures. Accordingly, OPM's statutory oversight and regulatory requirements already in place are sufficient to meet the Government's interests in a much less burdensome way than applying CAS. This new regulation will enhance the financial integrity of the Program and demonstrate to the public and any other interested parties that accounting methods and related financial disclosures by carriers are consistent with sound business practices.

Collection of Information Requirement

This rulemaking imposes additional oversight and audit requirements on individual Federal contractors. The requirements do not represent routine information collection. Carriers are required to provide the information on an individual case-by-case basis only when they are initiating a new Large Provider contract or renewing an existing contract. It 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 rulemaking affects FEHB Program experience-rated carriers and their Large Provider contractual arrangements which exceed that dollar threshold. Therefore, I certify that this 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 (RIA) 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 title 5, United States Code, Section 804(2), because we estimate its impact will only affect FEHB carriers and their Large Provider Agreements and mirrors current FEHB Program practice with regard to carriers' subcontract arrangements. Any economic impact resulting from oversight or audit efforts would not be expected to exceed the dollar threshold.

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 in 48 CFR Parts 1601, 1602, 1604, 1615, 1631, 1632, 1644, 1646, and 1652

Government employees, Government procurement, Health insurance, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

Dan G. Blair,

Acting Director.

■ Accordingly, OPM is amending chapter 16 of title 48 CFR, as follows:

CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATION

■ 1. The authority citation for 48 CFR parts 1601, 1602, 1604, 1615, 1631, 1632, 1644, 1646, and 1652 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SUBCHAPTER A—GENERAL

PART 1601—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 1601.1—Purpose, Authority, Issuance

1601.105 [Redesignated]

■ 2. Section 1601.105 is redesignated as 1601.106.

PART 1602—DEFINITIONS OF WORDS AND TERMS

Subpart 1602.1—Definitions of FEHB Program Terms

■ 3. In 1602.170–5, paragraph (a) is revised to read as follows:

1602.170–5 Cost or pricing data.

(a) *Experience-rated carriers.* Cost or pricing data for experience-rated carriers includes:

- (1) Information such as claims data;
 - (2) Actual or negotiated benefits payments made to providers of medical services for the provision of healthcare, such as capitation not adjusted for specific groups, including mental health benefits capitation rates, per diems, and Diagnostic Related Group (DRG) payments;
 - (3) Cost data;
 - (4) Utilization data; and
 - (5) Administrative expenses and retentions, including capitated administrative expenses and retentions.
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■ 4. Section 1602.170–7 is revised to read as follows:

1602.170–7 Experience-rate.

Experience-rate means a rate for a given group that is the result of that group's actual paid claims, administrative expenses (including capitated administrative expenses), retentions, and estimated claims incurred but not reported, adjusted for benefit modifications, utilization trends, and economic trends. Actual paid claims include any actual or negotiated benefits payments made to providers of services for the provision of healthcare such as capitation not adjusted for specific groups, including mental health benefits capitation rates, per diems, and DRG payments.

■ 5. Section 1602.170–15 is added to read as follows:

1602.170–15 Large Provider Agreement.

(a) *Large Provider Agreement* means an agreement between —

(1) An FEHB carrier, at least 25 percent of which total contracts are FEHB enrollee contracts, and

(2) A vendor of services or supplies such as mail order pharmacy services, pharmacy benefit management services, mental health and/or substance abuse management services, preferred provider organization services, utilization review services, and/or large case or disease management services. This representative list includes organizations that own or contract with direct providers of healthcare or supplies, or organizations that process claims or manage patient care. A hospital is not considered to be a vendor for purposes of this chapter.

(i) Where the total costs charged to the FEHB carrier for a contract term for FEHB members, including benefits and services, are reasonably expected to exceed 5 percent of the carrier's total FEHB benefits costs, or

(ii) Where the total administrative costs charged to the FEHB carrier for the contract term for FEHB members are reasonably expected to exceed 5 percent of the carrier's total FEHB administrative costs (applicable to agreements where the provider is not responsible for FEHB benefits costs).

(3) As used in this section, the term "carrier" does not include local health plans that serve under an umbrella arrangement with an FEHB carrier.

(b) The FEHB Program Annual Accounting Statement for the FEHB Plan for the prior contract year will be used to determine the 5 percent threshold under Large Provider Agreements.

(c) Large Provider Agreements based on cost analysis are subject to the provisions of FAR 52.215–2, "Audit and Records-Negotiation."

(d) Large Provider Agreements based on price analysis are subject to the provisions of 48 CFR 1646.301 and 1652.246–70.

PART 1604—ADMINISTRATIVE MATTERS

■ 6. Subpart 1604.72 is added to read as follows:

Subpart 1604.72—Large Provider Agreements

Sec.

1604.7201 FEHB Program Large Provider Agreements.

1604.7202 Large Provider Agreement clause.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1604.7201 FEHB Program Large Provider Agreements.

The following provisions apply to all experience-rated carriers participating in the FEHB Program:

(a) *Notification and information requirements.* (1) All experience-rated carriers must provide notice to the contracting officer of their intent to enter into or to make a significant modification to a Large Provider Agreement. Significant modification means a 20% increase or more in the amount of the Large Provider Agreement:

(i) Not less than 60 days before entering into any Large Provider Agreement; and

(ii) Not less than 60 days before exercising renewals or other options, or making a significant modification.

(2) The carrier's notification to the contracting officer must be in writing and must, at a minimum:

(i) Describe the supplies and/or services the proposed provider agreement will require;

(ii) Identify the proposed basis for reimbursement;

(iii) Identify the proposed provider agreement, explain why the carrier selected the proposed provider, and, where applicable, what contracting method it used, including the kind of competition obtained;

(iv) Describe the methodology the carrier used to compute the provider's profit; and, (v) Describe the provider risk provisions.

(3) The contracting officer may request from the carrier any additional information on a proposed provider agreement and its terms and conditions prior to a Large Provider award and during the performance of the agreement.

(4) Within 30 days of receiving the carrier's notification, the contracting officer will either give the carrier written comments or written notice that there will be no comments. If the contracting officer comments, the carrier must respond in writing within 10 calendar days and explain how it intends to address any concerns.

(5) When computing the carrier's annual service charge, the contracting officer will consider how well the carrier complies with the provisions of this section, including the advance notification requirements, as an aspect of the carrier's performance factor.

(6) The contracting officer's review of any Large Provider agreement, option, renewal, or modification will not constitute a determination of the

acceptability of terms or conditions of any provider agreement or the allowability of any costs under the carrier's contract, nor will it relieve the carrier of any responsibility for performing the contract.

(b) *Records and inspection.* The carrier must insert in all Large Provider Agreements the requirement that the provider will retain and make available to the Government all records relating to the agreement as follows:

(1) Records that support the annual statement of operations—Retain for 6 years after the agreement term ends.

(2) Enrollee records, if applicable—Retain for 6 years after the agreement term ends.

(c) Large Provider Agreements based on cost analysis are subject to the provisions of FAR 52.215–2, "Audit and Records-Negotiation."

(d) Large Provider Agreements based on price analysis are subject to the provisions of 48 CFR 1646.301 and 1652.246–70.

1604.7202 Large Provider Agreement clause.

The contracting officer will insert the clause set forth at section 1652.204–74 in all experience-rated FEHB Program contracts.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1615—CONTRACTING BY NEGOTIATION

■ 7. A new § 1615.070 is added immediately before Subpart 1615.1 to read as follows:

1615.070 Negotiation authority.

The authority to negotiate FEHB contracts is conferred by 5 U.S.C. 8902.

■ 8. Subpart 1615.1 is revised to read as follows:

Subpart 1615.1—Source Selection Processes and Techniques.

1615.170 Applicability.

FAR Subpart 15.1 has no practical application to the FEHB Program because prospective contractors (carriers) are considered for inclusion in the FEHB Program according to criteria in 5 U.S.C. chapter 89 and 5 CFR part 890 rather than by competition between prospective carriers.

■ 9. Subpart 1615.2 is added to read as follows:

Subpart 1615.2—Solicitations and Receipt of Proposals and Information

1615.270 Applicability.

FAR subpart 15.2 has no practical application to the FEHB Program

because OPM does not issue formal procurement solicitations to health benefits carriers. Eligible contractors (*i.e.*, qualified health benefits carriers) are identified in accordance with 5 U.S.C. 8903. Offerors voluntarily come forth in accordance with procedures provided in 5 CFR part 890.

Subpart 1615.6 [Redesignated]

■ 10. Subpart 1615.6 is redesignated as Subpart 1615.3.

1615.202 [Redesignated and amended]

■ 10a. Section 1615.602 is redesignated as 1615.370 and amended by removing “15.6” and adding in its place “15.3”.

■ 11. Subpart 1615.4 is revised to read as follows:

Subpart 1615.4—Contract Pricing

Sec.

1615.402 Pricing policy.

1615.404–4 Profit.

1615.404–70 Profit analysis factors.

1615.406–2 Certificate of accurate cost or pricing data for community-rated carriers.

1615.407–1 Rate reduction for defective pricing or defective cost or pricing data.

1615.470 Carrier investment of FEHB funds.

1615.470–1 Investment income clause.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1615.402 Pricing policy.

Pricing of FEHB contracts is governed by 5 U.S.C. 8902(i), 5 U.S.C. 8906, and other applicable law. FAR subpart 15.4 will be implemented by applying its policies and procedures—to the extent practicable—as follows:

(a) For both experience-rated and community-rated contracts for which the FEHB Program premiums for the contract term will be less than the threshold at FAR 15.403–4(a)(1), OPM will not require the carrier to provide cost or pricing data in the rate proposal for the following contract term.

(b) Cost analysis will be used for contracts where premiums and subscription income are determined on the basis of experience rating.

(c)(1) A combination of cost and price analysis will be used for contracts where premiums and subscription income are based on community-rates. For contracts for which the FEHB Program premiums for the contract term will be less than the threshold at FAR 15.403–4(a)(1), OPM will not require the carrier to provide cost or pricing data. The carrier is required to submit only a rate proposal and abbreviated utilization data for the applicable contract year. OPM will evaluate the proposed rates by performing a basic reasonableness test on the information submitted. Rates

failing this test will be subject to further review.

(2) For contracts with fewer than 1,500 enrollee contracts for which the FEHB Program premiums for the contract term will be at or above the threshold at FAR 15.403–4(a)(1), OPM will require the carrier to submit its rate proposal, utilization data, and the certificate of accurate cost or pricing data required in 1615.406–2. In addition, OPM will require the carrier to complete the proposed rates form containing cost and pricing data, and the Community-Rate Questionnaire, but will not require the carrier to send these documents to OPM. The carrier will keep the documents on file for periodic auditor and actuarial review in accordance with 1652.204–70. OPM will perform a basic reasonableness test on the data submitted. Rates that do not pass this test will be subject to further OPM review.

(3) For contracts with 1,500 or more enrollee contracts for which the FEHB Program premiums for the contract term will be at or above the threshold at FAR 15.403–4(a)(1), OPM will require the carrier to provide the data and methodology used to determine the FEHB Program rates. OPM will also require the data and methodology used to determine the rates for the carrier's similarly sized subscriber groups. The carrier will provide cost or pricing data required by OPM in its rate instructions for the applicable contract period. OPM will evaluate the data to ensure that the rate is reasonable and consistent with the requirements in this chapter. If necessary, OPM may require the carrier to provide additional documentation.

(4) Contracts will be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the similarly-sized subscriber groups (SSSGs). Such adjustments will be based on the lower of the two rates determined by using the methodology (including discounts) the carrier used for the two SSSGs.

(5) FEHB Program community-rated carriers will comply with SSSG criteria provided by OPM in the rate instructions for the applicable contract period.

(d) The application of FAR 15.402(b)(2) should not be construed to prohibit the consideration of preceding year surpluses or deficits in carrier-held reserves in the rate adjustments for subsequent year renewals of contracts based, in whole or in part, on cost analysis.

1615.404–4 Profit.

(a) When the pricing of FEHB Program contracts is determined by cost analysis, OPM will determine the profit or fee prenegotiation objective (service charge) portion of the contracts by use of a weighted guidelines structured approach. The service charge so determined will be the total service charge that may be negotiated for the contract and will encompass any service charge (whether entitled service charge, profit, fee, contribution to reserves or surpluses, or any other title) that may have been negotiated by the prime contractor with any subcontractor or underwriter.

(b) OPM will not guarantee a minimum service charge.

1615.404–70 Profit analysis factors.

(a) OPM contracting officers will apply a weighted guidelines method in developing the service charge prenegotiation objective for FEHB Program contracts. The following factors, as defined in FAR 15.404–4(d), will be applied to projected incurred claims and allowable administrative expenses:

(1) *Contractor performance.* OPM will consider such elements as the accurate and timely processing of benefit claims and the volume and validity of disputed claims as measures of economical and efficient contract performance. This factor will be judged apart from the contractor's basic responsibility for contract performance and will be a measure of the extent and nature of the contractor's contribution to the FEHB Program through the application of managerial expertise and effort. Evidence of effective contract performance will receive a plus weight, and poor performance or failure to comply with contract terms and conditions a negative weight. Innovations of benefit to the FEHB Program will generally result in a positive weight; documented inattention or indifference to cost control will generally result in a negative weight.

(2) *Contract cost risk.* In assessing the degree of cost responsibility and associated risk assumed by the contractor as a factor to be considered in negotiating profit, OPM will consider such underwriting elements as the availability of margins, group size, enrollment demographics and fluctuation, and the probability of conversion and adverse selection, as well as the extent of financial assistance the carrier renders to the contract. However, the “loss carry forward basis” of experience-rated group insurance practices, which mitigates contract risk, will likely serve to diminish this profit

analysis factor in an overall determination of profit. This factor is intended to provide profit opportunities commensurate with the contractor's share of cost risks only, taking into account elements such as the adequacy and reliability of data for estimating costs.

(3) *Federal socioeconomic programs.* OPM will consider documented evidence of successful, contractor-initiated efforts to support Federal socioeconomic programs such as drug and substance abuse deterrents and concerns of the type enumerated in FAR 15.404-4(d)(iii), as a factor in negotiating profit. This factor will be assessed by considering the quality of the contractor's policies and procedures and the extent of unusual effort or achievement demonstrated. Evidence of effective support of Federal socioeconomic programs will receive a positive weight; poor support will receive a negative weight.

(4) *Capital investments.* This factor is generally not applicable to FEHB Program contracts because facilities capital cost of money may be an allowable administrative expense. Generally, this factor will be given a weight of zero. However, special purpose facilities or investment costs of direct benefit to the FEHB Program that are not recoverable as allowable or allocable administrative expenses may be taken into account in assigning a positive weight.

(5) *Cost control.* OPM will consider contractor-initiated efforts such as improved benefit design, cost-sharing features, innovative peer review, or other professional cost containment efforts as a factor in negotiating profit. OPM will use this factor to reward contractors with additional profit opportunities for self-initiated efforts to control contract costs.

(6) *Independent development.* OPM will consider any profit opportunities that may be directly related to relevant independent efforts such as the development of a unique and enhanced customer support system that is of demonstrated value to the FEHB Program and for which developmental costs have not been recovered directly or indirectly through allowable administrative expenses. OPM will use this factor to provide additional profit opportunities based upon an assessment of the contractor's investment and risk in developing techniques, methods, and practices having viability to the program at large. OPM will not consider improvements and innovations recognized and rewarded under any of the other profit factors.

(b) The following weight ranges for each factor are used in the weighted guidelines approach:

Profit factor	Weight ranges (percent)
1. Contractor performance	-.2 to + .45
2. Contract cost risk *	+.02 to + .2
3. Federal socioeconomic programs.	-.05 to + .05
4. Capital investments	0 to + .02
5. Cost control	0 to + .35
6. Independent development	0 to + .03

*The contract cost risk factor is subdivided into two parts: group size (.02 to .10) and other risk elements (0 to .10). With respect to the group size element, subweights should be assigned as follows:

Enrollment	Weight (percent)
10,000 or less	.06 to .10
10,001-50,000	.05 to .09
50,001-200,000	.04 to .07
200,001-500,000	.03 to .06
500,001 and over	.02 to .04

1615.406-2 Certificate of accurate cost or pricing data for community-rated carriers.

The contracting officer will require a carrier with a contract meeting the requirements in 1615.402(c)(2) or 1615.402(c)(3) to execute the Certificate of Accurate Cost or Pricing Data contained in this section. A carrier with a contract meeting the requirements in 1615.402(c)(2) will complete the Certificate and keep it on file at the carrier's place of business in accordance with 1652.204-70. A carrier with a contract meeting the requirements in 1615.402(c)(3) will submit the Certificate to OPM along with its rate reconciliation, which is submitted during the first quarter of the applicable contract year.

Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers

This is to certify that, to the best of my knowledge and belief: (1) The cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting officer or the Contracting officer's representative or designee, in support of the _____ *FEHB Program rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHB Program contract and are accurate, complete, and current as of the date this certificate is executed; and (2) the methodology used to determine the FEHB Program rates is consistent with the methodology used to determine the rates for the carrier's Similarly Sized Subscriber Groups.

Firm: _____
Name: _____
Signature: _____
Date of Execution: _____

*Insert the year for which the rates apply. Normally, this will be the year for which the rates are being reconciled.

(End of Certificate)

1615.407-1 Rate reduction for defective pricing or defective cost or pricing data.

The clause set forth in section 1652.215-70 will be inserted in FEHB Program contracts, at or above the threshold in FAR 15.403-4(a)(1), that are based on a combination of cost and price analysis (community-rated).

1615.470 Carrier investment of FEHB funds.

(a) Except for contracts based on a combination of cost and price analysis (community-rated), the carrier is required to invest and reinvest all funds on hand, including any attributable to the special reserve or the reserve for incurred but unpaid claims, exceeding the funds needed to discharge promptly the obligations incurred under the contract.

(b) The carrier is required to credit income earned from its investment of FEHB funds to the special reserve on behalf of the FEHB Program. If a carrier, for any reason, fails to invest excess FEHB funds or to credit any income due to the contract, it will return or credit any investment income lost to OPM or the special reserve.

(c) Investment income. Investment income is the net amount earned by the carrier after deducting investment expenses.

1615.470-1 Investment income clause.

The clause set forth in 1652.215-71 will be inserted in all FEHB contracts based on cost analysis.

Subpart 1615.8 [Removed and Reserved]

■ 12. Subpart 1615.8 is removed and reserved.

Subpart 1615.9 [Removed and Reserved]

■ 13. Subpart 1615.9 is removed and reserved.

■ 14. Subpart 1615.70 is added to read as follows:

Subpart 1615.70—Audit and Records—Negotiation

1615.7001 Audit and records.

The Contracting officer will modify 52.215-2 in all FEHB Program experience-rated contracts by amending paragraph (g) of that section to replace the words "exceed the simplified acquisition threshold" with "equals or exceeds \$550,000." This amount shall be adjusted by the same amount and at

the same time as any change to the threshold for application of the Truth in Negotiations Act pursuant to 41 U.S.C. 254b(a)(7).

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1631—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1631.2—Contracts With Commercial Organizations

- 15. A new 1631.205–81 is added to Subpart 1631.2 to read as follows:

1631.205–81 Inferred reasonableness.

If the carrier follows the notification and consent requirements of paragraphs (a), (b) and (c) of 1652.244–70, and subsequently obtains the Contracting officer's consent or ratification, then the reasonableness of the subcontract's costs shall be inferred.

PART 1632—CONTRACT FINANCING

Subpart 1632.1—General

1632.170 [Amended]

- 16. In 1632.170, remove paragraph (c).

Subpart 1632.7—Contract Funding

1632.771 [Amended]

- 17. In 1632.771 paragraph (d), remove “1652.232–70” and add in its place “1652.232–72.”

1632.772 [Amended]

- 18. In 1632.772, remove “1652.232–70” and add in its place “1652.232–72.”

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1644—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1644.1—General

- 19. Section 1644.170 is revised to read as follows:

1644.170 Policy for FEHB Program subcontracting.

(a) *General policy.* Carriers shall follow appropriate procurement procedures that comply with the FAR policies and procedures relating to competition and contract pricing for the acquisition of both commercial and non-commercial items.

(b) *Consent.* For all experience-rated contracts, carriers will notify the Contracting officer in writing at least 30 days in advance of entering into any subcontract or subcontract modification, or as otherwise specified by the contract, if: the amount of the subcontract or the amount of the

subcontract and modification charged to the FEHB Program equals or exceeds \$550,000 and is at least 25 percent of the total subcontract's costs. The amount of the dollar charge to the FEHB Program shall be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act pursuant to 41 U.S.C. 254b(a)(7). Failure to provide advance notice may result in a Contracting officer's disallowance of subcontract costs or a penalty when considering the performance aspect of the carriers' service charge.

(1) All subcontracts or subcontract modifications that equal or exceed the threshold are subject to audit under FAR 52.215–2 “Audit and Records-Negotiations” if based on cost analysis, and subject to the provisions of 48 CFR 1646.301 and 1652.246–70 “FEHB Inspection” if based on price analysis.

(2) In determining whether the amount chargeable to the FEHB Program contract for a given subcontract or modification equals or exceeds the \$550,000 threshold, the following rules apply:

(i) For initial advance notification, the carrier shall provide the total cost/price for the base year.

(ii) The carrier shall provide advance notification of any modifications, options, including quantity or service options and option periods, and renewals of “evergreen contracts” that cause the total price to equal or exceed the threshold. OPM's review will be of the modification(s), itself, but documentation for the original subcontract will be required to perform the review.

(iii) The \$550,000 threshold will be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act.

PART 1646—QUALITY ASSURANCE

Subpart 1646.2—Contract Quality Requirements

- 20. Subpart 1646.2—Contract Quality Requirements is revised as follows:

Subpart 1646.2—Contract Quality Requirements

1646.201 Contract Quality Policy.

(a) This section prescribes general policies and procedures to ensure that services acquired under the FEHB contract conform to the contract's quality and audit requirements.

(b) OPM will periodically evaluate the contractor's system of internal controls under the quality assurance program required by the contract and will

acknowledge in writing whether or not the system is consistent with the requirements set forth in the contract. After the initial review, subsequent reviews may be limited to changes in the contractor's internal control guidelines. However, a limited review does not diminish the contractor's obligation to apply the full internal control system.

(c) OPM will issue specific quality performance standards for the FEHB contracts and will inform carriers of the applicable standards prior to negotiations for the contract year. OPM will benchmark its standards against standards generally accepted in the insurance industry. The contracting officer may authorize nationally recognized standards to be used to fulfill this requirement. FEHB carriers will comply with the performance standards issued by OPM.

(d) In addition to reviewing carriers' quality assurance programs, OPM will periodically audit contractors, subcontractors and Large Providers' books and records to assure compliance with FEHB law, regulations, and the contract.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1652—CONTRACT CLAUSES

Subpart 1652.2—Texts of FEHB Clauses

- 21. Section § 1652.204–70 is revised to read as follows:

1652.204–70 Contractor records retention.

As prescribed in 1604.705 the following clause will be inserted in all FEHB Program contracts.

Contractor Records Retention (Jan 2004)

Notwithstanding the provisions of Section 5.7 (FAR 52.215–2(f)) “Audit and Records—Negotiation” the carrier will retain and make available all records applicable to a contract term that support the annual statement of operations and, for contracts that equal or exceed the threshold at FAR 15.403–4(a)(1), the rate submission for that contract term for a period of six years after the end of the contract term to which the records relate. This includes all records of Large Provider Agreements and subcontracts that equal or exceed the threshold requirements. In addition, individual enrollee and/or patient claim records will be maintained for six years after the end of the contract term to which the claim records relate. This clause is effective prospectively as of the 2004 contract year.

(End of Clause)

- 22. Section 1652.204–74 is added to read as follows:

1652.204–74 Large provider agreements.

As prescribed by 1604.7202, the contracting officer will insert the following clause in all FEHB Program contracts based on cost analysis (experience-rated):

Large Provider Agreements (Jan 2004)

(a) *Notification and Information Requirements.* (1) The experience-rated Carrier must provide notice to the contracting officer of its intent to enter into or to make a significant modification of a Large Provider Agreement:

(i) Not less than 60 days before entering into any Large Provider Agreement; and
(ii) Not less than 60 days before exercising a renewal or other option, or significant modification to a Large Provider Agreement, when such action would result in total costs to the FEHB Program of an additional 20 percent or more above the existing contract. This amount shall be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act pursuant to 41 U.S.C. 254b(a)(7). However, if a carrier is exercising a simple renewal or other option contemplated by a Large Provider Agreement that OPM previously reviewed, and there are no significant changes, then a statement to the effect that the renewal or other option is being exercised along with the dollar amount is sufficient notice.

(2) The carrier's notification to the contracting officer must be in writing and must, at a minimum:

(i) Describe the supplies and/or services the proposed provider agreement will require;
(ii) Identify the proposed basis for reimbursement;
(iii) Identify the proposed provider agreement, explain why the carrier selected the proposed provider, and what contracting method it used, where applicable, including the kind of competition obtained;
(iv) Describe the methodology the carrier used to compute the provider's profit; and,
(v) Describe provider risk provisions.

(3) The Contracting officer may request from the carrier any additional information on a proposed provider agreement and its terms and conditions prior to a provider award and during the performance of the agreement.

(4) Within 30 days of receiving the carrier's notification, the Contracting officer will give the carrier either written comments or written notice that there will be no comments. If the Contracting officer comments, the carrier must respond in writing within 10 calendar days, and explain how it intends to address any concerns.

(5) When computing the carrier's service charge, the Contracting officer will consider how well the carrier complies with the provisions of this section, including the advance notification requirements, as an aspect of the carrier's performance factor.

(6) The Contracting officer's review of any Large Provider Agreement, option, renewal, or modification will not constitute a determination of the acceptability of the terms and conditions of any provider agreement or of the allowability of any costs

under the carrier's contract, nor will it relieve the carrier of any responsibility for performing the contract.

(b) *Records and Inspection.* The carrier must insert in all Large Provider Agreements the requirement that the provider will retain and make available to the Government all records relating to the agreement that support the annual statement of operations and enrollee records—Retain for 6 years after the agreement term ends.

(c) *Audit and Records—Negotiation.* The provisions of FAR 52.215–2, “Audit and Records—Negotiation,” when required, or FEHBAR 1652.246–70, “FEHB Inspection” apply to all experience-rated Carriers' Large Provider Agreements. The Carrier will insert the clauses at FAR 52.215–2, when applicable, or FEHBAR 1652.246–70 in all Large Provider Agreements. In FAR 52.215–2 the carrier will substitute:

(1) The term “Large Provider” for the term “Contractor” throughout the clause, and

(2) The term “Large Provider Agreement” for the term “Subcontracts” in paragraph (g) of FAR 52.215–2. The term “Contracting officer” will mean the FEHB Program Contracting officer at OPM. The carrier will be responsible for ensuring the Large Provider complies with the provisions set forth in the clause.

(d) *Prohibited Agreements.* No provider agreement made under this contract will provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The carrier will insert this clause, 1652.204–74, in all Large Provider Agreements.

(End of Clause)

1652.215–70 (Amended)

■ 23. Amend Section 1652.215–70 as follows:

■ A. In the introductory text of section 1652.215–70, remove “1615.804–72” and add in its place “1615.407–1” and remove “15.804–2(a)(1)” and add in its place “15.403–4(a)(1)”.

■ B. In the clause title, remove “JAN 2000” and add in its place “JAN 2004”.

■ C. In paragraph (a)(1) of the clause remove “1615.804–70” and add in its place “1615.406–2” and

■ D. Remove paragraph (d).

1652.215–71 [Amended]

■ 24. In the introductory text of section 1652.215–71, remove “1615.805–71” and add in its place “1615.470–1”.

1652.216–70 [Amended]

■ 25. In Section 1652.216–70,

■ A. Remove “JAN 2000” in the clause title and add in its place “JAN 2003” and

■ B. Remove paragraph (c) of the clause.

1652.216–71 [Amended]

■ 26. In 1652.216–71:

■ A. Remove “JAN 2000” in the clause title and add in its place “JAN 2003” and

■ B. Remove paragraph (d) of the clause.

■ 27. In the clause in section 1652.222–70, the clause heading and paragraph (d) are revised to read as follows:

1652.222–70 Notice of Significant Events.

* * * * *

Notice of Significant Events (Jan 2001)

* * * * *

(d) The carrier will insert this clause in any subcontract or subcontract modification if the amount of the subcontract or modification charged to the FEHB Program (or in the case of a community-rated carrier, applicable to the FEHB Program) equals or exceeds \$550,000 and is at least 25 percent of the total subcontract cost. The amount of the dollar charge to the FEHB Program shall be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act pursuant to 41 U.S.C. 254b(a)(7).

(End of Clause)

■ 28. Section 1652.244–70 is revised to read as follows:

1652.244–70 Subcontracts.

As prescribed in section 1644.270, the following clause will be inserted in all FEHB Program contracts based on cost analysis (experience-rated):

Subcontracts (Jan 2004)

(a) The carrier will notify the Contracting officer in writing at least 30 days in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, if the amount of the subcontract or modification charged to the FEHB Program equals or exceeds \$550,000 and is at least 25 percent of the total subcontract cost. The amount of the dollar charge to the FEHB Program shall be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act pursuant to 41 U.S.C. 254b(a)(7). Failure to provide advance notice may result in a Contracting officer's disallowance of subcontract costs or a penalty in the performance aspect of the carrier's service charge. In determining whether the amount chargeable to the FEHB Program contract for a given subcontract or modification equals or exceeds the \$550,000 threshold, the following rules apply:

(1) For initial advance notification, the carrier shall add the total cost/price for the base year and all options, including quantity or service options and option periods.

(2) For contract modifications, options and/or renewals (e.g. evergreen contracts) not accounted for in paragraph (a)(1) of this clause, the carrier shall provide advance notification if they cause the total price to equal or exceed the threshold. OPM's review will be of the modification(s), itself, but documentation for the original subcontract will be required to perform the review. The \$550,000 threshold will be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act. All subcontracts or subcontract modifications that equal or exceed the threshold are subject to audit

under FAR 52.215-2 "Audit and Records—Negotiations" if based on cost analysis or 48 CFR 1646.301 and 1552.246-70 "FEHB Inspection" if based on price analysis.

(b) The advance notification required by paragraph (a) of this clause will include the information specified below:

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the carrier's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and a Certificate of Current Cost or Pricing Data must be submitted to the Contracting officer if required by law, regulation, or other contract provisions.

(6) (Reserved)

(7) A negotiation memorandum reflecting—

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant consideration controlling establishment of initial or revised prices;

(iii) An explanation of the reason cost or pricing data are not required, if the carrier believes that cost or pricing data are not required.

(iv) The extent, if any, to which the carrier did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent, if any, to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the carrier and the subcontractor; and the effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the carrier's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan, when incentives are used. The explanation will identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The carrier will obtain the Contracting officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) of this clause. However, the Contracting officer may ratify

in writing any such subcontract for which written consent was not obtained. Ratification will constitute the consent of the Contracting officer.

(d) The Contracting officer may waive the requirement for advance notification and consent required by paragraphs (a), (b) and (c) of this clause where the carrier and subcontractor submit an application or renewal as a contractor team arrangement as defined in FAR Subpart 9.6 and—

(1) The Contracting officer evaluated the arrangement during negotiation of the contract or contract renewal; and

(2) The subcontractor's price and/or costs were included in the Plan's rates that were reviewed and approved by the Contracting officer during negotiation of the contract or contract renewal.

(e) If the carrier follows the notification and consent requirements of paragraphs (a), (b) and (c) of this clause and subsequently obtains the Contracting officer's consent or ratification, then the reasonableness of the subcontract's costs will be inferred as provided for in 1631.205-81. However, consent or ratification by the Contracting officer will not constitute a determination:

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) That the carrier should be relieved of any responsibility for performing this contract.

(f) No subcontract placed under this contract will provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts will not exceed the fee limitations in FAR 15.404-4(c)(4)(i). Any profit or fee payable under a subcontract will be in accordance with the provision of Section 3.7, *Service Charge*.

(g) The carrier will give the Contracting officer immediate written notice of any action or suit filed and prompt notice of any claim made against the carrier by any subcontractor or vendor that, in the opinion of the carrier, may result in litigation related in any way to this contract with respect to which the carrier may be entitled to reimbursement from the Government.

(End of Clause)

■ 29. Section 1652.246-70 is revised to read as follows:

1652.246-70 FEHB Inspection.

As prescribed in 1646.301, the following clause will be inserted in all FEHB contracts:

FEHB Inspection (Jan 2004)

(a) The Contracting officer, or an authorized representative of the Contracting officer, has the right to inspect or evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unreasonably delay the work.

(b) The Contractor shall maintain and the Contracting officer, or an authorized representative of the Contracting officer, shall have the right to examine and audit all books and records relating to the contract for purposes of the Contracting officer's determination of the carrier's subcontractor or Large Provider's compliance with the terms of the contract, including its payment (including rebate and other financial arrangements) and performance provisions. The Contractor shall make available at its office at all reasonable times those books and records for examination and audit for the record retention period specified in the Federal Employees Health Benefits Acquisition Regulation (FEHBAR), 48 CFR 1652.204-70. This subsection is applicable to subcontract and Large Provider Agreements with the exception of those that are subject to the "Audits and Records—Negotiation" clause, 48 CFR 52.215-2.

(c) If the Contracting officer, or an authorized representative of the Contracting officer, performs inspection, audit or evaluation on the premises of the carrier, the subcontractor, or the Large Provider, the carrier shall furnish or require the subcontractor or Large Provider to furnish all reasonable facilities for the same and convenient performance of these duties.

(d) The carrier shall insert this clause, including this subsection (d), in all subcontracts for underwriting and claim payments and administrative services and in all Large Provider Agreements and shall substitute "contractor" "Large Provider," or other appropriate reference for the term "carrier."

(End of clause)

Subpart 1652.3—FEHB Clause Matrix

■ 30. In section 1652.370, the FEHB Clause Matrix, is revised to read as follows:

1652.370 Use of the Matrix.

* * * * *

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FEHB CLAUSE MATRIX

Clause No.	Text Reference	Title	Use Status	Use With Experience Rated Contracts	Use With Community Rated Contracts
FAR 52.202-1	FAR 2.201	Definitions	M	T	T
FAR 52.203-3	FAR 3.202	Gratuities	M	T	T
FAR 52.203-5	FAR 3.404	Covenant Against Contingent Fees	M	T	T
FAR 52.203-7	FAR 3.502-3	Anti-Kickback Procedures	M	T	T
FAR 52.203-12	FAR 3.808(b)	Limitation on Payments to Influence Certain Federal Transactions	M	T	T
1652.203-70	1603-7003	Misleading, Deceptive, or Unfair Advertising	M	T	T
1652.204-70	1604.705	Contractor Records Retention	M	T	T
1652.204-71	1604.7001	Coordination of Benefits	M	T	T
1652.204-72	1604.7101	Filing Health Benefit Claims/Court Review of Disputed Claims	M	T	T
1652.204-73	1604.970	Taxpayer Identification Number	M	T	T
1652.204-74	1604.7202	Large Provider Agreements	M	T	T
FAR 52.209-6	FAR 9.409(b)	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	M	T	T
FAR 52.215-2	FAR 15.209(b)	Audit & Records—Negotiation	A	T	T
FAR 52.215-10	FAR 15.408(b)	Price Reduction for Defective Cost or Pricing Data	M	T	T
FAR 52.215-12	FAR 15.408(d)	Subcontractor Cost or Pricing Data	M	T	T
FAR 52.215-15	FAR 15.408(g)	Pension Adjustments and Asset Reversions	M	T	T
FAR 52.215-16	FAR 15.408(h)	Facilities Capital Cost of Money	M	T	T
FAR 52.215-17	FAR 15.408(i)	Waiver of Facilities Capital Cost of Money	A	T	T
FAR 52.215-18	FAR 15.408(j)	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions	M	T	T

Clause No.	Text Reference	Title	Use Status	Use With Experience Rated Contracts	Use With Community Rated Contracts
1652.215-70	1615.407-70	Rate Reduction for Defective Pricing or Defective Cost or Pricing Data	M		T
1652.215-71	1615.407-72	Investment Income	M	T	
1652.216-70	1616.7001	Accounting and Price Adjustment	M		T
1652.216-71	1616.7002	Accounting and Allowable Cost	M	T	
FAR 52.219-8	FAR 19.708(a)	Utilization of Small Business Concerns	M	T	T
FAR 52.222-1	FAR 22.103-5(a)	Notice to the Government of Labor Disputes	M	T	T
FAR 52.222-3	FAR 22.202	Convict Labor	M	T	T
FAR 52.222-4	FAR 22.305	Contract Work Hours and Safety Standards Act—Overtime Compensation	M	T	T
FAR 52.222-21	FAR 22.810(a)(1)	Prohibition of Segregated Facilities	M	T	T
FAR 52.222-26	FAR 22.810(a)	Equal Opportunity	M	T	T
FAR 52.222-29	FAR 22.810(g)	Notification of Visa Denial	A	T	T
FAR 52.222-35	FAR 22.1308(a)	Equal Opportunity for Special Disabled Veterans, and Other Eligible Veterans	M	T	T
FAR 52.222-36	FAR 22.1408(a)	Affirmative Action for Workers With Disabilities	M	T	T
FAR 52.222-37	FAR 22.1308(b)	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	M	T	T
1652.222-70	1622.103-70	Notice of Significant Events	M	T	T
FAR 52.223-6	FAR 23.505	Drug-Free Workplace	A	T	T
1652.224-70	1624.104	Confidentiality of Records	M	T	T
FAR 52.227-1	FAR 27.201-2(a)	Authorization and Consent	M	T	T
FAR 52.227-2	FAR 27.202-2	Notice and Assistance Regarding Patent and Copyright Infringement	M	T	T
FAR 52.229-3	FAR 29.401-3	Federal, State and Local Taxes	M		T

Clause No.	Text Reference	Title	Use Status	Use With Experience Rated Contracts	Use With Community Rated Contracts
FAR 52.229-4	FAR 29.401-4	Federal, State and Local Taxes (Noncompetitive Contract)	M	T	
FAR 52.229-5	FAR 29.401-5	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico	A	T	T
1652.229-70	FEHBP 1629.402	Taxes—Foreign Negotiated Benefits Contracts	A	T	T
FAR 52.232-8	FAR 32.111(c)(1)	Discounts for Prompt Payment	M	T	T
FAR 52.232-17	FAR 32.617(a) Modification: 1632.617	Interest	M	T	T
FAR 52.232-23	FAR 32.806(a)(1)	Assignment of Claims	A	T	T
FAR 52.232-33	FAR 32.1103(a)	Payment by Electronic Funds Transfer—Central Contractor Registration	M	T	T
1652.232-70	1632.171	Payments—Community-Rated Contracts	A	T	T
1652.232-71	1632.172	Payments—Experience-Rated Contracts	A	T	
1652.232-72	1632.772	Non-Commingling of FEHBP Funds	M	T	
1652.232-73	1632.806-70	Approval for Assignment of Claims	M	T	T
FAR 52.233-1	FAR 33.215	Disputes	M	T	T
FAR 52.242-1	FAR 42.802	Notice of Intent to Disallow Costs	M	T	
FAR 52.242-3	FAR 42.709-6	Penalties for Unallowable Costs	M	T	
FAR 52.242-13	FAR 42.903	Bankruptcy	M	T	T
1652.243-70	1643.205-70	Changes—Negotiated Benefits Contracts	M	T	T
FAR 52.244-5	FAR 44.204(c)	Competition in Subcontracting	M	T	
FAR 52.244-6	FAR 44.403	Subcontracts for Commercial Items	M	T	
1652.244-70	1644.270	Subcontracts	M	T	
1652.245-70	1645.303-70	Government Property (Negotiated Benefits Contracts)	M	T	T

Clause No	Text Reference	Title	Use Status	Use With Experience Rated Contracts	Use With Community Rated Contracts
FAR 52.246-25	FAR 46.805(a)(4)	Limitation of Liability—Services	M	T	
1652.246-70	1646.301	FEHB Inspection	M	T	T
FAR 52.247-63	FAR 47.405	Preference for U.S.-Flag Air Carriers	M	T	T
1652.249-70	1649.101-70	Renewal and Withdrawal of Approval	M	T	T
1652.249-71	1649.101-71	FEHBP Termination for Convenience of the Government—Negotiated Benefits Contracts	M	T	T
1652.249-72	1649.101-72	FEHBP Termination for Default—Negotiated Benefits Contracts	M	T	T
FAR 52.251-1	FAR 51.107	Government Supply Sources	A	T	
FAR 52.252-4	FAR 52.107(d)	Alterations in Contract	A	T	T
FAR 52.252-6	FAR 52.107(f)	Authorized Deviations in Clauses	M	T	T

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OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1631 and 1699

RIN 3206-AJ10

Federal Employees Health Benefits Program; Revision of Contract Cost Principles and Procedures, and 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 amending the Federal Employees Health Benefits (FEHB) Acquisition Regulation (FEHBAR). This regulation provides additional contract cost principles and procedures for FEHB Program experience-rated contracts and is intended to clarify our requirements and enhance our oversight of FEHB carriers.

DATES: Effective July 1, 2005.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION: We are enhancing our oversight of experience-rated FEHB contracts by requiring carriers to apply additional cost principles and procedures. We currently contract with thirty-two experience-rated fee-for-service carriers and Health Maintenance Organizations (HMOs). Under the FEHB law, 5 U.S.C. 8902, it is part of OPM's responsibility to ensure that rates charged by health benefits plans reasonably and equitably reflect the cost of the benefits provided. Our interest, from a financial standpoint, is to pay a reasonable price for the health care coverage we purchase from private contractors on behalf of FEHB enrollees. OPM's independent Inspector General regularly audits experience-rated carriers to determine if they are in compliance with the Cost Principles in part 31 of title 48, Code of Federal Regulations (the Federal Acquisition Regulation (FAR)) and chapter 16 of title 48, Code of Federal Regulations (FEHBAR)). In addition, we have other requirements and practices in place to provide assurance to FEHB Program administrators that carriers' financial reporting and contractual requirements are met.

The FEHBAR and part 31 of the FAR are the sole sources of cost accounting

principles and practices for FEHB contracts. The basic cost accounting principles in the FAR Part 31 have been in place for over 40 years. During this time period, significant improvements in cost accounting principles and practices have been made. Advances in information technology have enabled FEHB contractors to implement cost accounting practices more complex than those generally used when we adopted the FAR cost principles. Also, we have observed some differences in interpretation regarding the allocation of costs to carriers' contracts. Therefore, we are updating the FEHBAR to allow carriers to use more current contract cost accounting principles and practices and to provide for consistent interpretation of our requirements across the Program. These final regulations may apply to contractors that also allocate costs to other federal contracts subject to CAS-coverage or FAR provisions related to cost-based contracts. OPM plans to contact other federal agencies that contract with the FEHB contractors to discuss how cost accounting practices are applied to business units that may have other cost-based contracts for federal programs, such as Medicare or Tricare, to determine if a consistent standard is appropriate governmentwide.

FAR Part 31 provides criteria that govern the allocation of indirect costs to contracts. This regulation provides guidance to carriers on allocating certain indirect costs to FEHB experience-rated contracts. For example, we have included a section to supplement FAR 31.203 that describes techniques for accumulating and allocating groupings of indirect costs (FEHBAR 1631.203-70). The new section provides guidance for determining logical cost groupings as required by FAR 31.203(c). It also provides methods for achieving the FAR 31.201-4 requirement that costs are to be allocated on the basis of relative benefits received or other equitable relationship. We have also provided more guidance on the allocation of business unit general and administrative (G&A) expenses (FEHBAR 1631.203-71) and home office expenses to carriers' business segments (FEHBAR 1631.203-72) to supplement FAR 31.203. Our intent is to supplement, but not to supplant FAR. Therefore, we believe that the provisions of FAR 31.203 dealing with the allocation of indirect costs, including G&A expenses and home office expenses, are rendered more useful for our purposes when supplemented by FEHBAR 1631.203-70, 71, and 72. In addition, we have

modified the FEHBAR to specifically recognize that monthly indirect cost rates are a practice of the insurance industry and are therefore permitted by FAR 31.203.

We have added subrogation settlements, prescription drug rebates, and volume discounts to the list of FEHB credits in FEHBAR 1631.201-70. This guidance specifies that the applicable portion of any credit relating to any allowable cost and received by or accruing to the carrier must be credited to the FEHB Program. We have always expected carriers to ensure that the Program actually receives these credits. Identifying them makes it even clearer that they are to be credited to the Program. While the list of credits is not intended to be exhaustive, we have added these examples to demonstrate how all credits should be treated. Other enhancements include modifying FAR 31.205-10 to make facilities cost of money (COM) allowable under certain circumstances, even if it is not specifically identified in a carrier proposal (FEHBAR 1631.205-10). This change is intended to more closely reflect the procedures we follow in our annual negotiation process with carriers.

We have added a provision to establish that compensated personal absence must be assigned to the cost accounting period in which the entitlement was earned (FEHBAR 1631.205-72). This section is included to ensure all carriers are following GAAP requirements applicable to accrual procedures. We also provided a transition rule to permit carriers to recover prior years' allocable liability for compensated personal absence not previously charged to FEHB contracts. We believe that the provisions of this section ensure that there is compatibility between the applicable requirements of GAAP, FAR and FEHBAR. It should also be stressed that the transition rule dealing with the recovery of prior years' costs applies only to costs that have not been previously charged to contracts or other final cost objectives.

Consistent with OPM's waiver of Cost Accounting Standards (CAS) requirements, a new FEHBAR Subpart 1699.70 is added to clarify they do not apply to experience-rated FEHB contracts.

We have worked collaboratively with carriers to develop procedures that are consistent with insurance industry practices and assure an equitable allocation of costs to the FEHB Program. When added to our current financial reporting and disclosure requirements, these new provisions will enhance our