to agree on premiums and benefits for an MSP on one or more Exchanges for the subsequent plan year by the date required by OPM, either party may provide notice of nonrenewal pursuant to §800.306, or OPM may in its discretion withdraw the certification of that MSP on the Exchange or Exchanges for that plan year. In addition, if OPM and the MSPP issuer fail to agree on benefits and premiums for an MSP on one or more Exchanges by the date set by OPM and in the event of no action (no notice of nonrenewal or renewal) by either party, the MSPP contract will be renewed and the existing premiums and benefits for that MSP on that Exchange or Exchanges will remain in effect for the subsequent plan year.

§ 800.306 Nonrenewal.

(a) Definition of nonrenewal. As used in this subpart and subpart E of this part, “nonrenewal” means a decision by either OPM or an MSPP issuer not to renew an MSPP contract.

(b) Notice required. Either OPM or an MSPP issuer may decline to renew an MSPP contract by providing a written notice of nonrenewal to the other party.

(c) MSPP issuer responsibilities. The MSPP issuer’s written notice of nonrenewal must be made in accordance with its MSPP contract with OPM. The MSPP issuer also must comply with any requirements regarding the termination of a plan that are applicable to a QHP offered on an Exchange on which the MSP was offered, including a requirement to provide advance written notice of termination to enrollees. If an Exchange does not have requirements about advance written notice of termination to enrollees, the MSPP issuer must inform current MSP enrollees in writing of the nonrenewal of the MSP no later than 90 days prior to termination of coverage, unless OPM determines that good cause justifies less than 90 days’ notice.

Subpart E—Compliance

§ 800.401 Contract performance.

(a) General. An MSPP issuer must perform an MSPP contract with OPM in accordance with the requirements of section 1334 of the Affordable Care Act and this part. The MSPP issuer must continue to meet such requirements while under an MSPP contract with OPM.

(b) Specific requirements for issuers. In addition to the requirements described in paragraph (a) of this section, the following requirements apply to each MSPP issuer:

1. It must have, in the judgment of OPM, the financial resources to carry out its obligations under the MSPP;

2. It must keep such reasonable financial and statistical records, and furnish to OPM such reasonable financial and statistical reports with respect to the MSP or the MSPP, as may be requested by OPM;

3. It must permit representatives of OPM (including the OPM Office of Inspector General), the U.S. Government Accountability Office, and any other applicable Federal Government auditing entities to audit and examine its records and accounts that pertain, directly or indirectly, to the MSP at such reasonable times and places as may be designated by OPM or the U.S. Government Accountability Office;

4. It must timely submit to OPM a properly completed and signed novation or change-of-name agreement in accordance with subpart 42.12 of 48 CFR part 42;

5. It must perform the MSPP contract in accordance with prudent business practices, as described in paragraph (c) of this section; and

6. It must not perform the MSPP contract in accordance with poor business practices, as described in paragraph (d) of this section.

(c) Prudent business practices. For purposes of paragraph (b)(5) of this section, prudent business practices include, but are not limited to, the following:

1. Timely compliance with OPM instructions and directives;

2. Legal and ethical business and health care practices;

3. Compliance with the terms of the MSPP contract, regulations, and statutes;

4. Timely and accurate adjudication of claims or rendering of medical services;
(5) Operating a system for accounting for costs incurred under the MSPP contract, which includes segregating and pricing MSP medical utilization and allocating indirect and administrative costs in a reasonable and equitable manner;
(6) Maintaining accurate accounting reports of costs incurred in the administration of the MSPP contract;
(7) Applying performance standards for assuring contract quality as outlined at §800.402; and
(8) Establishing and maintaining a system of internal controls that provides reasonable assurance that:
   (i) The provision and payments of benefits and other expenses comply with legal, regulatory, and contractual guidelines;
   (ii) MSP funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and
   (iii) Data are accurately and fairly disclosed in all reports required by OPM.
(d) Poor business practices. For purposes of paragraph (b)(6) of this section, poor business practices include, but are not limited to, the following:
   (1) Using fraudulent or unethical business or health care practices or otherwise displaying a lack of business integrity or honesty;
   (2) Repeatedly or knowingly providing false or misleading information in the rate setting process;
   (3) Failing to comply with OPM instructions and directives;
   (4) Having an accounting system that is incapable of separately accounting for costs incurred under the contract and/or that lacks the internal controls necessary to fulfill the terms of the contract;
   (5) Failing to assure that the MSP properly pays or denies claims, or, if applicable, provides medical services that are inconsistent with standards of good medical practice; and
   (6) Entering into contracts or employment agreements with providers, provider groups, or health care workers that include provisions or financial incentives that directly or indirectly create an inducement to limit or restrict communication about medically necessary services to any individual covered under the MSPP. Financial incentives are defined as bonuses, withholds, commissions, profit sharing or other similar adjustments to basic compensation (e.g., service fee, capitation, salary) which have the effect of limiting or reducing communication about appropriate medically necessary services.
(e) Performance escrow account. OPM may require MSPP issuers to pay an assessment into an escrow account to ensure contract compliance and benefit MSP enrollees.
§ 800.402 Contract quality assurance.
(a) General. This section prescribes general policies and procedures to ensure that services acquired under MSPP contracts conform to the contract’s quality requirements.
(b) Internal controls. 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. OPM’s reviews do not diminish the contractor’s obligation to implement and maintain an effective and efficient system to apply the internal controls.
(c) Performance standards. (1) OPM will issue specific performance standards for MSPP contracts and will inform MSPP issuers of the applicable performance standards prior to negotiations for the contract year. OPM may benchmark its standards against standards generally accepted in the insurance industry. OPM may authorize nationally recognized standards to be used to fulfill this requirement.
   (2) MSPP issuers must comply with the performance standards issued under this section.
§ 800.403 Fraud and abuse.
(a) Program required. An MSPP issuer must conduct a program to assess its vulnerability to fraud and abuse as well as to address such vulnerabilities.
(b) Fraud detection system. An MSPP issuer must operate a system designed to detect and eliminate fraud and abuse by employees and subcontractors