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(d) An action under paragraph (c) of this section to recover on a claim for health benefits:

(1) May not be brought prior to exhaustion of the administrative remedies provided in § 890.105;

(2) May not be brought later than December 31 of the 3rd year after the year in which the care or service was provided; and

(3) Will be limited to the record that was before OPM when it rendered its decision affirming the carrier's denial of benefits.

(e) A suit for equitable relief founded on 5 U.S.C. chapter 89 that is based on 5 U.S.C. 8902(p) and is governed by 5 CFR part 890 must be brought against OPM by December 31 of the 3rd year after the year in which disputed services were rendered.

(f) A suit to compel enrollment or for equitable relief from an adverse enrollment action founded on 5 U.S.C. chapter 89 that is based on information received by OPM pursuant to an agreement with a source agency as defined at § 890.1602, to determine whether Postal Service annuitants or family members of such annuitants satisfy the enrollment requirements set forth in 5 U.S.C. 8903c, may not be brought later than December 31 of the 3rd year after the year in which the enrollment action was effectuated, and will be limited to the record that was before OPM when it effectuated the enrollment action.

[61 FR 15179, Apr. 5, 1996, as amended at 86 FR 36947, July 13, 2021; 89 FR 85028, Oct. 24, 2024]

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

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

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

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

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

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

[72 FR 19100, Apr. 17, 2007]

### § 890.109 Exclusion of certain periods of eligibility when determining continued coverage during retirement.

(a) Except as provided in paragraph (b) of this section, periods during which temporary employees are eligible under 5 U.S.C. 8906a to receive health benefits by enrolling and paying the full subscription charge, but are not eligible to participate in a retirement system, are not considered when determining eligibility for continued coverage during retirement. For the purpose of continuing coverage during retirement, an employee is considered to have enrolled at his or her first opportunity if the employee registered to be enrolled when he or she received a permanent appointment entitling him or her to participate in a retirement system and to receive the Government contribution toward the health benefits premium payments.

(b) A temporary employee eligible under 5 U.S.C. 8906a may continue enrollment as a compensationer if he or she has been enrolled or covered as a family member under another enrollment under this part for:

(1) The 5 years of service immediately preceding the commencement of his or her monthly compensation; or

(2) During all periods of service since his or her first opportunity to enroll, if less than 5 years. For the purpose of this paragraph, an employee is considered to have enrolled at his or her first opportunity if the employee registered to be enrolled when he or she first became eligible under 5 U.S.C. 8906a.

[58 FR 47824, Sept. 13, 1993]

### § 890.110 Enrollment reconciliation.

(a) Each employing office must report to each carrier or its surrogate on