

Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board and the Office of Personnel Management.

**PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION**

1. The authority citation for part 841 is revised to read as follows:

**Authority:** 5 U.S.C. 8461; Sec. 841.108 also issued under 5 U.S.C. 552a; subpart D also issued under 5 U.S.C. 8423; Sec. 841.504 also issued under 5 U.S.C. 8422; Sec. 841.507 also issued under section 505 of Pub. L. 99–335; subpart J also issued under 5 U.S.C. 8469; Sec. 841.506 also issued under 5 U.S.C. 7701(b)(2); Sec. 841.508 also issued under section 505 of Pub. L. 99–335; Sec. 841.604 also issued under Title II, Pub. L. 106–265, 114 Stat. 780; Secs. 841.110 and 841.111 also issued under 5 U.S.C. 8470(a).

2. Add new § 841.110 to read as follows:

**§ 841.110 Garnishment of FERS payments.**

FERS payments are not subject to execution, levy, attachment, garnishment or other legal process except as expressly provided by Federal law.

3. Add a new § 841.111 to read as follows:

**§ 841.111 Garnishment of payments after disbursement.**

(a) Payments that are covered by 5 U.S.C. 8470(a) and made by direct deposit are subject to 31 CFR part 212, Garnishment of Accounts Containing Federal Benefit Payments.

(b) This section may be amended only by a rulemaking issued jointly by the Department of the Treasury, the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board and the Office of Personnel Management.

By the Department of the Treasury.

**Richard L. Gregg,**

*Acting Fiscal Assistant Secretary.*

By the Social Security Administration.

**Michael J. Astrue,**

*Commissioner of Social Security.*

Dated: April 9, 2010.

By the Department of Veterans Affairs.

**John R. Gingrich,**

*Chief of Staff.*

Dated: April 6, 2010.

By the Railroad Retirement Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

By the Office of Personnel Management.

**John Berry,**

*Director.*

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**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Parts 890 and 892**

**RIN 3206–AL95**

**Federal Employees Health Benefits Program; Miscellaneous Changes**

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Office of Personnel Management is proposing to amend its regulations to provide for continuation of Federal Employees Health Benefits (FEHB) coverage for certain former Senate Restaurant employees who transferred to employment with a private contractor. We are also proposing to change the annual FEHB Program Open Season from the Monday of the second full workweek in November through the Monday of the second full workweek in December, to November 1st through November 30th of each year. We are also adding a new opportunity for eligible employees to enroll in the FEHB Program or to change enrollment from self only to self and family under the Children's Health Insurance Program Reauthorization Act of 2009. Finally, we are proposing to allow FEHB plans to offer three options, without the requirement that one of the options be a high deductible health plan.

**DATES:** OPM must receive comments on or before June 18, 2010.

**ADDRESSES:** Send written comments to Ronald L. Brown, Healthy Policy, Planning & Policy Analysis, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–3666; or deliver to OPM, Room 3425, 1900 E Street NW., Washington, DC or FAX to (202) 606–0633.

Comments may also be sent through the Federal eRulemaking Portal at: <http://www.regulations.gov>. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking. **FOR FURTHER INFORMATION CONTACT:** Ron Brown, (202) 606–0004, or e-mail at [ronald.brown@opm.gov](mailto:ronald.brown@opm.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Senate Restaurants Employees*

Public Law 110–279, enacted July 17, 2008, provides for certain Federal employee benefits to be continued for certain employees of the Senate Restaurants after the operations of the

Senate Restaurants are contracted to be performed by a private business concern. The law provides that a Senate Restaurants employee who was an employee of the Architect of the Capitol on the date of enactment and who accepted employment by the private business concern as part of the transition, may elect to continue Federal benefits during continuous employment with the business concern. We are proposing to conform the regulations to these provisions of Public Law 110–279.

*Change in Dates of Open Season*

The current regulations provide for the FEHB Program Open Season to be held from the Monday of the second full workweek in November through the Monday of the second full workweek in December of each year. We are revising the regulations to change these dates to the month of November. Therefore, beginning in 2010, the Open Season dates will be November 1st through November 30th of each year. This will simplify the annual announcement of the time period for Open Season and allow agencies and employees to better plan for the enrollment opportunity since they will know well in advance when it will occur each year.

*New Enrollment Opportunities*

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

enrollment changes regardless of whether they are covered under premium conversion (pay premiums with pre-tax dollars).

#### *Change in Options Offered*

The current regulations state that an FEHB plan shall not have more than two options and a high deductible health plan. We are proposing to revise the regulations to allow employee organization plans and health maintenance organizations to both offer two options and a high deductible health plan or to offer three options, without the requirement that one of the options be a high deductible health plan. This will provide for more flexibility in contracting with health plans for modern types of benefits.

#### **Regulatory Flexibility Act**

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

#### **Executive Order 12866, Regulatory Review**

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

#### **Federalism**

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

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

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

#### **John Berry,**

*Director, U.S. Office of Personnel Management.*

Accordingly, OPM is proposing to amend 5 CFR parts 890 and 892 as follows:

#### **PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM**

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

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

§ 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

#### **Subpart A—Administration and General Provisions**

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

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

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

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

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

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

#### **Subpart B—Health Benefits Plans**

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

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

\* \* \* \* \*

(b) \* \* \*

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

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

\* \* \* \* \*

#### **Subpart C—Enrollment**

4. Amend § 890.301 as follows:

a. Revise paragraph (f)(1) to read as set forth below.

b. Add a new paragraph (m) to read as set forth below.

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

\* \* \* \* \*

(f) \* \* \* (1) An open season will be held each year from November 1st through November 30th.

\* \* \* \* \*

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

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

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

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

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

##### **§ 892.101 Definitions.**

\* \* \* \* \*

*Qualifying life event* \* \* \*

(13) An employee or eligible family member becomes eligible for premium assistance. An eligible employee may enroll and an enrolled employee may change his or her enrollment from self only to self and family, from one plan

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

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 210, 215, 220, 225, and 226

RIN 0584-AE03

#### Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The 2008 Farm Bill amended the Richard B. Russell National School Lunch Act to direct that the Secretary of Agriculture encourage institutions operating Child Nutrition Programs to purchase unprocessed locally grown and locally raised agricultural products. Effective October 1, 2008, institutions receiving funds through the Child Nutrition Programs may apply an optional geographic preference in the procurement of unprocessed locally grown or locally raised agricultural products. This provision applies to institutions in all of the Child Nutrition Programs, including the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, Special Milk Program for Children, Child and Adult Care Food Program and Summer Food Service Program, as well as to purchases made for these programs by the Department of Defense Fresh Program. The provision also applies to State Agencies making purchases on behalf of any of the aforementioned Child Nutrition Programs. The purpose of this proposed rule is to incorporate this procurement option in the Programs' regulations and to define the term "unprocessed locally grown or locally raised agricultural products" to ensure that both the intent of Congress in providing for such a procurement option is met and that any such definition will facilitate ease of implementation for institutions

participating in the Child Nutrition Programs. The proposed rule is intended to be implemented by institutions choosing to apply the geographic preference option for the procurement of locally grown and locally raised agricultural products.

**DATES:** Comments must be received on or before June 18, 2010 to be assured of consideration.

**ADDRESSES:** The Food and Nutrition Service, USDA, invites interested persons to submit comments on this proposed rule. Comments may be submitted by one of the following methods:

- *Federal e-Rulemaking Portal:* Go to <http://www.regulations.gov>. Preferred method; follow the online instructions for submitting comments.

- *Fax:* Submit comments by facsimile transmission to: (703) 305-2879, Attention: Melissa Rothstein.

- *Mail:* Comments should be addressed to Melissa Rothstein, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 634, Alexandria, Virginia 22302.

- *Hand Delivery or Courier:* Deliver comments to 3101 Park Center Drive, Room 634, Alexandria, Virginia 22302-1594, during normal business hours of 8:30 a.m.-5 p.m.

- All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Melissa Rothstein, Chief, Policy and Program Development Branch at the above address or by telephone at (703) 305-2590.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4302 of Public Law 110-246, the Food, Conservation, and Energy Act of 2008, amended section 9(j) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(j)) to require the Secretary of Agriculture to encourage institutions operating Child Nutrition Programs to purchase unprocessed locally grown and locally raised agricultural products. Pursuant to section 4407 of Public Law 110-246, beginning October 1, 2008, institutions receiving funds as participants in the Child Nutrition Programs may apply an

optional geographic preference in the procurement of unprocessed locally grown or locally raised agricultural products. This provision applies to institutions operating all of the Child Nutrition Programs, including the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, Special Milk Program, Child and Adult Care Food Program and Summer Food Service Program, as well as to purchases made for these programs by the Department of Defense Fresh Program. The provision does not apply to purchases made by the Department. However, the provision does also apply to State agencies making purchases on behalf of any of the aforementioned Child Nutrition Programs. We initially implemented the provisions through policy memoranda and explanatory question and answer communications dated January 9, 2009, July 22, 2009 and October 9, 2009.

Traditionally, a geographic preference established for a procurement provides bidders located in a specified geographic area additional points or credit calculated during the evaluation of the proposals or bids received in response to a solicitation. A geographic preference is not a procurement set-aside for bidders located in the specified geographic area, guaranteeing them a certain level or percentage of business. In addition, including a geographic preference in a procurement does not preclude a bidder from outside the specified geographic area from competing for, and possibly being awarded, the contract subject to the geographic preference. Rather, a geographic preference is a tool that gives bidders in a specified geographic area a specific, defined advantage in the procurement process.

By utilizing the statutorily established geographic preference option in Child Nutrition Programs, purchasing institutions, such as States, school food authorities, child care institutions and SFSP sponsors, may specifically identify the geographic area within which unprocessed locally raised and locally grown agricultural products will originate. As proposed in this rule, a responsive bidder would offer to provide unprocessed locally raised and locally grown agricultural products from the specifically identified geographic area. In most cases, we would expect that a bidder would be located in the identified geographic area, though it is possible for a responsive bidder to be located outside of that area. These procurements may be accomplished through informal or formal procurement procedures, as required by respective Child Nutrition Program regulations.