

**OFFICE OF PERSONNEL
MANAGEMENT****5 CFR Parts 890, 892, 894****RIN 3206-AM55****Federal Employees Health Benefits
Program and Federal Employees
Dental and Vision Insurance Program:
Expanding Coverage of Children
Federal Flexible Benefits Plan: Pre-Tax
Payment of Health Benefits Premiums****AGENCY:** Office of Personnel
Management.**ACTION:** Proposed rule with request for
comments.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing a proposed rule to amend the Federal Employees Health Benefits Program (FEHB) regulations regarding coverage for children up to age 26 and for children of the same-sex domestic partners of FEHB enrollees. The regulations also allow children of same-sex domestic partners to be covered family members under the Federal Employees Dental and Vision Insurance Program (FEDVIP).

DATES: OPM must receive comments on or before September 18, 2012.

ADDRESSES: Send written comments to Marguerite Martel, Senior Policy Analyst, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 3415, 1900 E Street NW., Washington, DC; or fax to (202) 606-4640 Attn: Marguerite Martel. You may also submit comments using the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Marguerite Martel; at Marguerite.Martel@opm.gov or (202) 606-0004.

SUPPLEMENTARY INFORMATION: This proposed rule is intended to (1) Bring FEHB rules into compliance with changes to health insurance coverage for children under the Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act, Public Law 111-152 (the Affordable Care Act); (2) extend FEHB and FEDVIP benefits to children of same-sex domestic partners of Federal employees consistent with Presidential Memoranda issued on June 17, 2009 and June 2, 2010; (3) make other non-substantive, technical conforming amendments to the Federal Employees Dental and Vision Program (FEDVIP) rules, which reference current FEHB rules that would be amended by this proposed rule; and

(4) update the Federal Flexible Benefits Plan: Pre-Tax Payment of Health Benefits Premiums (Part 892) rules to reflect the above-referenced changes required by the Affordable Care Act and to implement changes in connection with the extension of FEHB coverage to children of same-sex domestic partners of Federal employees.

Section 2714(a) of the Public Health Service Act, which was added by section 1001 of the Affordable Care Act, requires group health plans and health insurance issuers offering group or individual health insurance coverage that provides dependent coverage of children to “continue to make such coverage available for an adult child until the child turns 26 years of age.” Pursuant to this law, OPM issued guidance to FEHB carriers in Carrier Letter No. 2010-18 and to agency benefit officers in Benefits Administration Letter No. 10-201. In these guidance documents, OPM explained that the Affordable Care Act and its implementing regulations allow married children to be covered; remove dependency requirements; remove residency requirements; and do not require a child to be a student or to have prior or current insurance coverage in order to be placed on their parent’s enrollment under the FEHB Program. This proposed rule updates FEHB regulations to align with current program policy by extending coverage to children up to 26 years of age, regardless of their marital status, dependency, residency, student status, or lack of insurance coverage with limited exceptions permitted under guidance issued under the Affordable Care Act. This proposed rule also updates Part 892 to reflect coverage of children up to age 26 as described above.

The rule also makes technical conforming changes to FEDVIP regulations, which reference current FEHB rules that are affected by this proposed rule. The changes required by the Affordable Care Act do not apply to FEDVIP as stand-alone dental and vision insurance, and therefore this regulation does not extend coverage of children to age 26 or eliminate dependency and residency restrictions under FEDVIP.

The rule also clarifies and updates FEHB rules governing dual enrollments. These changes are not meant to affect the substance of current rules prohibiting dual enrollments, but rather to clarify and update the rules in light of the Affordable Care Act’s elimination of residency and dependency restrictions for children.

The proposed rule also would extend FEHB and FEDVIP eligibility to the children of an enrollee’s same-sex domestic partner. This change is being proposed to implement President Obama’s memoranda on domestic partner benefits. On June 17, 2009, President Obama issued the Presidential Memorandum on Federal Benefits and Non-Discrimination requesting that the Director of OPM extend certain benefits to qualified same-sex domestic partners of Federal employees. OPM then determined that it could expand eligibility to apply for coverage under the Federal Long Term Care Insurance Program (FLTCIP) to same-sex domestic partners of Federal employees and annuitants, and issued published regulations (75 FR 30267-30268) to do so.

That memorandum also requested that heads of executive departments and agencies conduct a review of the benefits provided by their respective departments and agencies to determine what authority they have to extend such benefits to same-sex domestic partners of Federal employees, annuitants and their families. The results of that review were reported to the Director of OPM, who, in consultation with the United States Department of Justice, made recommendations to the President to provide benefits to the same-sex domestic partners of Federal Government employees. Subsequently, President Obama issued a Presidential Memorandum on June 2, 2010 requesting agencies to implement the recommended regulatory and administrative actions expanding benefits for same-sex domestic partners of Federal employees and their families.

Executive Order 13563, *Improving Regulation and Regulatory Review*, sets out a series of requirements that must be followed, to the extent permitted by law, in issuing regulations. That Executive Order states that “[w]here appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.” Such values are relevant here. In particular, this regulation would protect human dignity, and promote equity and fairness by ensuring equal access to these benefits for LGBT Federal employees.

Since OPM made its recommendations to the President, the Agency has determined that coverage under the FEHB and FEDVIP Programs may be extended to children of the same-sex domestic partners of Federal employees and annuitants through a regulation defining the term “stepchild”

as that term is used in 5 U.S.C. 8901 and cross-referenced in 5 U.S.C. 8951 and 5 U.S.C. 8981. This regulatory action is necessary to implement fully the Presidential Memoranda cited above and is consistent with OPM's policy determination that extension of coverage is appropriate. Accordingly, this proposed rule extends FEHB and FEDVIP coverage to children of same-sex domestic partners of enrolled employees and annuitants.

The rule adds a definition of "stepchild" to Parts 890 and 894 to denote the child of an enrollee's spouse or same-sex domestic partner. In order to maintain consistency across the Federal benefits programs, the definitions of domestic partner and domestic partnership mirror those found at 5 CFR 875.213 governing the FLTCIP.

The rule would amend FEHB regulations to provide that if the enrollee does not establish that the child of an enrollee's same-sex domestic partner qualifies for favorable tax treatment under applicable tax laws, then the enrollee will be taxed on the fair market value of any FEHB coverage provided to the child. The rule would also amend Parts 892 and 894 to provide that income will be separately imputed to the enrollee in the amount of that portion of the amount allotted for pre-tax treatment that is attributable to coverage of the child of an enrollee's same sex domestic partner where the enrollee has not established that the child is entitled to favorable tax treatment under applicable tax laws and that such income will be taxed accordingly.

This proposed rule also amends Part 892 rules to provide that for purposes of determining whether a qualifying life event has occurred, the child of an employee's same-sex domestic partner as described in Part 890 will be treated as being covered by the qualifying life event rules set forth in Treasury Regulations at 26 CFR 1.125-4 even if the child is not covered by such rules by virtue of not being a dependent under the Internal Revenue Code. This would permit an employee receiving premium conversion to make mid-plan year FEHB enrollment and Part 892 election changes in connection with events related to the child of a same-sex domestic partner who does not qualify as a dependent under the Internal Revenue Code under the same terms and conditions as children covered by such rules. For instance, an employee receiving premium conversion under a FEHB self and family enrollment covering only the employee and the child of a same-sex domestic partner

who did not qualify as a dependent under the Internal Revenue Code would be able to switch from a self and family enrollment to a self only enrollment during a plan year if the child reached age 26 during the year.

In addition to generally seeking comments on this proposed rule, we are specifically soliciting comments on how, in the case of the provision of FEHB coverage to the child of a same-sex domestic partner who does not qualify for favorable tax treatment under the Internal Revenue Code, the fair market value of that coverage might be calculated for different types of plan coverage, including, for example, a high deductible health plan with a health reimbursement arrangement.

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 adds additional groups to the list of groups eligible for coverage under FEHB.

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

5 CFR Part 890

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

5 CFR Part 892

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

5 CFR Part 894

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

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM is proposing to amend title 5, Code of Federal Regulations as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

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

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

2. Section 890.302 is revised to read as follows:

§ 890.302 Coverage of family members.

(a)(1) An enrollment for self and family includes all family members who are eligible to be covered by the enrollment. Except as provided in paragraph (a)(2) of this section, no employee, former employee, annuitant, child, or former spouse may enroll or be covered as a family member if he or she is covered under another person's self and family enrollment in the FEHB Program.

(2) *Dual enrollment.* A dual enrollment exists when an individual is covered under more than one FEHB Program enrollment. Dual enrollments are prohibited except when an eligible individual would otherwise not have access to coverage and the dual enrollment has been authorized by the employing office.

(i) An individual who is a covered family member under the self and family enrollment of another FEHB enrollee may not enroll in his or her own right, even though otherwise eligible to enroll.

(ii) *Exception.* An individual described in paragraph (a)(2)(i) of this section may enroll if he or she or his or her eligible family members would otherwise not have access to coverage, in which case the individual may enroll in his or her own right for self only or self and family coverage, as appropriate. However, an eligible individual is entitled to receive benefits under only one enrollment regardless of whether he or she qualifies as a family member under a spouse's or parent's enrollment. To ensure that no person receives benefits under more than one enrollment, each enrollee must promptly notify the insurance carrier as to which persons will be covered under his or her enrollment. These individuals are not covered under the other

enrollment. Examples include but are not limited to:

(A) To protect the interests of married or legally separated Federal employees, annuitants and their children, an employee or annuitant may enroll in his or her own right in a self only or self and family enrollment, as appropriate, even though his or her spouse also has a self and family enrollment if the employee, annuitant or his or her children live apart from the spouse and would otherwise not have access to coverage due to a service area restriction and the spouse refuses to change health plans.

(B) When an employee who is under age 26 and covered under a parent's self and family enrollment acquires an eligible family member, the employee may elect to enroll for self and family coverage.

(iii) Children are entitled to receive benefits under only one enrollment regardless of whether the children qualify as family members under the enrollment of both parents or of a parent and a stepparent and regardless of whether the parents are married, unmarried, divorced, legally separated, or in a domestic partnership. To ensure that no person receives benefits under more than one enrollment, each enrollee must promptly notify the insurance carrier as to which family members will be covered under his or her enrollment. These individuals are not covered under the other enrollment.

(b)(1) A child is considered to be a family member eligible to be covered by the enrollment of an enrolled employee or annuitant or a former employee or child enrolled under § 890.1103 of this part if he or she is—

- (i) A child born within marriage;
- (ii) A recognized natural child;
- (iii) An adopted child;
- (iv) A stepchild; or
- (v) A foster child who lives with the enrollee in a regular parent-child relationship.

(2) *Meaning of stepchild.* For purposes of this part, the term "stepchild" refers to the child of an enrollee's spouse or domestic partner.

(3) *Meaning of domestic partner.* For purposes of this part, the term "domestic partner" is a person in a domestic partnership with an employee, annuitant, former employee or child enrolled under § 890.1103 of this part.

(4) *Meaning of domestic partnership.* For purposes of this part, the term "domestic partnership" is defined as a committed relationship between two adults, of the same sex, in which the partners—

(i) Are each other's sole domestic partner and intend to remain so indefinitely;

(ii) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(iii) Are at least 18 years of age and mentally competent to consent to a contract;

(iv) Share responsibility for a significant measure of each other's financial obligations;

(v) Are not married or joined in a civil union to anyone else;

(vi) Are not a domestic partner of anyone else;

(vii) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(viii) Provide documentation demonstrating fulfillment of the requirements of (i) through (vii) as prescribed by OPM; and

(ix) Certify that they understand that willful falsification of the documentation described in subparagraph (viii) of this section may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification and may constitute a criminal violation under 18 U.S.C. 1001.

(5) *Termination of Domestic Partnership.* An enrollee must notify the employing office within seven calendar days in the event that any of the conditions listed in (i) through (vii) of this subsection are no longer met, in which case a domestic partnership will be deemed terminated.

(6) *Tax Issues.* The fair market value of coverage provided to a stepchild who is the child of a domestic partner will be taxed in accordance with applicable tax laws unless the enrollee establishes that the stepchild qualifies for favorable tax treatment in accordance with guidance issued by OPM.

(c) *Child incapable of self-support.* When an individual's enrollment for self and family includes a child who has become 26 years of age and is incapable of self-support, the employing office must require such enrollee to submit a physician's certificate verifying the child's disability. The certificate must—

(1) State that the child is incapable of self-support because of a physical or mental disability that existed before the child became 26 years of age and that can be expected to continue for more than 1 year;

(2) Include a statement of the name of the child, the nature of the disability,

the period of time it has existed, and its probable future course and duration; and,

(3) Be signed by the physician and show the physician's office address. The employing office must require the enrollee to submit the certificate on or before the date the child becomes 26 years of age. However, the employing office may accept otherwise satisfactory evidence of incapacity that is not timely filed.

(d) *Renewal of certificates of incapacity.* The employing office must require an enrollee who has submitted a certificate of incapacity to renew that certificate on the expiration of the minimum period of disability certified.

(e) *Determination of incapacity.* (1) Except as provided in paragraph (e)(2) of this section, the employing office shall make determinations of incapacity.

(2) Either the employing office or the carrier may make a determination of incapacity if a medical condition, as specified by OPM, exists that would cause a child to be incapable of self-support during adulthood.

3. Section 890.804 is revised to read as follows:

§ 890.804 Coverage.

(a) *Type of enrollment.* A former spouse who meets the requirements of § 890.803 may elect coverage for self alone or for self and family. A family enrollment covers only the former spouse and any child of both the former spouse and the employee, former employee or employee annuitant, provided such child is not otherwise covered by a health plan under this part. A child must be under age 26 or incapable of self-support because of a mental or physical disability existing before age 26. No person may be covered by two enrollments.

(b) *Child.* A child is considered to be the child of the former spouse or the employee, former employee, or employee annuitant if he or she is—

- (i) A child born within marriage or
- (ii) An adopted child.

(c) *Child incapable of self-support.*

When a former spouse enrolls for a family enrollment which includes a child who has become 26 years of age and is incapable of self-support, the employing office shall determine such child's eligibility in accordance with § 890.302(c), (d), and (e).

4. In § 890.1102, revise the definition of "Qualifying event" to read as follows:

§ 890.1102 Definitions.

* * * * *

Qualifying event means any of the following events that qualify an individual for temporary continuation of coverage under subpart K of this part:

(1) A separation from Government service.

(2) A divorce or annulment.

(3) A change in circumstances that causes an individual to become ineligible to be considered a child who is a covered family member under this part.

* * * * *

5. In § 890.1103, revise paragraphs (a) introductory text and (a)(2) to read as follows:

§ 890.1103 Eligibility.

(a) Except as provided by paragraph (b) of this section, individuals described by this section are eligible to elect temporary continuation of coverage under this subpart. Eligible individuals are as follows:

* * * * *

(2) Individuals whose coverage as children under the family enrollment of an employee, former employee, or annuitant ends because they cease meeting the requirements for being considered covered family members. For the purpose of this section, children who are enrolled under this part as survivors of deceased employees or annuitants are considered to be children under a family enrollment of an employee or annuitant at the time of the qualifying event.

* * * * *

6. In § 890.1104, revise paragraphs (b)(2) and (3) to read as follows:

§ 890.1104 Notification by agency.

* * * * *

(b) * * *

(2) If the notice described in paragraph (b)(1) of this section is received by the employing office within 60 days after the date on which the child ceased meeting the requirements for being considered a covered family member, the employing office must notify the child of his or her rights under this subpart within 14 days after receiving the notice.

(3) This paragraph does not preclude the employing office from notifying the child of his or her rights based on oral or written notification by the child, another family member, or any other source that the child no longer meets the requirements for being considered a covered family member.

* * * * *

5. In § 890.1107, revise paragraphs (b)(1) and (2) to read as follows:

§ 890.1107 Length of temporary continuation of coverage.

* * * * *

(b)(1) Except as provided in paragraph (b)(2) of this section, in the case of individuals who are eligible for

continued coverage under § 890.1103(a)(2) of this part, the temporary continuation of coverage ends on the date that is 36 months after the date the individual first ceases to meet the requirements for being considered a child who is a covered family member, unless it is terminated earlier under the provisions of § 890.1110.

(2) The temporary continuation of coverage ends on the date that is 36 months after the date of the separation from service on which the former employee's continuation of coverage is based, unless it is terminated earlier under the provisions of § 890.1110, in the case of individuals who—

(i) Are eligible for continued coverage under § 890.1103(a)(2); and

(ii) As of the day before ceasing to meet the requirements for being considered children who are covered family members, were covered family members of a former employee receiving continued coverage under this subpart; and

(iii) Cease meeting the requirements for being considered children who are covered family members before the end of the 18-month period specified in paragraph (a) of this section.

* * * * *

§ 890.1202 [Amended]

6. In § 890.1202, remove the words “unmarried” and “dependent” from the definition of “covered family members”.

§ 890.1203 [Amended]

7. In § 890.1203, in paragraph (b), remove the word “dependent” each time it appears.

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

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

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

9. In § 892.101, the definition of “Dependent” and the introductory text and paragraph (1)(iii) of the definition of “Qualifying life event” are revised to read as follows:

§ 892.101 Definitions.

* * * * *

Dependent means a family member who is both eligible for coverage under the FEHB Program and either a dependent as defined in section 152 of the Internal Revenue Code or a child as defined in section 152(f)(1) of the

Internal Revenue Code who is under age 27 as of the end of the employee's taxable year.

* * * * *

Qualifying life event means an event that may permit changes to your FEHB enrollment as well as changes to your premium conversion election as described in Treasury regulations at 26 CFR 1.125–4. For purposes of determining whether a qualifying life event has occurred under this part, a stepchild who is the child of an employee's domestic partner as defined in Part 890 shall be treated as though the child were a dependent within the meaning of 26 CFR 1.125–4 even if the child does not so qualify under such Treasury regulations. Such events include the following:

* * * * *

(iii) Last dependent child loses coverage, for example, the child reaches age 26, disabled child becomes capable of self support, child acquires other coverage by court order; and

* * * * *

10. In § 892.102, add two sentences to the end of the section to read as follows:

§ 892.102 What is premium conversion and how does it work?

* * * * * There is one exception, however. If your FEHB enrollment covers a stepchild who is the child of a domestic partner as defined in part 890 of this chapter, and that stepchild does not qualify for favorable tax treatment under applicable tax laws, then the portion of the allotted amount described above that represents the employee's contribution toward the fair market value of FEHB coverage provided to the child will be separately imputed to the employee as income and subject to applicable taxes.

§ 892.208 [Amended]

11. In § 892.208(b), the number “22” is removed and the number “26” is added in its place.

PART 894—FEDERAL EMPLOYEES DENTAL AND VISION INSURANCE PROGRAM

12. The authority citation for part 894 continues to read as follows:

Authority: 5 U.S.C. 8962; 5 U.S.C. 8992; subpart C also issued under sec. 1 of Pub. L. 110–279, 122 Stat. 2604.

13. In § 894.101, the definition of “Acquiring an eligible child” is revised and definitions for “Domestic partner,” “Domestic partnership,” and “Stepchild” are added to read as follows:

§ 894.101 Definitions.

* * * * *

Acquiring an eligible child means one of the following:

- (1) Birth of a child;
- (2) Adoption of a child;
- (3) Acquisition of a foster child as described in § 890.101(a)(8) of this chapter;
- (4) Acquisition of a stepchild who lives with the enrollee in a regular parent-child relationship;
- (5) Establishment of a recognized natural child;
- (6) Residence change of the enrollee's stepchild or recognized natural child who moves in with the enrollee; and
- (7) An otherwise eligible child becoming unmarried due to divorce or annulment of marriage, or death.

* * * * *

Domestic partner means a person in a domestic partnership with an employee or annuitant.

Domestic partnership means a committed relationship between two adults, of the same sex, in which the partners—

- (1) Are each other's sole domestic partner and intend to remain so indefinitely;
- (2) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);
- (3) Are at least 18 years of age and mentally competent to consent to a contract;
- (4) Share responsibility for a significant measure of each other's financial obligations;
- (5) Are not married or joined in a civil union to anyone else;

(6) Are not a domestic partner of anyone else;

(7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(8) Provide documentation demonstrating fulfillment of the requirements of (i) through (vii) as prescribed by OPM; and

(9) Certify that they understand that willful falsification of the documentation described in subparagraph (viii) of this section may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification and may constitute a criminal violation under 18 U.S.C. 1001.

(10) Termination of Domestic Partnership. An enrollee must notify the employing office within seven calendar days in the event that any of the conditions listed in paragraphs (1) through (7) of this definition are no longer met, in which case a domestic partnership will be deemed terminated.

* * * * *

Stepchild means the child of an enrollee's spouse or domestic partner.

* * * * *

14. Add § 894.308 to subpart C to read as follows:

§ 894.308 How do I establish the dependency of my recognized natural child?

(a) Dependency is established for a recognized natural child who lives with the enrollee in a regular parent-child relationship, a recognized natural child for whom a judicial determination of support has been obtained, or a recognized natural child to whose

support the enrollee makes regular and substantial contributions.

(b) The following are examples of proof of regular and substantial support. More than one of the following proofs may be required to show support of a recognized natural child who does not live with the enrollee in a regular parent-child relationship and for whom a judicial determination of support has not been obtained:

- (1) Evidence of eligibility as a dependent child for benefits under other State or Federal programs;
- (2) Proof of inclusion of the child as a dependent on the enrollee's income tax returns;
- (3) Canceled checks, money orders, or receipts for periodic payments from the enrollee for or on behalf of the child.
- (4) Evidence of goods or services which show regular and substantial contributions of considerable value;
- (5) Any other evidence which OPM shall find to be sufficient proof of support or of paternity or maternity.

15. In § 894.403, add a sentence to the end of paragraph (a) to read as follows:

§ 894.403 Are FEDVIP premiums paid on a pre-tax basis?

(a) * * * However, if your enrollment covers a stepchild who is the child of a domestic partner as defined in § 894.101, and that stepchild does not qualify for favorable tax treatment under applicable tax laws, the allotted amount of premium that represents the fair market value of the FEDVIP coverage provided to the stepchild will be separately imputed to the employee as income and subject to applicable taxes.

* * * * *

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