submitted cost or pricing data which was incomplete, inaccurate, or noncurrent; and
(3) Simple interest on the MLR penalty from the date on which the penalty should have been paid to the FEHB Fund to the date on which the penalty was or will be actually paid to the FEHB fund. The interest rate shall be calculated as specified in paragraph (c)(1) of this clause.

9. In 1652.216–70, revise paragraphs (b)(2), (3), (7), and (8) to read as follows:

1652.216–70 Accounting and price adjustment.

(2) Effective January 1, 2013 all community-rated plans must develop the FEHBP’s rates using their State-filed rating methodology or, if not required to file with the State, their standard written and established rating methodology. A carrier who mandated by the State to use traditional community rating will be subject to paragraph (b)(2)(ii) of this clause. All other carriers will be subject to paragraph (b)(2)(i) of this clause.

(i) The subscription rates agreed to in this contract shall meet the FEHB-specific MLR threshold as defined in FEHBAR 162.170–14. The ratio of a plan’s incurred claims, including the carrier’s expenditures for activities that improve health care quality, to total premium revenue shall not be lower than the FEHB-specific MLR threshold published annually by OPM in its rate instructions.

(ii) The subscription rates agreed to in this contract shall be equivalent to the subscription rates given to the carrier’s similarly sized subscriber group (SSSG) as defined in FEHBAR 1602.170–13. The subscription rates shall be determined according to the carrier’s established policy, which must be applied consistently to the FEHB and to the carrier’s SSSG. If the SSSG receives a rate lower than that determined according to the carrier’s established policy, it is considered a discount. The FEHB must receive a discount equal to or greater than the carrier’s SSSG discount.

(3) If subject to paragraph (b)(2)(ii) of this clause, then:

(i) If, at the time of the rate reconciliation, the subscription rates are found to be lower than the equivalent rates for the SSSG, the carrier shall reimburse the Fund, for example, by reducing the FEHB rates for the next contract term to reflect the difference between the estimated rates and the rates which are derived using the methodology of the SSSG, except as noted in paragraph (b)(3)(ii) of this clause.

(ii) Carriers may provide additional guaranteed discounts to the FEHBP that are not given to the SSSG. Any such guaranteed discounts must be clearly identified as guaranteed discounts. After the beginning of the contract year for which the rates are set, these guaranteed FEHBP discounts may not be adjusted.

(7) Carriers may provide additional guaranteed discounts to the FEHBP. Any such guaranteed discounts must be clearly identified as guaranteed discounts. After the beginning of the contract year for which the rates are set, these guaranteed FEHBP discounts may not be adjusted.

(8) Carriers may not impose surcharges (loadings not defined based on an established rating method) on the FEHBP subscription rates or use surcharges in the rate reconciliation process. If the carrier is subject to the SSSG rules and imposes a surcharge on the SSSG, the carrier cannot impose the surcharge on FEHB.
their control, are unable to make enrollment changes and are enrolled in the lowest-cost nationwide plan.

Since 2004, OPM has allowed up to three plan options under a plan. See 69 FR 31721. Accordingly, the proposed rule also updates outdated language in 5 CFR 890.301 and 890.306 that considers the termination of a plan option under a plan with a total of only two plan options. Under the proposed rule, when two or more plan options remain after a different plan option is terminated, the employing office will enroll the employee in the lowest-cost remaining plan option that is not an HDHP.

Conforming edits have been made to 5 CFR 890.806 for former spouses and 5 CFR 890.1108 for enrollees in temporary continuation of coverage status.

We are seeking comment on these provisions.

Paperwork Reduction Act (PRA)

OPM has reviewed this proposed rule for PRA implications and have determined that it does not apply to this action.

Regulatory Impact Analysis

OPM has examined the impact of this proposed rule as required by Executive Order 12866 and Executive Order 13563, which 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 must be prepared for major rules with economically significant effects of $100 million or more in any one year. After completing this analysis, OPM has determined that this rule is not considered a major rule.

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 impacts options available for FEHB enrollees when the plan or plan option in which they are enrolled terminates.

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 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.

Katherine Archuleta,
Director.

Accordingly, OPM proposes to amend title 5, Code of Federal Regulations, part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

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

(i) * * *

(ii) If the whole plan is discontinued, an employee who does not change the enrollment within the time set in paragraph (ii)(4)(i) of this section will be enrolled in the lowest-cost nationwide plan option, as defined in paragraph (n) of this section;

(iii) If one or more options of a plan are discontinued, an employee who does not change the enrollment will be enrolled in the remaining option of the plan, or in the case of a plan with two or more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP).

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, an employee must change the enrollment within 60 days of the disaster, as announced by OPM. If an employee does not change the enrollment within the time frame announced by OPM, the employee will be enrolled in the lowest-cost nationwide plan option, as defined in paragraph (n) of this section. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(v) An employee who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in paragraph (n) of this section, may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section.

§ 890.306 When can annuitants or survivor annuitants change enrollment or reenroll and what are the effective dates?

(i) * * *

(ii) If a plan discontinues all of its existing options, an annuitant who does not change his or her enrollment is deemed to have enrolled in the lowest-cost nationwide plan option, as defined in §890.301(n); except when the annuity is insufficient to pay the withholdings, then paragraph (q) of this section applies;

(iii) If one or more options of a plan are discontinued, an annuitant who does not change the enrollment will be enrolled in the remaining option of the plan, or in the case of a plan with two or more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP). In the event that the annuity is insufficient to pay the withholdings, then paragraph (q) of this section applies;

(iv) After an involuntary enrollment under paragraph (l)(4)(ii) or (iii) of this section becomes effective, the annuitant may change the enrollment to another option of the plan into which he or she
was enrolled or another health plan of his or her choice retroactively within 90-days after OPM advises the annuitant of the new enrollment:

(v) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, an annuitant must change the enrollment within 60 days of the disaster, as announced by OPM. If an annuitant does not change the enrollment within the time frame announced by OPM, the annuitant will be enrolled in the lowest-cost nationwide plan option, as defined in §890.301(n). The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(vi) An annuitant who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in §890.301(n), may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section.

* * * * *

4. Amend §890.806 by revising paragraphs (j)(4)(ii), (iii), and (iv) and adding paragraph (j)(4)(v) to read as follows:

§ 890.806 When can former spouses change enrollment or reenroll and what are the effective dates?

* * * * *

(j) * * *

(4) * * *

(ii) If the whole plan is discontinued, a former spouse who does not change the enrollment within the time set will be enrolled in the lowest-cost nationwide plan option, as defined in §890.301(n);

(iii) If one or more options of a plan are discontinued, an enrollee who does not change the enrollment will be enrolled in the remaining option of the plan, or in the case of a plan with two or more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP);

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the enrollee must change the enrollment within 60 days of the disaster, as announced by OPM. If the enrollee does not change the enrollment within the time frame announced by OPM, the enrollee will be enrolled in the lowest-cost nationwide plan option, as defined in §890.301(n). The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(v) A former spouse who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in §890.301(n), may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section.

* * * * *

5. Amend §890.1108 by revising paragraphs (h)(4)(ii), (iii), and (iv) and adding paragraph (h)(4)(v) to read as follows:

§ 890.1108 Opportunities to change enrollment; effective dates.

* * * * *

(h) * * *

(4) * * *

(ii) If the whole plan is discontinued, an enrollee who does not change the enrollment within the time set will be enrolled in the lowest-cost nationwide plan option, as defined in §890.301(n);

(iii) If one or more options of a plan are discontinued, an enrollee who does not change the enrollment will be enrolled in the remaining option of the plan, or in the case of a plan with two or more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP);

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the enrollee must change the enrollment within 60 days of the disaster as announced by OPM. If the enrollee does not change the enrollment within the time frame announced by OPM, the enrollee will be enrolled in the lowest-cost nationwide plan option, as defined in §890.301(n). The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(v) An enrollee who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in §890.301(n), may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section.

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