

ments for self plus one under such chapter based on an actuarial analysis.”

ELECTION OF HEALTH BENEFITS COVERAGE AND ENTITLEMENT TO HEALTH BENEFITS UNDER THIS CHAPTER RATHER THAN UNDER RETIRED FEDERAL EMPLOYEES HEALTH BENEFITS ACT

Pub. L. 93-246, §§ 2, 4(b), Jan. 31, 1974, 88 Stat. 4, provided that:

“SEC. 2. (a) Notwithstanding any other provision of law, an annuitant, as defined under section 8901(3) of title 5, United States Code, who is participating or who is eligible to participate in the health benefits program offered under the Retired Federal Employees Health Benefits Act (74 Stat. 849; Public Law 86-724), may elect, in accordance with regulations prescribed by the United States Civil Service Commission, to be covered under the provisions of chapter 89 of title 5, United States Code, in lieu of coverage under such Act.

“(b) An annuitant who elects to be covered under the provisions of chapter 89 of title 5, United States Code, in accordance with subsection (a) of this section, shall be entitled to the benefits under such chapter 89.

“[Sec. 4] (b) Section 2 [set out above] shall take effect on the one hundred and eightieth day following the date of enactment [Jan. 1, 1974] or on such earlier date as the United States Civil Service Commission may prescribe.”

§ 8905a. Continued coverage

(a) Any individual described in subsection (b) may elect to continue coverage under this chapter in accordance with the provisions of this section.

(b) This section applies with respect to—

(1) any employee who—

(A) is separated from service, whether voluntarily or involuntarily, except that if the separation is involuntary, this section shall not apply if the separation is for gross misconduct (as defined under regulations which the Office of Personnel Management shall prescribe); and

(B) would not otherwise be eligible for any benefits under this chapter (determined without regard to any temporary extension of coverage and without regard to any benefits available under a nongroup contract);

(2) any individual who—

(A) ceases to meet the requirements for being considered an unmarried dependent child under this chapter;

(B) on the day before so ceasing to meet the requirements referred to in subparagraph (A), was covered under a health benefits plan under this chapter as a member of the family of an employee or annuitant; and

(C) would not otherwise be eligible for any benefits under this chapter (determined without regard to any temporary extension of coverage and without regard to any benefits available under a nongroup contract); and

(3) any employee who—

(A) is enrolled in a health benefits plan under this chapter;

(B) is a member of a reserve component of the armed forces;

(C) is called or ordered to active duty in support of a contingency operation (as defined in section 101(a)(13) of title 10);

(D) is placed on leave without pay or separated from service to perform active duty; and

(E) serves on active duty for a period of more than 30 consecutive days.

(c)(1) The Office shall prescribe regulations and provide for the inclusion of appropriate terms in contracts with carriers to provide that—

(A) with respect to an employee who becomes (or will become) eligible for continued coverage under this section as a result of separation from service, the separating agency shall, before the end of the 30-day period beginning on the date as of which coverage (including any temporary extensions of coverage) would otherwise end, notify the individual of such individual's rights under this section; and

(B) with respect to a child of an employee or annuitant who becomes eligible for continued coverage under this section as a result of ceasing to meet the requirements for being considered a member of the employee's or annuitant's family—

(i) the employee or annuitant may provide written notice of the child's change in status (complete with the child's name, address, and such other information as the Office may by regulation require)—

(I) to the employee's employing agency; or

(II) in the case of an annuitant, to the Office; and

(ii) if the notice referred to in clause (i) is received within 60 days after the date as of which the child involved first ceases to meet the requirements involved, the employing agency or the Office (as the case may be) must, within 14 days after receiving such notice, notify the child of such child's rights under this section.

(2) In order to obtain continued coverage under this section, an appropriate written election (submitted in such manner as the Office by regulation prescribes) must be made—

(A) in the case of an individual seeking continued coverage based on a separation from service, before the end of the 60-day period beginning on the later of—

(i) the effective date of the separation; or

(ii) the date the separated individual receives the notice required under paragraph (1)(A); or

(B) in the case of an individual seeking continued coverage based on a change in circumstances making such individual ineligible for coverage as an unmarried dependent child, before the end of the 60-day period beginning on the later of—

(i) the date as of which such individual first ceases to meet the requirements for being considered an unmarried dependent child; or

(ii) the date such individual receives notice under paragraph (1)(B)(ii);

except that if a parent fails to provide the notice required under paragraph (1)(B)(i) in timely fashion, the 60-day period under this subparagraph shall be based on the date under clause (i), irrespective of whether or not any notice under paragraph (1)(B)(ii) is provided.

(d)(1)(A) Except as provided in paragraphs (4), (5), and (6), an individual receiving continued

coverage under this section shall be required to pay currently into the Employees Health Benefits Fund, under arrangements satisfactory to the Office, an amount equal to the sum of—

- (i) the employee and agency contributions which would be required in the case of an employee enrolled in the same health benefits plan and level of benefits; and
- (ii) an amount, determined under regulations prescribed by the Office, necessary for administrative expenses, but not to exceed 2 percent of the total amount under clause (i).

(B) Payments under this section to the Fund shall—

- (i) in the case of an individual whose continued coverage is based on such individual's separation, be made through the agency which last employed such individual; or
- (ii) in the case of an individual whose continued coverage is based on a change in circumstances referred to in subsection (c)(2)(B), be made through—
 - (I) the Office, if, at the time coverage would (but for this section) otherwise have been discontinued, the individual was covered as the child of an annuitant; or
 - (II) if, at the time referred to in subclause (I), the individual was covered as the child of an employee, the employee's employing agency as of such time.

(2) If an individual elects to continue coverage under this section before the end of the applicable period under subsection (c)(2), but after such individual's coverage under this chapter (including any temporary extensions of coverage) expires, coverage shall be restored retroactively, with appropriate contributions (determined in accordance with paragraph (1), (4), or (5), as the case may be) and claims (if any), to the same extent and effect as though no break in coverage had occurred.

(3)(A) An individual making an election under subsection (c)(2)(B) may, at such individual's option, elect coverage either as an individual or, if appropriate, for self plus one or for self and family.

(B) For the purpose of this paragraph, members of an individual's family shall be determined in the same way as would apply under this chapter in the case of an enrolled employee.

(C) Nothing in this paragraph shall be considered to limit an individual making an election under subsection (c)(2)(A) to coverage for self alone.

(4)(A) If the basis for continued coverage under this section is an involuntary separation from a position, or a voluntary separation from a surplus position, in or under the Department of Defense due to a reduction in force, or the Department of Energy due to a reduction in force resulting from the establishment of the National Nuclear Security Administration—

- (i) the individual shall be liable for not more than the employee contributions referred to in paragraph (1)(A)(i); and
- (ii) the agency which last employed the individual shall pay the remaining portion of the amount required under paragraph (1)(A).

(B) This paragraph shall apply with respect to any individual whose continued coverage is

based on a separation occurring on or after the date of enactment of this paragraph and before—

- (i) December 31, 2016; or
- (ii) February 1, 2017, if specific notice of such separation was given to such individual before December 31, 2016.

(C) For the purpose of this paragraph, "surplus position" means a position which is identified in pre-reduction-in-force planning as no longer required, and which is expected to be eliminated under formal reduction-in-force procedures.

(5)(A) If the basis for continued coverage under this section is an involuntary separation from a position in or under the Department of Veterans Affairs due to a reduction in force or a title 38 staffing readjustment, or a voluntary or involuntary separation from a Department of Energy position at a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 4421¹ of the Atomic Energy Defense Act—

- (i) the individual shall be liable for not more than the employee contributions referred to in paragraph (1)(A)(i); and
- (ii) the agency which last employed the individual shall pay the remaining portion of the amount required under paragraph (1)(A).

(B) This paragraph shall only apply with respect to individuals whose continued coverage is based on a separation occurring on or after the date of the enactment of this paragraph.

(6)(A) If the basis for continued coverage under this section is, as a result of the termination of the Space Shuttle Program, an involuntary separation from a position due to a reduction-in-force or declination of a directed reassignment or transfer of function, or a voluntary separation from a surplus position in the National Aeronautics and Space Administration—

- (i) the individual shall be liable for not more than the employee contributions referred to in paragraph (1)(A)(i); and
- (ii) the National Aeronautics and Space Administration shall pay the remaining portion of the amount required under paragraph (1)(A).

(B) This paragraph shall only apply with respect to individuals whose continued coverage is based on a separation occurring on or after the date of enactment of this paragraph and before December 31, 2010.

(C) For purposes of this paragraph, "surplus position" means a position which is—

- (i) identified in pre-reduction-in-force planning as no longer required, and which is expected to be eliminated under formal reduction-in-force procedures as a result of the termination of the Space Shuttle Program; or
- (ii) encumbered by an employee who has received official certification from the National Aeronautics and Space Administration consistent with the Administration's career transition assistance program regulations that the position is being abolished as a result of the termination of the Space Shuttle Program.

(e)(1) Continued coverage under this section may not extend beyond—

- (A) in the case of an individual whose continued coverage is based on separation from

¹ See References in Text note below.

service, the date which is 18 months after the effective date of the separation;

(B) in the case of an individual whose continued coverage is based on ceasing to meet the requirements for being considered an unmarried dependent child, the date which is 36 months after the date on which the individual first ceases to meet those requirements, subject to paragraph (2); or

(C) in the case of an employee described in subsection (b)(3), the date which is 24 months after the employee is placed on leave without pay or separated from service to perform active duty.

(2) In the case of an individual who—

(A) ceases to meet the requirements for being considered an unmarried dependent child;

(B) as of the day before so ceasing to meet the requirements referred to in subparagraph (A), was covered as the child of a former employee receiving continued coverage under this section based on the former employee's separation from service; and

(C) so ceases to meet the requirements referred to in subparagraph (A) before the end of the 18-month period beginning on the date of the former employee's separation from service,

extended coverage under this section may not extend beyond the date which is 36 months after the separation date referred to in subparagraph (C).

(f)(1) The Office shall prescribe regulations under which, in addition to any individual otherwise eligible for continued coverage under this section, and to the extent practicable, continued coverage may also, upon appropriate written application, be afforded under this section—

(A) to any individual who—

(i) if subparagraphs (A) and (C) of paragraph (10) of section 8901 were disregarded, would be eligible to be considered a former spouse within the meaning of such paragraph; but

(ii) would not, but for this subsection, be eligible to be so considered; and

(B) to any individual whose coverage as a family member would otherwise terminate as a result of a legal separation.

(2) The terms and conditions for coverage under the regulations shall include—

(A) consistent with subsection (c), any necessary notification provisions, and provisions under which an election period of at least 60 days' duration is afforded;

(B) terms and conditions identical to those under subsection (d), except that contributions to the Employees Health Benefits Fund shall be made through such agency as the Office by regulation prescribes;

(C) provisions relating to the termination of continued coverage, except that continued coverage under this section may not (subject to paragraph (3)) extend beyond the date which is 36 months after the date on which the qualifying event under this subsection (the date of divorce, annulment, or legal separation, as the case may be) occurs; and

(D) provisions designed to ensure that any coverage pursuant to this subsection does not adversely affect any eligibility for coverage which the individual involved might otherwise have under this chapter (including as a result of any change in personal circumstances) if this subsection had not been enacted.

(3) In the case of an individual—

(A) who becomes eligible for continued coverage under this subsection based on a divorce, annulment, or legal separation from a person who, as of the day before the date of the divorce, annulment, or legal separation (as the case may be) was receiving continued coverage under this section based on such person's separation from service under a self plus one enrollment that covered the individual or under a self and family enrollment; and

(B) whose divorce, annulment, or legal separation (as the case may be) occurs before the end of the 18-month period beginning on the date of the separation from service referred to in subparagraph (A),

extended coverage under this section may not extend beyond the date which is 36 months after the date of the separation from service, as referred to in subparagraph (A).

(Added Pub. L. 100-654, title II, §201(a)(1), Nov. 14, 1988, 102 Stat. 3841; amended Pub. L. 102-484, div. D, title XLIV, §4438(a), Oct. 23, 1992, 106 Stat. 2725; Pub. L. 103-337, div. A, title III, §341(d), Oct. 5, 1994, 108 Stat. 2720; Pub. L. 104-106, div. A, title X, §1036, Feb. 10, 1996, 110 Stat. 431; Pub. L. 106-65, div. A, title XI, §1104(c), div. C, title XXXII, §3244, Oct. 5, 1999, 113 Stat. 777, 965; Pub. L. 106-117, title XI, §1106, Nov. 30, 1999, 113 Stat. 1598; Pub. L. 107-314, div. A, title XI, §1103, Dec. 2, 2002, 116 Stat. 2661; Pub. L. 107-314, div. D, title XLVI, §4603(h), formerly Pub. L. 106-398, §1 [div. C, title XXXI, §3136(h)], Oct. 30, 2000, 114 Stat. 1654, 1654A-459, renumbered §4603(h) of Pub. L. 107-314 by Pub. L. 108-136, div. C, title XXXI, §3141(i)(4)(A)-(C), Nov. 24, 2003, 117 Stat. 1777; Pub. L. 108-136, div. C, title XXXI, §3141(m)(3), Nov. 24, 2003, 117 Stat. 1787; Pub. L. 108-375, div. A, title XI, §1101(a), Oct. 28, 2004, 118 Stat. 2072; Pub. L. 109-163, div. A, title XI, §1101, Jan. 6, 2006, 119 Stat. 3447; Pub. L. 110-422, title VI, §615, Oct. 15, 2008, 122 Stat. 4800; Pub. L. 111-242, §151, as added Pub. L. 111-322, title I, §1(a)(2), Dec. 22, 2010, 124 Stat. 3519; Pub. L. 112-81, div. A, title XI, §1123, Dec. 31, 2011, 125 Stat. 1617; Pub. L. 113-67, div. A, title VII, §706(b), Dec. 26, 2013, 127 Stat. 1194.)

REFERENCES IN TEXT

The date of enactment of this paragraph, referred to in subsec. (d)(4)(B), is the date of enactment of Pub. L. 102-484, which was approved Oct. 23, 1992.

Section 4421 of the Atomic Energy Defense Act, referred to in subsec. (d)(5)(A), was classified to section 2601 of Title 50, War and National Defense, prior to repeal by Pub. L. 113-66, div. C, title XXXI, §3146(e)(10), Dec. 26, 2013, 127 Stat. 1077.

The date of the enactment of this paragraph, referred to in subsec. (d)(5)(B), is the date of enactment of Pub. L. 106-117, which was approved Nov. 30, 1999.

The date of enactment of this paragraph, referred to in subsec. (d)(6)(B), is the date of enactment of Pub. L. 110-422, which was approved Oct. 15, 2008.

AMENDMENTS

2013—Subsec. (d)(3)(A). Pub. L. 113-67, § 706(b)(1), inserted “for self plus one or” before “for self and family”.

Subsec. (f)(3)(A). Pub. L. 113-67, § 706(b)(2), substituted “based on such person’s separation from service under a self plus one enrollment that covered the individual or under a self and family enrollment” for “for self and family based on such person’s separation from service”.

2011—Subsec. (d)(4)(B). Pub. L. 112-81 substituted “December 31, 2016” for “December 31, 2011” in cls. (i) and (ii) and substituted “February 1, 2017” for “February 1, 2012” in cl. (ii).

2010—Subsec. (d)(4)(B)(i). Pub. L. 111-242, § 151(1), as added by Pub. L. 111-322, substituted “December 31, 2011” for “October 1, 2010”.

Subsec. (d)(4)(B)(ii). Pub. L. 111-242, § 151(2), as added by Pub. L. 111-322, substituted “February 1, 2012” for “February 1, 2011” and “December 31, 2011” for “October 1, 2010”.

2008—Subsec. (d)(1)(A). Pub. L. 110-422, § 615(b), substituted “(4), (5), and (6)” for “(4) and (5)” in introductory provisions.

Subsec. (d)(6). Pub. L. 110-422, § 615(a), added par. (6).

2006—Subsec. (d)(4)(B)(i). Pub. L. 109-163, § 1101(1), substituted “October 1, 2010” for “October 1, 2006”.

Subsec. (d)(4)(B)(ii). Pub. L. 109-163, § 1101(2), substituted “February 1, 2011” for “February 1, 2007” and “October 1, 2010” for “October 1, 2006”.

2004—Subsec. (a). Pub. L. 108-375, § 1101(a)(1), struck out “paragraph (1) or (2) of” after “Any individual described in”.

Subsec. (b)(3). Pub. L. 108-375, § 1101(a)(2), added par. (3).

Subsec. (e)(1)(C). Pub. L. 108-375, § 1101(a)(4), added subpar. (C).

2003—Subsec. (d)(5)(A). Pub. L. 108-136, § 3141(m)(3), substituted “section 4421 of the Atomic Energy Defense Act” for “section 3143 of the National Defense Authorization Act for Fiscal Year 1997 (42 U.S.C. 7274n)”.

2002—Subsec. (d)(4)(B)(i). Pub. L. 107-314, § 1103(1), substituted “2006” for “2003”.

Subsec. (d)(4)(B)(ii). Pub. L. 107-314, § 1103(2), substituted “2007” and “2006” for “2004” and “2003”, respectively.

2000—Subsec. (d)(5)(A). Pub. L. 107-314, § 4603(h), formerly Pub. L. 106-398, § 1 [div. C, title XXXI, § 3136(h)], as renumbered by Pub. L. 108-136, § 3141(i)(4)(A)-(C), in introductory provisions, inserted “, or a voluntary or involuntary separation from a Department of Energy position at a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 3143 of the National Defense Authorization Act for Fiscal Year 1997 (42 U.S.C. 7274n)” after “readjustment”.

1999—Subsec. (d)(1)(A). Pub. L. 106-117, § 1106(1), substituted “paragraphs (4) and (5)” for “paragraph (4)” in introductory provisions.

Subsec. (d)(2). Pub. L. 106-117, § 1106(2), substituted “(1), (4), or (5)” for “(1) or (4)”.

Subsec. (d)(4)(A). Pub. L. 106-65, § 3244, inserted “, or the Department of Energy due to a reduction in force resulting from the establishment of the National Nuclear Security Administration” after “reduction in force” in introductory provisions.

Subsec. (d)(4)(B). Pub. L. 106-65, § 1104(c), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

“(i) October 1, 1999; or

“(ii) February 1, 2000, if specific notice of such separation was given to such individual before October 1, 1999.”

Subsec. (d)(5). Pub. L. 106-117, § 1106(3), added par. (5).

1996—Subsec. (d)(4)(A). Pub. L. 104-106, § 1036(1), inserted “, or a voluntary separation from a surplus position,” after “an involuntary separation from a position” in introductory provisions.

Subsec. (d)(4)(C). Pub. L. 104-106, § 1036(2), added subpar. (C).

1994—Subsec. (d)(4)(B). Pub. L. 103-337 substituted “October 1, 1999” for “October 1, 1997” in cls. (i) and (ii) and “February 1, 2000” for “February 1, 1998” in cl. (ii).

1992—Subsec. (d)(1)(A). Pub. L. 102-484, § 4438(a)(1), substituted “Except as provided in paragraph (4), an individual” for “An individual”.

Subsec. (d)(2). Pub. L. 102-484, § 4438(a)(2), substituted “in accordance with paragraph (1) or (4), as the case may be” for “in accordance with paragraph (1)”.

Subsec. (d)(4). Pub. L. 102-484, § 4438(a)(3), added par. (4).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-375, div. A, title XI, § 1101(c), Oct. 28, 2004, 118 Stat. 2072, provided that: “The amendments made by this section [amending this section and section 8906 of this title] shall apply with respect to Federal employees called or ordered to active duty on or after September 14, 2001.”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 3244 of Pub. L. 106-65 effective Mar. 1, 2000, see section 3299 of Pub. L. 106-65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

EFFECTIVE DATE

Section applicable with respect to any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after the end of the 9-month period beginning Nov. 14, 1988, and with respect to any qualifying event occurring on or after the first day of the first calendar year beginning after the end of such 9-month period, see section 203 of Pub. L. 100-654, set out as an Effective Date of 1988 Amendment note under section 8902 of this title.

SOURCE OF PAYMENTS

Pub. L. 102-484, div. D, title XLIV, § 4438(b)(1), Oct. 23, 1992, 106 Stat. 2725, provided that: “Any amount which becomes payable by an agency as a result of the enactment of subsection (a) [amending this section] shall be paid out of funds or appropriations available for salaries and expenses of such agency.”

§ 8906. Contributions

(a)(1) Not later than October 1 of each year, the Office of Personnel Management shall determine the weighted average of the subscription charges that will be in effect during the following contract year with respect to—

(A) enrollments under this chapter for self alone;

(B) enrollments under this chapter for self plus one; and

(C) enrollments under this chapter for self and family.

(2) In determining each weighted average under paragraph (1), the weight to be given to a particular subscription charge shall, with respect to each plan (and option) to which it is to apply, be commensurate with the number of enrollees enrolled in such plan (and option) as of March 31 of the year in which the determination is being made.

(3) For purposes of paragraph (2), the term “enrollee” means any individual who, during the contract year for which the weighted average is to be used under this section, will be eligible for a Government contribution for health benefits.

(b)(1) Except as provided in paragraphs (2), (3), and (4), the biweekly Government contribution for health benefits for an employee or annuitant