

Code. Such adjusted rates may not exceed the new rate for Executive Schedule level II or other applicable maximum established for the critical position. However, the employee must have at least a rating of Fully Successful or equivalent, and subsequent adjustments must be based on labor market factors, recruitment and retention needs, and individual accomplishments and contributions to an agency's mission.

(d) Employees receiving critical position pay are not entitled to locality-based comparability payments established under 5 U.S.C. 5304, special rate supplements under 5 U.S.C. 5305, or other similar payments or supplements under other legal authority.

(e) If an agency discontinues critical position pay for a given position (on its own initiative or because OPM, in consultation with OMB, terminates the authority under § 535.103(d)), the employee's rate of basic pay will be set at the rate to which the employee would be entitled had he or she not received critical pay, as determined by the head of the agency, unless the employee is eligible for a higher payable rate under the General Schedule maximum payable rate rule in § 531.221 and the agency chooses to apply that rule.

#### **§ 535.106 Treatment as rate of basic pay.**

A critical position pay rate is considered a rate of basic pay for all purposes, including any applicable premium pay, except—

(a) Application of any saved pay or pay retention provisions (e.g., 5 U.S.C. 5363); or

(b) Application of any adverse action provisions (e.g., 5 U.S.C. 7512).

#### **§ 535.107 Annual reporting requirements.**

(a) OPM must submit an annual report to Congress on the use of the critical position pay authority. Agencies must submit the following information to OPM by January 31 of each year on their use of critical position pay authority for the previous calendar year:

(1) The name, title, pay plan, and grade/level of each employee receiving a higher rate of basic pay under this subpart;

(2) The annual rate or rates of basic pay paid in the preceding calendar year to each employee in a critical position;

(3) The beginning and ending dates of such rate(s) of basic pay, as applicable;

(4) The rate or rates of basic pay that would have been paid but for the grant of critical position pay. This includes what the rate or rates of basic pay were, or would have been, without critical position pay at the time critical position

pay is initially exercised and any subsequent adjustments to basic pay that would have been made if critical position pay authority had not been exercised; and

(5) Whether the authority is still needed for the critical position(s).

### **PART 536—GRADE AND PAY RETENTION**

■ 4. The authority citation for part 536 continues to read as follows:

**Authority:** 5 U.S.C. 5361–5366; sec. 4 of the Performance Management and Recognition System Termination Act of 1993, Pub. L. 103–89, 107 Stat. 981; § 536.405 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502; § 536.308 also issued under section 301(d)(2) of the Federal Workforce Flexibility Act of 2004, Pub. L. 108–411, 118 Stat. 2305.

#### **Subpart A—General Provisions**

■ 5. Amend § 536.102 as follows:

■ a. Remove “or” at the end of paragraph (b)(7);

■ b. Remove the period at the end of paragraph (b)(8) and add “; or” in its place; and

■ c. Add paragraph (b)(9) to read as follows:

#### **§ 536.102 Coverage.**

\* \* \* \* \*

(b) \* \* \*

(9) Is reduced in pay upon termination of a critical position pay authority under 5 CFR part 535.

\* \* \* \* \*

[FR Doc. E8–19758 Filed 8–25–08; 8:45 am]

**BILLING CODE 6325–39–P**

### **OFFICE OF PERSONNEL MANAGEMENT**

#### **5 CFR Part 894**

**RIN 3206–AL03**

#### **Federal Employees Dental and Vision Insurance Program**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations to administer the Federal Employee Dental and Vision Benefits Enhancement Act of 2004, signed into law December 23, 2004. This law establishes dental and vision benefits programs for Federal employees, annuitants, and their eligible family members.

**DATES:** September 25, 2008.

#### **FOR FURTHER INFORMATION CONTACT:**

Nataya Battle, (202) 606–1874, or e-mail at [nataya.battle@opm.gov](mailto:nataya.battle@opm.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On December 23, 2004, Public Law 108–496, 118 Stat. 4001, was signed into law. This law established a dental benefits and vision benefits program for Federal employees, annuitants, and their eligible family members. The first effective date of coverage was December 31, 2006.

On October 15, 2007, OPM published interim regulations in the **Federal Register** (72 FR 58243–58248) to administer the Federal Employees Dental and Vision Insurance Program (FEDVIP). Comments were requested by December 15, 2007. OPM received comments from an employee union, a participating health plan in the FEHB Program, and an independent organization.

One comment addressed the role of the carriers and the Administrator in the handling of the enrollment process. OPM contracts with the Administrator which has agreed to handle all aspects of the enrollment process on behalf of the carriers. Therefore the regulations have been revised to substitute “Administrator” for “carrier” wherever there is a reference to the enrollment process.

Another comment addressed concerns that OPM does not review appeals for denial of a claim. The dental and vision carriers conduct their own disputed claims process and are required to use an independent third party to conduct a final analysis of any dispute, upon appeal. This process was established to ensure an independent evaluation is conducted, but at minimal cost to Program enrollees.

A comment indicated that it was not clear whether enrollment or coverage would be denied for preexisting dental conditions. Under this Program, neither enrollment nor benefits coverage is denied due to a preexisting dental condition. However, since the dental program was established in order to provide benefits for dental services for teeth and their surrounding tissues, a carrier may determine that coverage does not extend to replacements for teeth missing before the effective date of enrollment in the Program.

Another comment suggested revising the language in § 894.601(a) to remove the reference to coverage ending at the end of the pay period “in which you were last eligible” and in § 894.601(b) to remove the reference to coverage ending at the end of the pay period for which the last premium allotment was made;

and replace them each with coverage ending "at the end of the period covered by your last premium payment." It is not our intention to terminate an enrollment prior to the end of an enrollee's eligibility for coverage. Therefore, we did not adopt this suggestion.

The regulations have also been revised at § 894.602 to provide for a Qualifying Life Event that allows cancellation of enrollment when an enrollee or his or her spouse is called to active military service, and at § 894.704(d) to advise an annuitant if his or her reemployment terminates, he or she must notify the Administrator within 30 days to have his or her FEDVIP allotments withheld from his or her annuity payments. Otherwise, their FEDVIP coverage will terminate due to non-payment of premiums.

### 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 dental and vision 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 Part 894

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

Office of Personnel Management.

**Howard Weizmann,**  
*Deputy Director.*

■ For the reasons stated in the Preamble, OPM is revising part 894 to title 5, Code of Federal Regulations, to read as follows:

## PART 894—FEDERAL EMPLOYEES DENTAL AND VISION INSURANCE PROGRAM

### Subpart A—Administration and General Provisions

Sec.

894.101 Definitions.

894.102 If I have a preexisting dental or vision condition, may I join FEDVIP?

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### Subpart B—Coverage and Types of Enrollment

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894.202 If I enroll for self plus one, may I decide which family member to cover?

894.203 If I have a self plus one enrollment, when may I change which family member I want to cover or change to self only?

894.204 May I be enrolled in more than one dental or vision plan at a time?

### Subpart C—Eligibility

894.301 Am I eligible to enroll in FEDVIP?

894.302 What is an excluded position?

894.303 What happens to my enrollment if I transfer to an excluded position?

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894.305 Am I eligible to enroll if I am a former spouse receiving an apportionment of annuity?

894.306 Are foster children eligible as family members?

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

894.404 May I opt out of premium conversion?

894.405 What happens if I go into nonpay status or if my pay/annuity is insufficient to cover the allotments?

### Subpart E—Enrolling and Changing Enrollment

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894.503 Are belated enrollments or changes allowed?

894.504 When is my enrollment effective?

894.505 Are retroactive premiums paid with pre-tax dollars (premium conversion)?

894.506 How often will there be open seasons?

894.507 After I'm enrolled, may I change from one dental or vision plan or plan option to another?

894.508 When may I increase my type of enrollment?

894.509 What are the QLEs that are consistent with increasing my type of enrollment?

894.510 When may I decrease my type of enrollment?

894.511 What are the QLEs that are consistent with decreasing my type of enrollment?

894.512 What happens if I leave Government and then return?

### Subpart F—Termination or Cancellation of Coverage

894.601 When does my FEDVIP coverage stop?

894.602 May I cancel my enrollment at any time?

894.603 Is there an extension of coverage and right to convert when my coverage stops or when a covered family member loses eligibility?

### Subpart G—Annuitants and Compensationers

894.701 May I keep my dental and/or vision coverage when I retire or if I start receiving workers' compensation?

894.702 May I participate in open seasons and make changes to my enrollment as an annuitant or compensationer?

894.703 How long does my coverage as an annuitant or compensationer last?

894.704 What happens if I retire and then come back to work for the Federal Government?

### Subpart H—Benefits in Underserved Areas

894.801 Will benefits be available in underserved areas?

**Authority:** 5 U.S.C. 8962; 5 U.S.C. 8992.

### Subpart A—Administration and General Provisions

#### § 894.101 Definitions.

This part is written as if the reader were an applicant or enrollee. Accordingly, the terms "you," "your," etc., refer, as appropriate, to the applicant or enrollee.

*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) Residence change of the enrollee's stepchild or recognized natural child who moves in with the enrollee;

(5) Establishment of dependency of a recognized natural child as described in § 890.302(b) of this chapter; and

(6) An otherwise eligible child's loss of spouse due to divorce or annulment of marriage, or death.

*Administrator* means the entity with which the Office of Personnel Management contracts to manage the enrollment and premium payment process for the Federal Employees Dental and Vision Insurance Program (FEDVIP).

*Annuitant* means an individual defined at 5 U.S.C. 8901(3). Generally, the term means a former employee who is entitled to an immediate annuity or a disability annuity under a retirement system established for employees. The term also generally includes those receiving a survivor annuity due to the death of a Federal employee or

annuitant (survivor annuitants) and those receiving compensation from the Office of Workers' Compensation Programs (compensations). The term does not include former employees who retire with a deferred annuity under 5 U.S.C. 8413, or former spouses of annuitants.

*Carrier* means a company with which the Office of Personnel Management contracts to provide dental and/or vision benefits.

*Child* means one of the following:

- (1)(i) A child born within marriage;
  - (ii) An adopted child;
  - (iii) A stepchild or foster child who lives with the enrollee in a regular parent-child relationship; or
  - (iv) A recognized natural child.
- (2) This definition does not include a grandchild (unless the grandchild meets all the requirements of a foster child as stated in § 890.101(a)(8) of this chapter).

(3) The child must be unmarried and under age 22. A child age 22 or over is eligible if the child is incapable of self-support because of a physical or mental disability that existed before the child reached age 22.

*Compensation* has the same meaning as found under subchapter I of chapter 81 of title 5, United States Code, which is payable because of an on-the-job injury or disease.

*Compensation* means an individual who is receiving compensation and who the Department of Labor determines is unable to return to duty.

*Covered position* means a position in which an employee is not excluded from FEDVIP eligibility by law or regulation.

*Days* means calendar days.

*Dependent* means an unmarried child who is living with or receiving regular and substantial support from the enrollee.

*Employee* means an individual defined in 5 U.S.C. 8901. For the purposes of this subpart, the term employee additionally means an employee of the United States Postal Service and an employee of the District of Columbia courts.

*Enrollment reconsideration* means the Administrator's review of its initial enrollment decision to determine if it followed the law and regulations correctly in making the initial decision concerning FEDVIP eligibility.

*Family member* means a spouse (including a spouse under a valid common law marriage) and/or unmarried dependent child(ren).

*OPM* means the Office of Personnel Management.

*OWCP* means the Office of Workers' Compensation Programs, U.S. Department of Labor.

*Premium conversion* means the payment of FEDVIP premiums using pre-tax dollars. See § 892.102 of this chapter for a discussion of how premium conversion works.

*QLE* means a qualifying life event.

*Recognized natural child* means a biological child born outside of marriage. A recognized natural child is an eligible family member if the child lives with the enrollee or receives financial support from the enrollee.

*Regular parent-child relationship* means that the enrollee is exercising parental authority, responsibility, and control over the child; is caring for, supporting the child; and is making the decisions about the child's education and medical care.

*Type of enrollment* means one of the following:

- (1) Self only;
- (2) Self plus one; or
- (3) Self and family.

**§ 894.102 If I have a pre-existing dental or vision condition, may I join FEDVIP?**

Yes. Pre-existing conditions do not exclude you from coverage under FEDVIP. The *Administrator* may not deny an individual the right to enroll solely because of a preexisting dental or vision condition.

**§ 894.103 How do I enroll?**

You may enroll through an *Administrator* contracted by OPM to facilitate the enrollment process. Your Federal agency, retirement system, or *OWCP* office will advise you of the enrollment process available to you.

**§ 894.104 Who makes enrollment decisions and reconsiderations?**

The *Administrator* makes enrollment decisions and the *Administrator* reviews requests for reconsideration of an enrollment decision. The *Administrator's* initial enrollment decision denying enrollment or an opportunity to change coverage must be in writing and must inform you about your right to reconsideration.

**§ 894.105 Who may correct an error in my enrollment?**

(a) The *Administrator* may correct administrative errors about the processing of your enrollment or changes in enrollment.

(b) OPM may order correction of an administrative error if it receives evidence that it would be against equity (fairness) and good conscience not to order the correction. This decision is made at the discretion of OPM and is not subject to review.

(c) If the correction gives you retroactive coverage, you must pay the premiums for all periods of the

retroactive coverage. These premiums will not be on a pre-tax basis (they are not subject to premium conversion).

**Subpart B—Coverage and Types of Enrollment**

**§ 894.201 What types of enrollments are available under FEDVIP?**

FEDVIP has three *types of enrollment*:

- (a) Self only, which covers only the enrolled *employee* or *annuitant*;
- (b) Self plus one, which covers the enrolled *employee* or *annuitant* plus one eligible family member; and
- (c) Self and family, which covers the enrolled *employee* or *annuitant* and all eligible *family members*.

**§ 894.202 If I enroll for self plus one, may I decide which family member to cover?**

Yes, if you enroll for self plus one, you must state at the time you enroll which eligible *family member* you want to cover under your enrollment.

**§ 894.203 If I have a self plus one enrollment, when may I change which family member I want to cover or change to self only?**

You may change your covered *family member* under a self plus one enrollment or change to self only coverage in the following situations:

- (a) During the annual open season;
- (b) If your covered *family member* dies during the year; or
- (c) If your covered *family member* loses eligibility during the year.

**§ 894.204 May I be enrolled in more than one dental or vision plan at a time?**

You may be enrolled in a FEDVIP dental plan and a separate FEDVIP vision plan at the same time. But no one may enroll or be covered as a family member in a FEDVIP dental or vision plan if he or she is covered under another person's FEDVIP dental or vision self plus one or self and family enrollment, except as provided under § 890.302 (a)(2) through (4) of this chapter, with respect to dual enrollments.

**Subpart C—Eligibility**

**§ 894.301 Am I eligible to enroll in the FEDVIP?**

You are eligible if you meet the definition of *employee* in 5 U.S.C. 8901(1), unless you are in an excluded position. You are eligible if you are an employee of the United States Postal Service or the District of Columbia courts.

**§ 894.302 What is an excluded position?**

Excluded positions are described in 5 U.S.C. 8901 (1)(I) and 5 CFR 890.102 (c), except that employees of the United

States Postal Service and District of Columbia courts are not excluded positions.

You are in an excluded position if you are:

(a) An *employee* of a corporation supervised by the Farm Credit Administration, if private interests elect or appoint a member of the board of directors.

(b) An *employee* who is not a citizen or national of the United States and your permanent duty station is outside the United States. *Exception:* You are eligible if you met the definition of *employee* on September 30, 1979, by service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area that was then known as the Canal Zone.

(c) An *employee* of the Tennessee Valley Authority.

(d) An individual first employed by the Government of the District of Columbia on or after October 1, 1987, except employees of the District of Columbia Courts and those employees defined at § 890.102 (c)(8) of this chapter.

(e) Serving under an appointment limited to 1 year or less. *Exceptions:* You are eligible if:

- (1) You are an acting postmaster;
- (2) You are a Presidential appointee appointed to fill an unexpired term;
- (3) You are an *employee* with a provisional appointment, as defined in § 316.401 and § 316.403 of this chapter; or
- (4) You have completed 1 year of current continuous employment, excluding any break in service of 5 *days* or less.

(f) You are expected to work fewer than 6 months in each year. *Exception:* You are eligible if you are employed under an OPM-approved career-related work-study program under Schedule B. To qualify, your work-study program must last at least 1 year, and you must be expected to be in pay status for at least one-third of the total period of time from the date of your first appointment to the date you complete the work-study program.

(g) An intermittent *employee* (a non-full-time *employee* without a prearranged regular tour of duty).

(h) A beneficiary or patient *employee* in a Government hospital or home.

(i) Paid on a contract or fee basis. *Exception:* You are eligible if you are a United States citizen, and you are appointed by a contract between you and the Federal employing authority. To qualify, your contract must require your personal service, and you must be paid on the basis of units of time.

(j) Paid on a piecework basis. *Exception:* You are eligible if your work schedule provides for full-time or part-time service, and you have a regularly scheduled tour of duty.

(k) The following positions are not excluded positions:

(1) An employee appointed to perform "part-time career employment," as defined in section 3401 (2) of title 5, U.S.C., and 5 CFR part 430, subpart B; or

(2) An employee serving under an interim appointment established under § 772.102 of this chapter.

#### § 894.303 What happens to my enrollment if I transfer to an excluded position?

(a) If you have FEDVIP coverage and you transfer to a position excluded under § 894.302(a) through (d), your enrollment stops.

(b) If you have FEDVIP coverage and you transfer to a position excluded under § 894.302(e) through (j) with no break in service of more than 3 days, your enrollment is not affected. If you have a break in service of more than 3 days, your enrollment stops.

(c) If you did not elect to enroll in FEDVIP and then transfer to an excluded position, you lose all rights to enroll at that time.

#### § 894.304 Am I eligible to enroll if I'm retired or receiving workers' compensation?

If you are retired, receiving workers' compensation, or are a survivor annuitant, you are eligible if you meet the definition of *annuitant* in 5 U.S.C. 8901(3).

#### § 894.305 Am I eligible to enroll if I am a former spouse receiving an apportionment of annuity?

No. Former spouses receiving an apportionment of annuity are not eligible to enroll in FEDVIP.

#### § 894.306 Are foster children eligible as family members?

Yes, foster children may be eligible for coverage as family members under FEDVIP.

#### § 894.307 Are disabled children age 22 or over eligible as family members?

A *child* age 22 or over is an eligible family member if the *child* is incapable of self-support because of a physical or mental disability that existed before the *child* reached age 22.

### Subpart D—Cost of Coverage

#### § 894.401 How do I pay premiums?

(a) *Employees* pay premiums through payroll allotments.

(b) *Annuitants* and survivor annuitants pay premiums through annuity allotments.

(c) *Compensationers* pay premiums through allotments from *compensation* payments.

(d) In limited circumstances, individuals may make direct premium payments. See § 894.405.

#### § 894.402 Do the premiums I pay reflect the cost of providing benefits?

The premiums you pay shall reasonably and equitably reflect the cost of the benefits provided.

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

(a) Your FEDVIP premiums are paid on a pre-tax basis (called premium conversion) if you are an active *employee*, your salary is sufficient to make the premium allotments, and your agency is able to make pre-tax allotments.

(b) Your FEDVIP premiums are *not* paid on a pre-tax basis if:

(1) You are an *employee* in nonpay status or an *employee* whose salary is not high enough to make premium allotments, or your agency is unable to make pre-tax allotments;

(2) You are an *annuitant*, a survivor *annuitant*, or a *compensationer*;

(3) Your enrollment change was made effective retroactively which resulted in additional premium withholdings, unless it is as a result of birth or adoption of a *child*.

(4) You have been approved to pay premiums directly to the *Administrator*.

#### § 894.404 May I opt out of premium conversion?

No, all enrolled employees whose salary is sufficient to make premium allotments and whose agency is able to make pre-tax allotments must participate in premium conversion.

#### § 894.405 What happens if I go into nonpay status or if my pay/annuity is insufficient to cover the allotments?

(a) If your pay, *annuity*, or *compensation* is too low to cover the premium allotments, or if you go into a nonpay status, contact the *Administrator* to arrange to pay your premiums directly to the Administrator.

(b) If you do not make the premium payments, your FEDVIP coverage will stop. You will not be able to reenroll until the next open season after:

(1) You are in pay status; or

(2) Your pay is sufficient to make the premium allotments.

**Subpart E—Enrollment and Changing Enrollment****§ 894.501 When may I enroll?**

You may enroll:

- (a) During the annual open season;
- (b) Within 60 *days* after you first become eligible as:
  - (1) A new *employee*;
  - (2) A previously ineligible *employee* who transfers to a covered position; or
  - (3) A new survivor *annuitant*, if not already covered under FEDVIP.
- (c) Within 60 *days* of when you return to service following a break in service of at least 30 days; or
- (d) Within 60 *days* of a QLE that allows you to enroll.

**§ 894.502 What are the Qualifying Life Events (QLEs) that allow me to enroll?**

- (a) You or an eligible *family member* lose other dental/vision coverage;
- (b) Your annuity or *compensation* is restored after having been terminated; or
- (c) You return to pay status after being on leave without pay due to deployment to active military duty.

**§ 894.503 Are belated enrollments or changes allowed?**

(a) The time limit for enrolling or changing your enrollment may be extended up to 3 months after the date you became newly eligible or had a QLE or after the end of an open season. To qualify, you must demonstrate to the *Administrator* that you were not able to enroll or change your enrollment on time for reasons beyond your control.

(b) If the *Administrator* allows you to make a belated enrollment or enrollment change, you must enroll or change within 30 *days* after the *Administrator* notifies you of its determination.

**§ 894.504 When is my enrollment effective?**

(a) Open season enrollments are effective on the date set by OPM.

(b) If you enroll when you first become eligible your enrollment is effective the 1st *day* of the pay period following the one in which the *Administrator* receives your enrollment, but no earlier than December 31, 2006.

(c)(1) A belated open season enrollment is effective retroactive to the date it would have been effective if you had made a timely enrollment or request for a change.

(2) Any other belated enrollment or change is effective retroactive to the 1st *day* of the pay period following the one in which you became newly eligible or the date of your QLE.

(3) You are responsible for any retroactive premiums due to a belated enrollment or request for a change.

**§ 894.505 Are retroactive premiums paid with pre-tax dollars (premium conversion)?**

Retroactive premiums are not paid under premium conversion, except when you are changing your enrollment retroactively as a result of birth or adoption of a *child*. Any additional withholdings for retroactive premiums that are due must be made with after-tax dollars. The *Administrator* will bill you directly for any retroactive premiums that must be paid with after-tax dollars.

**§ 894.506 How often will there be open seasons?**

There will be an annual open season for FEDVIP at the same time as the annual Federal Benefits Open Season.

**§ 894.507 After I'm enrolled, may I change from one dental or vision plan or plan option to another?**

(a) You may change from one dental and/or vision plan to another plan or one plan option to another option in that same plan during the annual open season.

(b)(1) If you are enrolled in a dental or vision plan with a geographically restricted service area, and you or a covered eligible *family member* move out of the service area, you may change to a different dental or vision plan that serves that area.

(2) You may make this change at any time before or after the move, once you or a covered eligible *family member* has a new address.

(3) The enrollment change is effective the first day of the pay period following the pay period in which you make the change.

(4) You may not change your *type of enrollment* unless you also have a QLE that allows you to change your *type of enrollment*.

**§ 894.508 When may I increase my type of enrollment?**

(a) You may increase your *type of enrollment*:

- (1) during the annual open season; or
- (2) If you have a QLE that is consistent with increasing your *type of enrollment*.

(b) Increasing your *type of enrollment* means going from:

- (1) Self only to self plus one;
- (2) Self only to self and family; or
- (3) Self plus one to self and family.

(c) You may increase your *type of enrollment* during the time period beginning 31 *days* before the QLE and ending 60 *days* after the QLE.

(d) Your new *type of enrollment* is effective the 1st *day* of the pay period following the pay period in which you make the change.

(e) You may not change from one dental or vision plan to another, except as stated in § 894.507(b).

**§ 894.509 What are the QLEs that are consistent with increasing my type of enrollment?**

- (a) Marriage;
- (b) *Acquiring an eligible child*; or
- (c) Loss of other dental or vision coverage by an eligible *family member*.

**§ 894.510 When may I decrease my type of enrollment?**

(a) You may decrease your type of enrollment

- (1) during the annual open season; or
- (2) If you have a QLE that is consistent with decreasing your *type of enrollment*,

(b) Decreasing your *type of enrollment* means going from:

- (1) Self and family to self plus one;
- (2) Self and family to self only; or
- (3) Self plus one to self only.

(c) You may decrease your *type of enrollment* during the time period beginning 31 *days* before your QLE and ending 60 *days* after your QLE.

(d) Your new *type of enrollment* is effective the 1st *day* of the pay period following the one in which you make the change.

(e) You may not change from one dental or vision plan or option to another, except as stated in § 894.507(b).

**§ 894.511 What are the QLEs that are consistent with decreasing my type of enrollment?**

(a) Loss of an eligible *family member* due to:

- (1) Divorce;
- (2) Death; or
- (3) Loss of eligibility of a previously enrolled *child*.

(b) Your spouse deploys to active military service.

**§ 894.512 What happens if I leave Federal Government and then return?**

(a) Your FEDVIP coverage terminates at the end of the pay period in which you separate from government service. *Exception:* If you separate for retirement or while in receipt of workers' *compensation* as defined in § 894.701, your FEDVIP coverage continues.

(b)(1) If you return to Federal service after a break in service of fewer than 30 *days*, and you were not previously enrolled in FEDVIP, you may not enroll until the next open season or unless you have a QLE that allows you to enroll.

(2) If you return to Federal service after a break in service of fewer than 30 *days*, and you were previously enrolled in FEDVIP, you may reenroll in the same plan(s) and plan option and with the same *type of enrollment* you had before you separated. *Exceptions:*

(i) If you were enrolled in a dental or vision plan with a restricted geographic service area, and you have since moved out of the plan's service area, you may

change to a different dental or vision plan that serves that area.

(ii) If you have since gained or lost an eligible *family member*, you may change your *type of enrollment* consistent with the change in the number of eligible *family members*.

(3) If you return to Federal service as a new hire after a break in service of 30 days or more, you may enroll if you were not previously enrolled, change your dental or vision plan, and/or change your *type of enrollment*.

#### Subpart F—Termination or Cancellation of Coverage

##### § 894.601 When does my FEDVIP coverage stop?

(a) If you no longer meet the definition of an eligible *employee* or *annuitant*, your FEDVIP coverage stops at the end of the pay period in which you were last eligible.

(b) If you go into a period of nonpay or insufficient pay, and you do not make direct premium payments, your FEDVIP coverage stops at the end of the pay period for which your agency, retirement system, or *OWCP* last made a premium allotment from your pay.

(c) If you are making direct premium payments, and you stop making the payments, your FEDVIP coverage stops at the end of the pay period for which you last made a payment.

(d) If you cancel your enrollment during an open season, your FEDVIP coverage stops at midnight of the *day* before the effective date of an open season change as set by OPM.

(e) If you are enrolled with a combination dental and vision *carrier* with a restricted service area, and you move outside the *carrier's* service area to a service area that does not offer a combination *carrier* and you change to a dental only or vision only *carrier*, your existing combination plan coverage will stop at midnight of the *day* before the effective date of your new plan coverage.

(f) If your FEDVIP carrier discontinues participation in the program at the end of the contract year, then you must change to another *carrier* during the open season, unless OPM establishes a different time. If the discontinuance is at a time other than the end of the contract year, OPM will establish a time and effective date for you to change your carrier. If you do not change your carrier within the time set by OPM, your coverage will stop at midnight of the *day* before the effective date set by OPM for coverage with another *carrier*.

##### § 894.602 May I cancel my enrollment at any time?

No. You may only cancel your enrollment during an open season. *Exceptions:* You may cancel your dental and/or vision enrollment if you transfer to an eligible position with a Federal agency that provides dental and/or vision coverage with 50 percent or more employer-paid premiums. You may also cancel upon your deployment or your spouse's deployment to active military duty. These cancellations will become effective at the end of the pay period that you submit your request.

##### § 894.603 Is there an extension of coverage and right to convert when my coverage stops or when a covered family member loses eligibility?

No. There is no extension of coverage or right to convert to an individual policy or Temporary Continuation of Coverage (TCC) when your FEDVIP coverage stops or when a *family member* loses eligibility under the Program.

#### Subpart G—Annuitants and Compensationers

##### § 894.701 May I keep my dental and/or vision coverage when I retire or start receiving workers' compensation?

(a) Your FEDVIP coverage continues if you retire on an immediate annuity or on a disability annuity, or start receiving *compensation* from *OWCP*.

(b) If you retire on a Minimum Retirement Age +10 annuity that you elect to postpone in accordance with 5 U.S.C. 8412(g), your FEDVIP coverage will stop when you separate from service. However, you may enroll again within 60 *days* of when your annuity starts.

(c) If you retire on a deferred annuity in accordance with 5 U.S.C. 8413, your FEDVIP coverage stops and you are not eligible to enroll.

##### § 894.702 May I participate in open season and make changes to my enrollment as an annuitant or compensationer?

Yes. *Annuitants* and *compensationers* may participate in open season and make enrollment changes under the same circumstances as active *employees*.

##### § 894.703 How long does my coverage as an annuitant or compensationer last?

Your coverage as an *annuitant* or *compensationer* continues as long as you continue receiving an annuity or *compensation* and pay your premiums, unless you cancel your coverage during an open season or terminate coverage due to insufficient annuity or *compensation*.

##### § 894.704 What happens if I retire and then come back to work for the Federal Government?

(a) If you have FEDVIP coverage as an *annuitant*, and you become reemployed in an eligible position in Federal service, you must contact the *Administrator* so it can send the request for allotments to your agency so your agency can start making the allotments from your pay.

(b) If you did not enroll in FEDVIP coverage as an *annuitant* and become reemployed in an eligible Federal position, you have 60 *days* to enroll in FEDVIP.

(c) If you enroll as an employee the *Administrator* will stop sending requests for allotments from your annuity.

(d) If your reemployment terminates, you must notify the *Administrator* within 30 days to have your allotments withheld from your annuity payments. Otherwise, your FEDVIP coverage will terminate due to non-payment of premiums.

#### Subpart H—Benefits in Underserved Areas

##### § 894.801 Will benefits be available in underserved areas?

(a) Dental and vision plans under FEDVIP will include underserved areas in their service areas and provide benefits to enrollees in underserved areas.

(b) In any area where a FEDVIP dental or vision plan does not meet OPM access standards, including underserved areas, enrollees may receive services from non-network providers.

(c) Contracts under FEDVIP shall include access standards as defined by OPM and payment levels for services to non-network providers in areas that do not meet access standards.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 987

[Docket No. AMS–FV–08–0056; FV08–987–1 IFR]

### Domestic Dates Produced or Packed in Riverside County, CA; Decreased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.