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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AM85

Federal Employees Health Benefits Program: Members of Congress and Congressional Staff

AGENCY: Office of Personnel
Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a final rule to amend the Federal Employees Health Benefits (FEHB) Program regulations regarding coverage for Members of Congress and congressional staff.

DATES: *Effective Date:* October 2, 2013.

FOR FURTHER INFORMATION CONTACT: Chelsea Ruediger at (202) 606-0004.

SUPPLEMENTARY INFORMATION: This final rule amends Federal Employees Health Benefits (FEHB) Program regulations to comply with Section 1312 of 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 or the Act).

On August 8, 2013, the Office of Personnel Management (OPM) published a proposed rule inviting comments on amendments to the FEHB Program regulations. The 30-day comment period ended on September 9, 2013. In response to this proposed rule, OPM received nearly 60,000 comments. The comments are summarized and discussed below. OPM will provide additional guidance as deemed necessary.

Comments on Section 1251(a) of the Affordable Care Act

Several commenters requested that OPM review Section 1251(a) of the

Affordable Care Act, which provides continuity of coverage for individuals covered under a group health plan. These commenters suggested that Section 1251(a) provides grounds for “grandfathering” current FEHB-eligible Members of Congress and congressional staff members into their current coverage and applying the requirements of Section 1312 only to Members of Congress and congressional staff hired on or after January 1, 2014.

OPM is not amending the rule in response to these comments. While OPM acknowledges that, in general, the Affordable Care Act did not intend to disrupt existing health insurance coverage, in this context, the Act included clear and unambiguous language providing that all Members of Congress and congressional staff employed by the official office of a Member of Congress be subject to the terms of Section 1312 regardless of their dates of employment. Thus, the final rule implements Section 1312 of the Affordable Care Act as written.

Comments About the Method by Which Congressional Staff Are Designated as Covered by § 1312 of the Affordable Care Act

OPM received several comments related to health care coverage for congressional staff and how staff will be designated for the purpose of determining which individuals are required to purchase their health insurance coverage from an Exchange.

OPM has not amended the final rule on the basis of these comments. OPM continues to believe that individual Members or their designees are in the best position to determine which staff work in the official office of each Member. Accordingly, OPM will leave those determinations to the Members or their designees, and will not interfere in the process by which a Member of Congress may work with the House and Senate Administrative Offices to determine which of their staff are eligible for a Government contribution towards a health benefits plan purchased through an appropriate Small Business Health Options Program (SHOP) as determined by the Director. Nothing in this regulation limits a Member’s authority to delegate to the House or Senate Administrative Offices the Member’s decision about the proper designation of his or her staff. The final

rule has been amended to provide an extension for staff designations affecting plan year 2014 only. Designations for individuals hired throughout the plan year should be made at the time of hire.

Comments on Incorporating Exchange Plans Under the § 8901 (6) Definition of “Health Benefit Plan Under This Chapter”

Some commenters questioned OPM’s decision to incorporate Exchange qualified health plans into the Section 8901(6) definition of a health benefits plan. OPM maintains its position that, because the Affordable Care Act did not alter the definition of “health benefits plan” under 5 U.S.C. 8901(6) and because the statutory definition of “health benefits plan” would otherwise apply to an Exchange qualified health plan, this regulation is an appropriate exercise of OPM’s interpretive authority under Chapter 89.

OPM has been provided the statutory authority to administer health benefits to Federal employees (as defined in 5 U.S.C. 8901(1)). Because Section 1312 of the Affordable Care Act did not remove Members of Congress or congressional staff from the Chapter 89 definition of “employee,” it is within OPM’s interpretive authority under Chapter 89 to clarify that a Government contribution may be provided to, and to establish the means for a Government contribution towards health benefits for, Members of Congress and congressional staff, just as we do for other Federal employees.

Comments on Government Contributions

Numerous commenters questioned OPM’s proposal to extend a Government contribution for Members of Congress and congressional staff purchasing health plans through the individual market Exchanges. Many commenters expressed their view that a Government contribution is antithetical to the intent of Section 1312 of the Affordable Care Act, which they interpret to require Members of Congress and congressional staff to purchase the same health insurance available to private citizens on the Exchanges. Commenters asserted that Members of Congress and congressional staff should be subject to the same requirements as citizens purchasing insurance on the Exchanges, including individual responsibility for

premiums and income restrictions for premium assistance.

As described in the proposed rule, because there are now employees covered by chapter 89 who will be purchasing health benefits plans on Exchanges, we believe that it is appropriate that the provisions that authorize an employer contribution for "health benefits plans under this chapter" includes health benefits plans fitting within the definition set forth in Section 8901(6). Nothing in this rule or the law prevents a Member of Congress or designated congressional staff from declining a Government contribution for himself or herself by choosing a different option for his/her health insurance coverage.

The proposed rule was silent on whether eligible individuals would select qualified health plans through an Exchange in the individual or small group market by way of the SHOP. Because a Government contribution is, in essence, an employer contribution, the final rule clarifies that Members of Congress and designated congressional staff must enroll in an appropriate SHOP as determined by the Director in order to receive a Government contribution. SHOPS are designed to provide employer-sponsored group health benefits and are, therefore, the appropriate environment in which to provide an employer contribution to Members of Congress and congressional staff. Further, this ensures that Members of Congress and congressional staff do not have additional choices in the individual Exchanges with a Government contribution that other individuals lack. Given the location of Congress in the District of Columbia, OPM has determined that the DC SHOP, known as the DC Health Link Small Business Market administered by the DC Health Benefit Exchange Authority, is the appropriate SHOP from which Members of Congress and designated congressional staff will purchase health insurance in order to receive a Government contribution. OPM intends to work with the DC Health Benefits Exchange to implement this rule.

Nothing in the final rule limits an individual from purchasing health insurance through other methods including the individual market Exchanges. Members of Congress and designated congressional staff are subject to the same requirements as citizens purchasing insurance on the Exchanges, including individual responsibility. Access to the Government contribution through the SHOP limits their eligibility for premium tax credits available through the individual market Exchanges.

OPM was also asked to provide additional details on how the Government contribution will be calculated. The formula for Government contributions is set forth in 5 U.S.C. Section 8906.

Comments on Retirement

Numerous commenters have urged OPM to reconsider its position that Section 1312 affects annuitant health insurance benefits.

Section 1312 only addresses the health benefits plans that the Federal Government may offer Members of Congress and congressional staff employed by the official office of a Member of Congress while they are employed in those positions. This provision neither amended any of the sections of Chapter 89 relating to annuitant health benefits nor otherwise indicated that the provision applies to annuitants. Because we agree with the central premise of these comments, we have deleted the proposed language in Section 890.501(h)(1) and (2) referring to annuitants. We make this change for the additional reason that, otherwise, Members of Congress and congressional staff would have broader health insurance options in the Exchange in retirement than are available to other Federal annuitants. Members of Congress and congressional staff will be subject to the same rules of participation in the FEHB Program in retirement as other Federal annuitants.

During the comment period, OPM was asked to clarify the effect of this regulation on current congressional retirees. Under the final rule, congressional retirees who are currently enrolled in plans contracted for and approved by OPM will not be affected and will continue enrollment in their current plans. In addition, OPM was asked if time covered under a plan purchased through the appropriate SHOP with a Government contribution would count towards the 5-year requirement to carry coverage into retirement. Time spent under a plan purchased on the appropriate SHOP as determined by the Director and purchased pursuant to Section 1312 of the Affordable Care Act will count towards the time requirement outlined in Chapter 89 Section 8905(b).

OPM was also asked to clarify the impact of this regulation on reemployed annuitants. This final rule does nothing to affect the choices available to a reemployed annuitant. As a general matter, upon reemployment an annuitant participating in the FEHB Program may choose either to continue that coverage without premium conversion through OPM or to have his/

her enrollment transferred to his/her employing office.

Coverage of Abortion Services

OPM received over 59,000 comments regarding coverage of abortion services for Members of Congress and congressional staff. More than 51,000 of these requested that plans available to Members of Congress and congressional staff include abortion services.

Current law prohibits the use of Federal funds to pay for abortions, except in the case of rape, incest, or when the life of the woman is endangered, and the Smith Amendment in particular makes no funds available "to pay for abortions or administrative expenses in connections with health plans under the FEHB which provides any benefits or coverage for abortions." Neither the proposed nor final regulation alters these prohibitions. Under OPM's final rule, no Federal funds, including administrative funds, will be used to cover abortions or administer plans that cover abortions. Unlike the health plans for which OPM contracts pursuant to 5 U.S.C. 8902, 8903 and 8903a, OPM does not administer the terms of the health benefits plans offered on an Exchange. Consequently, while plans with such coverage may be offered on an Exchange, OPM can and will take appropriate administrative steps to ensure that the cost of any such coverage purchased by a Member of Congress or a congressional staffer from a designated SHOP is accounted for and paid by the individual rather than from the Government contribution, consistent with the general prohibition on Federal funds being used for this purpose.

Comments on Effective and Termination Dates

OPM was asked to clarify the termination date for current FEHB plan coverage. Current FEHB health plan enrollment for Members of Congress and congressional staff employed by the official office of a Member of Congress will terminate at midnight on December 31, 2013. Members of Congress and designated congressional staff who choose to purchase health insurance through the appropriate SHOP as determined by the Director may do so with an effective date of January 1, 2014. OPM will provide additional guidance regarding effective and termination dates as deemed necessary.

Comments on Eligibility for Other Federal Benefits

OPM received one comment requesting clarification on the eligibility of Members of Congress and

congressional staff to participate in other Federal benefits programs administered by OPM. Section 1312 and this rule only pertain to Members' or congressional staff's health benefits plans.

Comments About Insurance Coverage for Representatives of U.S. Territories

OPM received a comment from the representatives of U.S. Territories. Because these Members of Congress represent geographic areas where there may not be a health insurance Exchange, commenters expressed concern that these representatives would lose health coverage if removed from current FEHB plan eligibility. Three solutions were suggested: allow these Members and their staff to maintain current FEHB plan coverage, allow them to enroll in a DC-based or Federal Exchange, or allow them to enroll in a Federal Exchange established for territories for this purpose.

After reviewing these options, OPM has determined that, like other Members of Congress and congressional staff, representatives from the U.S. Territories and their staff who want to receive a Government contribution will enroll for coverage through the appropriate SHOP as determined by the Director.

Comments About the Affordable Care Act

OPM received several comments expressing opinions about the Affordable Care Act as a whole. Other comments more specifically addressed the requirement in Section 1312 to remove Members of Congress and congressional staff from current FEHB plan coverage. Some indicated that the decision to remove Members of Congress and congressional staff from current FEHB plan coverage would have detrimental effects to these individuals. Others felt that the provision should only apply to Members of Congress and not to congressional staff. Others indicated that Members of Congress should not be provided with employer-based health coverage at all. The majority of these comments have been addressed in the above discussion. The remaining comments regarding the Affordable Care Act are beyond the scope of this regulation and are not addressed.

Additional Comments

OPM received additional comments regarding coverage of pathology services, Health Reimbursement Arrangements, and employer shared responsibility. These comments have been deemed outside the scope of this regulation and are not addressed in the

final rule. In addition, OPM received requests for operational details about the administration of benefits for Members of Congress and designated congressional staff. Most of these questions have been responded to in the final rule. In addition, OPM plans to provide operational guidance in future communications as deemed necessary.

In addition to the changes described above, the final rule includes non-substantive, editorial changes to improve clarity.

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 involves the issue of where Members of Congress and certain congressional staff may purchase their health insurance, and does not otherwise alter the FEHB program.

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

Administration and general provisions, Health benefits plans, Enrollment, Temporary extension of coverage and conversion, Contributions and withholdings, Transfers from retired FEHB Program, Benefits in medically underserved areas, Benefits for former spouses, Limit on inpatient hospital charges, physician charges, and FEHB benefit payments, Administrative sanctions imposed against health care providers, Temporary continuation of coverage, Benefits for United States hostages in Iraq and Kuwait and United States hostages captured in Lebanon, Department of Defense Federal Employees Health Benefits Program demonstration project, Administrative practice and procedure, Employee benefit plans, Government employees, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Elaine Kaplan,
Acting Director.

Accordingly, OPM is amending chapter I, title 5, Code of Federal Regulations as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

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

Authority: 5 U.S.C. 8913; 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; Pub. L. 111–148, as amended by Pub. L. 111–152.

■ 2. Amend § 890.101 by adding definitions of “Congressional staff member”, “Member of Congress”, and “Shop” to paragraph (a) in alphabetical order to read as follows:

§ 890.101 Definitions; time computations.

(a) * * *

Congressional staff member means an individual who is a full-time or part-time employee employed by the official office of a Member of Congress, whether in Washington, DC or outside of Washington, DC.

* * * * *

Member of Congress means a member of the Senate or of the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner of Puerto Rico.

* * * * *

SHOP has the meaning given in 45 CFR 155.20.

* * * * *

§ 890.102 Coverage.

■ 3. Amend § 890.102 by adding paragraph (c)(9) and revising paragraph (e) as follows:

* * * * *

(c) * * *

(9) The following employees are not eligible to purchase a health benefit plan for which OPM contracts or which OPM approves under this paragraph (c), but may purchase health benefit plans, as defined in 5 U.S.C. 8901(6), that are offered by an appropriate SHOP as determined by the Director, pursuant to section 1312(d)(3)(D) of 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 or the Act):

(i) A Member of Congress.

(ii) A congressional staff member, if the individual is determined by the employing office of the Member of

Congress to meet the definition of congressional staff member in § 890.101 as of January 1, 2014, or in any subsequent calendar year. Designation as a congressional staff member shall be an annual designation made prior to November 2013 for the plan year effective January 1, 2014 and October of each year for subsequent years or at the time of hiring for individuals whose employment begins during the year. The designation shall be made for the duration of the year during which the staff member works for the Member of Congress beginning with the January 1st following the designation and continuing to December 31st of that year.

* * * * *

(e) With the exception of those employees or groups of employees listed in paragraph (e)(1) of this section, the Office of Personnel Management makes the final determination of the applicability of this section to specific employees or groups of employees.

(1) Employees identified in paragraph (c)(9)(i) and (ii) of this section.

(2) [Reserved].

* * * * *

■ 4. Amend § 890.201 to add a new paragraph (d) to read as follows:

§ 890.201 Minimum standards for health benefit plans.

(d) Nothing in this part shall limit or prevent a health insurance plan purchased through an appropriate SHOP as determined by the Director, pursuant to section 1312(d)(3)(D) of 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 or the Act), by an employee otherwise covered by 5 U.S.C. 8901(1)(B) and (C) from being considered a “health benefit plan under this chapter” for purposes of 5 U.S.C. 8905(b) and 5 U.S.C. 8906.

* * * * *

■ 5. Amend § 890.303 by revising paragraph (b) as follows:

§ 890.303 Continuation of enrollment.

* * * * *

(b) *Change of enrolled employees to certain excluded positions.* Employees and annuitants enrolled under this part who move, without a break in service or after a separation of 3 days or less, to an employment in which they are excluded by § 890.102(c), continue to be enrolled unless excluded by paragraphs (c)(4), (5), (6), (7), or (9) of § 890.102.

* * * * *

■ 6. Amend § 890.304 by revising paragraph (a)(1)(iii) to read as follows.

§ 890.304 Termination of enrollment.

(a) * * *
(1) * * *

(iii) The last day of the pay period in which his or her employment status or the eligibility of his or her position changes so that he or she is excluded from enrollment.

* * * * *

■ 7. Amend § 890.501 to add a new paragraph (h) to read as follows:

§ 890.501 Government contributions.

* * * * *

(h) The Government contribution for an employee who enrolls in a health benefit plan offered through an appropriate SHOP as determined by the Director pursuant to section 1312(d)(3)(D) of 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 or the Act) shall be calculated in the same manner as for other employees.

(2) Government contributions and employee withholdings for employees who enroll in a health benefit plan offered through an appropriate SHOP as determined by the Director, pursuant to section 1312(d)(3)(D) of 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 or the Act) shall be accounted for pursuant to section 8909 of title 5 and such monies shall only be available for payment of premiums, and costs in accordance with section 8909(a)(2) of title 5.

[FR Doc. 2013–23565 Filed 9–30–13; 11:15 am]

BILLING CODE 6325–63–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0352; Directorate Identifier 2012–SW–063–AD; Amendment 39–17598; AD 2013–19–16]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters to require

modifying the No. 1 engine forward firewall center fire extinguisher discharge tube (No. 1 engine tube) and inspecting the outboard discharge tube to determine if it is correctly positioned. This AD was prompted by the discovery that the No. 1 engine tube installed on the helicopters is too long to ensure that a fire could be effectively extinguished in the helicopter. The actions are intended to ensure the No. 1 engine tube allows for complete coverage of an extinguishing agent in the No. 1 engine compartment area, ensure that a fire would be extinguished and prevent the loss of helicopter control.

DATES: This AD is effective November 6, 2013.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of November 6, 2013.

ADDRESSES: For service information identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT 06614; telephone (800) 562–4409; email tslibrary@sikorsky.com; or at <http://www.sikorsky.com>. You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Michael Schwetz, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7761; email michael.schwetz@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

On April 22, 2013, at 78 FR 23698, the **Federal Register** published our notice of

Proposed Rules

Federal Register

Vol. 78, No. 153

Thursday, August 8, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 890

RIN 3206-AM85

Federal Employees Health Benefits Program: Members of Congress and Congressional Staff

AGENCY: Office of Personnel
Management.

ACTION: Proposed rule with request for
comments.

SUMMARY: The U.S. Office of Personnel
Management (OPM) is issuing a
proposed rule to amend the Federal
Employees Health Benefits (FEHB)
Program regulations regarding coverage
for Members of Congress and
congressional staff.

DATES: OPM must receive comments on
or before September 9, 2013.

ADDRESSES: Send written comments to
Chelsea Ruediger, Planning and Policy
Analysis, U.S. Office of Personnel
Management, Room 2H28, 1900 E Street
NW., Washington, DC 20415. You may
also submit comments using the *Federal
eRulemaking Portal*: [http://
www.regulations.gov](http://www.regulations.gov). Follow the
instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT:
Chelsea Ruediger at (202) 606-0004.

SUPPLEMENTARY INFORMATION: This
proposed rule is intended to amend
FEHB Program eligibility regulations to
comply with section 1312 of 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 or the Act).
Subparagraph 1312(d)(3)(D) of the
Affordable Care Act states that,
“Notwithstanding any other provision
of law . . . the only health plans that
the Federal Government may make
available to Members of Congress and
congressional staff with respect to their
service as a Member of Congress or
congressional staff shall be health plans
that are—(I) created under this Act (or

an amendment made by this Act); or (II)
offered through an Exchange established
under this Act (or an amendment made
by this Act).” The Act defines “Member
of Congress” as any member of the
House of Representatives or the Senate
and “congressional staff” as all full-time
and part-time employees employed by
the official office of a Member of
Congress, whether in Washington, DC or
outside of Washington, DC.

Currently, Members of Congress
(including Delegates to the House of
Representatives and the Resident
Commissioner from Puerto Rico) and
congressional employees (which
include each Member’s respective
personal staffs, staffs of House and
Senate leadership committees, other
committee staff and administrative
office staff) meet the definition of
employee in 5 U.S.C. 8901 of title 5 and
are, therefore, eligible to enroll in the
FEHB Program.

While the Affordable Care Act does
not amend 5 U.S.C. 8901, the effect of
the “notwithstanding” clause of section
1312 is to limit the ability of Members
of Congress and congressional staff to
purchase health benefits plans for
which OPM may contract under chapter
89. Section 1312 specifies that “the only
health plans that the Federal
Government may make available” are
those that are either “created under” the
ACA, or “offered through an Exchange
established under” the Act. The health
benefits plans for which OPM can
contract under chapter 89 are not
“created under” the ACA, nor are they
offered through the Exchanges.
Therefore, Members of Congress and
congressional staff who are employed by
the official office of a Member of
Congress may no longer purchase the
health benefits plans for which OPM
contracts under chapter 89. As part of
their service, they are limited to
purchasing plans from Exchanges. This
proposed rule implements this mandate.

Effective Date of Termination of Coverage

Though the Affordable Care Act does
not provide a specific effective date for
Subparagraph 1312(d)(3)(D), OPM has
concluded that the most reasonable
reading of the statute is that enrollment
in FEHB contracted plans under chapter
89 of title 5 will no longer be available
to Members of Congress and
congressional staff who are employed by

the official office of a Member of
Congress as of January 1, 2014, the date
under the Act that Exchanges (also
called Health Insurance Marketplaces)
established under the Affordable Care
Act will be available for providing
health insurance coverage.

Accordingly, we are proposing that
FEHB health plan enrollment for
Members of Congress and congressional
staff employed by the official office of
a Member of Congress terminate (with a
31-day extension of coverage and
opportunity for conversion) on the first
day of the last pay period in which they
are eligible for FEHB. FEHB coverage
will continue through the end of the pay
period in which enrollment is
terminated. Therefore, the termination
of coverage will be effective at midnight
on December 31, 2013.

Members of Congress and Congressional Staff

The proposed rule defines a “Member
of Congress” as a member of the Senate
or of the House of Representatives, a
Delegate to the House of Representatives
(which includes delegates from the
District of Columbia and the territories),
and the Resident Commissioner of
Puerto Rico. Under the Affordable Care
Act, territories are not required to
establish an Exchange but may elect to
do so. We seek comment on the health
plans made available to Members of
Congress who represent territories that
do not establish Exchanges.

The proposed rule utilizes the
statutory definition for congressional
staff. Because there is no existing
statutory or regulatory definition of
“official office,” the proposed rule
delegates to the employing office of the
Member of Congress the determination
as to whether an employed individual
meets the statutory definition. OPM
seeks comment on this proposal.

Based on research related to the
administration of congressional staffing,
including communication with the
respective House and Senate
administrative and disbursement
offices, OPM has determined that
Members’ offices are best equipped to
make the determination as to whether
an individual is employed by the
“official office” of that Member. OPM’s
understanding is that congressional staff
often have allocated to them a
percentage of work as personal staff and
a percentage of work as committee or
leadership committee staff. It also is

common for the percentage to change during the year. Moreover, staff are often unaware of these percentages or budgetary source of their compensation. OPM believes that allowing the employing office to make the determination as to whether particular individuals are employed by the "official office" is most appropriate, and will allow such determinations to be made by the office of the Member of Congress, which is their employer. As part of their responsibility to make this determination, the employing offices shall be the final authority with respect to the determination for each individual. Under these proposed regulations, OPM will not review or overturn these determinations. OPM seeks comment on this proposed approach.

The proposed rule provides that a designation as a congressional staff member who is employed by the official office of a Member of Congress will be an annual designation made prior to October of each year for the following year based on expected work. The designation must be made prior to October of the year before the coverage year to allow the individual to participate in either the appropriate Exchange open season in October or the FEHB Program open season in November for the following year.

The proposed rule also states that the designation will be effective for the entire FEHB Program plan year during which the staff member works for that Member of Congress. OPM believes that it would be unduly disruptive for an individual to move back and forth from Exchange coverage to FEHB Program coverage mid-year. In addition, due to the complexity of congressional staffing assignments, OPM's understanding is that payroll changes may be made without the congressional staff member being aware of these changes. Therefore, OPM has proposed that individuals maintain their designations for an entire year so long as they continue to be employed by the same Member of Congress. OPM seeks comment on the feasibility of this method.

Clarification of Meaning of "Health Benefit Plan Under This Chapter" As Used in 5 U.S.C. 8905(b) and 5 U.S.C. 8906

As noted above, the ACA circumscribes the ability of the Federal Government to offer health insurance to Members of Congress and certain congressional staff in connection with their service to only those plans offered on Exchanges. The ACA did not, however, alter the definition of "employee" as used in 5 U.S.C.

8901(1)(B) & (C) or the definition of "health benefits plan" under 5 U.S.C. 8901(6). Although, pursuant to its authority under chapter 89 of title 5, OPM will have no role in "contracting for" or "approving" health benefit plans that are offered through the Exchanges, there is no doubt that such plans fit within the definition of "health benefit plan" under 8901(6). This proposed regulation imposes no new requirements on qualified health plans or Exchanges.

Prior to the passage of the ACA, there was no need for OPM to clarify that the term "health benefits plan under this chapter" as used in section 8905(b) and 8906 included plans other than those health benefits plans for which OPM contracted or which OPM approved, pursuant to its authority under 5 U.S.C. 8902, 8903 and 8903a. Because there are now employees covered by chapter 89 who will be purchasing health benefits plans on Exchanges, we believe that it is appropriate to clarify that the provisions that authorize an employer contribution for "health benefits plans under this chapter," and authorize the continuation of such coverage into retirement, includes all health benefits plans fitting within the definition set forth in 8901(6). The revisions adopted here have no impact on the availability to Members of Congress and Congressional Staff Members of the contribution established in 5 U.S.C. 8906. Health benefit plans, as defined at 5 U.S.C. 8901(6), will encompass health benefit plans offered through an Exchange.

The revisions adopted here also will have no impact on the ability of Members of Congress and congressional staff who are employed by the official office of a Member of Congress to continue being enrolled in their existing health benefit plans when they become annuitants. Pursuant to 5 U.S.C. 8905(b), an annuitant who at the time he/she becomes an annuitant was enrolled in a health benefit plan under chapter 89 (which, by definition, would include a health benefit plan offered through an Exchange) may continue his/her enrollment in the health benefit plan offered through the Exchange under the conditions of eligibility prescribed by OPM in this part.

In order to establish that the contributions and withholdings will be appropriately accounted for pursuant to section 8909 of title 5, we have added new paragraph (h) to § 890.501. The two enrollment categories used by FEHB, self or self and family, are not generally applicable in an Exchange. In an Exchange, a family's premium will generally be based on the actual

composition of the family (for example, one adult, two adults, one adult and two children, etc.). A state may also choose to establish family tiers that may differ from the two enrollment categories used by FEHB. Therefore, subparagraph (h)(1) reflects that OPM will apply the self and family contribution level to any Exchange enrollment category other than one adult/individual. Subparagraph (h)(2) clarifies the accounting issue with respect to payments for health benefits plans under Exchanges.

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 involves the issue of where Members of Congress and certain congressional staff may purchase their health insurance, and does not otherwise alter the FEHB program.

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

Administration and general provisions; Health benefits plans; Enrollment, Temporary extension of coverage and conversion; Contributions and withholdings; Transfers from retired FEHB Program; Benefits in medically underserved areas; Benefits for former spouses; Limit on inpatient hospital charges, physician charges, and FEHB benefit payments; Administrative sanctions imposed against health care providers; Temporary continuation of coverage; Benefits for United States hostages in Iraq and Kuwait and United States hostages captured in Lebanon; Department of Defense Federal Employees Health Benefits Program demonstration project; Administrative practice and procedure, Employee benefit plans, Government employees,

Reporting and recordkeeping requirements, Retirement.

Elaine Kaplan,

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

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 is revised 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; Public Law 111-148, as amended by Public Law 111-152.

■ 2. Amend § 890.101 adding definitions for “congressional staff member” and “Member of Congress” to paragraph (a) to read as follows:

§ 890.101 Definitions; time computations.

(a) * * *
Congressional staff member means an individual who is a full-time or part-time employee employed by the official office of a Member of Congress, whether in Washington, DC or outside of Washington, DC.

* * * * *
Member of Congress means a member of the Senate or of the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner of Puerto Rico.

* * * * *
■ 3. Amend § 890.102 by adding paragraphs (c)(9) and (10) and revising paragraph (e) to read as follows:

§ 890.102 Coverage.

* * * * *
(c) * * *
(9) The following employees are not eligible to purchase a health benefit plan for which OPM contracts or which OPM approves under this subsection, but may purchase health benefit plans, as defined in 5 U.S.C. 8901(6), that are offered by an Exchange, pursuant to § 1312(d)(3)(D) of 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 or the Act):

(i) A Member of Congress.
(ii) A congressional staff member, if the individual works for a Member of Congress and is determined by the employing office of the Member of Congress to meet the definition of congressional staff member in § 890.101 of this part effective January 1, 2014, or in any subsequent calendar year. Designation as a congressional staff member shall be an annual designation made prior to October of each year for the following year. The designation shall be made for the duration of the year during which the staff member works for that Member of Congress beginning with the January 1st following the designation and continuing to December 31st of that year.

* * * * *
(e) With the exception of those employees or groups of employees listed in paragraph (e)(1) of this section, the Office of Personnel Management makes the final determination of the applicability of this section to specific employees or groups of employees.

(1) Employees identified in paragraph (c)(9)(i) and (ii) of this section.

(2) [Reserved]

* * * * *
■ Amend § 890.201 by adding paragraph (d) to read as follows:

§ 890.201 Minimum standards for health benefits.

* * * * *
(d) Nothing in this part shall limit or prevent a health insurance plan purchased through an Exchange, pursuant to section 1312(d)(3)(D) of 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 or the Act), by an employee otherwise covered by 5 U.S.C. 8901(1)(B) and (C) from being considered a “health benefit plan under this chapter” for purposes of 5 U.S.C. 8905(b) and 5 U.S.C. 8906.

■ 4. Amend § 890.303 by revising paragraph (b) to read as follows:

§ 890.303 Continuation of enrollment.

* * * * *
(b) *Change of enrolled employees to certain excluded positions.* Employees and annuitants enrolled under this part who move, without a break in service or after a separation of 3 days or less, to an employment in which they are excluded by § 890.102(c), continue to be enrolled unless excluded by § 890.102(c)(4), (5), (6), (7), or (9).

* * * * *
■ 5. Amend § 890.304 by revising paragraph (a)(1)(iii) to read as follows.

§ 890.304 Termination of enrollment.

(a) * * *
(1) * * *
(iii) The last day of the pay period in which his employment status or the eligibility of his position changes so that he is excluded from enrollment.

* * * * *
■ 6. Amend § 890.501 by adding paragraph (h) to read as follows:

§ 890.501 Government contributions.

* * * * *
(h)(1) The Government contribution for an employee who enrolls in a health benefit plan offered through an Exchange, pursuant to section 1312(d)(3)(D) of 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 or the Act), or an annuitant whose enrollment in a health benefit plan offered through such an Exchange continues, pursuant to 5 U.S.C. 8905(b), shall be calculated in the same manner as for other employees and annuitants.

(2) Government contributions and employee withholdings for employees who enroll in a health benefit plan offered through an Exchange, pursuant to section 1312(d)(3)(D) of 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 or the Act), or annuitants whose enrollment in a health benefit plan offered through such an Exchange continues, pursuant to 5 U.S.C. 8905(b), shall be accounted for pursuant to 5 U.S.C. 8909 and such monies shall only be available for payment of premiums, and costs in accordance with 5 U.S.C. 8909(a)(2).

[FR Doc. 2013-19222 Filed 8-7-13; 8:45 am]

BILLING CODE 6325-63-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0811; Directorate Identifier 2008-NE-41-AD]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce Corporation Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD)

United States Senate

WASHINGTON, DC 20510

Sept. 9, 2013

COMMITTEES:
BUDGET

COMMERCE, SCIENCE
AND TRANSPORTATION

FOREIGN RELATIONS

HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS

SMALL BUSINESS AND
ENTREPRENEURSHIP

Chelsea Ruediger,
Planning and Policy Analysis
U.S. Office of Personnel Management
1900 E St. NW
Washington, DC 20415

Re: Federal Employees Health Benefits Program: Members of Congress and Congressional Staff (RIN 3206-AM85)

Dear Ms. Ruediger:

On behalf of Senator Ron Johnson and several members of his staff, we are writing to offer our comments regarding the proposed rules issued by the Office of Personnel Management (OPM) relating to the Federal Employees Health Benefits Program (FEHBP) regulations regarding coverage for Members of Congress and certain congressional staff.¹ The proposed rule permits the federal government to pay an employer contribution toward health insurance premiums for Members and staff when they purchase health insurance through an exchange as required by the Patient Protection and Affordable Care Act (ACA).

We submit this comment to OPM because the proposed rule is unlawful and it defeats the will and intent of Congress as expressed in the ACA and the statute creating the FEHBP.

OPM administers the FEHBP under Chapter 89 of Title 5 of the U.S. Code, and in that capacity OPM contracts with carriers to offer group health insurance to federal employees. OPM also determines the government and employee shares of the costs of such insurance and pays the government's share. Nowhere is OPM given authority to pay for a federal employee's health insurance (in whole or in part) that is not a group plan contracted for by OPM under Chapter 89. The Department of Health and Human Services (HHS) is responsible for implementing Section 1312(d)(3)(D) of the ACA, not OPM.

Section 1312(d)(3)(D) of the ACA provides that, as of Jan. 1, 2014, "the only health plans ... available to Members of Congress and congressional staff ... shall be health plans that are ... created under [the ACA]; or offered through an Exchange established under [the ACA]." The individual plans purchased by Members and their staffs by statutory definition are not OPM-negotiated group plans. Furthermore, the rate and benefit requirements for exchange plans (in substantial part because they are individual plans, not group plans) are different from those specified for FEHBP plans. Thus, exchange plans likely will not meet the standards for participating in FEHBP.

¹ Federal Employees Health Benefits Program: Members of Congress and Congressional Staff (RIN 3206-AM85).

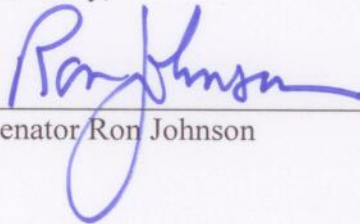
As a result, the proposed rule exceeds the authority granted to the OPM, is inconsistent with the federal statute authorizing the OPM's operation, and is inconsistent with the ACA.

When Congress was debating the ACA, at least one proposed amendment was offered that would have allowed Members of Congress and their staffs to continue to receive the payments the proposed rule would now allow. That amendment stated: "**Enrollment by Members of Congress and Congressional Employees.** Notwithstanding any other provision of law, beginning July 1, 2013, Members of Congress and congressional employees would be required to use their employer contribution (adjusted for age rating) to purchase coverage through a state-based exchange, rather than using the traditional Federal Employees Health Benefits Plan (FEHBP)." But that amendment did **not** become part of the law. Thus, Congress considered but did not accept an amendment that would have produced exactly the result that OPM is now trying to create by rule.

When Congress passed the ACA, it resolved that Members of Congress and their staffs would not be eligible for FEHBP plans or the pre-tax employer contributions to their plans. It was the intent of Congress that Members and their staffs would access health care through either an ACA qualified exchange or the open market with after-tax dollars, qualifying or not qualifying for exchange subsidies like every other American who loses his or her employer coverage.

We understand the concerns that have been raised by many Members and their staffs with respect to the financial consequences of the provisions of the ACA that require them to purchase individual insurance through the exchanges. We are sympathetic to those concerns, but it is our belief that they need to be addressed in a straightforward manner by Congress. It is simply wrong for OPM to address the matter by issuing a regulation that is neither authorized by statute nor consistent with the plain meaning of the ACA. The program you have proposed is unlawful. It would require Members and their staffs to facilitate the improper expenditure of taxpayer funds. We do not want to participate in such a program, as the proposed regulation would require us to do. We urge you to reconsider.

Sincerely,

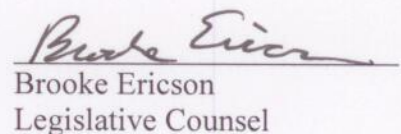


Senator Ron Johnson

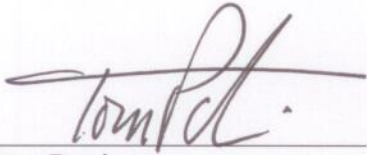
Staff of Senator Ron Johnson:



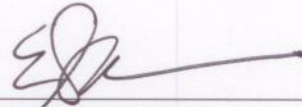
Patrick McIlheran
Policy Advisor



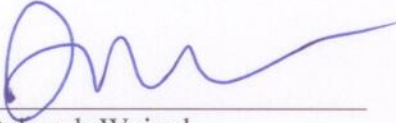
Brooke Ericson
Legislative Counsel



Tom Petri
Senior Legislative Assistant



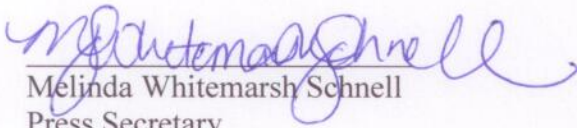
Elizabeth Schwartz
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Melinda Whitemarsh Schnell
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