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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

RIN 3206-AN04

Federal Employees' Group Life Insurance Program: Providing Option C Coverage for Children of Same-Sex Domestic Partners

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing a proposed rule to amend the Federal Employees' Group Life Insurance (FEGLI) regulations to allow children of same-sex domestic partners living in states that do not allow same-sex couples to marry to be covered as family members under an eligible individual's FEGLI Option C enrollment. This rule expands the circumstances under which an employee experiencing a change in family circumstances may include eligible children of a same-sex domestic partner.

DATES: Comments are due on or before [INSERT 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send written comments to Ronald Brown, Policy Analyst, Planning & Policy Analysis, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415-9700; or deliver to OPM, Room 2309, 1900 E Street, NW, Washington, DC; or FAX to (202) 606-0636. Comments may also be sent through the Federal eRulemaking Portal at:

<http://www.regulations.gov>. All submissions received through the Portal must include the agency name and docket number or the Regulation Identifier Number (RIN) for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Ronald Brown, Policy Analyst, (202)606-0004, or by e-mail to Ronald.Brown@opm.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is intended to: (1) Extend eligibility as a stepchild under FEGLI Option C to children of same-sex domestic partners of Federal employees or annuitants in states where same-sex couples are not permitted to marry; (2) amend 5 CFR Part 870 to provide that acquiring a child or children of an employee's same-sex domestic partner as described in Part 870 will be treated as a change in family circumstances so that a waiver of Basic insurance or Optional insurance may be cancelled; and (3) make other non-substantive, technical conforming amendments to the FEGLI rules in connection with the extension of coverage to children of same-sex domestic partners of Federal employees.

On June 17, 2009, President Obama issued the Presidential Memorandum on Federal Benefits and Non-Discrimination requesting that the Director of OPM extend certain benefits to qualified same-sex domestic partners of Federal employees. That Presidential Memorandum also requested that heads of executive departments and agencies conduct a review of the benefits provided by their respective departments and agencies to determine what authority they have to extend such benefits to same-sex domestic partners of Federal employees, annuitants, and their families. The results of that review were reported to the Director of OPM, who, in consultation with the United States Department of Justice, made recommendations to the President to provide benefits to the same-sex domestic partners of Federal Government employees. Subsequently, President Obama issued a Presidential Memorandum on June 2, 2010 requesting agencies to implement the recommended regulatory and administrative actions expanding benefits for same-sex domestic partners of Federal employees and their families.

Since OPM made its recommendations to the President, the Agency has determined that coverage under the FEGLI Program as a family member under Option C may be extended to the children of the same-sex domestic partners of Federal employees and annuitants. This regulatory action is necessary to implement fully the Presidential Memoranda cited above and is consistent with OPM's policy determination that extension of coverage is appropriate.

To maintain consistency across the Federal benefits programs, the definitions of domestic partner and domestic partnership mirror those governing the Federal Employees Health Benefits Program (FEHBP) and the Federal Employees Dental and Vision Insurance Program (FEDVIP). For the reasons cited in the FEHBP and FEDVIP final regulation at 78 FR 64873, this includes a requirement that the employee or annuitant enrolled in Option C coverage reside in a state that does not recognize same-sex marriage. Also, this proposed rule adds a definition of "stepchild" to Part 870 to denote the child of an enrollee's spouse or same-sex domestic partner the same as in FEHBP and FEDVIP.

We recognize that the legal landscape is changing and certain states that currently do not allow same-sex couples to marry may allow them to do so in the future. Same-sex couples may also relocate from states where they cannot marry to states where they are permitted to marry. The possibility that the relevant state marriage laws may change has the potential to create significant administrative difficulties. For this reason, eligibility to elect Option C FEGLI coverage will be determined at the time the employee has a change in family circumstances (including marriage or divorce, a spouse's death, or acquisition of eligible child(ren)) and files an election with his or her employing office as provided by FEGLI regulation. Eligibility will depend on whether an enrollee seeking to cover the child of his or her domestic partner lives in a state that does not authorize same-sex marriage. This change can be found in section 870.302.

This regulation also adds to the events that constitute a change in family circumstances for employees, annuitants or compensationers who have Option C insurance under the FEGLI Program. The regulation amends Part 870 to provide that an employee who waived FEGLI Basic insurance or Optional insurance may cancel the waiver and become covered upon acquiring an eligible stepchild, if all eligibility requirements are met. Please see the changes to sections 870.503 and 870.506.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only adds additional groups to the list of groups eligible for coverage under FEGLI.

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 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life Insurance, Retirement.

U.S. Office of Personnel Management.

Katherine Archuleta,
Director.

Accordingly, OPM is proposing to amend 5 CFR as follows:

PART 870--FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

1. The authority citation for 5 CFR part 870 continues to read as follows:

Authority: 5 U.S.C. 8716; Subpart J also issued under section 599C of Pub. L. 101-513, 104 Stat. 2064, as amended; Sec. 870.302(a)(3)(ii) also issued under section 153 of Pub. L. 104-134, 110 Stat. 1321; Sec. 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105-33, 111 Stat. 251, and section 7(e) of Pub. L. 105-274, 112 Stat. 2419; Sec. 870.302(a)(3) also issued under section 145 of Pub. L. 106-522, 114 Stat. 2472; Secs. 870.302(b)(8), 870.601(a), and 870.602(b) also issued under Pub. L. 110-279, 122 Stat. 2604.

Subpart A--Administration and General Provisions

2. In § 870.101, add the definitions of “domestic partner”, “domestic partnership”, and “stepchild” in alphabetical order to read as follows:

§ 870.101 Definitions.

* * * * *

Domestic partner means a person in a domestic partnership with an employee, annuitant, or compensation enrollee enrolled in Option C.

* * * * *

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

- (i) Are each other's sole domestic partner and intend to remain so indefinitely;
- (ii) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);
- (iii) Are at least 18 years of age and mentally competent to consent to a contract;
- (iv) Share responsibility for a significant measure of each other's financial obligations;
- (v) Are not married or joined in a civil union to anyone else;
- (vi) Are not a domestic partner of anyone else;
- (vii) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;
- (viii) Provide documentation demonstrating fulfillment of the requirements of (i) through (vii) as prescribed by OPM;

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

(x) Certify that they would marry but for the failure of their state of residence to permit same-sex marriage.

* * * * *

Stepchild means the child of an enrollee's spouse or domestic partner and shall continue to refer to such child in the event of the enrollee's divorce from the spouse, termination of the domestic partnership, or death of the spouse or domestic partner, so long as the child continues to live with the enrollee in a regular parent-child relationship.

* * * * * ***Subpart C—Eligibility**

3. In § 870.302 amend by revising paragraph (a)(5) to read as follows:

§870.302 Exclusions.

(a) * * *

(5) The child who otherwise meets the requirements for life insurance coverage but whose parent enrollee and his or her domestic partner live in a state or whose parent enrollee and his or her domestic partner maintain a common residence in a state that has authorized marriage by same-sex couples by the day prior to the date of notice of the election to the employing office or the day prior to the first day of an open enrollment period.

* * * * *

4. Section 870.304 is added to read as follows:

§870.304 Eligibility of stepchildren under Option C.

(a) Stepchildren are eligible for coverage as family members under Option C.

(b) (1) For purposes of this part, to qualify for coverage as a stepchild, the child must be the child of the insured employee, annuitant or compensationers' spouse or domestic partner.

(2) For purposes of this section, the term "domestic partner" is as defined in section 870.101 of this part.

(3) An enrollee or his or her domestic partner must notify the employing office within thirty calendar days in the event that any of the conditions of domestic partnership found in the definition section of 870.101 of this part are no longer met, in which case a domestic partnership will be deemed terminated.

(4) Notwithstanding the provisions of paragraph (b)(1) of this section, the child who otherwise meets the requirements for life insurance coverage but whose parent enrollee and his or her domestic partner live in a state or whose parent enrollee and his or her domestic partner maintain a common residence in a state that has authorized marriage by same-sex couples, shall not be considered a stepchild. For enrollment changes involving the addition of a new stepchild, as defined by this regulation, the determination of whether a state's marriage laws render the child ineligible for coverage shall be made at the time the employee notifies the employing office of his or her desire to cover the child.

Subpart E—Coverage

5. Section 870.503 is amended by revising paragraph (b)(3) to read as follows:

§870.503 Basic insurance: Cancelling a waiver.

* * * * *

(b) * * *

(3) The employee has a change in family circumstances (marriage or divorce, a spouse's death or acquisition of an eligible child) and files an election as provided in paragraph (b)(3)(i), (b)(3)(ii), or (b)(3)(iii) of this section. Except as provided in paragraph (b)(3)(iii), the effective date of Basic insurance elected under this paragraph (b)(3) is the 1st day the employee actually enters on duty in a pay status on or after the day the employing office receives the election.

* * * * *

6. Section 870.506 is amended by revising paragraphs (a)(2) and (a)(4)(i) to read as follows:

§870.506 Optional insurance: Cancelling a waiver.

(a) * * *

(2) An employee who has waived Options A and B coverage may elect coverage, and an employee who has fewer than 5 multiples of Option B may increase the number of multiples, upon his or her marriage or divorce, upon a spouse's death, or upon acquisition of an eligible child.

* * *

(4)(i) An employee who has waived Option C may elect it, and an employee who has fewer than 5 multiples of Option C may increase the number of multiples, upon his or her marriage, or acquisition of an eligible child or stepchild(ren). An employee who has Option C may also elect

or increase Option C coverage upon divorce or death of a spouse, if the employee has any eligible children or stepchild(ren).

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