



Billing Code 6325-63

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

RIN 3206-AN52

Federal Employees' Group Life Insurance Program: Clarifying Annual Rates of Pay and Amending the Employment Status of Judges of the United States Court of Appeals for Veterans Claims

AGENCY: Office of Personnel Management.

ACTION: Proposed Rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to amend the Federal Employees' Group Life Insurance (FEGLI) regulations to clarify the definition of annual rates of pay for insured employees and to clarify the status of judges of the United States Court of Appeals for Veterans Claims.

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, Healthcare and Insurance, U.S. Office of Personnel Management, Room 4316, 1900 E Street NW., Washington, DC. You may also submit comments identified by the RIN number stated above using the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Ronald Brown, Policy Analyst, (202)606-2128, or by e-mail to Ronald.Brown@opm.gov.

SUPPLEMENTARY INFORMATION:

Background

The Federal Employees' Group Life Insurance Program (FEGLI) is administered by the United States Office of Personnel Management (OPM) in accordance with Chapter 87 of Title 5 of the U.S. Code and our implementing regulations (title 5, part 87, and title 48, part 21, of the Code of Federal Regulations). The FEGLI enabling legislation was signed August 17, 1954. As of September 30, 2017, FEGLI covers an estimated 4,231,000 employees and annuitants enrolled in Basic insurance, including 1,144,000 employees and annuitants with Option B insurance that has not reduced to zero, 1,187,000 employees and annuitants enrolled in Option A insurance, and 933,000 employees and annuitants enrolled in Option C insurance that has not reduced to zero. The FEGLI statute establishes the basic rules for benefits, enrollment, and participation, and provides that OPM "shall specify the types of pay included in annual pay." See 5 U.S.C. 8704(c). In accordance, OPM has promulgated regulations defining the "basic insurance amount" for all Program enrollees. Further, the "basic insurance amount" is defined by law using the term "annual rate of basic pay." See 5 U.S.C. 8701(c). For Program purposes, the basic insurance amount applies to Basic and Option B insurance.

This proposed rule clarifies what is considered annual basic pay for FEGLI Program purposes, but does not change how the annual rate of basic pay is computed, provide additional enrollment or change opportunities, or make other changes not in the existing Program regulations. The proposed rule makes this clear in the revised sections of part 870 by aligning the Program and retirement regulations, and, in the process, eliminating certain outdated regulatory provisions on basic pay.

Discussion of Proposed Changes

OPM is issuing a proposed regulation to clarify that (1) annual basic pay for FEGLI includes any type of pay treated as basic pay for purposes of the retirement systems established under 5 U.S.C. chapters 83 and 84 consistent with applicable law or OPM regulation, and (2) basic pay for FEGLI purposes does not include bonuses, allowances, overtime pay, or any other pay to a covered civilian employee given in addition to the base pay of the position except as otherwise provided by specific provision of law or OPM regulation.

The proposed rule changes existing paragraphs 5 CFR 870.204(a)(1) and (a)(2) to clarify that basic pay for FEGLI purposes includes all payments that are retirement-creditable basic pay under 5 U.S.C. chapters 83 and 84. The proposed rule also deletes paragraphs that are obsolete or creditable by other provisions of law or covered as exceptions to existing law. This includes a revised paragraph on locality pay, special pay supplements, and customs officer pay.

The proposed regulation updates FEGLI regulations to state that (1) judges of the United States Court of Appeals for Veterans Claims, formerly judges of the United States Court of Veterans Appeals, are covered under applicable provisions of 5 U.S.C. chapter 87, and (2) any such judge who is in regular active service and a judge who is retired under chapter 72 of title 38 or under chapter 83 or 84 of title 5 shall be treated as an employee under FEGLI law and regulation.

The proposed regulation updates 5 CFR 870.101 with the correct title of the United States Court of Appeals for Veterans Claims and updates paragraph 5 CFR 870.101 with the correct title of the United States Court of Appeals for Veterans Claims. The proposed regulation also updates paragraph 5 CFR 870.703(e)(1) to state that a judge of the United States Court of Appeals for Veterans Claims who is in regular active service and a judge who is retired under 38

U.S.C. 7296 is considered an employee under the FEGLI Program as required by Public Law 114-315.

REGULATORY IMPACT ANALYSIS: OPM has examined the impact of this proposed rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of \$100 million or more in any one year. This rule is not considered a major rule because the regulation only clarifies the definition of basic pay, but does not make substantive changes to its computation. This rule only affects the life insurance of a small number of federal employees and annuitants that are or have served as judges for the United States Court of Appeals for Veteran's Claims. As the Court is authorized seven permanent, active Judges, and two additional Judges as part of a temporary expansion provision, who are appointed for 15-year terms, OPM estimates the number of affected employees is *de minimus*.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide range

of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects a small number of Federal employees and annuitants.

Executive Order 12866, Regulatory Review

This proposed rule has been reviewed by the Office of Management and Budget in accordance with Executive Orders 13563 and 12866.

Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This proposed rule is not expected to be an EO 13771 regulatory action because this proposed rule is not significant under Executive Order 12866. The proposed rule makes minimal changes to coverage for certain judges, and clarifies that annual basic pay for FEGLI includes any type of pay treated as basic pay for purposes of the retirement systems established under 5 U.S.C. chapters 83 and 84 consistent with applicable law or OPM regulation.

This proposed rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is related to agency organization, management, or personnel and affects only a small number of federal employees and annuitants.

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.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3507(d); see 5 CFR part 1320) requires that the U.S. Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. OPM is not proposing any additional collections in this rule. This rule does not affect any existing collections.

List of Subjects in 5 CFR Part 870

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

Office of Personnel Management.

Jeff T.H. Pon,
Director.

Billing Code 6325-63

For the reasons stated in the preamble, OPM is proposing to amend part 870 of title 5 of the Code of Federal Regulations as follows:

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

1. The authority citation for Part 870 continues to read:

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 E also issued under 5 U.S.C. 8702(c); Sec. 870.601(d)(3) also issued under 5 U.S.C. 8706(d); Sec. 870.703(e)(1) also issued under section 502 of Pub. L. 110-177, 121 Stat. Stat. Printed Page 773662542; Sec. 870.705 also issued under 5 U.S.C. 8714b(c) and 8714c(c); Public Law 104-106, 110 Stat. 521.

2. Amend § 870.101 by revising the definition of *Employing Office*, to read as follows:

§870.101 Definitions.

Employing Office

(4) The United States Court of Appeals for Veterans Claims is the employing office for judges of the United States Court of Appeals for Veterans Claims.

* * * * *

3. Amend § 870.204 by revising paragraph (a) to read as follows:

§870.204 Annual rates of pay.

(a) (1) An employee's annual pay is the annual basic pay of the position as fixed by law or regulation, except as otherwise provided by specific provision of law or OPM regulation. Annual pay for this purpose includes the following:

(i) Any pay of a type that is treated as basic pay for purposes of the retirement systems established under 5 U.S.C. chapters 83 and 84, consistent with 5 U.S.C. 8331(3);

(ii) Any geographic-based pay supplement that is equivalent to a locality-based comparability payment under 5 U.S.C. 5304; and

(iii) Any special pay supplement for a defined subcategory of employees that is equivalent to a special rate supplement under 5 U.S.C. 5305.

(2) Notwithstanding paragraph (a) (1) of this section, annual basic pay does not include the following:

(i) Bonuses, allowances, overtime pay, or any other pay to a covered civilian employee given in addition to the base pay of the position, except as otherwise provided by specific provision of law or OPM regulation.

(ii) Physicians comparability allowances under 5 U.S.C. 5948.

4. Amend § 870.703 by adding paragraph (e)(1)(vii) to read as follows:

§870.703 Election of Basic insurance.

*** **

(e) ***

(1) ***

(vii) 38 U.S.C. 7296..

* * * * *

[FR Doc. 2018-14032 Filed: 6/28/2018 8:45 am; Publication Date: 6/29/2018]