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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 875

RIN 3206-AN05

### Federal Long Term Care Insurance Program Eligibility Changes

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The United States Office of Personnel Management (OPM) is issuing a final rule to amend the Federal Long Term Care Insurance Program (FLTCIP) regulation to expand eligibility to apply for coverage under the Program. This rule expands the definition of “qualified relative” to include opposite-sex domestic partners of Federal and U.S. Postal Service employees, annuitants, members of the uniformed services, and retired members of the uniformed services. In addition, this rule provides that adult children of domestic partners will be considered one of the types of individuals comprising the statutory term “qualified relative” who may apply for FLTCIP coverage.

**DATES:** Effective November 30, 2015.

**FOR FURTHER INFORMATION CONTACT:** Ronald Brown, Policy Analyst, (202) 606-0004, or by email to [Ronald.Brown@opm.gov](mailto:Ronald.Brown@opm.gov).

**SUPPLEMENTARY INFORMATION:** On November 13, 2014, OPM published proposed regulations in the **Federal Register** (79 FR 67377-67379) to (1) Expand the definition of “qualified relative” under 5 U.S.C. 9001(5)(D) to include both same-sex and opposite-sex domestic partners of Federal and U.S. Postal Service employees and annuitants and members and retired members of the uniformed services; (2) expand the definition of “qualified relative” to include adult children of domestic partners of Federal and U.S.

Postal Service employees and annuitants, and members and retired members of the uniformed services; (3) allow the workforce member or his or her domestic partner to provide notice to the employing office if at any time between the time of application and the time coverage is scheduled to go into effect, any of the conditions for a domestic partnership are no longer met, in which case a domestic partnership is deemed terminated; (4) require domestic partners to provide documentation to establish that they meet the criteria for domestic partnership; (5) clarify that once coverage has begun, termination of a domestic partnership does not terminate a domestic partner’s insurance coverage as long as the Carrier continues to receive the required premium when due; and (6) make other technical conforming amendments to the FLTCIP rules in connection with the extension of coverage to domestic partners and to adult children of domestic partners.

Comments were requested to be received on or before January 12, 2015. After reviewing the comments received OPM is issuing the final regulation as proposed.

### Analysis of and Response to Public Comments

We received three comments on the proposed rule. All commenters expressed support for the proposed rule that extends important coverage to domestic partners and to children of domestic partners under the FLTCIP. One commenter approved the wording of the proposed rule with no suggested changes and this comment is not addressed. Below, please find our response to the remaining two comments we received.

*Comment:* The commenter had concerns as to the wording or the implications of this expansion primarily concerning states that do not recognize domestic partnerships, and requested to know how eligibility would be treated for qualified partners in states that do not recognize domestic partnerships. The commenter requested to know whether a couple that is considered, and could register as a domestic partnership in one state would be deemed ineligible in a state that does not recognize and does not register domestic partnerships or whether this would prohibit same-sex partnerships in states that prevent same-

sex marriage. This commenter also noted that the FLTCIP regulation explains that one would not be deemed eligible if related in a way that would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed and requested further clarification of how would this impact same-sex domestic partnerships in states that prevent same-sex marriage.

*Response:* The proposed and final regulations expand the definition of “qualified relative” to cover all individuals who are domestic partners (both same-sex and opposite-sex) of Federal and U.S. Postal Service employees, annuitants, members of the uniformed services, and retired members of the uniformed services no matter their state of residence. The regulation allows coverage for individuals who certify to their employing office that they meet the criteria in the regulatory definition of domestic partnership. The requirement in paragraph (v)(ii) of the definition of domestic partnership does not prevent those who reside in states that prohibit same-sex marriage to register as domestic partners. The requirement is meant to prevent those who are related by blood to certify to a domestic partnership as determined by their state of residence. This requirement already applies to same-sex domestic partners who can currently apply for coverage.

*Comment:* The commenter recommended that we amend the proposed rulemaking to ensure that all children of same-sex parents are eligible to access FLTCIP Benefits, regardless of their parents’ ability to marry. The commenter stated that this can be achieved by redefining an eligible child to include the child of a person standing *in loco parentis*, where *in loco parentis* means those persons with day-to-day responsibilities to care for and financially support a child, and with whom a biological or legal relationship is not necessary.

*Response:* The proposed rule clarifies that OPM intends for children of domestic partners to be treated the same as currently eligible individuals. The eligibility of the stepchild does not depend upon the parent’s ability to marry. The FLTCIP regulation provides that a “stepchild,” as defined in the proposed rule, may qualify for FLTCIP coverage as a qualified relative, if all eligibility requirements are met. The

stepchild must be the child of the spouse or domestic partner of an employee, annuitant, member of the uniformed services, or retired member of the uniformed services. The stepchild(ren) may apply for coverage even if the employee does not apply, and his or her eligibility for FLTICP coverage is determined independent of the workforce member's ability to marry.

**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 to apply for coverage under the FLTICP. The FLTICP is a voluntary, self-pay, benefits program with no Government contribution.

**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 875**

Administrative practice and procedure, Employee benefit plans, Government contracts, Government employees, health insurance, military personnel, organization and functions, Retirement.

U.S. Office of Personnel Management.

**Beth F. Cobert,**

*Acting Director.*

Accordingly, OPM is amending 5 CFR part 875 as follows:

**PART 875—FEDERAL LONG TERM CARE INSURANCE PROGRAM**

■ 1. The authority citation for 5 CFR part 875 continues to read as follows:

**Authority:** 5 U.S.C. 9008.

**Subpart A—Administration and General Provisions**

■ 2. Section 875.101 is amended by revising the definitions of “domestic partner” and “domestic partnership” and by adding in alphabetical order a definition of “stepchild(ren)” to read as follows:

**§ 875.101 Definitions.**

\* \* \* \* \*

*Domestic partner* is defined as a person in a domestic partnership with an employee, annuitant, member of the uniformed services, or retired member of the uniformed services.

*Domestic partnership* means:

(1) A committed relationship between two adults, of the opposite sex or 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 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 paragraphs (1)(i) through (vii) of this definition as prescribed by OPM; and

(ix) Certify that they understand that willful falsification of the documentation described in paragraph (1)(viii) of this definition 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.

(2) You or your domestic partner must notify the employing office if at any time between the time of application and the time coverage is scheduled to go into effect, any of the conditions listed in paragraphs (1)(i) through (vii) of this definition are no longer met, in which case a domestic partnership is deemed terminated. Such notification must be made as soon as possible, but in no event later than thirty calendar days after such conditions are no longer met.

\* \* \* \* \*

*Stepchild(ren)*, as set forth in section 9001 of title 5, United States Code, means the child(ren) of the spouse or domestic partner of an employee, annuitant, member of the uniformed services, or retired member of the uniformed services.

\* \* \* \* \*

**Subpart B—Eligibility**

■ 3. Section 875.208 is revised to read as follows:

**§ 875.208 May I apply as a qualified relative if the person on whom I am basing my eligibility status has died?**

You may not apply as a qualified relative if the workforce member on whom you are basing your qualified relative status died prior to the time you apply for coverage, unless you are receiving a survivor annuity as the spouse or an insurable interest annuity as the domestic partner of a deceased workforce member. In this case, your adult children and your current spouse or domestic partner are also considered to be qualified relatives.

■ 4. In § 875.213, paragraph (a) is revised to read as follows:

**§ 875.213 May I apply as a qualified relative if I am the domestic partner of a workforce member?**

(a) You may apply for coverage as a qualified relative if you are a domestic partner, as described in § 875.101 of this chapter. As prescribed by OPM, you will be required to provide documentation to demonstrate that you meet these requirements, and you must submit to full underwriting requirements. However, as explained in § 875.210 of this chapter, if you lose your status as a domestic partner, and therefore a qualified relative, before your coverage goes into effect, you are no longer eligible for FLTICP coverage.

\* \* \* \* \*

**Subpart D—Coverage**

■ 5. Section 875.405 is revised to read as follows:

**§ 875.405 If I marry, may my new spouse apply for coverage; if I become a domestic partner, may my new domestic partner apply for coverage; and may other qualified relatives apply for coverage?**

(a) *Marriage.* (1) If you are an active workforce member and you have married, your spouse is eligible to submit an application for coverage under this section within 60 days from the date of your marriage and will be subject to the underwriting requirements in force for the spouses of active workforce members during the most recent open season. You, however, are not eligible for abbreviated underwriting because of your marriage. You, your spouse, or both you and your spouse may apply for coverage during this 60-day period, but full underwriting will be required for you. After 60 days from the date of your marriage, you and/or your spouse may still apply for

coverage but will be subject to full underwriting.

(2) If you are an active workforce member and you have entered into a domestic partnership, your domestic partner is eligible to submit an application for coverage under this section at any time from the commencing date of your domestic partnership and will be subject to full underwriting requirements. You are not eligible for abbreviated underwriting because of your domestic partnership. You, your domestic partner, or both you and your domestic partner may apply for coverage at any time, but full underwriting will be required for both of you.

(b) *Domestic partnership.* The new spouse or domestic partner of an annuitant or retired member of the uniformed services may apply for coverage with full underwriting at any time following the marriage or commencing date of the domestic partnership.

(c) *Other qualified relatives.* Other qualified relative(s) of a workforce member may apply for coverage with full underwriting at any time following the marriage or commencing date of the domestic partnership.

■ 6. In § 875.412, the introductory text is revised and paragraph (e) is added to read as follows:

**§ 875.412 When will my coverage terminate?**

Except as provided in paragraph (e) of this section, your coverage will terminate on the earliest of the following dates:

\* \* \* \* \*

(e) Termination of a domestic partnership does not terminate insurance coverage as long as the Carrier continues to receive the required premium when due.

[FR Doc. 2015-27381 Filed 10-29-15; 8:45 am]

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**MERIT SYSTEMS PROTECTION BOARD**

**5 CFR Part 1201**

**Practices and Procedures**

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Interim final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) hereby amends its rules of practice and procedure to clarify that parties have a right to discovery under the MSPB's existing discovery procedures in compliance proceedings.

**DATES:** This interim final rule is effective on October 30, 2015. Submit written comments concerning this interim final rule on or before December 29, 2015.

**ADDRESSES:** Submit your comments concerning this interim final rule by one of the following methods and in accordance with the relevant instructions:

*Email: mspb@mspb.gov.* Comments submitted by email can be contained in the body of the email or as an attachment in any common electronic format, including word processing applications, HTML and PDF. If possible, commenters are asked to use a text format and not an image format for attachments. An email should contain a subject line indicating that the submission contains comments concerning the MSPB's interim final rule. The MSPB asks that commenters use email to submit comments if possible. Submission of comments by email will assist the MSPB to process comments and speed publication of a final rule.

*Fax: (202) 653-7130.* Comments submitted by fax should be addressed to William D. Spencer and contain a subject line indicating that the submission contains comments concerning the MSPB's interim final rule.

*Mail or other commercial delivery:* Comments submitted by mail should be addressed to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419.

*Hand delivery or courier:* Comments submitted by hand delivery or courier should be addressed to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419, and delivered to the 5th floor reception window at this street address. Such deliveries are only accepted Monday through Friday, 9 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* As noted above, the MSPB requests that commenters use email to submit comments, if possible. All comments received will be made available online at the Board's Web site, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information or other information whose disclosure is restricted by law. Those desiring to submit anonymous comments must submit comments in a manner that does not reveal the commenter's identity, include a statement that the comment is being submitted anonymously, and include no personally-identifiable information. The email address of a

commenter who chooses to submit comments using email will not be disclosed unless it appears in comments attached to an email or in the body of a comment.

**FOR FURTHER INFORMATION CONTACT:** William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC, 20419; phone: (202) 653-7200; fax: (202) 653-7130; or email: *mspb@mspb.gov*.

**SUPPLEMENTARY INFORMATION:** This interim final rule is necessary because in *Bernard v. Dep't of Agric.*, 788 F.3d 1365, 1367-70 (Fed. Cir. 2015), the United States Court of Appeals for the Federal Circuit held that the MSPB's regulations provide no clear guarantee that parties are authorized to undertake discovery in enforcement proceedings. This interim final rule amends the MSPB's regulations to address this holding and make clear that the parties have a right to discovery in such cases under the Board's existing discovery procedures.

**Amendments Made by This Interim Final Rule**

A new provision, section 1201.183(a)(9), is inserted to make clear that discovery may be undertaken in enforcement matters. This new provision makes clear that the Board's regular discovery procedures apply in enforcement matters and sets a deadline by which initial discovery requests must be filed. As in other Board cases, this deadline may be changed by the judge.

**Justification for Use of Interim Final Rule**

Ordinarily, the Administrative Procedure Act (APA) requires an agency to provide notice of proposed rulemaking and a period of public comment before the promulgation of a new regulation. 5 U.S.C. 553(b) and (c). However, section 553(b) of the APA specifically provides that the notice and comment requirements do not apply:

(A) To interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. The APA also requires the publication of any substantive rule at least thirty days before its effective date, 5 U.S.C. 553(d), except where the rule is interpretive, where the rule grants an exception or relieves a restriction, or "as