

ACTION: Interim rule with request for comments.

SUMMARY: In compliance with the Long-Term Care Security Act, the Office of Personnel Management (OPM) is issuing interim regulations that set forth rules for the administration of the Federal Long Term Care Insurance Program (FLTCIP).

DATES: *Effective Date:* February 4, 2003.

Comment Date: Comments due on or before April 7, 2003.

ADDRESSES: Send or deliver written comments to Frank D. Titus, Assistant Director for Long Term Care, Office of Personnel Management, Room 2H24, 1900 E Street NW., Washington DC 20415, or by fax to (202) 606-2023. You may send comments electronically to ltc@opm.gov, using the subject line "Comments on Proposed Regulations."

FOR FURTHER INFORMATION CONTACT: Terry Schleicher, (202) 606-0417, or tschlei@opm.gov.

SUPPLEMENTARY INFORMATION: On September 19, 2000, the Long-Term Care Security Act (Pub. L. 106-265) became law. The Act directs OPM to prescribe regulations necessary to carry out the law.

In new part 875, subpart A provides definitions, methods for contract and claims dispute resolution, and the authority for OPM to order correction of errors. It also sets out agency and OPM responsibilities under this Program.

The Act provides preemption of State insurance laws that relate to the nature, provision, or extent of coverage or benefits under FLTCIP. The regulations specify OPM's authority to act as the regulator for FLTCIP in accordance with the Act and the consumer protection provisions of the Health Insurance Portability and Accountability Act of 1996.

OPM has determined that the enrollee's proof of insurance will consist of a benefit booklet prepared by OPM and the Carrier, together with the schedule of benefits. The enrollee will also receive a copy of the approved application for coverage. The booklet will provide general FLTCIP provisions, definitions, exclusions, and limitations. The schedule of benefits will specify the coverage purchased (e.g., waiting period, daily benefit amount, benefit period, type of inflation protection, and either a comprehensive package or a facilities only package). The approved application will show the specific information that provided the basis for issuing the coverage. This will help to reduce Program costs by eliminating the expense of preparing a customized

certificate of insurance for each enrollee.

Subpart B specifies eligibility requirements for, and exclusions from, participation in the FLTCIP for Federal civilian employees, Postal employees, members of the uniformed services, civilian annuitants, retired members of the uniformed services, and their qualified relatives.

The FLTCIP law defines an eligible Federal or Postal employee as someone also eligible for Federal Employees Health Benefits (FEHB) participation. Therefore, Federal civilian and Postal eligibility for and exclusions from coverage are tied to FEHB regulations found in part 890 of this chapter. There are 2 exceptions, however. The FLTCIP law specifically excludes all District of Columbia employees from participation, even though some are eligible for FEHB coverage. The regulations make this exclusion clear. Also, Tennessee Valley Authority employees are eligible for FLTCIP participation, even though by law they may not be eligible for FEHB.

Civilian annuitants eligible to apply for coverage under the FLTCIP law include those who have retired on an immediate annuity, deferred annuitants when they begin to receive an annuity, and survivor annuitants.

The regulations specify that if an employee has separated from service under the Federal Employees Retirement System (FERS) Minimum Retirement Age (MRA) + 10 provision (5 U.S.C. 8412(g)), but has not begun drawing an annuity, he or she can apply for coverage under the FLTCIP. He or she will be considered an annuitant for underwriting purposes.

A retired member of the uniformed services is eligible to apply for coverage if he or she is entitled to retired or retainer pay, even if that member is receiving disability retirement pay. However, the FLTCIP law specifies that a former member of the uniformed services retired under chapter 1223 of title 10, United States Code, (a "gray reservist") is not eligible to apply for coverage until he or she starts receiving retirement pay at age 60.

If an individual applies as a qualified relative, the regulations specify that the workforce member (Federal civilian or Postal employee, Federal annuitant, member of the uniformed services, or retired member of the uniformed services) on whom the applicant bases the qualified relative status must be alive at the time the applicant applies for coverage. There is 1 exception to this rule. If the applicant is receiving an annuity as the spouse of a deceased workforce member, then he or she may apply for coverage.

A new employee or member of the uniformed services and his or her spouse will have a 60-day period after becoming eligible to apply for coverage with the same underwriting requirements provided to that eligible group during the most recent open season.

If a Federal civilian or Postal employee or member of the uniformed services held a position that did not convey eligibility for FLTCIP coverage, and then enters into a position that conveys eligibility, he or she also has a 60-day period to apply for coverage with the same underwriting requirements provided to that eligible group during the most recent open season, as well as his or her spouse, if any. For example, if an employee was not eligible because he or she was a temporary employee who had worked less than 1 year, and then took a permanent position, he or she would now be eligible to apply for FLTCIP coverage.

If a Federal civilian or Postal employee or member of the uniformed services is returning from a break in service of 180 days or more, he or she may apply for coverage with the same underwriting requirements provided to that eligible group during the most recent open season, as may his or her spouse, if any.

Other qualified relatives may apply for enrollment at any time with full underwriting.

If a Federal civilian or Postal employee or member of the uniformed services returns from nonpay status during an open season, he or she can apply for coverage within 60 days from return to pay status, or by the end of the open season, whichever provides more time. For example, if the open season runs from July 1 through December 31, and an individual returns on October 15, he or she still gets until December 31 to apply with the open season underwriting requirements for his or her eligibility group. If he or she returns on November 15, he or she will have until January 14 to apply. If he or she returns after the open season has ended, he or she can apply with the open season underwriting requirements of his or her eligibility group within 60 days from his or her return. This section only applies when the applicant is in nonpay status for more than one-half of the scheduled open season, unless he or she went into nonpay status for a reason beyond his or her control. If the applicant has been actively at work for at least one-half of the open season, he or she has already had ample opportunity to get information and apply for coverage without the need for the special provisions of this section.