United States

Office of Personnel Management
The Federal Government's Human Resources Agency

Benefits Administration Letter

Number: 13-203 Date: July 3, 2013

Subject: Coverage of Same-Sex Spouses

Section 3 of the Defense of Marriage Act (DOMA) provided that, when used in a Federal law, the term "marriage" would mean only a legal union between one man and one woman as husband and wife, and that the term "spouse" referred only to a person of the opposite sex who is a husband or a wife. Because of DOMA, the Federal government has been prohibited from recognizing the legal marriages of same-sex couples for purposes of Federal benefit programs.

On June 26, 2013, the Supreme Court ruled that Section 3 of DOMA is unconstitutional. As a result of this decision, the United States Office of Personnel Management is now able to extend benefits to legally married same-sex spouses of Federal employees and annuitants. For purposes of benefits coverage, you must follow the same procedures you currently follow when enrolling an opposite-sex spouse or child(ren) of an opposite-sex marriage. The purpose of this letter is to provide information that will assist you in implementing this change and counseling employees.

General Information

- Because existing same-sex marriages were not recognized by the Federal government before this Supreme Court decision, all legal same-sex marriages that predate the decision are being treated as new marriages; **enrollees will have 60 days from June 26, 2013 (i.e., until August 26, 2013) for enrollment actions.**
- Benefits coverage is now available to a legally married same-sex spouse of a Federal employee or annuitant, regardless of the employee's or annuitant's state of residency.
- Legal same-sex marriages entered into following this decision will be treated in the same manner as opposite-sex marriages, regardless of an employee's or annuitant's state of residency.
- For FEHB and FEGLI, we encourage employing offices to exercise flexibility in the use of their belated enrollments authority for enrollment actions following the 60-day time period.
- FEHB and FEDVIP carriers will be instructed to follow the same procedures they follow when adding or providing coverage for an opposite-sex spouse or child(ren) of opposite-sex marriages.
- The Supreme Court's decision addressed the constitutionality of a statute that defined "marriage" and "spouse" for purposes of federal law to include only opposite-sex

couples. Therefore, same-sex couples who are in a civil union or other forms of domestic partnership other than marriage will remain ineligible for most Federal benefits programs. There is no change to the benefits OPM has extended, to the extent permissible under the law, to same-sex domestic partners. The Federal Long Term Care Insurance Program regulations allow those individuals who satisfy the domestic partnership standard to be treated as qualifying relatives for Federal/postal employees and annuitants.

- From this point forward, the word "spouse" in any OPM documentation pertaining to the programs discussed in this BAL refers to both same and opposite-sex spouses, the word "marriage" refers to both same and opposite-sex marriages, and the word "child" refers to children of both same and opposite-sex marriages. If there is a need to differentiate between same and opposite-sex spouses, their marriages or child(ren), OPM will do so explicitly.
- If you have an electronic enrollment system, please do the necessary testing and updating to ensure that enrollees will not encounter problems when enrolling their newly eligible spouses or child(ren). If system updates cannot be made immediately, please provide your employees with the appropriate paper forms that will allow for enrollment actions to occur before the system has been updated. For FEHB, please use SF 2809 and for FEGLI SF 2817.

Federal Employees Health Benefits (FEHB) Program

What are the changes to FEHB Program family member eligibility rules?

As a result of the Supreme Court's decision, legally married same-sex spouses will now be eligible family members under a Self and Family enrollment. **Coverage is available to a legally married same-sex spouse of a Federal employee or annuitant, regardless of his or her state of residency.** This decision does not extend coverage to registered domestic partners or individuals in civil unions.

In addition, the children of same-sex marriages will be treated in the same manner as those of opposite-sex marriages and will be eligible family members according to the same eligibility guidelines. This includes coverage for children of same-sex spouses as stepchildren.

Example: *Tonya is an FEHB enrollee. She and her same-sex spouse, Sally, have two children together but Tonya is not biologically related to the children nor has she adopted them. Based on the eligibility changes, Tonya can cover Sally and their children under her Self and Family enrollment. If Tonya already has a Self and Family enrollment, she may contact her carrier directly to notify it of her newly eligible family members. If Tonya has a Self Only enrollment, she will need to complete an SF 2809 to change her enrollment to Self and Family.*

These changes to family member eligibility are effective immediately.

When will new enrollments and enrollment changes based on the Court's decision be effective?

OPM will consider the date of the Court's decision as the date of the event that permits the enrollment or change. Employees and annuitants will have from June 26, 2013, until August 26, 2013, to make changes to their FEHB enrollment. Employees, but not annuitants, may also enroll during this time. Specific effective dates are as follows:

- If an employee enrolls or changes from Self Only to Self and Family to cover a spouse, the enrollment or change is effective on the first day of the first pay period that begins after the date the employing office receives the appropriate request and that follows a pay period during any part of which the employee is in pay status.

- If an annuitant changes from Self Only to Self and Family to cover a spouse, the change is effective on the first day of the first pay period that begins after the date the retirement system receives the appropriate request.

- If the employee chooses to enroll or change to Self and Family based on acquiring a child, the change is effective on the first day of the pay period in which the child became an eligible family member for FEHB purpose, June 26, 2013. Annuitants may also choose to change to Self and Family based on acquiring a child.
  Note: *The Self and Family premium begins on the effective date of the change to Self and Family, but coverage for the child and spouse cannot begin until the actual date of the Supreme Court's decision (when the child becomes an eligible family member) or date of the marriage (if after the decision). There is no pay status requirement under this circumstance.*

- We encourage employing offices to exercise flexibility in the use of their belated enrollments authority for enrollment actions following the 60-day time period. When a belated enrollment is allowed, employing offices should provide an additional 60 days to make enrollment changes—for a period of up to 6 months following the release of the Supreme Court decision. When processing a late election, indicate the reason for doing so in the Remarks section of the 2809. Coverage will be effective retroactive to the first day of the first pay period following the one including June 26, 2013, and the enrollee will be responsible for retroactive premiums.

What does an individual need to do to cover a spouse or a child who is now eligible?

If an enrollee currently has a Self and Family enrollment, his/her newly eligible spouse or child(ren) will be automatically covered as of June 26, 2013. Enrollees should notify their FEHB Program plan carrier about their newly eligible spouse and child(ren). Enrollees do NOT need to complete an SF 2809. Just like any other newly eligible family member, carriers may ask for documentation, such as a valid marriage license, to confirm eligibility, but carriers will be instructed to follow the same procedures they currently follow when adding a spouse or child to a Self and Family enrollment. Carriers will be cautioned against imposing any new rules in

response to the Supreme Court's decision that could be seen as having either the purpose or effect of creating barriers to enrollment for legally married same-sex couples.

If an enrollee currently has a Self Only enrollment and would like to change to a Self and Family enrollment in order to add his/her same-sex spouse or newly eligible child(ren), he/she must do so by August 26, 2013. Individuals must use an SF 2809 or their agency self-service enrollment system to make an enrollment change. The life event code to use on the SF 2809 is "1C" for employees participating in premium conversion, "2B" for annuitants (including OWCP recipients), "4C" for former employees on TCC, and "5C" for employees not participating in premium conversion. If an enrollee does not change his or her election during the 60-day window and is not allowed a belated enrollment, he/she must wait until the annual Open Season or another Qualifying Life Event to make an enrollment change.

If an employee is not currently enrolled in the FEHB Program and would like to enroll in a Self and Family plan to cover his/her newly eligible family members, he/she must do so by August 26, 2013. Employees must use an SF 2809 or their agency self-service enrollment system. The QLE code is '1C' for employees participating in premium conversion, '2B' for annuitants (including OWCP recipients), and '5C' for employees not participating in premium conversion.

If an employee does not change his or her election during the 60-day window and is not allowed a belated enrollment, he/she must wait until the annual Open Season or another Qualifying Life Event to enroll in a plan. Open Season will begin in November 2013. New enrollments made during Open Season will be effective on the first day of the first pay period that begins in January 2014, and that follows a pay period during any part of which the employee is in a pay status.

Annuitants not enrolled in FEHB may not enroll based on a new or newly eligible marriage.

For employees who participate in premium conversion, cancellation of an FEHB enrollment will only be allowed in order to avoid dual enrollments. If two FEHB enrollees are married and newly eligible as spouses based on the Supreme Court decision, the employees may consolidate their FEHB enrollments into one Self and Family enrollment by cancelling one enrollment and making changes, if needed, to the other. FEHB enrollees are encouraged to notify their FEHB carrier of any newly eligible family members under a Self and Family enrollment.
Note: Cancellation is allowed at any time by (1) annuitants and (2)employees who waived participation in premium conversion.

How will same-sex marriages entered into following the issue of this letter be treated?

For purposes of FEHB coverage, along with the other benefits discussed in this BAL, legal same-sex marriages entered into after the issue date of this letter will be treated in the same manner as opposite-sex marriages and will trigger a QLE. Benefits coverage will be available to a legally married same-sex spouse of a Federal employee or annuitant, regardless of the employee's or annuitant's state of residency.

How will same-sex divorces be treated following the issue of this letter?

For purposes of FEHB coverage, along with the other benefits discussed in this BAL, same-sex divorces following the issue date of this letter will be treated in the same manner as opposite-sex divorces and will trigger a QLE.

Federal Employees Group Life Insurance (FEGLI)

What are the changes to the FEGLI eligibility rules?

Legally married same-sex spouses and children of legal same-sex marriages are now eligible family members under the FEGLI Program. This means that same-sex spouses and children of same-sex marriages are covered under Option C life insurance and the order of precedence in the same manner as opposite-sex spouses and children of opposite-sex marriages.

Coverage of a same-sex spouse or children of same-sex marriages under an Option C enrollment is available to any legally married same-sex spouse of any Federal employee or annuitant, regardless of the employee's or annuitant's state of residency. This decision does not extend to registered domestic partners or individuals in a civil union.

These changes to eligibility are effective immediately. Employees will have 60 days from June 26, 2013 (i.e., until August 26, 2013) to make changes to their FEGLI enrollment. We encourage employing offices to exercise flexibility in the use of their belated enrollments authority for enrollment actions following the 60-day time period. When a belated enrollment is allowed, employing offices should provide an additional 60 days to make enrollment changes—for a period of up to 6 months following the release of the Supreme Court decision. Coverage will be effective retroactive to the first day of the first pay period following the one including June 26, 2013, and the enrollee will be responsible for retroactive premiums.

How can an employee or annuitant cover his or her same-sex spouse under an Option C FEGLI enrollment?

If an employee or annuitant has already purchased Option C coverage, a legally married same-sex spouse is automatically covered under the existing enrollment.

If an employee does not have Option C and wishes to elect it or to increase his/her number of multiples to cover newly eligible family members, he/she must do so by August 26, 2013. The employee or annuitant needs to complete an SF 2817. Even if the marriage occurred more than 60 days prior to the Supreme Court's decision, the life event allowing the change to cover a same-sex spouse is the (newly recognized) marriage. If the coverage is for a formerly ineligible child, the life event is acquisition of a newly eligible child. The life event code for adding either a spouse or child(ren) of a same-sex marriage is 2.

Employees who have waived Basic and/or Optional FEGLI coverage will be allowed to cancel their waiver based on a change of family circumstances. Employees with no coverage will be allowed to enroll in Basic and any Optional insurance up to the maximum. For those with existing FEGLI coverage, they will be allowed to newly elect or increase Optional insurance up to the maximum. New enrollments or changes to existing enrollments must be made by August 26, 2013.

Annuitants will not be allowed to cancel a waiver for Basic and/or Optional FEGLI coverage, nor will they be allowed to increase their multiples of Option B or C coverage if they are already enrolled.

Federal Employees Dental and Vision (FEDVIP) Program

What are the changes to the FEDVIP eligibility rules?

As a result of the Supreme Court decision, legally married same-sex spouses will now be eligible family members under a Self and Family enrollment or a Self Plus One enrollment. Coverage is now available to any legally married same-sex spouse of any Federal employee or annuitant, regardless of the employee's or annuitant's state of residency. This decision does not extend FEDVIP coverage to registered domestic partners or individuals in civil unions.

In addition, the children of same-sex marriages will be treated in the same manner as those of opposite-sex marriages and will be eligible family members according to the same eligibility guidelines. This includes coverage for children of same-sex spouses as stepchildren.

These changes are effective immediately. Enrollees will have 60 days from June 26, 2013, (i.e., until August 26, 2013) to make changes to their FEDVIP enrollment.

What does an individual need to do to cover a spouse or a child who is now eligible?

If an enrollee currently has a Self and Family enrollment, the enrollee must notify BENEFEDS of any additional family members by calling the BENEFEDS Customer Service Center, (1-877-888-3337) within 60 days from June 26, 2013 (i.e., until August 26, 2013). As with any other newly eligible family member, carriers may ask for documentation such as a valid marriage license to confirm eligibility, but carriers will be instructed to follow the same procedures they usually follow when adding an opposite-sex spouse to a Self and Family enrollment. Carriers will be cautioned against imposing any new rules in response to the Supreme Court's decision that could be seen as having either the purpose or effect of creating barriers to enrollment for legally married same-sex couples.

If an enrollee currently has a Self Only enrollment or a Self Plus One enrollment and would like to change enrollment in order to cover the enrollee's same-sex spouse or newly eligible child(ren), he/she must do so by August 26, 2013. Enrollees may submit a change by calling the BENEFEDS Customer Service Center. Enrollees with a Self Plus One enrollment hoping to change their covered family member must wait until the annual Open Season.

Will new enrollments be allowed?

Marriage is not an event that permits a new FEDVIP enrollment. Employees, annuitants, and compensationers who are not enrolled in FEDVIP will not be allowed to enroll in a FEDVIP plan until the annual Open Season.

Federal Long-Term Care Insurance Program (FLTCIP)

What are the changes to FLTCIP eligibility rules?

Legally married same-sex spouses of Federal employees and annuitants are now qualified relatives eligible to apply for FLTCIP coverage. The Supreme Court decision does not change the existing FLTCIP policy that allows same-sex domestic partners of Federal/postal employees and annuitants to enroll as qualifying relatives.

May FLTCIP eligible individuals and/or their newly eligible spouses apply for coverage with abbreviated underwriting as a result of the Supreme Court decision?

FLTCIP eligible individuals and their qualifying relatives may apply for coverage at any time. Because same-sex marriages were not recognized by the Federal government prior to the Supreme Court decision, same-sex marriages that predate the decision will be considered new marriages on June 26, 2013. Newly eligible legally married same-sex spouses of current employees and active members of the uniformed services will have 60 days from June 26, 2013 (i.e., until August 26, 2013), to apply for coverage with abbreviated underwriting. After the 60-day opportunity to enroll, same-sex spouses of current employees and active members of the uniformed services will be subject to full underwriting. Newly eligible legally married same-sex spouses of annuitants, retired members of the uniformed services and other qualifying relatives, such as parents-in-law, may apply to enroll at any time and are subject to full underwriting.

May current enrollees increase, decrease, or cancel their coverage as a result of the Supreme Court decision?

Enrollees may increase, decrease, or cancel their coverage at any time. Increases in coverage made outside of Open Season, including those made as a result of the Supreme Court decision, are subject to full underwriting (§875.406).

Will parents of a same-sex spouse of an eligible workforce member be qualified relatives under FLTCIP?

Yes, parents of legally married same-sex spouses will be eligible as qualified relatives of Federal employees, postal employees, or active members of the Uniformed Services, just as the parents of opposite-sex spouses are. Parents of annuitants are not eligible as qualified relatives.

For more information about the FLTCIP, please contact Long Term Care Partners at 1(800)582-3337, or visit the website at www.ltcfeds.com.

Federal Flexible Spending Accounts (FSAFEDS)

What are the changes to FSAFEDS reimbursement eligibility?

Effective immediately, an employee who is enrolled in FSAFEDS may request reimbursement for eligible health care expenses incurred by a legally married same-sex spouse or related child. In addition, childcare for a child of an enrollee's same-sex spouse is eligible under a Dependent Care FSA. Eligibility for coverage under an FSAFEDS account is based on IRS dependency rules; except children under age 26 are eligible under a Health Care FSA without regard to tax or residence dependency.

Can an individual now enroll or make a change in the amount of an election?

Yes. Because same-sex marriages were not recognized by the Federal government prior to this Supreme Court decision, all Federal employees in legal same-sex marriages that predated this decision will be considered to have a change in family status (from unmarried to married) on June 26, 2013. As a result, employees in existing same-sex marriages will have 60 days following the date of the decision (i.e., until August 26, 2013) to enroll in or make changes to their existing FSAFEDS account. Any changes made to the account must be consistent with the life event. In this case, newly eligible spouses and/or children may result in an increased, but not a decreased, election. If an enrollee does not change his or her election during the 60-day window, he/she must wait until the annual Open Season or another Qualifying Life Event to make an enrollment change.

Note: *New enrollments and increased elections based on a QLE will not be accepted after September 30, 2013.*

Need more information? Call FSAFEDS at 1-877-372-3337/ TTY 1-800-952-0450.

If you have any questions about the information provided in this letter, please contact your Headquarters Insurance Officer. If you are a Headquarters Insurance Officer, please contact Barbara Myers (Barbara.Myers@opm.gov) or Amber Hudson (Amber.Hudson@opm.gov) for operational questions. For policy questions, please contact Chelsea Ruediger (Chelsea.Ruediger@opm.gov).

Sincerely,

John O'Brien
Director for Healthcare and Insurance