

# WAEPA GUIDE

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## New Federal Employees



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## 2023 New Federal Employees Guide

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## The New Federal Employees Guide is presented by:



The goal of WAEPA is to provide access to products and services that promote the health, welfare, and financial well-being of its members.

WAEPA – A nonprofit association formed in 1943, governed by Federal Employees, just like you, to serve the Federal community.

Join WAEPA Today – Membership offers the opportunity to participate in Group Term Insurance programs and other services through the association.

# Introduction

As a new Federal Employee there are many decisions you will need to make that can directly impact your federal career – and your future. We hope that this unique 2023 New Federal Employees Guide will help you make the right decisions concerning pay, leave, alternative work schedules, health benefits, and life insurance.

Since 1943, over 100,000 Civilian Federal Employees and their dependents have been insured by Worldwide Assurance for Employees of Public Agencies (WAEPA). WAEPA is a non-profit association (not an insurance company). Today, more than 50,000 Federal Employees and their dependents currently belong to WAEPA.

Life insurance usually brings protection and peace of mind for Federal families – and we urge you to take a look at WAEPA's Group Term Life Insurance.

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- WAEPA also offers more coverage for your dependent children. WAEPA offers up to \$25,000 of coverage
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We hope that you find this 2023 New Federal Employees Guide helpful. If you have any questions about WAEPA's Group Term Life Insurance coverage, please feel free to call us at **800-368-3484** or visit our website at [waepa.org](http://waepa.org).

— *The WAEPA Staff*

# Federal Pay

## Federal Wage System

The Federal Wage System (FWS) was developed to make the pay of Federal blue-collar workers comparable to prevailing private sector rates in each local wage area.

Before the FWS, there was no central authority to establish wage equity for Federal trade, craft, and laboring employees. In 1965, President Johnson ordered the former Civil Service Commission to work with Federal agencies and labor organizations to study the different agency systems and combine them into a single wage system that would be sensible and just.

The President called for common job-grading standards and wage policies and practices that would ensure interagency equity in wage rates.

### **He established two basic principles for these policies and practices:**

- Wages will be set according to local prevailing rates.
- There will be equal pay for equal work and pay distinctions in keeping with work distinctions.

Congress established the FWS by law in 1972. It created a joint labor-management Federal Prevailing Rate Advisory Committee (FPRAC) with an independent Chairman. Agencies and labor unions are members of the Committee. FPRAC studies

all matters pertaining to prevailing rate determinations and advises the Director of the Office of Personnel Management (OPM) on appropriate pay policies for FWS employees.

### **Federal Wage System Coverage**

The goal of the system is to pay employees according to local prevailing rates. The regular pay plan covers most trade, craft, and laboring employees in the executive branch. The FWS does not cover Postal Service employees, legislative branch employees, or employees of private sector contracting firms.

Special pay plans cover certain employees in special circumstances. OPM authorizes special pay plans when unusual labor market conditions seriously handicap agencies in recruiting and retaining qualified employees.

### **How the Federal Wage System Works**

The FWS is a partnership worked out between OPM, other Federal agencies, and labor organizations.

OPM prescribes basic policies and procedures to ensure uniform pay-setting. OPM specifies procedures for agencies to design and conduct wage surveys, to construct wage schedules, to grade levels of work, and to administer basic and premium pay for employees.

To issue common job-grading standards for major occupations,

OPM occupational specialists follow specific steps to develop new standards and to update existing standards. They make full occupational studies, which include onsite visits to interview employees, supervisors, and union representatives. Specialists write standards and ask agencies and unions for comments that are carefully considered and, where appropriate, incorporated into final job-grading standards. Federal agencies are required to apply these standards.

OPM defines the geographic boundaries of individual local wage areas and reviews survey job descriptions to ensure that they are accurate and current. In addition, OPM works with agencies and unions to schedule annual local wage surveys in each wage area.

Wage adjustments become effective in accordance with what is commonly referred to as the 45-day law. This law states that the Government has 45 working days to put FWS pay adjustments into effect after each wage survey starts. Wage schedules are effective with the first pay period after the 45-day period expires. The Department of Defense (DOD) is the lead agency responsible for issuing FWS wage schedules.

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## Enrollee Responsibilities

### Setting the Wages in Your Area

For each wage area, OPM identifies a “lead” agency. The “lead” agency is responsible for conducting wage surveys, analyzing data, and issuing wage schedules under the policies and procedures prescribed by OPM. All agencies in a wage area pay their hourly wage employees according to the wage schedules developed by the lead agency.

OPM has identified DOD as the lead agency for each local wage area. OPM does not conduct local wage surveys.

Labor organizations play an important role in the wage determination process by providing representatives at all levels of the wage determination process. The employee unions having the greatest number of wage employees under exclusive recognition designate

two of the five members of a lead agency’s national level wage committee. Locally, the union with the most employees under exclusive recognition in a wage area designates one of the three members of each Local Wage Survey Committee. In addition, labor organizations nominate half of the Federal employees who collect wage data from private enterprise employers. A partnership team of one labor data collector and one management data collector visits each surveyed employer.

**Comparability:** Wage System and General Schedule. Under the FWS, your employer bases your pay on what private industry is paying for comparable levels of work in your local wage area. Employees are paid the full prevailing rate at step 2 of each grade level. Step 5, the highest step in the FWS, is 12 percent above the prevailing

rate of pay. Under the General Schedule (GS) a separate pay system covering most white-collar civilian Federal employees, surveys of non-Federal employers (including State and local governments) determine the pay for GS employees. There are a number of other differences between the GS and FWS in terms of occupational coverage, geographic coverage, pay ranges, and pay adjustment cycles

Pay Caps and Delays. The preceding sections describe the basic structure of the FWS and its method of setting wages based on local prevailing rates. However, specific legislation may limit or delay annual wage adjustments for some FWS employees.

If you have any questions about the system and how it affects you, please contact your local personnel office.

## Senior Executive Service

### The Senior Executive Service (SES)

The SES is a corps of men and women who administer public programs at the top levels of Federal Government. Positions

are primarily managerial and supervisory. The SES is a grade-less system in which salary is linked to individual performance. Members of the SES are not eligible for

locality pay. Some positions include additional recruitment incentives.

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## How SES Jobs Are Filled

Each Federal agency determines the qualifications required for its SES positions, and whether to consider only current Federal civil service appointees or all qualified candidates.

### There are two methods of entry into the SES:

- Apply directly to a Federal agency for a specific SES position
- Apply for a Federal Agency's SES Candidate Development Program (SESCDP). Qualifications Review Board (QRB) certified graduates of an SESCDP advertised to "all qualified Civil Service appointees" or "all qualified persons" are eligible for (but not guaranteed) career appointment to an SES position without further competition.

### SES Qualification Requirements

An applicant must meet two types of qualifications for any SES position:

- The Executive Core Qualifications, which apply to every SES position
- Specific, professional/technical qualifications (if any) for the position being advertised

The Office of Personnel Management (OPM) has identified five Executive Core Qualifications (ECQs) common to all SES positions

### The ECQs are:

- 1. Leading Change:** The ability to bring about strategic change, both within and outside the organization, to meet organizational goals. Inherent to this ECQ is the ability to establish an organizational vision and to implement it in a continuously changing environment.
- 2. Leading People:** The ability to lead people toward meeting the organization's vision, mission, and goals. Inherent to this ECQ is the ability to provide an inclusive workplace that fosters the development of others, facilitates cooperation and teamwork, and supports constructive resolution of conflicts
- 3. Results Driven:** The ability to meet organizational goals and customer expectations. Inherent to this ECQ is the ability to make decisions that produce high-quality results by applying technical knowledge, analyzing problems, and calculating risks
- 4. Business Acumen:** The ability to manage human, financial, and information resources strategically
- 5. Building Coalitions:** The ability to build coalitions internally and with other Federal agencies, State and local governments, nonprofit and private sector organizations, foreign

governments, or international organizations to achieve common goals

The ECQs are mandatory qualification standards for every SES position. Agencies may also identify specific, professional/technical qualifications for the position being filled. The qualification standards for an advertised SES position are listed in the agency's vacancy announcement. Applicants need to obtain a copy of the agency's vacancy announcement to respond to these requirements.

### Examination Process

#### A Federal agency:

- Reviews, rates, and ranks applicants based on the executive qualifications and the professional/technical qualifications (if any) listed in the vacancy announcement
- Makes a final selection from among the best-qualified applicants
- Submits a candidate's application package to OPM for Qualifications Review Board (QRB) consideration of the selectee's Executive Core Qualifications

OPM convenes Qualifications Review Boards to determine whether agency selectees have the executive qualifications required for the SES. An agency may not appoint the selectee unless a QRB approves.

#### Recruitment Area

Agencies decide how to fill a vacant SES position. If

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they choose to advertise the position (as opposed to noncompetitive alternatives), they also determine the recruitment area. There are two choices: “all qualified civil service appointees” or “all qualified persons”.

### **Recruitment Incentives**

#### **Exceptional difficulty in recruiting highly qualified applicants for SES positions may result in:**

- Payment of recruitment or relocation bonuses up to 25% of base pay (up to 100%, if approved by OPM)
- Waiver of the dual compensation restrictions that apply to civil service retirees
- Designation of the position for critical pay authority whereby annual salary may be established up to the Executive Schedule Level I basic rate (after January 2018, \$213,000 per annum). Recruitment incentives are noted in the “Application Information” column

### **How to Apply**

In OPM’s USAJOBS system, check the specific job entry for a full text vacancy announcement. If the announcement is not available through the system, call the agency contact for a copy of the vacancy announcement. Ask for additional information about specific application procedures and detailed qualifications requirements.

Send your application directly to the address shown on the vacancy announcement. Be alert to announcement closing dates and apply promptly to meet them. Agencies may issue announcements for as little as 2 weeks.

### **Candidate Development Programs**

Some, but not all, Federal agencies have SES Candidate Development Programs to identify and develop potential executive talent. QRB certified graduates of OPM approved SESCDPs advertised to “all qualified civil service appointees” or “all qualified

persons” are eligible for a career appointment to the SES without further competition. However, graduates are not guaranteed an SES position.

### **Other Opportunities**

From time to time, other vacancies will be listed on USAJOBS that are not in the SES but are in a comparable pay range. Contact the organization listed to determine the specific qualification requirements and application procedures.

Vacancy announcement information is available through USAJOBS: <https://www.usajobs.gov/>

## **The General Schedule (GS)**

The General Schedule (GS) is a separate pay system covering most white-collar civilian Federal employees. Surveys of non-Federal employers (including State and local governments) determine the pay for GS employees.

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## Promotions within the General Schedule

A promotion is a change of an employee while continuously employed from one General Schedule (GS) grade to a higher GS grade.

### Employee Coverage

Only GS employees who are promoted to a higher grade under the General Schedule without a break in service are covered by the two-step promotion rule in 5 U.S.C. 5334(b) and 5 CFR 531.214 (also, 5 CFR 531.243 for GM employees).

### Two-Step Promotion Rule

The two-step promotion rule states that a GS employee promoted to a position in a higher grade is entitled to basic pay at the lowest rate of the higher grade that exceeds his or her existing rate of basic pay by not less than two step increases of the grade from which promoted. The two-step promotion rule must be applied using one of two methods—the standard method or the alternate method.

### Geographic Conversion Rule

When an employee's official worksite is changed to a new location upon promotion where different pay schedules apply\*, the agency must convert the employee to the applicable pay schedule(s) and rate(s) of basic pay for the new official worksite based on the employee's position of record before

promotion before applying the two-step promotion rule. Set the employee's rate(s) of basic pay in the applicable pay schedule(s) in the new location based on his or her position of record (including grade) and step (or rate) immediately before the change in the employee's official worksite. The resulting rate must be used as the existing rate in applying the two-step promotion rule. (See 5 CFR 531.206 and 531.214 for information on processing other pay actions that may occur simultaneously with a promotion action.)

\* In the context of applying the geographic conversion rule, the phrase "where different pay schedules apply" means that an employee's official worksite is changed to a new location that would cause the employee to lose or gain coverage under a location-based pay schedule (i.e., locality rate schedule or special rate schedule) if the employee were to remain in the same position of record.

### Standard Method

Apply the standard method for the two-step promotion rule if the employee is covered by the same pay schedules before and after promotion. For example, an employee may be covered by the General Schedule and the same locality rate schedule before and after promotion.

The steps for the standard method are as follows:

### Promotion Rule - Standard Method

#### Step A

If applicable, apply the geographic conversion rule to determine the employee's rate(s) and range(s) of basic pay based on the employee's position of record before promotion and the new official worksite. Also, if applicable, provide any simultaneous within-grade increase or quality step increase. Use the resulting rate(s) of basic pay as the existing rate(s) in effect immediately before promotion in applying steps B and C.

#### Step B

Identify the employee's existing GS rate (or LEO special base rate) in the grade before promotion and increase that rate by two GS within-grade increases for that grade.

#### Step C

Determine the payable (highest) rate of basic pay for the step or rate determined in step B by applying any locality payment or special rate supplement applicable to the given grade, based on the employee's position of record before promotion and official worksite after promotion. (If the rate

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## Promotions within the General Schedule *(continued)*

determined in step B is above the range maximum, use the same locality payment or special rate supplement that applies to rates within the rate range.)

### **Step D**

Identify the highest applicable rate range for the employee's position of record after promotion and find the lowest step rate in that range that equals or exceeds the rate determined in step C. This is the employee's payable rate of basic pay upon promotion. (If the rate identified in step C exceeds the maximum of the rate range identified in this step, the employee's payable rate is that maximum rate, or, if the employee's existing rate is higher than that maximum rate, a retained rate under 5 CFR part 536 equal to that existing rate.)

### **Alternate Method**

Apply the alternate method for the two-step promotion rule if the employee is covered by different pay schedules before and after promotion and if the alternate method will produce a higher payable rate upon promotion than the standard method. For example, an employee may be covered after promotion by a special rate schedule that did not apply to him or her before promotion, and the alternate method will produce a higher rate.

**Exception:** An agency may apply the alternate method

for an employee covered by different pay schedules before and after promotion, even though the alternate method produces a lesser payable rate than the standard method, only under the following conditions:

- The agency determines it would be inappropriate to use the standard method based on a finding that the higher pay for the position before promotion is not sufficiently related to the knowledge and skills required for the position after promotion
- The agency informs the employee of the determination to use the alternate method before the effective date of the promotion

### **Promotion Rule – Alternate Method**

#### **Steps A, B, C**

Same as steps A, B, and C, of the standard method.

#### **Step D**

Identify the highest applicable rate range for the employee's grade after promotion based on consideration of any pay schedule that applied to the employee's position of record before promotion (after any geographic conversion). (Do not consider pay schedules that apply only to the employee's new position of record after promotion. For example, if a particular special rate schedule applies only to an

employee's position of record after promotion, disregard that schedule in applying this step.) Find the lowest step in the highest applicable rate range that equals or exceeds the rate identified in step C. (If the rate identified in step C exceeds the maximum of the rate range identified in this step, the employee's payable rate is that maximum rate, or, if the employee's existing rate is higher than that maximum rate, a retained rate under 5 CFR part 536 equal to that existing rate.)

### **Step E**

Convert the lowest step rate identified in step D to a corresponding step rate (same step) in the highest applicable rate range for the employee's new position of record after promotion. This is the employee's alternate payable rate of basic pay upon promotion. (If the rate derived under step D was a retained rate, see 5 CFR 531.214(d)(4)(ii) to determine the alternate payable rate.)

### **Step F**

If the alternate payable rate identified in step E exceeds the payable rate resulting from the standard method, the employee is entitled to the alternate rate upon promotion. Otherwise, the employee is entitled to the payable rate derived under the standard method.

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## Promotions within the General Schedule *(continued)*

### **Retained Rate Employees**

If an employee was receiving a retained rate before promotion, apply the promotion rule as follows:

- If the employee's existing payable rate of basic pay before promotion is a retained rate, apply the standard method or alternate method, as applicable, as if the employee were receiving the maximum rate of the employee's grade before promotion
- If the payable rate of basic pay after promotion determined under paragraph (1) is greater than the employee's existing retained rate, the employee is entitled to that payable rate
- If the existing retained rate is greater than the rate determined under paragraph (1), the retained rate must be compared to the highest applicable rate range for the position after promotion, as provided in 5 CFR 536.304. The employee is entitled to the lowest step rate in the range that equals or exceeds the retained rate or, if the retained rate exceeds the range maximum, to the retained rate

### **Maximum Payable Rate**

An agency may use the maximum payable rate

provisions of 5 CFR 531.221 through 531.223 (and 5 CFR 531.247 for GM employees) to set an employee's pay at a higher rate upon promotion. The maximum payable rate provisions allow an agency to set pay based on higher pay the employee previously earned in another Federal job. However, agencies may not use the maximum payable rate provisions to set an employee's pay at a lower rate than that provided by the two-step promotion rule.

### **How to Compute FLSA Overtime Pay**

Overtime pay for nonexempt employees is computed under the Fair Labor Standards Act (FLSA), subject to some special rules for Federal employees. Under the FLSA, overtime pay is determined by multiplying the employee's "straight time rate of pay" by all overtime hours worked PLUS one-half of the employee's "hourly regular rate of pay" times all overtime hours worked. All overtime work that is ordered or approved or "suffered or permitted" must be compensated. (See 5 CFR part 551.)

Include any applicable special rate supplement or locality payment in the "total remuneration" and "straight time rate of pay" when computing overtime pay under

the FLSA. Compute the "hourly regular rate of pay" by dividing the "total remuneration" paid to an employee in the workweek by the number of hours in the workweek for which such compensation is paid. All overtime work that is ordered or approved must be compensated. All overtime work that is "suffered or permitted" also must be compensated, except for flexible schedule employees. Include any applicable special rate supplement or locality payment in the "total remuneration" and "straight time rate of pay" when computing overtime pay under the FLSA. Compute the "hourly regular rate of pay" by dividing the "total remuneration" paid to an employee in the workweek by the number of hours in the workweek for which such compensation is paid.

### **Pay Limitations**

The limitation on an hourly rate of overtime pay under title 5, United States Code, does not apply to overtime pay under the FLSA. Also, the maximum biweekly or annual earnings limitations on title 5 premium pay do not apply to FLSA overtime pay.

## General Schedule Within-Grade Increases

Each General Schedule (GS) grade has 10 steps. Within-grade increases (WGI) or step increases are periodic increases in a GS employee's rate of basic pay from one step of the grade of his or her position to the next higher step of that grade.

- The employee's performance must be at an acceptable level of competence. To meet this requirement, an employee's

most recent performance rating of record must be at least Level 3 ("Fully Successful" or equivalent)

- The employee must have completed the required waiting period for advancement to the next higher step
- The employee must not have received an "equivalent increase" in pay during the waiting period (See 5 CFR 531.407.)

### Permanent Positions

WGI's apply only to GS employees occupying permanent positions. "Permanent position" means a position filled by an employee whose appointment is not designated as temporary and does not have a definite time limitation of 1 year or less. "Permanent position" includes a position to which an employee is promoted on a temporary or term basis for at least 1 year.

### Required Waiting Periods

For employees with a scheduled tour of duty, the required waiting periods established by law for advancement to the next higher step are as follows:

Advancement from	Requirements
<b>Step 1 to Step 2</b>	52 weeks of creditable service at step 1
<b>Step 2 to Step 3</b>	52 weeks of creditable service at step 2
<b>Step 3 to Step 4</b>	52 weeks of creditable service at step 3
<b>Step 4 to Step 5</b>	104 weeks of creditable service in step 4
<b>Step 5 to Step 6</b>	104 weeks of creditable service in step 5
<b>Step 6 to Step 7</b>	104 weeks of creditable service in step 6
<b>Step 7 to Step 8</b>	156 weeks of creditable service in step 7
<b>Step 8 to Step 9</b>	156 weeks of creditable service in step 8
<b>Step 9 to Step 10</b>	156 weeks of creditable service in step 9

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## Night Pay for General Schedule Employees

Night pay is a 10 percent differential paid to an employee for regularly scheduled work performed at night. It is computed as a percentage of the employee's rate of basic pay (including any applicable locality payment or special rate supplement).

### Employee Coverage

An individual who meets the definition of "employee" in 5 U.S.C. 5541(2) is covered by the night pay provisions, including employees under the General Schedule.

**Note:** Prevailing rate (wage) employees are covered by a separate night shift differential authority. (See 5 U.S.C. 5343.)

### Regularly Scheduled Work

Night pay is paid for regularly scheduled work performed at night. This generally means work scheduled before the beginning of the administrative workweek. However, night pay is also paid for night work on a temporary assignment to a different daily tour of duty during the administrative workweek.

### Night Work Hours

Generally, night work must be performed between the hours of 6 p.m. and 6 a.m.,

including night work under a compressed work schedule. For posts located outside the United States, the head of an agency may designate a time after 6 p.m. and before 6 a.m. as the beginning and end, respectively, of night work to accommodate the customary hours of business in the locality. (See also "Flexible Work Schedules," below.)

### Relation to Other Premium Pay

Night pay is paid in addition to overtime, Sunday, or holiday premium pay.

### Relationship to Basic Pay

Night pay is not basic pay for any purpose.

### Relationship to Leave

An employee is entitled to night pay for paid leave only when the total amount of paid leave during a biweekly pay period is less than 8 hours.

### Paid on Holidays

An employee is entitled to night pay when excused from night work on a holiday or another non workday (does not apply to AWS non workdays).

### Flexible Work Schedules

If a flexible work schedule includes 8 or more hours available for work between 6 a.m. and 6 p.m., the employee is not entitled to night pay for voluntarily working flexible hours between 6 p.m. and 6 a.m., including while earning credit hours.

An employee is entitled to night pay for those hours that must be worked between 6 p.m. and 6 a.m. to complete an 8-hour daily tour of duty.

An employee is entitled to night pay for any non-overtime work performed between 6 p.m. and 6 a.m. during designated core hours.

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## Sunday Premium Pay

An employee is entitled to 25 percent of his or her rate of basic pay for work performed during a regularly scheduled basic 8-hour tour of duty that begins or ends on a Sunday. Sunday premium pay is not paid for overtime hours of work.

### Employee Coverage

An employee, as defined in 5 U.S.C. 5541(2), is entitled to Sunday premium pay. This definition includes General Schedule employees and certain other white-collar civilian Federal employees. Prevailing rate (wage) employees are entitled to Sunday premium pay under 5 U.S.C. 5544(a). Part-time employees are not entitled to Sunday premium pay. (See 46 Comp. Gen. 337 (1966).)

**Entitlement:** An employee is entitled to his or her rate of basic pay plus Sunday premium pay for up to 8 non overtime hours of work during each regularly scheduled basic tour of duty that begins or ends on Sunday. Sunday premium pay is equal to 25 percent of an employee's rate of basic pay.

### Flexible Work Schedule

An employee under a flexible work schedule is entitled to Sunday premium pay for up to 8 hours of his or her basic work requirement based on electing to work flexible hours during a basic tour of duty that begins or ends on Sunday. However, an agency may preclude employees from working flexible hours during a basic tour of duty

that begins or ends on Sunday. See Comptroller General opinion B-245772, May 7, 1992, and 5 CFR 610.111(d). Employees may not earn Sunday premium pay when they earn or use credit hours.

### Compressed Work Schedule

An employee under a compressed work schedule is entitled to Sunday Work Schedule) premium pay for all non-overtime hours the employee works during each regularly scheduled basic tour of duty that begins or ends on Sunday. (See 5 U.S.C. 6128(c).)

### Two Tours Of Duty on Sunday

When an employee has two separate basic tours of duty on Sunday, he or she is entitled to Sunday premium pay for performing work during each tour of duty. For example, if an employee works 8 hours during a basic tour of duty that begins on Saturday and ends on Sunday, and also works 8 hours during a basic tour of duty that begins on the same Sunday and ends on Monday, the employee is entitled to 16 hours of Sunday premium pay.

### Relationship to Overtime Pay

An employee under a standard work schedule is entitled to overtime pay for hours of work on Sunday that are in excess of 8 hours in a day or 40 hours in a week. Sunday premium pay is not paid for overtime hours of work.

### Flexible Work Schedule

An employee whose flexible work schedule includes work on Sunday is entitled to overtime pay for hours of work in excess of 8 hours in a day or 40 hours in a week and which are officially ordered in advance. This does not include any flexible hours of work applicable to the employees basic work requirement. (See the definition of overtime hours in 5 U.S.C. 6121(6).)

### Compressed Work Schedule

An employee whose compressed work schedule includes work on Sunday is entitled to overtime pay for hours of work in excess of the employees compressed work schedule on that day. (See the definition of overtime hours in 5 U.S.C. 6121(7).)

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## Sunday Premium Pay *(continued)*

### **Relationship to GS Night Pay**

When an employee has a regularly scheduled basic tour of duty that begins or ends on Sunday and includes night work (between 6 p.m. and 6 a.m. for GS employees), the employee is entitled to night pay in addition to Sunday premium pay for work during night hours of the Sunday tour of duty. This applies to standard, flexible, and compressed work schedules. (See exception below.)

### **Flexible Work Schedule**

If a flexible tour of duty includes 8 or more hours available for work during daytime hours (i.e., between 6 a.m. and 6 p.m.), an employee is not entitled to night pay even though he or she voluntarily elects to work flexible hours at night.

### **Relationship to Holiday Premium Pay**

When an employee has a regularly scheduled basic tour of duty that begins on Sunday and Sunday is a holiday, the employee is entitled to holiday premium pay and Sunday premium pay for up to 8 hours of work during that basic tour of duty. This applies to standard and flexible work schedules. (Please see the [Federal Holidays - Work Schedules and Pay](#) fact sheet for more information on an employee's holiday tour of duty.)

### **Compressed Work Schedule**

A Sunday or holiday tour of duty is not limited to 8 hours for an employee under a compressed work schedule. (See 5 U.S.C. 6128(c) and 5 CFR 610.407.)

### **No Compounding of Premium Pay**

Each separate entitlement to premium pay is computed separately as a Premium Pay percentage of an employee's rate of basic pay. No compounding occurs if an employee is entitled to more than one type of premium pay for the same hour of work.

Paid Leave, Excused Absence, and Holidays on Sunday. Employees who are regularly scheduled to work non overtime hours on Sunday, but do not work during their Sunday tour of duty because they are on paid leave or excused absence, because they are using compensatory time off or credit hours, or because Sunday is a holiday, are not entitled to Sunday premium pay. Sunday premium pay may be paid only for periods when an employee performs work on Sunday.

### **Payment for Actual Work**

Sunday premium pay is paid for any actual work performed during an employee's Sunday tour of duty. For example, if an employee's Sunday tour of duty is from 8 p.m. on Sunday until 4 a.m. on Monday and the

employee is granted annual leave from 8 p.m. until 11 p.m., the employee is entitled to Sunday premium pay for 5 hours for working between 11 p.m. and 4 a.m. (See the definitions of Sunday work and tour of duty in 5 CFR 550.103.)

### **Superseded Regulation**

The regulation at 5 CFR 550.171(a) has been superseded by the appropriations restrictions limiting payment of Sunday premium pay to hours when employees actually perform work. Employees may not be paid Sunday premium pay for hours when they are in a leave, excused absence, or holiday status.

### **First-40 Tours of Duty**

Since work under a first-40 tour of duty is regularly scheduled work, an employee under a first-40 tour of duty is entitled to up to 8 hours of Sunday premium pay when the employee performs non overtime work on Sunday. (See 5 CFR 610.111(b).)

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## Hazardous Duty Pay

### **Hazardous Duty Pay Eligibility**

If an employee is covered by chapter 51 (Classification) and subchapter III of chapter 53 (General Schedule Pay Rates) of title 5, United States Code, then he or she may be eligible to receive hazardous duty pay. To receive hazardous duty pay, a General Schedule (GS) employee must also meet the requirements in 5 CFR 550.904. (Note: Prevailing rate (wage) employees may be eligible to receive environmental differential pay under the separate provisions of 5 U.S.C. 5343(c)(4).)

### **Can Title 38 Employees Receive Hazardous Duty Pay?**

Some title 38 employees are not covered by chapter 51 and are classified under the title 38 qualification-based grading system. Such employees are not covered by the hazardous duty pay authority.

### **Can an Employee be Paid Hazardous Duty Pay for Performing a Type of Duty not Listed Under Appendix A of 5 CFR Part 550, Subpart I?**

No. 5 U.S.C. 5545(d) requires the Office of Personnel Management to establish a schedule or schedules of hazard duty differentials and to prescribe regulations governing payment of the differentials. If a duty or type of work is not listed in appendix A, the

employee cannot be paid a hazard duty differential.

### **Who Can Establish a Hazard Pay Differential?**

The request for a hazard pay differential must be made by the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned. Amendments to appendix A may be made by OPM on its own motion or at the request of an agency, as defined in 5 U.S.C. 5102(a)(1). (See 5 CFR 550.903(b).)

### **Information Agencies are Required to Submit with Requests to Amend Appendix A.**

**Agencies are required to submit the following information with their amendment request:**

- The nature of the duty
- The degree to which the employee is exposed to the hazard or physical hardship
- The length of time during which the duty will continue to exist
- The degree to which control may be exercised over the hazard or physical hardship
- The estimated annual cost to the agency if the request is approved

Additional information OPM typically ask agencies to submit with requests to amend appendix A.

### **OPM typically asks agencies to submit the following information with amendment requests, as applicable:**

- A detailed description of the hazardous duty or physical hardship (i.e., explain what causes the hazard)
- Specific wording of the proposed category (as it would appear in appendix A), including the threshold for payment and the recommended percentage to be paid
- Information on ways to mitigate the hazard (e.g., training, use of safety procedures and equipment)
- Information on the measures the agency has taken to practically eliminate the hazard
- An explanation of why the hazard is “unusual”
- Information on Occupational Safety and Health Administration standards or other published material on safety for the work situation. Information on how the agency will determine whether the hazard is reduced to a less than significant level
- Descriptions of and statistics on actual accidents or injuries that have occurred because of exposure to the hazard or physical hardship

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## Hazardous Duty Pay *(continued)*

- Information on when a decision is made not to expose an employee to the hazard or physical hardship
- Information about other Federal agencies that may be affected by such a category
- Information on Federal Wage System employees in the agency that may be exposed to the hazard or physical hardship in the same manner
- Whether and in what manner the hazard has affected the classification of the position

### **Hazardous Duty Pay for Voluntarily Performing a Hazardous Duty Listed in Appendix A**

Hazardous duty pay may be paid only to employees who are assigned hazardous duties or duties involving physical hardship for which a differential is authorized. It may not be paid to an employee who undertakes to perform a hazardous duty on his or her own, without proper authorization, either expressed or implied. (5 CFR 550.904(a))

### **If an Employee Performs a Hazardous Duty (as listed in appendix A) for an Hour During the Work Shift, Does He or She Receive the Hazard Pay Differential for Only That Hour?**

No. When an employee performs a duty for which

a hazard pay differential is authorized, the agency must pay the hazard pay differential for all of the hours in which the employee is in a pay status on the day on which the duty is performed. (5 CFR 550.905)

### **Maximum Amount of Hazardous Duty Pay an Employee May Receive.**

An employee may receive no more than 25 percent of his or her rate of basic pay. (5 U.S.C. 5545(d)(2))

### **May an Employee be Paid Hazardous Duty Pay For a Hazard or Physical Hardship Encountered on the Way to Work?**

No. Hazardous duty pay is paid only for the hours in which the employee is in a pay status on the day on which the hazardous duty is performed. (5 CFR 550.905)

### **May an Employee Receive Hazardous Duty Pay During Overtime Hours?**

Yes, because an employee is in a pay status during overtime hours. However, the hazardous duty pay is computed on the employee's hourly rate of basic pay, not his or her hourly overtime rate. (5 CFR 550.905 and 5 U.S.C. 5545(d)(2))

### **Can Hazardous Duty Pay be Paid During Hours of Paid Leave?**

Yes, if a hazardous duty is performed on a day on which paid leave is taken. For example, if an employee

performs a hazardous duty for 1 hour and then takes annual leave for the 7 hours remaining in his or her workday, the employee is paid hazardous duty pay for the entire 8-hour workday. (5 CFR 550.905)

### **May Hazardous Duty Pay be Paid for Periods of Leave Without Pay?**

No. Hazardous duty pay may only be paid while an employee is in a pay status. (5 CFR 550.905)

### **Is Hazardous Duty Pay Included in the Biweekly Limitation on Premium Pay?**

No, the limitation on premium pay in 5 U.S.C. 5547(a) does not include hazardous duty pay.

### **May Employees Who Have been Incidentally Exposed to Asbestos (I.E., not Directly Connected With Their Assigned Duties) Receive Hazardous Duty Pay for Asbestos?**

No. As stated in the description of asbestos duty in appendix A, agencies may pay hazardous duty pay for asbestos when the risk of exposure is directly connected with the performance of assigned duties. Employees should not be paid hazardous duty pay after being exposed to asbestos (or any other hazard) when the exposure is not triggered by their job duties. It cannot be paid because of an accidental exposure.

## Holiday Premium Pay

Holiday premium pay is equal to an employee's rate of basic pay. Employees who are required to work on a holiday receive their rate of basic pay, plus holiday premium pay, for each hour of holiday work. (See 5 U.S.C. 5546(b).)

## Holiday Premium Pay and Travel

### Are Employees Entitled to Holiday Premium Pay for the Time They Spend in Work-Related Travel on a Federal Holiday?

Employees generally are not entitled to holiday premium pay for the time they spend in work-related travel during holiday hours of their tours of duty. Holiday premium pay is paid only to employees who perform work on a holiday. (See 5 U.S.C. 5546(b).) The Comptroller General has ruled that the criteria in 5 U.S.C. 5542(b)(2) must be used to determine whether travel time is hours of work for holiday premium pay purposes. (These are the same criteria that are used to determine travel time

as hours of work for title 5 overtime pay purposes. The criteria are also found in 5 CFR 550.112(g).) Time spent in a travel status is not hours of work for the purpose of paying premium pay, including holiday premium pay, unless it meets one of the criteria in 5 U.S.C. 5542(b)(2)(B) for crediting irregular or occasional hours of work for travel.

**The criteria state that time spent in a travel status away from the official duty station is not hours of employment unless the travel:**

- Involves the performance of work while traveling (such as employment as a truck driver)

- Is incident to travel that involves the performance of work while traveling (such as “deadhead” travel performed by a truck driver to return an empty truck after unloading)
- Is carried out under arduous and unusual conditions (e.g., on unpaved roads)
- Results from an event which could not be scheduled or controlled administratively by any individual or agency in the executive branch of the Government (such as training scheduled solely by a private firm or a job-related court appearance required by a court subpoena)

## Compensatory Time Off For Travel

Compensatory time off for travel is a separate form of compensatory time off that may be earned by an employee for time spent in a travel status away from the employee's official duty

station when such time is not otherwise compensable.

### Employees Covered by This Provision

The compensatory time off provision applies to an “employee” as defined in

5 U.S.C. 5541(2) who is employed in an “Executive agency” as defined in 5 U.S.C. 105, without regard to whether the employee is exempt from or covered by the overtime pay provisions of the Fair

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## Compensatory Time Off For Travel *(continued)*

Labor Standards Act of 1938, as amended. For example, this includes employees in senior-level (SL) and scientific or professional (ST) positions, but not members of the Senior Executive Service or Senior Foreign Service or Foreign Service officers. Effective April 27, 2008, prevailing rate (wage) employees are covered under the compensatory time off for travel provision.

### **Are Intermittent Employees Eligible to Earn Compensatory Time Off For Travel?**

No. Compensatory time off for travel may be used by an employee when the employee is granted time off from his or her scheduled tour of duty established for leave purposes. (See 5 CFR 550.1406(b).) Also see the definition of “scheduled tour of duty for leave purposes” in 5 CFR 550.1403. Employees who are on intermittent work schedules are not eligible to earn and use compensatory time off for travel because they do not have a scheduled tour of duty for leave purposes.

### **What Qualifies as Travel for The Purpose of This Provision?**

To qualify for this purpose, travel must be officially authorized. In other words, travel must be for work purposes and must be approved by an authorized agency official or otherwise authorized under established agency policies.

### **May An Employee Earn Compensatory Time Off When He or She Travels in Conjunction With the Performance of Union Representational Duties?**

No. The term “travel” is defined at 5 CFR 550.1403 to mean officially authorized travel—i.e., travel for work purposes approved by an authorized agency official or otherwise authorized under established agency policies. The definition specifically excludes time spent traveling in connection with union activities. The term “travel for work purposes” is intended to mean travel for agency-related work purposes. Thus, employees who travel in connection with union activities are not entitled to earn compensatory time off for travel because they are traveling for the benefit of the union, and not for agency-related work purposes.

### **An Employee Receives Compensatory Time Off for Travel Only for Those Hours Spent in a Travel Status. What Qualifies as Time in a Travel Status?**

Travel status includes only the time actually spent traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the usual waiting time that precedes or interrupts such travel.

### **Is Travel in Connection With a Permanent Change of Station (PCS) Creditable for Compensatory Time Off for Travel?**

Although PCS travel is officially authorized travel, it is not travel between an official duty station and a temporary duty station or between two temporary duty stations. Therefore, it is not considered time in a travel status for the purpose of earning compensatory time off for travel.

### **What is Meant by “Usual Waiting Time”?**

Airline travelers generally are required to arrive at the airport at a designated pre-departure time (e.g., 1 or 2 hours before the scheduled departure, depending on whether the flight is domestic or international). Such waiting time at the airport is considered usual waiting time and is creditable time in a travel status. In addition, time spent at an intervening airport waiting for a connecting flight (e.g., 1 or 2 hours) also is creditable time in a travel status. In all cases, determinations regarding what is creditable as “usual waiting time” are within the sole and exclusive discretion of the employing agency.

### **What If an Employee Experiences an “Extended” Waiting Period?**

If an employee experiences an unusually long wait prior to his or her initial departure

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## Compensatory Time Off For Travel *(continued)*

or between actual periods of travel during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes, the extended waiting time outside the employee's regular working hours is not creditable time in a travel status. An extended waiting period that occurs during an employee's regular working hours is compensable as part of the employee's regularly scheduled administrative workweek.

### **Do Meal Periods Count As Time in a Travel Status?**

Meal periods during actual travel time or waiting time are not specifically excluded from creditable time in a travel status for the purpose of earning compensatory time off for travel. However, determinations regarding what is creditable as "usual waiting time" are within the sole and exclusive discretion of the employing agency.

### **What Happens Once An Employee Reaches A Temporary Duty Station?**

Time spent at a temporary duty station between arrival and departure is not creditable travel time for the purpose of earning compensatory time off for travel. Time in a travel status ends when the employee arrives at the temporary duty worksite or his or her lodging in the temporary duty station, wherever the employee arrives first. Time in a travel status

resumes when an employee departs from the temporary duty worksite or his or her lodging in the temporary duty station, wherever the employee departs last.

### **When Is It Appropriate For an Agency To Offset Creditable Time In A Travel Status By The Amount of Time The Employee Spends In Normal Commuting Between Home and Work?**

If an employee travels directly between his or her home and a temporary duty station outside the limits of the employee's official duty station (e.g., driving to and from a 3-day conference), the agency must deduct the employee's normal home-to-work/work-to-home commuting time from the creditable travel time. The agency must also deduct an employee's normal commuting time from the creditable travel time if the employee is required—outside of regular working hours—to travel between home and a transportation terminal (e.g., an airport or train station) outside the limits of the employee's official duty station.

### **What If An Employee Travels To A Transportation Terminal Within The Limits Of His Or Her Official Duty Station?**

An employee's time spent traveling outside of regular working hours to or from a transportation terminal within

the limits of his or her official duty station is considered equivalent to commuting time and is not creditable time in a travel status for the purpose of earning compensatory time off for travel.

### **What If An Employee Travels From A Worksite To A Transportation Terminal?**

If an employee travels between a worksite and a transportation terminal, the travel time outside regular working hours is creditable as time in a travel status, and no commuting time offset applies. For example, after completing his or her workday, an employee may travel directly from the regular worksite to an airport to attend an out-of-town meeting the following morning. The travel time between the regular worksite and the airport is creditable as time in a travel status.

### **What If An Employee Elects To Travel At A Time Other Than The Time Selected By The Agency?**

When an employee travels at a time other than the time selected by the agency, the agency must determine the estimated amount of time in a travel status the employee would have had if the employee had traveled at the time selected by the agency.

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## Compensatory Time Off For Travel *(continued)*

**The agency must credit the employee with the lesser of:**

1. The estimated time in a travel status the employee would have had if the employee had traveled at the time selected by the agency
2. The employee's actual time in a travel status at a time other than that selected by the agency

### **How Is An Employee's Travel Time Calculated For The Purpose Of Earning Compensatory Time Off For Travel When The Travel Involves Two Or More Time Zones?**

When an employee's travel involves two or more time zones, the time zone from point of first departure must be used to determine how many hours the employee actually spent in a travel status for the purpose of accruing compensatory time off for travel. For example, if an employee travels from his official duty station in Washington, DC, to a temporary duty station in San Francisco, CA, the Washington, DC, time zone must be used to determine how many hours the employee spent in a travel status. However, on the return trip to Washington, DC, the time zone from San Francisco, CA, must be used to calculate how many hours the employee spent in a travel status.

### **How Is Compensatory Time Off For Travel Earned And Credited?**

Compensatory time off for travel is earned for qualifying time in a travel status. Agencies may authorize credit in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes). Agencies must track and manage compensatory time off for travel separately from other forms of compensatory time off.

### **Is There A Limitation On The Amount Of Compensatory Time Off For Travel An Employee May Earn?**

No.

### **How Does An Employee Request Credit For Compensatory Time Off For Travel?**

Agencies may establish procedures for requesting credit for compensatory time off for travel. An employee must comply with his or her agency's procedures for requesting credit of compensatory time off, and the employee must file a request for such credit within the time period established by the agency. An employee's request for credit of compensatory time off for travel may be denied if the request is not filed within the time period required by the agency.

### **Is There A Form Employees Must Fill Out For Requests To Earn Or Use Compensatory Time Off For Travel?**

There is not a Governmentwide form used for requests to earn or use compensatory time off for travel. However, an agency may choose to develop a form as part of its internal policies and procedures.

### **How Does An Employee Use Accrue Compensatory Time Off For Travel?**

An employee must request permission from his or her supervisor to schedule the use of his or her accrued compensatory time off for travel in accordance with agency policies and procedures. Compensatory time off for travel may be used when the employee is granted time off from his or her scheduled tour of duty established for leave purposes. Employees must use accrued compensatory time off for travel in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes).

### **In What Order Should Agencies Charge Compensatory Time Off For Travel?**

Agencies must charge compensatory time off for travel in the chronological order in which it was earned, with compensatory time off for travel earned first being charged first.

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## Compensatory Time Off For Travel *(continued)*

### **How Long Does An Employee Have To Use Accrued Compensatory Time Off For Travel?**

An employee must use his or her accrued compensatory time off for travel by the end of the 26th pay period after the pay period during which it was earned or the employee must forfeit such compensatory time off, except in certain circumstances.

### **What If An Employee Is Unable To Use His Or Her Accrued Compensatory Time Off For Travel Because Of Uniformed Service Or An On-The-Job Injury With Entitlement To Injury Compensation?**

Unused compensatory time off for travel will be held in abeyance for an employee who separates, or is placed in a leave without pay status, and later returns following (1) separation or leave without pay to perform service in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) and a return to service through the exercise of a reemployment right or (2) separation or leave without pay due to an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81. The employee must use all of the compensatory time off for travel

held in abeyance by the end of the 26th pay period following the pay period in which the employee returns to duty, or such compensatory time off for travel will be forfeited.

### **What If An Employee Is Unable To Use His Or Her Accrued Compensatory Time Off For Travel Because Of An Exigency Of The Service Beyond The Employee's Control?**

If an employee fails to use his or her accrued compensatory time off for travel before the end of the 26th pay period after the pay period during which it was earned due to an exigency of the service beyond the employee's control, the head of an agency, at his or her sole and exclusive discretion, may extend the time limit for up to an additional 26 pay periods.

### **May Unused Compensatory Time Off For Travel Be Restored If An Employee Does Not Use It By The End Of The 26th Pay Period After The Pay Period During Which It Was Earned?**

Except in certain circumstances (see Q24 and Q25), any compensatory time off for travel not used by the end of the 26th pay period after the pay period during which it was earned must be forfeited.

### **What Happens To An Employee's Unused Compensatory Time Off For Travel Upon Separation From Federal Service?**

Except in certain circumstances (see Q24), an employee must forfeit all unused compensatory time off for travel upon separation from Federal service.

### **May An Employee Receive A Lump-Sum Payment For Accrued Compensatory Time Off For Travel Upon Separation From An Agency?**

No. The law prohibits payment for unused compensatory time off for travel under any circumstances.

### **What Happens To An Employee's Accrued Compensatory Time Off For Travel Upon Transfer To Another Agency?**

When an employee voluntarily transfers to another agency (including a promotion or change to lower grade action), the employee must forfeit all of his or her unused compensatory time off for travel.

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## Recruitment Incentives

An agency may pay a recruitment incentive to a newly appointed employee if the agency has determined that the position is likely to be difficult to fill in the absence of an incentive.

### Covered Positions

A recruitment incentive may be paid to an eligible individual who is appointed to a General Schedule (GS), senior-level (SL), scientific or professional (ST), Senior Executive Service (SES), Federal Bureau of Investigation and Drug Enforcement Administration (FBI/DEA) SES, Executive Schedule (EX), law enforcement officer, or prevailing rate position. OPM may approve other categories for coverage upon written request from the head of an executive agency.

### Excluded Positions

Recruitment incentives may not be paid to Presidential appointees; noncareer appointees in the Senior Executive Service; those in positions excepted from the competitive service by reason of their confidential, policy-determining, policy-making, or policy-advocating natures; agency heads; or those expected to receive an appointment as an agency head; or SES limited term appointees or SES limited emergency appointees when the appointment must be cleared through the White House Office of Presidential Personnel.

### “Newly Appointed”

Recruitment incentives may be paid to an employee who is newly appointed to the Federal Government. “Newly appointed” refers to the first appointment (regardless of tenure) as an employee of the Federal Government, an appointment following a break in service of at least 90 days from a previous appointment as an employee of the Federal Government, or, in certain cases, an appointment following a break in service of less than 90 days from a previous appointment as an employee of the Federal Government. (See the definition of “newly appointed” at 5 CFR 575.102.)

### Agency Plan

Before paying a recruitment incentive, an agency must establish a recruitment incentive plan. The plan must include the designation of officials with authority to review and approve the payment of recruitment incentives, the designation of officials with authority to waive the repayment of a recruitment incentive, the categories of employees who may not receive recruitment incentives, the required

documentation for determining that a position is likely to be difficult to fill, requirements for determining the amount of a recruitment incentive, the payment methods that may be authorized, requirements governing service agreements (including criteria for determining the length of a service period, the conditions for terminating a service agreement, and the obligations of the agency and the employee if a service agreement is terminated), and documentation and recordkeeping requirements. Unless the head of the agency determines otherwise, an agency recruitment incentive plan must apply uniformly across the agency.

### Approval Criteria

For each determination to pay a recruitment incentive, an agency must document in writing the basis for determining that the position is likely to be difficult to fill in the absence of a recruitment incentive, the amount and timing of the incentive payments, and the length of the service period. The determination to pay a recruitment incentive must be made before the prospective employee enters on duty in the

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## Recruitment Incentives *(continued)*

position for which recruited. The authorized agency official must review and approve the recruitment incentive determination before the agency pays the incentive to the employee.

An agency may determine that a position is likely to be difficult to fill if the agency is likely to have difficulty recruiting candidates with the competencies (i.e., knowledge, skills, abilities, behaviors, and other characteristics) required for the position (or group of positions) in the absence of a recruitment incentive based on a consideration of the factors listed in 5 CFR 575.106(b). An agency also may determine that a position is likely to be difficult to fill if OPM has approved the use of a direct-hire authority applicable to the position.

### **Groups of Employees**

An agency may target groups of similar positions (e.g., same occupational series, interdisciplinary positions, titles, or duties) that have been difficult to fill in the past or that are likely to be difficult to fill in the future and may make the required determination to offer a recruitment incentive on a group basis. Agencies must review each decision to authorize a recruitment incentive for a group of similar positions at least annually to determine whether the positions are still likely to be difficult to fill.

### **Payment**

A recruitment incentive may not exceed 25 percent of the employee's annual rate of basic pay in effect at the beginning of the service period multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years). With OPM approval, this cap may be increased to 50 percent (based on a critical agency need), as long as the total incentive does not exceed 100 percent of the employee's annual rate of basic pay at the beginning of the service period. (See 5 CFR 575.109(c).) The incentive may be paid as an initial lump-sum payment at the beginning of the service period, in installments throughout the service period, as a final-lump sum payment upon completion of the service period, or in a combination of these methods. An incentive may be paid to an individual not yet employed who has received a written offer of employment and signed a written service agreement.

### **Rate of Basic Pay**

For the purpose of calculating a recruitment incentive, an employee's rate of basic pay includes a special rate under 5 CFR part 530, subpart C, a locality payment under 5 CFR part 531, subpart F, or similar payment under other legal authority, but excludes additional pay of any other kind. A recruitment incentive is not part of an employee's rate of basic pay for any purpose.

### **Aggregate Pay Limitation**

Payment of a recruitment incentive is subject to the aggregate limitation on pay under 5 CFR part 530, subpart B.

### **Service Agreement**

Before receiving a recruitment incentive, an employee must sign a written agreement to complete a specified period of employment with the agency. The service agreement must specify the length, commencement, and termination dates of the service period; the amount of the incentive; the method and timing of incentive payments; the conditions under which an agreement will be terminated by the agency; any agency or employee obligations if a service agreement is terminated (including the conditions under which the employee must repay an incentive or under which the agency must make additional payments for partially completed service); and any other terms and conditions for receiving and retaining a recruitment incentive. An agency may not commence a recruitment incentive service agreement while an employee receives retention incentive payments without a service agreement or during the service period established by an employee's relocation or retention incentive service agreement.

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## Recruitment Incentives *(continued)*

### **Service Period**

The employee's required service period may not be less than 6 months and may not exceed 4 years. The service period must begin upon the commencement of service with the agency and end on the last day of a pay period. The commencement of the service period may be delayed under certain conditions described in 5 CFR 575.110(b).

### **Termination of a Service Agreement**

**Discretionary** An agency may unilaterally terminate a recruitment incentive service agreement based solely on the management needs of the agency, in which case the employee is entitled to recruitment incentive payments attributable to completed service and to retain any incentive payments already received that are attributable to uncompleted service.

### **Mandatory**

An agency must terminate a service agreement if an employee is demoted or separated for cause (i.e., for unacceptable performance or conduct), receives a rating of record lower than "Fully Successful" or equivalent during the service period, or otherwise fails to fulfill the terms of the service agreement. In such cases, the employee must repay any portion of the incentive attributable to uncompleted service (See 5 CFR 575.111(h) for a repayment waiver authority.) The employee may retain any recruitment incentive payments attributable to completed service. Exception: when the employee is separated as a result of material, false or inaccurate statements or deception or fraud in examination or appointment, or as a result of failing to meet

employment qualifications, the employee WAEPA Guide – 2023 New Federal Employees Guide [waepa.org](http://waepa.org) 23 must repay all recruitment incentives received under that service agreement. The agency is not obligated to pay the employee any outstanding incentive payment attributable to completed service unless such payment was required under the terms of the recruitment incentive service agreement. The full amount of the authorized recruitment incentive must be prorated across the length of the service period to determine the amount attributable to completed service and uncompleted service.

An agency must notify an employee in writing when it terminates a recruitment incentive service agreement. The termination of a service agreement is not grievable or appealable.

## Relocation Incentives

An agency may pay a relocation incentive to a current employee who must relocate to accept a position in a different geographic area if the agency determines that the position is likely to be difficult to fill in the absence of an incentive. A relocation incentive may be

paid only when the employee's rating of record under an official performance appraisal or evaluation system is at least "Fully Successful" or equivalent.

### **Covered Positions**

A relocation incentive may be paid to an eligible individual who is appointed to a General

Schedule (GS), senior-level (SL), scientific or professional (ST), Senior Executive Service (SES), Federal

Bureau of Investigation and Drug Enforcement Administration (FBI/DEA) SES, Executive Schedule (EX), law enforcement officer, or

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## Relocation Incentives *(continued)*

prevailing rate position. OPM may approve other categories for coverage upon written request from the head of an executive agency.

### **Excluded Positions**

A relocation incentive may not be paid to Presidential appointees (except career SES appointees); noncareer appointees in the Senior Executive Service; those in positions excepted from the competitive service by reason of their confidential, policy-determining, policy-making, or policy-advocating natures; agency heads; those expected to receive an appointment as an agency head; or SES limited term appointees or SES limited emergency appointees when the appointment must be cleared through the White House Office of Presidential Personnel.

### **Relocation to Different Geographic Area**

Relocation incentives may be paid to an employee who:

- Must relocate to a different geographic area (permanently or temporarily) to accept a covered position in an agency when the position is likely to be difficult to fill
- Is an employee of the Federal Government immediately before the relocation. (See 5 CFR 575.205(a))

A position is considered to be in a different geographic area if the worksite of the new position is 50 or more miles from the worksite of the position held immediately before the move. If the worksite of the new position is less than 50 miles from the worksite of the position held immediately before the move, but the employee must relocate (i.e., establish a new residence) to accept the position, an authorized agency official may waive the 50-mile requirement and pay the employee a relocation incentive. In all cases, an employee must establish a residence in the new geographic area before the agency may pay the employee a relocation incentive.

### **An employee receiving a relocation incentive may establish a residence in the new geographic location in several ways, including but not limited to:**

- Purchasing or renting of a home, apartment, or condominium
- Residing at a residence of a friend or family member
- Temporarily residing at a hotel

The employee does not need to terminate an existing residence nor physically move his or her family, household, goods, etc. to the residence in the new geographical location in order to receive

a relocation incentive. For example, the employee could retain a residence of record in a different geographic area and live in the new duty location during the work week.

### **Maintaining a Residence in the New Geographic Location**

In addition to establishing a residence in the new geographic location before the payment of a relocation incentive, an employee must *maintain* a residence in the new geographic location for the duration of the service agreement. A relocation incentive will be terminated for employees who fail to maintain a residence throughout the service agreement in the new geographic location. Periodically throughout the service agreement, employees may be required to provide proof of residence. Examples of proof of residence include a lease, proof of purchasing property, utility bill, or a similar document to ensure the employee still resides in the new location.

### **Agency Plan**

Before paying a relocation incentive, an agency must establish a relocation incentive plan. The plan must include the designation of officials with authority to review and approve the payment of relocation incentives, the designation of officials

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## Relocation Incentives *(continued)*

with authority to waive the repayment of a relocation incentive, the categories of employees who may not receive relocation incentives, the required documentation for determining that a position is likely to be difficult to fill, requirements for determining the amount of a relocation incentive, the payment methods that may be authorized, requirements governing service agreements (including criteria for determining the length of a service period, the conditions for terminating a service agreement, and the obligations of the agency and the employee if a service agreement is terminated), and documentation and recordkeeping requirements. Unless the head of the agency determines otherwise, an agency relocation incentive plan must apply uniformly across the agency.

### **Approval Criteria**

For each relocation incentive authorized, an agency must document in writing the basis for determining that the position is likely to be difficult to fill in the absence of a relocation incentive, the amount and timing of the incentive payments, the length of the service period, and that the worksite of the new position is in a different geographic area than the previous position. The determination

to pay a relocation incentive must be made before the employee enters on duty in the position at the new duty station. The authorized agency official must review and approve the relocation incentive determination before the agency pays the incentive to the employee. Agency determinations to pay a relocation incentive must generally be made on a case-by-case basis.

An agency also may determine that a position is likely to be difficult to fill if the agency is likely to have difficulty recruiting candidates with the competencies (i.e., knowledge, skills, abilities, behaviors, and other characteristics) required for the position (or group of positions) in the absence of a relocation incentive based on a consideration of the factors listed in 5 CFR 575.206(b). An agency also may determine that a position is likely to be difficult to fill if OPM has approved the use of a direct-hire authority applicable to the position.

### **Groups of Employees**

An agency may waive the case-by-case approval requirement when the employee is a member of a group of employees subject to a mobility agreement or when a major organizational unit is being relocated to a new duty station. Under such a waiver, an agency must specify the

group of employees covered, the conditions under which the waiver is approved, and the period of time during which the waiver may be applied. Groups of employees must be approved for relocation incentives using the same criteria that apply to individuals. (See 5 CFR 575.208(b).)

### **Payment**

A relocation incentive may not exceed 25 percent of the employee's annual rate of basic pay in effect at the beginning of the service period multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years). With OPM approval, this cap may be raised to 50 percent (based on a critical agency need), as long as the total incentive does not exceed 100 percent of the employee's annual rate of basic pay at the beginning of the service period. (See 5 CFR 575.209(c).) The incentive may be paid as an initial lump-sum payment at the beginning of the service period, in installments throughout the service period, as a final lump-sum payment upon completion of the service period, or in a combination of these methods. The agency may not pay a relocation incentive until the employee establishes a residence in the new geographic area.

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## Relocation Incentives *(continued)*

### **Rate of Basic Pay**

For the purpose of calculating a relocation incentive, an employee's rate of basic pay includes a special rate under 5 CFR part 530, subpart C, a locality payment under 5 CFR part 531, subpart F, or similar payment under other legal authority, but excludes additional pay of any other kind. A relocation incentive is not part of an employee's rate of basic pay for any purpose.

### **Aggregate Pay Limitation**

Payment of a relocation incentive is subject to the aggregate limitation on pay under 5 CFR part 530, subpart B.

### **Service Agreement**

Before receiving a relocation incentive, an employee must sign a written agreement to complete a specified period of employment with the agency at the new duty station. The service agreement must specify the length, commencement, and termination dates of the service period; the amount of the incentive; the method and timing of incentive payments; the conditions under which an agreement will be terminated by the agency; any agency or employee obligations if a service agreement is terminated (including the conditions under which the employee must repay an incentive or under which the agency must make additional payments for partially completed service); and any other terms and conditions for receiving and retaining a relocation incentive.

An agency may not commence a relocation incentive service agreement during a service period established by an employee's recruitment incentive service agreement or previously authorized relocation incentive service agreement. An agency may commence a relocation incentive service agreement during a service period established by an employee's previously authorized retention incentive service agreement or while an employee receives previously authorized retention incentive payments without a service agreement.

### **Service Period**

The employee's required service period may not exceed 4 years. The service period must begin upon the commencement of service at the new duty station and end on the last day of a pay period. The commencement of the service period may be delayed under certain conditions described in 5 CFR 575.210(b).

### **Termination of a Service Agreement**

#### **Discretionary**

An agency may unilaterally terminate a relocation incentive service agreement based solely on the management needs of the agency, in which case the employee is entitled to relocation incentive payments attributable to completed service and to retain any incentive payments already received that are attributable

to uncompleted service.

#### **Mandatory**

An agency must terminate a service agreement if an employee is demoted or separated for cause (i.e., for unacceptable performance or conduct), receives a rating of record lower than "Fully Successful" or equivalent during the service period, or otherwise fails to fulfill the terms of the service agreement. In such cases, the employee may retain any relocation incentive payments attributable to completed service but must repay any portion of the incentive attributable to uncompleted service. (See 5 CFR 575.211(h) for a repayment waiver authority.) The agency is not obligated to pay the employee any outstanding incentive payment attributable to completed service unless such payment was required under the terms of the relocation incentive service agreement. The full amount of the authorized relocation incentive must be prorated across the length of the service period to determine the amount attributable to completed service and uncompleted service.

An agency must notify an employee in writing when it terminates a relocation incentive service agreement. The termination of a service agreement is not grievable or appealable.

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## Retention Incentives (likely to leave for a different Federal position)

**An agency may pay a retention incentive to a current employee if the agency determines:**

- Given the agency's mission requirements and the employee's competencies, the agency has a special need for the employee's services that makes it essential to retain the employee in his or her current position during a period of time before the closure or relocation of the employee's office, facility, activity, or organization
- The employee would be likely to leave for a different position in the Federal service in the absence of a retention incentive.

### **Eligibility**

**A retention incentive may be paid to an employee who would be likely to leave for a different position in the Federal service when:**

- The employee is in a covered position (see "Covered Positions" below)
- The employee's rating of record under an official performance appraisal or evaluation system is at least "Fully Successful" or equivalent
- The agency has provided a general or specific written notice to the employee that his or her position may or would be affected by the

closure or relocation of the employee's office, facility, activity organization (e.g., the employee's position may or would move to a new geographic location or the employee's position may or would be eliminated).

### **Covered Positions**

A retention incentive may be paid to an eligible individual in a General Schedule (GS), senior-level (SL), scientific or professional (ST), Senior Executive Service (SES), Federal Bureau of Investigation and Drug Enforcement Administration (FBI/DEA) SES, Executive Schedule (EX), law enforcement officer, or prevailing rate position. The U.S. Office of Personnel Management (OPM) may approve other categories for coverage upon written request from the head of an executive agency.

### **Excluded Positions**

Retention incentives may not be paid to Presidential appointees (except career SES appointees); noncareer appointees in the SES; those in positions excepted from the competitive service by reason of their confidential, policy-determining, policy-making, or policy-advocating natures; agency heads; those expected to receive an appointment as an agency head; or SES limited term appointees or SES limited emergency appointees when the appointment must

be cleared through the White House Office of Presidential Personnel.

### **Agency Plan**

Before paying a retention incentive to an employee who would be likely to leave for a different position in the Federal service before the closure or relocation of the employee's office, facility, activity, or organization, an agency must establish a retention incentive plan or include in its existing retention incentive plan the conditions and requirements governing the use of this authority. The plan must include the designation of officials with authority to review and approve the payment of these retention incentives. (See 5 CFR 575.307(a) for additional requirements for retention incentive plans.)

### **Approval Criteria**

**For each retention incentive authorized for an employee who would be likely to leave for a different position in the Federal service before the closure or relocation of the employee's office, facility, activity, or organization, an agency must document in writing:**

- The basis for determining the agency has a special need for the employee's services that makes it essential to retain the employee, based on the agency's mission needs and the employee's during

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## Retention Incentives (likely to leave for a different Federal position)

(continued)

a period of time before the closure or relocation of the employee's office, facility, activity, or organization

- The basis for determining, in the absence of a retention incentive, the employee would be likely to leave for a different position in the Federal service
- The basis for determining the amount and timing of the incentive payments and the length of the service period

An agency must address the factors listed in 5 CFR 575.315(d)(2) when making such written determinations. competencies.

### Payment

An agency must establish a single retention incentive rate for an employee who would be likely to leave for a different position in the Federal service before the closure or relocation of the employee's office, facility, activity, or organization, not to exceed 25 percent (or not to exceed 50 percent with OPM's approval based on a critical agency need). Other provisions for computing and paying retention incentives under 5 CFR 575.309 generally apply to retention incentives authorized for such an employee. However, an agency may not pay a retention incentive in biweekly installments at the full retention incentive percentage rate.

Aggregate Pay Limitation  
Payment of a retention incentive is subject to the aggregate limitation on pay under 5 CFR part 530, subpart B.

### Service Agreement

Before receiving a retention incentive, an employee who would be likely to leave for a different position in the Federal service before the closure or relocation of the employee's office, facility, activity, or organization must sign a written agreement to complete a specified period of service with the agency. Requirements for service agreements are found in 5 CFR 575.315(f).

### Annual Review

An agency must review each determination to pay a retention incentive to an employee who would be likely to leave for a different position in the Federal service before the closure or relocation of the employee's office, facility, activity, or organization at least annually to determine if payment is still warranted.

### Termination of Retention Incentives

The service agreement termination provisions in 5 CFR 575.311 apply to retention incentives authorized for an employee who would be likely to leave for a different position in the Federal service before the closure or relocation of the employee's office, facility, activity, or organization.

**In addition, an agency must terminate a service agreement for such an employee if:**

- The closure or relocation is cancelled or no longer affects the employee's position
- The employee moves to another position not affected by the closure or relocation (including another position within the same agency)
- The employee moves to a different position in the same office, facility, activity, or organization subject to closure or relocation that is not covered by the employee's service agreement. In this situation, the agency may authorize a new retention incentive for the employee, as appropriate

An agency must review the determination to pay a retention incentive at least annually to determine whether payment is still warranted and certify this determination in writing.

See 5 CFR 575.315(g) for information on employee entitlements and agency obligations upon termination of retention incentive service agreements for employees who would be likely to leave for a different position in the Federal service before the closure or relocation of the employee's office, facility, activity, or organization.

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## Retention Incentives (likely to leave for a different Federal position)

(continued)

### Reporting Requirements

Agencies must submit a report to OPM by March 31 each year on the use of retention incentives for employees who would be likely to leave for a different position in the Federal service before the closure or relocation of the employee's office, facility, activity, or organization.

#### Each report must include:

- A description of how this authority to pay retention incentives was used in the agency during the previous calendar year
- The number and dollar amount of such retention incentives paid during the previous calendar year to individuals by occupational series and grade, pay level, or other pay classification
- The agency to which each employee would be likely to leave in the absence of a retention incentive
- Each employee's official worksite and the geographic location of the agency to which each employee would be likely to leave in the absence of a retention incentive
- Other information, records, reports, and data as OPM may require

## Retention Incentives (likely to leave the Federal service)

An agency may pay a retention incentive to a current employee if the agency determines that the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee and that the employee would be likely to leave the Federal service in the absence of a retention incentive. A retention incentive may be paid only when the employee's rating of record under an official performance appraisal or evaluation system is at least "Fully Successful" or equivalent.

### Covered Positions

A retention incentive may be paid to an eligible individual in a General Schedule (GS), senior-level (SL), scientific

or professional (ST), Senior Executive Service (SES), Federal Bureau of Investigation and Drug Enforcement Administration (FBI/DEA) SES, Executive Schedule (EX), law enforcement officer, or prevailing rate position. OPM may approve other categories for coverage upon written request from the head of an executive agency.

### Excluded Positions

Retention incentives may not be paid to Presidential appointees (except career SES appointees); noncareer appointees in the Senior Executive Service; those in positions excepted from the competitive service by reason of their confidential, policy-determining, policy-making, or policy-advocating natures;

agency heads; those expected to receive an appointment as an agency head; or SES limited term appointees or SES limited emergency appointees when the appointment must be cleared through the White House Office of Presidential Personnel.

### Agency Plan

Before paying a retention incentive, an agency must establish a retention incentive plan. The plan must include the designation of officials with authority to review and approve the payment of retention incentives, the categories of employees who may not receive retention incentives, the required documentation for determining that an employee would be likely to leave the Federal service, requirements

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## Retention Incentives (likely to leave the Federal service) *(continued)*

for determining the amount of a retention incentive, the payment methods that may be authorized, requirements governing service agreements (including criteria for determining the length of a service period, the conditions for terminating a service agreement, the obligations of the agency if a service agreement is terminated, and the conditions for terminating retention incentive payments when no service agreement is required), and documentation and recordkeeping requirements. Unless the head of the agency determines otherwise, an agency retention incentive plan must apply uniformly across the agency.

### **Approval Criteria**

For each retention incentive authorized, an agency must document in writing the basis for determining that the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee and that the employee would be likely to leave the Federal service in the absence of a retention incentive. An agency may make this determination based on a consideration of the factors listed in 5 CFR 575.306(b). In addition, an agency must document in writing the basis for determining the amount and timing of the incentive payments and the length of the

service period. The authorized agency official must review and approve the retention incentive determination before the agency pays the incentive to the employee.

### **Payment**

An agency must establish a single retention incentive rate for the employee, expressed as a percentage of the employee's rate of basic pay, not to exceed 25 percent. With OPM approval, this cap may be increased to 50 percent (based on a critical agency need). (See 5 CFR 575.309(e).) The incentive may be paid in installments after the completion of specified periods of service within the full period of service required by the service agreement or in a single lump sum after completion of the full period of service required by the service agreement. An agency may not pay a retention incentive as an initial lump-sum payment at the start of a service period or in advance of fulfilling the service period for which the retention incentive is received. A retention incentive installment payment may be computed at the full retention incentive percentage rate or at a reduced rate with the excess deferred for payment at the end of the full-service period.

An agency may not offer or authorize a retention incentive for an individual prior to employment with the agency. An agency may not begin

paying a retention incentive during the service period established by an employee's recruitment or relocation incentive service agreement. However, a relocation incentive may be paid to an employee who is already receiving a retention incentive. An agency may not begin paying a retention incentive during the service period established by an employee's previously authorized retention incentive or while an employee is receiving a previously authorized retention incentive without a service agreement.

### **Groups of Employees**

An agency may pay a retention incentive of up to 10 percent of basic pay (or up to 50 percent with OPM approval, based on a critical agency need) to an eligible group or category of employees if the agency determines that the unusually high or unique qualifications of the group or a special need of the agency for the employees' services makes it essential to retain the employees and that there is a high risk that a significant number of employees in the group would leave the Federal service in the absence of a retention incentive. (See the [Group Retention Incentives – likely to leave the Federal service – fact sheet](#) for additional information.)

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## Retention Incentives (likely to leave the Federal service) *(continued)*

### **Rate of Basic Pay**

For the purpose of calculating a retention incentive, the employee's rate of basic pay includes a special rate under 5 CFR part 530, subpart C, a locality payment under 5 CFR part 531, subpart F, or similar payment under other legal authority, but excludes additional pay of any other kind. A retention incentive is not part of an employee's rate of basic pay for any purpose.

### **Aggregate Pay Limitation**

Payment of a retention incentive is subject to the aggregate limitation on pay under 5 CFR part 530, subpart B.

### **Service Agreement**

Before receiving a retention incentive, an employee must sign a written agreement to complete a specified period of service with the agency. The service period must begin on the first day of a pay period and end on the last day of a pay period. The service agreement must specify the retention incentive percentage rate established for the employee, the method and timing of incentive payments, the conditions under which an agreement will be terminated by the agency, any agency obligations if a service agreement is terminated (including the conditions under which the agency must make an additional payment for partially completed service), and any other terms and conditions for receiving and

retaining retention incentives. A written service agreement is not required if the agency pays the retention incentive in biweekly installments and sets the biweekly installment payment at the full retention incentive percentage rate established for the employee. (See 5 CFR 575.310(f).)

### **Continuation, Reduction, or Termination of a Retention Incentive**

#### **Discretionary**

An agency may unilaterally terminate a retention incentive service agreement based solely on the management needs of the agency, in which case the employee is entitled to retain any retention incentive payment attributable to completed service and to receive any portion of a retention incentive payment owed by the agency for completed service.

#### **Mandatory**

For each retention incentive that is subject to a service agreement, an agency must review the determination to pay a retention incentive at least annually to determine whether the original determination still applies or whether payment is still warranted and certify this determination in writing.

An agency must terminate a retention incentive service agreement when conditions change such that the

original determination to pay the retention incentive no longer applies (such as when the agency assigns the employee to a different position that is not within the terms of the service agreement) or when payment is no longer warranted. The employee is entitled to retain any retention incentive payment attributable to completed service and to receive any portion of a retention incentive payment owed by the agency for completed service.

An agency also must terminate a service agreement if the employee is demoted or separated for cause (i.e., for unacceptable performance or conduct), receives a rating of record below "Fully Successful" or equivalent during the service period, or otherwise fails to fulfill the terms of the service agreement. In such cases, the employee is entitled to retain retention incentive payments previously paid by the agency that are attributable to the completed portion of the service period. If the employee received retention incentive payments that are less than the amount that would be attributable to completed service, the agency is not obligated to pay the employee any outstanding incentive payments attributable to completed service unless

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## Retention Incentives (likely to leave the Federal service) *(continued)*

such payment was required under the terms of the retention incentive service agreement.

An explanation of how to determine the amount of retention incentive payments that may be owed to an employee for completed service may be found at 5 CFR 575.311(e).

### **When No Service Agreement is Required**

For retention incentives that are paid in biweekly installments when no service agreement is required, an agency must review each determination to pay

the incentive annually to determine whether payment is still warranted and certify this determination in writing. An agency must reduce or terminate the retention incentive whenever conditions change such that the original determination to pay the retention incentive no longer applies, (such as the agency assigns the employee to a different position that is not within the terms of the original determination) or payment at the original level is no longer warranted. In addition, an agency must terminate a retention incentive authorization when no service

agreement is required if the employee is demoted or separated for cause or receives a rating of record of less than “Fully Successful” or equivalent. An agency may unilaterally terminate a retention incentive based solely on the management needs of the agency. (See 5 CFR 575.311(f).)

An agency must notify an employee in writing when it terminates a retention service agreement or a retention incentive when no service agreement is required. Termination or reduction of a retention incentive is not grievable or appealable.

## Superior Qualifications and Special Needs Pay-Setting Authority

**Agencies may set the rate of basic pay of a newly appointed employee at a rate above the minimum rate of the appropriate General Schedule (GS) grade because of:**

- The superior qualifications of the candidate
- A special need of the agency for the candidate's services

### **Covered Positions**

Agencies may use the superior qualifications and special needs pay-setting authority to set the rate of basic pay for an employee newly-appointed to any General Schedule position, including permanent

and temporary positions in the competitive or excepted service, at any grade level.

### **Newly-Appointed Employees**

**Agencies may use the superior qualifications and special needs pay-setting authority to set the rate of basic pay for an employee upon:**

- First appointment as a civilian employee of the Federal Government
- Reappointment to a GS position with a 90-day break in service. (See 5 CFR 531.212(a)(3) for exceptions to the 90-day break in service requirement.)

### **Required Documentation**

Before using the superior qualifications and special needs pay-setting authority, agencies must establish documentation and recordkeeping procedures sufficient to allow reconstruction of the action taken in each case.

**Documentation must include a description of the:**

- Superior qualifications of the individual or special agency need for the candidate's services that justifies a higher minimum rate
- Factor(s) and supporting documentation under 5 CFR 531.212(c) that were used to justify the rate at which the employee's pay is set

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## Superior Qualifications and Special Needs Pay-Setting Authority

(continued)

- Reason(s) for authorizing a higher minimum rate instead of or in addition to a recruitment incentive under 5 CFR part 575, subpart A

### Superior Qualifications Determination

**An agency may determine that a candidate has superior qualifications based on:**

- The level, type, or quality of the candidate's skills or competencies demonstrated or obtained through experience and/or education
- The quality of the candidate's accomplishments compared to others in the field
- Other factors that support a superior qualifications determination

The candidate's skills, competencies, experience, education, and/or accomplishments must be relevant to the requirements of the position to be filled. These qualities must be significantly higher than that needed to be minimally qualified for the position and/or be of a more specialized quality compared to other candidates.

### Special Needs Determination

An agency may determine that a candidate fills a special agency need if the type,

level, or quality of skills and competencies or other qualities and experiences possessed by the candidate are relevant to the requirements of the position and are essential to accomplishing an important agency mission, goal, or program activity.

A candidate also may meet the special needs criteria by meeting agency workforce needs, as documented in the agency's strategic human capital plan.

### Pay Rate Determination

**An agency may consider one or more of the following factors, as applicable in the case at hand, to determine the step at which to set an employee's payable rate of basic pay using the superior qualifications and special needs pay-setting authority:**

1. The level, type, or quality of the candidate's skills or competencies
2. The candidate's existing salary, recent salary history, or salary documented in a competing job offer (taking into account the location where the salary was or would be earned and comparing the salary to payable rates of basic pay in the same location)

3. Significant disparities between Federal and non-Federal salaries for the skills and competencies required in the position to be filled
4. Existing labor market conditions and employment trends, including the availability and quality of candidates for the same or similar positions
5. The success of recent efforts to recruit candidates for the same or similar positions
6. Recent turnover in the same or similar positions
7. The importance/criticality of the position to be filled and the effect on the agency if it is not filled or if there is a delay in filling it
8. The desirability of the geographic location, duties, and/or work environment associated with the position
9. Agency workforce needs, as documented in the agency's strategic human capital plan
10. Other relevant factors \*

*\*One example of a relevant factor is the salaries the agency has paid to similarly qualified candidates filling similar positions.*

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## Severance Pay

Severance pay is authorized for full-time and part-time employees who are involuntarily separated from Federal service and who meet other conditions of eligibility.

### Eligibility for Severance Pay

To be eligible for severance pay, an employee must be serving under a qualifying appointment, have a regularly scheduled tour of duty, have completed at least 12 months of continuous service, and be removed from Federal service by involuntary separation for reasons other than inefficiency (i.e., unacceptable performance or conduct).

### Ineligibility for Severance Pay

An employee is not eligible for severance pay if he or she is serving under a nonqualifying appointment; declines a reasonable offer of assignment to another position; is serving under a qualifying appointment in an agency scheduled to be terminated within 1 year after the date of the appointment; is receiving injury compensation under 5 U.S.C. chapter 81, subchapter I; or is eligible upon separation for an immediate annuity from a Federal civilian retirement system or from the uniformed services. The employing agency must determine whether an employee was provided a reasonable offer, as defined in 5 CFR 550.703.

### Qualifying Appointments

**The following appointments are qualifying appointments for severance pay eligibility:**

- A career or career-conditional appointment in the competitive service or the equivalent in the excepted service
- A career appointment in the Senior Executive Service
- An excepted appointment without time limitation, except under Schedule C or an equivalent appointment made for similar purposes
- An overseas limited appointment without time limitation
- A status quo appointment, including one that becomes indefinite when the employee is promoted, demoted, or reassigned
- A time-limited appointment in the Foreign Service, when the employee was assigned under a statutory authority that carried entitlement to reemployment in the same agency, but this right of reemployment has expired
- A time-limited appointment (or series of time-limited appointments by the same

agency without any breaks in service) for full-time employment that takes effect within 3 calendar days after the end of an qualifying appointment

### Nonqualifying Appointments

**The following types of appointments are nonqualifying appointments and do not convey eligibility for severance pay:**

- An appointment at a noncovered agency (see the definition of agency in 5 CFR 550.703)
- An appointment in which the employee has an intermittent work schedule
- A Presidential appointment
- An emergency appointment
- An excepted appointment under Schedule C or an equivalent appointment made for similar purposes
- A noncareer appointment in the Senior Executive Service or an equivalent appointment made for similar purposes; and
- A time-limited appointment (except for a time-limited appointment that is qualifying because it is made effective within 3 calendar days after

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## Severance Pay *(continued)*

separation from a qualifying appointment), including:

- A term appointment
- An overseas limited appointment with a time limitation
- A limited term or limited emergency appointment in the Senior Executive Service, as defined in 5 U.S.C. 3132(a), or an equivalent appointment made for similar purposes
- A Veterans Readjustment Appointment
- A Presidential Management Fellows appointment

### **12 Months of Continuous Employment**

To be eligible for severance pay, an employee must have completed at least 12 months of continuous service by the date of separation. This continuous service may consist of one or more civilian Federal positions held over a period of 12 months without a single break in service of more than 3 calendar days. The positions held must have been under one or more qualifying appointments; one or more nonqualifying temporary appointments that precede the current qualifying appointment; or an appointment to a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard that precedes the current qualifying

appointment in the Department of Defense or the Coast Guard, respectively.

### **Resignations and Involuntary Separation**

**If an employee expects to be involuntarily separated and resigns, the employee is considered to have been involuntarily separated if he or she resigns after receiving a specific written notice that he or she will be involuntarily separated by a particular action effective on a particular date; or a general written notice of reduction in force or transfer of functions which:**

- Is issued by a properly authorized agency official
- Announces that the agency has decided to abolish, or transfer to another commuting area, all positions in the competitive area by a particular date (no more than 1 year after the date of the notice)
- States that, for all employees in that competitive area, a resignation following receipt of the notice constitutes an involuntary separation for severance pay purposes

However, a resignation is not considered an involuntary separation if the specific or general written notice is canceled before the separation (based on that resignation) takes effect. Resignations under any other circumstances

are voluntary separations and do not carry entitlement to severance pay.

### **Computation of Severance Pay Fund**

An employee's severance pay fund may consist of two parts—the basic severance pay allowance and an age adjustment allowance, if applicable.

#### **Basic severance pay allowance**

**The basic severance pay allowance consists of:**

- One week of pay at the rate of basic pay for the position held by the employee at the time of separation for each full year of creditable service through 10 years
- Two weeks of pay at the rate of basic pay for the position held by the employee at the time of separation for each full year of creditable service beyond 10 years
- Twenty-five percent of the otherwise applicable amount for each full 3 months of creditable service beyond the final full year

The weekly rate of basic pay for employees with variable work schedules is determined based on the weekly average for the last position held by the employee during the 26 biweekly pay periods immediately preceding separation. The regulations at 5 CFR 550.707(b) provide specific instructions on

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## Severance Pay *(continued)*

calculating the weekly rate for various types of variable work schedules, including part-time work and seasonal work.

### **Age Adjustment Allowance**

The basic severance pay allowance is augmented by an age adjustment allowance consisting of 2.5 percent of the basic severance pay allowance for each full 3 months of age over 40 years.

### **Rate of Basic Pay**

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by the employee, including, as applicable, annual premium pay for standby duty, law enforcement availability pay, straight-time pay for regular overtime hours for firefighters, night differential for prevailing rate employees, locality payments, and special rate supplements. Rate of basic pay does not include additional pay of any other kind. (See definition of rate of basic pay in 5 CFR 550.703.)

### **Lifetime Limitation**

An employee may not receive a total of more than 52 weeks of severance pay during his or her lifetime.

### **Creditable Service for Computing Severance Pay**

The following types of service are creditable for computing an employee's severance pay:

- Civilian service as an employee (as defined in 5 U.S.C. 2105), excluding time during a period of nonpay status that is not

creditable for annual leave accrual purposes under 5 U.S.C. 6303(a)

- Service performed with the United States Postal Service or the Postal Rate Commission
- Military service, including active or inactive training with the National Guard, when performed by an employee who returns to civilian service through the exercise of a restoration right provided by law, Executive Order, or regulation
- Service performed by an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard and who moves to a civilian position with the Department of Defense or the Coast Guard, respectively, without a break in service of more than 3 days
- Service performed with the government of the District of Columbia by an individual first employed by that government before October 1, 1987, excluding service as a teacher or librarian of the public schools of the District of Columbia

### **Accrual and Payment of Severance Pay**

Severance pay accrues on a day-to-day basis following the recipient's separation from Federal employment. Severance payments must be made at the same pay period intervals that salary payments would be

made if the recipient were still employed. The amount of the severance payment is computed using the recipient's rate of basic pay in effect immediately before separation. Severance payments are subject to appropriate deductions for income and Social Security taxes. Severance payments are the responsibility of the agency employing the recipient at the time of the involuntary separation that triggered the current entitlement to severance pay. The regulations at 5 CFR 550.709 provide more details on the accrual and payment of severance pay.

### **Reemployment and Termination or Suspension of Severance Pay**

If an individual entitled to severance pay later accepts a position with the Federal Government or the government of the District of Columbia, he or she is no longer eligible for severance pay and severance pay is terminated. The employing agency must then record on the appointment document the number of weeks of severance pay the individual has received. If the employee again becomes entitled to severance pay, the agency from which the employee is involuntarily separated must recompute the severance pay allowance on the basis of all creditable service and the individual's current age. The agency must deduct the number of weeks for which severance pay previously was received from the number of

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## Initial Decision and Reconsideration

weeks it would take to exhaust the recomputed allowance.

If an individual entitled to severance pay is employed by the Federal Government or the government of the

District of Columbia under a nonqualifying time-limited appointment, severance pay is suspended during the life of the appointment but resumes (without being recomputed) when the employee separates

from the nonqualifying time-limited appointment. The resumed severance payments are the responsibility of the agency that originally separated the individual involuntarily.

## Work Schedules

### Adjustment of Work Schedules for Religious Observances

To the extent that modifications in work schedules do not interfere with the efficient accomplishment of an agency's mission, an employee whose personal religious beliefs require that he or she abstain from work at certain times of the workday or workweek must be permitted to work alternative work hours so that the employee can meet the religious obligation. The hours worked in lieu of the normal work schedule do not create any entitlement to premium pay (including overtime pay).

### Employee Coverage

Adjustments of work schedules for religious observances may be approved for an employee who is employed in or under an executive agency, as defined in section 105 of title 5, United States Code.

### Approval

Agencies should require employees to submit a written request for an adjusted work schedule in advance. An employee should specifically state that his or her request for an adjusted work schedule is for religious purposes and

should provide acceptable documentation of the need to abstain from work.

When deciding whether an employees request for an adjusted work schedule should be approved, a supervisor should not make any judgment about the employees religious beliefs or his or her affiliation with a religious organization. A supervisor may disapprove an employees request if modifications of an employees work schedule would interfere with the efficient accomplishment of the agency's mission.

If an employees request is approved, a supervisor may determine whether the alternative work hours will be scheduled before or after the religious observance.

### Documenting An Adjusted Work Schedule

An employees request for time off should not be granted without simultaneously scheduling the hours during which the employee will work to make up the time. This provides a clear record of the employees adjusted work schedule. An employee should

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## Work Schedules *(continued)*

be allowed to accumulate only the number of hours of work needed to make up for previous or anticipated absences from work for religious observances.

If an employee is absent when he or she is scheduled to perform work to make up for a planned absence for a religious observance, the employee must take paid leave, request leave without pay, or be

charged absent without leave, if appropriate. These are the same options that apply to any other absence from an employees basic work schedule.

### Impact on Pay

The overtime pay provisions of title 5, United States Code, and the Fair Labor Standards Act of 1938, as amended, do not apply to employees who work different hours or days because of religious

observances, even if an employee voluntarily works in excess of 40 hours per week or 8 hours per day for this purpose. If an employee is separated or transferred before using the time set aside for religious observances, any hours not used must be paid at the employees rate of basic pay in effect when the extra hours of work were performed.

## Alternative Work Schedules (AWS) and Compressed Work Schedules (CWS)

An agency may implement for its employees an alternative work schedule (AWS) instead of traditional fixed work schedules (e.g., 8 hours per day, 40 hours per week). Within rules established by the agency, AWS can enable employees to have work schedules that help the employee balance work and family responsibilities.

### There are two categories of AWS:

- 1 Flexible Work Schedules (FWS)
- 2 Compressed Work Schedules (CWS)  
CWS are fixed work schedules, but they enable full-time employees to complete the basic 80-hour biweekly work requirement in less than 10 workdays.

### Employee Coverage

A Federal employee, as defined in section 2105(a) or (c) of title 5, United States Code, who is employed by an agency, as defined in 5 U.S.C. 6121(1),

may be covered by a CWS. An employee may request to be excluded for a personal hardship.

### Implementation Restrictions

For employees in a bargaining unit: The agency must

successfully negotiate a CWS program with the union for a represented group of employees prior to implementation (5 U.S.C. 6130).

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## Alternative Work Schedules (AWS) and Compressed Work Schedules (CWS) *(continued)*

For employees not in a bargaining unit: The agency must secure a favorable vote from the majority of employees in the affected group before implementing a CWS program (5 U.S.C. 6127 (b)(1)).

### **Credit Hours**

Credit hours are not permitted under a CWS program.

### **Overtime**

For full-time employees, all hours worked in excess of the established compressed work schedule are overtime hours.

### **Compensatory Time Off**

An employee on a Compressed Work Schedule (CWS) may request compensatory time off only for the performance of irregular or occasional overtime

work. Compensatory time off may not be approved for any member of the Senior Executive Service (SES).

### **Night Pay**

The normal premium pay rules apply for night pay. See 5 CFR 550.121 and 122 for General Schedule employees and 5 CFR 532.505 for prevailing rate employees.

### **Holidays**

On holidays, an employee is normally excused from work and entitled to basic pay for the number of hours of his or her CWS on that day. In the event the President issues an Executive Order granting a “half-day” holiday, full-time CWS employees are normally excused from work during the last half of their

“basic work requirement” (i.e., nonovertime hours) on that day.

### **Holiday Premium Pay**

Holiday premium pay (equal to 100 percent of the rate of basic pay) is paid for nonovertime hours of work that fall within the hours regularly scheduled on the holiday.

### **Sunday Premium Pay**

Sunday premium pay is paid for non-overtime work performed by full-time employees. For an employee on a CWS, Sunday premium pay is paid for the entire non-overtime regularly scheduled tour of duty that begins or ends on Sunday. It may not be paid for periods of nonwork, including leave, holidays, and excused absence.

## Credit Hours

Credit hours are hours that an employee elects to work, with supervisory approval, in excess of the employee's basic work requirement under a flexible work schedule. The basic work requirement for full-time employees is 80 non-overtime hours in a 2-week pay period. Agency policies or union agreements may place restrictions on earning or using credit hours.

Employees are not paid basic pay or overtime pay for credit hours when they earn them. An employee may use credit

hours during a subsequent day, week, or pay period, with supervisory approval, to allow the employee to be absent from an equal number of hours of the employee's basic work requirement with no loss of basic pay. (See the definitions of basic work requirement and credit hours in 5 U.S.C. 6121(3) and (4), respectively.)

### **Eligibility for Credit Hours**

Full-time or part-time employees under flexible work schedules may earn credit hours if agency policies for flexible work schedules or union agreements

permit. Agencies may permit GS employees, wage employees, and DOD nonappropriated fund employees under flexible work schedules to earn credit hours. Members of the Senior Executive Service (SES) may not earn credit hours. See 5 U.S.C. 6121(2) and 5 CFR 610.408.

### **Part-time Employees and Credit Hours**

Agency policies or union agreements may permit part-time employees to earn credit hours if they elect to work in excess of their basic work requirement. Part-time employees under

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## Credit Hours *(continued)*

flexible work schedules may have a basic work requirement of between 32 and 64 hours during a biweekly pay period. See 5 U.S.C. 3401(2). Overtime pay standards do not have to be met before part-time employees may earn credit hours. Part-time employees may accumulate a maximum of the hours in their biweekly basic work requirement as credit hours for carryover to the next biweekly pay period. See 5 U.S.C. 6126(a).

### **Restrictions on Earning or Using Credit Hours**

An employee's election to work a flexible work schedule and earn credit hours is subject to limitations prescribed by an agency to ensure that the duties and responsibilities of a position are fulfilled. Subject to any applicable negotiated agreement, the head of an agency may determine that any organization within the agency is being substantially disrupted in carrying out its functions or is incurring additional costs because of use of flexible work schedules. If such a finding is made, the agency head may restrict the use of credit hours, limit flexible time bands, or exclude any employee or group of employees from using flexible work schedules.

Even without such a finding, an agency may establish limitations on how credit hours are earned and the number of credit hours that may be earned. (See 5 U.S.C. 6122(b).)

### **When Credit Hours may be Earned**

The definition of credit hours in law (5 U.S.C. 6121(4)) provides that credit hours may be earned only within an employee's flexible work schedule. This means that an employee may earn credit hours only by working within the flexible time bands established by the agency or union agreement.

Hours that will count toward the basic work requirement may not be considered credit hours. For example, if an employee would otherwise complete 9 hours of his or her 80-hour basic work requirement on a workday, the ninth hour is not a credit hour. If the agency's flexible time bands are broad enough, the agency may permit the employee in this situation to work a 10th hour voluntarily and earn 1 credit hour.

### **Credit Hours on Saturday or Sunday**

Agency policies or an applicable union agreement may permit employees to earn credit hours on Saturdays or Sundays. An agency that wishes to permit employees to earn credit hours on Saturday or Sunday must establish flexible time bands on Saturdays or Sundays.

### **Are Credit Hours Regularly Scheduled?**

No. Credit hours are worked voluntarily by employees

in excess of their regularly scheduled 80-hour biweekly basic work requirement, which may include flexible hours. (See 5 CFR 610.111(d).)

### **Maximum Number of Credit Hours that may be Carried Over to the Next Pay Period**

For a full-time employee, only 24 credit hours may be carried over to the next pay period. For a part-time employee, only the hours in the employee's biweekly basic work requirement may be carried over to the next pay period. An agency policy or union agreement may place stricter limitations on how many credit hours may be accumulated or carried over.

Only 1 credit hour is earned for each hour of voluntary work in excess of the basic work requirement. (See 5 U.S.C. 6126(a).)

### **Use of Credit Hours before they are Earned**

There is no authority in law or regulation to advance credit hours. Time cannot be charged against credit hours until credit hours have been earned. For this reason, some agencies do not permit employees to use credit hours until the pay period following the one in which they are earned.

Even if an agency has such a policy, the agency may still permit supervisors to approve changes in the time when employees will work flexible hours (part of the basic work

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## Credit Hours *(continued)*

requirement) after the beginning of a week or a pay period. For example, an employee may be permitted or required to shift some flexible hours from the first week of a pay period to the second week of the pay period. As long as the employee completes his or her 80-hour basic work requirement during the pay period, this can be done without any charge to leave.

### **What Happens to Earned Credit Hours if an Employee Leaves Federal Employment or Transfers to Another Federal Department or Agency**

A full-time employee receives pay for a maximum of 24 unused credit hours at his or her current rate of basic pay when Federal employment ends, when the employee transfers to another agency (as defined in 5 U.S.C. 6121(1)), or when the employee otherwise is no longer subject to an agency's flexible work schedule program. A part-time employee who is no longer subject to an agency's flexible work schedule program receives basic pay for accumulated credit hours that are not in excess of the employees biweekly basic work requirement. Agencies should have policies for determining whether employees continue to be subject to an agency's flexible work schedule program after other personnel actions or work schedule changes occur. (See 5 U.S.C. 6126.)

The premium pay limitations in 5 U.S.C. 5547 do not apply to payment for credit hours even though they apply to payments for unused compensatory time off.

### **May Credit Hours be Earned for Travel?**

Typically, credit hours may not be earned for travel since travel is always ordered by an agency. Travel hours are not hours that an employee elects to work with supervisory approval. Subject to agency policies or the provisions of negotiated agreements, agencies should consider placing employees on standard work schedules during extended periods of travel.

Under certain conditions, an agency may permit an employee to earn credit hours by performing productive and essential work while in a travel status. For example, while traveling, employees may use a laptop computer to write speeches and draft or edit reports and other correspondence. Since travel itself does not generally constitute hours of work, the work that is done must be approved and verified by a supervisor.

### **All of the following conditions must be met to allow an employee to earn credit hours while in a travel status are:**

- The employee must be under a flexible work schedule
- The employee must perform work within designated hours when credit hours may be earned under the agency's flexible work schedule policy (see 5 U.S.C. 6122(a)(2))
- The employee must elect to perform the work voluntarily

- The hours of work must be in excess of the basic work requirement for the employee
- Travel must be scheduled during the regularly scheduled working hours for the employee to the maximum extent practicable (see 5 U.S.C. 6101(b)(2) and 5 CFR 610.123)
- The agency must ensure that a policy permitting employees to earn credit hours for working during travel time is consistent with applicable legal and regulatory requirements, as well as with agency policies

If work is required during travel time outside of the employees basic work requirement, overtime pay must be paid for work that is ordered in excess of 8 hours in a day or 40 hours in a week. (See 5 U.S.C. 6121(6).)

### **May Credit Hours be Earned for Training?**

No, credit hours cannot be earned if training or homework is required by an agency. If training is required, it does not constitute hours that an employee elects to work with supervisory approval.

Agencies may place employees on a standard work schedule (8 hours a day, 5 days a week, Monday through Friday) during a period of training or on a work schedule that corresponds to the hours of training. Employees must be notified of changes in their basic work schedule in advance of the agency's administrative workweek.

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## Credit Hours *(continued)*

### **May Employees Earn Overtime Pay or Compensatory Time Off for Credit Hours?**

No overtime pay or compensatory time off may be paid when employees earn credit hours or when credit hours are liquidated because Federal employment ends. (See 5 U.S.C. 6123(b) and 6126.)

### **May GS Employees Earn Night Pay when Credit Hours are Earned or Used?**

No night pay may be paid when credit hours are earned. That is because when employees earn credit hours, they are not performing regularly scheduled work. By contrast, night pay is authorized for work performed at night during an employees regularly scheduled tour of duty. See 5 U.S.C. 5545(a).

No night pay may be paid for credit hours that are used at night to be absent from the employees basic tour of duty. This is because under 5 U.S.C. 5545(a) and OPM regulations, employees must generally perform work at night to earn night pay. There is no provision of law or OPM regulation that permits night pay to be paid when credit hours are used to be absent from regularly scheduled night work. For requirements on entitlement to night differential when credit hours are earned by wage (prevailing rate) employees and

employees employed under title 38, United States Code, see 5 U.S.C. 6123(c)(2).

### **May Employees Receive Sunday Premium Pay when they Earn or Use Credit Hours?**

No. Credit hours may be earned only when employees work voluntarily, with supervisory approval, in excess of their regularly scheduled basic work requirement. Sunday premium pay is paid only when full-time employees are required to work during a Sunday tour of duty that is part of their regularly scheduled basic work requirement. Sunday premium pay is limited to 8 hours for each regularly scheduled basic tour of duty that begins or ends on Sunday. Thus, Sunday premium pay may not be paid when employees earn credit hours.

Also, employees may not receive Sunday premium pay if they are permitted to use credit hours in order to be absent from their regularly scheduled basic work requirement on a Sunday. Employees may not receive Sunday premium pay for any period of time when they do not actually perform work on Sunday. (See Section 624 of the Treasury and General Government Appropriations Act, 1999, which is a permanent restriction.)

### **May Employees Earn Hazardous Duty Pay when they Earn or Use Credit Hours?**

When a GS employee performs work during any part of a day for which hazardous duty pay is authorized, the employee is entitled to hazardous duty pay for all hours in a pay status on that day. (See 5 CFR 550.905). This means that if an employee is entitled to hazardous duty pay during any part of a day when credit hours are earned or used, the employee must be paid hazardous duty pay for the credit hours as well. Subject to the provisions of any applicable negotiated agreement, an agency may establish a policy that employees cannot earn and/or use credit hours on any day when the employee is entitled to hazardous duty pay.

### **May Employees Earn Credit Hours During Excused Absence, Such as Hours when they are Excused from Work because of a Weather Emergency?**

No. Excused absence means that employees are excused from their basic work requirement on that day. As explained in the answer to the first question above, credit hours are hours worked voluntarily by employees in excess of their basic work requirement, with supervisory approval.

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## Credit Hours *(continued)*

If employees work during the hours of their basic work requirement despite having been excused from work, they are not entitled to any additional compensation or to credit hours. However, if permitted by agency policies or negotiated agreements, supervisors may approve requests from employees under flexible work schedules to earn credit hours for work in excess of their basic work requirement on a day when excused absence is granted.

### **May Employees Earn or Use Credit Hours on Holidays?**

Employees may not earn any additional compensation

or credit hours for working voluntarily during holiday hours. If permitted by agency policies or negotiated agreements, supervisors may approve requests from employees under flexible work schedules to earn credit hours for work in excess of their basic work requirement on a holiday.

Full-time employees under flexible work schedules are excused only from 8 hours of their basic work requirement because of a holiday. (See 5 U.S.C. 6124.) Therefore, an agency may find it desirable to schedule only 8 hours of an employees basic work requirement on a holiday.

Flexible work schedules may be changed to accommodate this policy. If an employee is scheduled to complete 9 or 10 hours of his or her basic work requirement on a holiday, the agency may permit the employee to use previously accrued credit hours or annual leave in order to be absent with pay during the 9th and 10th hours.

If employees under flexible work schedules are required by an agency to work during holiday hours (their basic work requirement if not for the holiday), they are entitled to holiday premium pay for a maximum of 8 hours.

## Designation of Holidays for Federal Employees

<b>New Year's Day</b>	January 1
<b>Birthday of Martin Luther King, Jr.</b>	Third Monday in January
<b>Washington's Birthday</b>	Third Monday in February
<b>Memorial Day</b>	Last Monday in May
<b>Juneteenth National Independence Day</b>	June 19
<b>Independence Day</b>	July 4
<b>Labor Day</b>	First Monday in September
<b>Columbus Day</b>	Second Monday in October
<b>Veterans Day</b>	November 11
<b>Thanksgiving Day</b>	Fourth Thursday in November
<b>Christmas Day</b>	December 25

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## Designation of Holidays *(continued)*

### **Presidential Inauguration Day**

Federal employees in the Washington, DC, area are entitled to a holiday on the day a President is inaugurated (January 20 following a Presidential election).

#### **Employees are entitled to this holiday if they are employed in:**

1. The District of Columbia
2. Montgomery and Prince Georges Counties in Maryland
3. Arlington and Fairfax Counties in Virginia
4. The cities of Alexandria and Falls Church in Virginia

When Inauguration Day is moved to January 21st because January 20th falls on Sunday, Federal employees in the Washington, DC, area who would otherwise work on Monday, January 21st, are entitled to a holiday on that day.

#### **“In Lieu of” Holidays**

All full-time employees, including those on flexible or compressed work schedules, are entitled to an “in lieu of” holiday when a holiday falls on a nonworkday. In such cases, the employee’s holiday is the basic workday immediately preceding the nonworkday. A basic workday for this purpose includes a day when part of the basic work requirement for an employee under a flexible work schedule is planned or scheduled to be performed.

#### **There are three exceptions:**

1. If the nonworkday is Sunday (or an “in lieu of” Sunday), the next basic workday is the “in lieu of” holiday. (See section 3 of E.O. 11582, February 11, 1971.)
2. If Inauguration Day falls on a nonworkday, there is no provision for an “in lieu of” holiday
3. If the head of an agency determines that a different “in lieu of” holiday is necessary to prevent an “adverse agency impact,” he or she may designate a different “in lieu of” holiday for full-time employees under compressed work schedules. (See 5 U.S.C. 6131(b).)

An employee is not entitled to another day off as an “in lieu of” holiday if a Federal office or facility is closed on a holiday because of a weather emergency or when employees are furloughed on a holiday.

#### **Two Holidays in One Pay Period**

Occasionally, two holidays will fall within the same pay period. A full-time employee on a flexible work schedule is entitled to 8 hours of pay on a holiday when the employee does not work. (See 5 U.S.C. 6124.)

Therefore, when two 8-hour holidays fall within the same pay period, full-time employees on a 5/4-9 flexible schedule (or other flexible schedules under

which employees work more than 8 hours a day) must make arrangements to work extra hours during other regularly scheduled workdays (or take annual leave or use credit hours or compensatory time off) in order to fulfill the 80-hour biweekly work requirement.

#### **Holidays for Employees Outside the United States**

Holidays designated by law to occur on Monday (i.e., Birthday of Martin Luther King, Jr., Washington’s Birthday, Memorial Day, Labor Day, and Columbus Day) are moved to Sundays for employees at duty posts outside the United States who are regularly scheduled to work on Monday. This applies to employees whose basic workweek is Sunday through Thursday. However, it does not apply to employees whose basic workweek is Monday through Friday or Monday through Saturday.

This rule does not apply to “in lieu of” holidays. (See 5 U.S.C. 6103(b)(3).)

#### **Presidential Closing of Agencies**

Presidents occasionally issue Executive Orders closing Federal departments and agencies for part or all of a workday. Employees are excused from duty during such periods unless they are “emergency employees,” as determined by their agencies. Such Executive Orders often provide that the time off will be treated like a holiday for pay

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## Designation of Holidays *(continued)*

and leave purposes. Employees who are required to work during their basic tour of duty on such days are entitled to holiday premium pay.

### **Tours On A Holiday**

A basic (nonovertime) tour of duty that includes some, but not all,

hours on a holiday is considered a holiday tour. (See section 5 of E.O. 11582, February 11, 1971, and B-202626, September 4, 1984.)

When two basic (nonovertime) tours of duty include hours on a holiday, the holiday tour is the

tour of duty that begins on the holiday. (See section 5 of E.O. 11582, February 11, 1971.)

## Pay On a Holiday

### **Full-time Employees**

Full-time employees who are not required to work on a holiday receive their rate of basic pay for the applicable number of holiday hours.

#### **Standard (40-Hour/5-Day Week) Work Schedules**

On a holiday, employees under a standard work schedule are generally excused from 8 hours of nonovertime work, which are considered part of the 40-hour basic workweek.

#### **Flexible Work Schedules**

On a holiday, employees under flexible work schedules are credited with 8 hours towards their 80-hour basic work requirement for the pay period. Employees under flexible work schedules are credited with 8 holiday hours even if they would otherwise work more hours on that day. In the event the President issues an Executive Order granting a “half-day” holiday, a full-time employee on a flexible work schedule is credited with half the number of hours he or she was scheduled to work, not to exceed 4 hours. (See 5 U.S.C. 6124 and the definition of “basic work requirement” in 5 U.S.C. 6121(3))

#### **Compressed Work Schedules**

On a holiday, employees under compressed work schedules are generally excused from all of the nonovertime hours they would otherwise work on that day and which apply to their “basic work requirement.” For example, if a holiday falls on a 9- or 10-hour basic workday, the employee’s holiday is 9 or 10 hours, respectively. In the event the President issues an Executive Order granting a “half-day” holiday, a full-time employee on a compressed work schedule is entitled to basic pay for half the number of hours he or she would otherwise work on that day. (See 5 CFR 610.406(a))

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## Pay On a Holiday *(continued)*

### Part-time Employees

A part-time employee is entitled to a holiday when the holiday falls on a day when he or she would otherwise be required to work or take leave. This does not include overtime work. Part-time employees who are excused from work on a holiday receive their rate of basic pay for the hours they are regularly scheduled to work on that day.

<b>Standard (40-Hour/5-Day Week) Work Schedules</b>	On a holiday, part-time employees under standard work schedules are generally excused from duty for the number of basic (nonovertime) hours they are regularly scheduled to work on that day, not to exceed 8 hours.
<b>Flexible Work Schedules</b>	On a holiday, part-time employees under a flexible work schedule are generally excused from duty for the number of hours of their “basic work requirement” (i.e., nonovertime hours) on that day, not to exceed 8 hours. (See 5 CFR 610.405.) In the event the President issues an Executive Order granting a “half-day” holiday, a part-time employee on a flexible work schedule is generally excused from duty for half the number of hours in his or her “basic work requirement” on that day, not to exceed 4 hours.
<b>Compressed Work Schedules</b>	On a holiday, part-time employees under a compressed work schedule are generally excused from all of the hours of their compressed work schedules (i.e., “basic work requirement”) on that day. (See 5 CFR 610.406(b).) In the event the President issues an Executive Order granting a “half-day” holiday, a part-time employee on a compressed work schedule is generally excused from half of the hours of his or her compressed work schedule on that day.

- ▶ If a holiday falls on a nonworkday, part-time employees are not entitled to an “in lieu of” holiday. If an agency’s office or facility is closed due to an “in lieu of” holiday for full-time employees, the agency may grant paid excused absence to part-time employees who are otherwise scheduled to work on that day. (63 Comp. Gen. 306 (1984).)

### Holiday Work

“Holiday work” means nonovertime work performed by employees during their regularly scheduled daily tour of duty on a holiday. (See 5 CFR 550.103.)

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## Pay On a Holiday *(continued)*

### Holiday Premium Pay

For each hour of holiday work, employees receive holiday premium pay. Holiday premium pay is equal to an employee's rate of basic pay. Employees who are required to work on a holiday receive their rate of basic pay, plus holiday premium pay, for each hour of holiday work. (See 5 U.S.C. 5546(b).)

Employees who are required to perform any work during basic (nonovertime) holiday hours are entitled to a minimum of 2 hours of holiday premium pay. (See 5 U.S.C. 5546(c).)

<b>Standard (40-Hour/5-Day Week) Work Schedules</b>	Employees are entitled to holiday premium pay if they are required to work on a holiday during their regularly scheduled nonovertime basic tours of duty, not to exceed 8 hours.
<b>Flexible Work Schedules</b>	Employees under flexible work schedules are entitled to holiday premium pay if they are required to work during the hours of their "basic work requirement" (i.e., nonovertime hours) on that day, not to exceed 8 hours. In the event the President issues an Executive Order granting a "halfday" holiday, part-time employees on a flexible work schedule are entitled to holiday premium pay if they are required to work during the last half of their "basic work requirement" (i.e., nonovertime hours) on that day, not to exceed 4 hours.
<b>Compressed Work Schedules</b>	Employees under compressed work schedules are entitled to holiday premium pay if they are required to work during their "basic work requirement" on that day. The number of hours of holiday premium pay may not exceed the hours in an employee's compressed work schedule for that day (e.g., 8, 9, or 10 nonovertime hours). (See 5 CFR 610.407.) In the event the President issues an Executive Order granting a "half-day" holiday, part-time employees on a compressed work schedule are entitled to holiday premium pay if they are required to work during the last half of their "basic work requirement" (i.e., nonovertime hours) on that day.

- ▶ Part-time employees do not receive holiday premium pay for working on an "in lieu of" holiday for full-time employees.

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## Overtime Work on a Holiday

<b>Standard (40-Hour/5-Day Week) Work Schedules</b>	Overtime work on a holiday is work in excess of 8 hours in a day or 40 hours in a week. This also applies to part-time employees.
<b>Flexible Work Schedules</b>	Overtime work on a holiday for employees under flexible work schedules is work in excess of 8 hours in a day or 40 hours in a week that is officially ordered in advance.
<b>Compressed Work Schedules</b>	Overtime work on a holiday for an employee under a compressed work schedule is hours of work in excess of the employee's compressed work schedule (e.g., 8-, 9-, or 10-hour "basic work requirement") on that day. (See 5 U.S.C. 6121(7).)
<b>Holiday Hours</b>	<p>Hours of paid leave, use of accrued compensatory time off or credit hours, and hours of excused absence with pay are credited as hours of work towards the overtime pay standards. For example, these hours are credited when determining whether an employee has worked in excess of 8 hours in a day or 40 hours in a week under a standard or flexible work schedule.</p> <p>Employees are not excused from overtime work on a holiday because of the holiday.</p>

## Overtime Pay On a Holiday

Employees are entitled to overtime pay, or compensatory time off, when applicable, if the agency requires overtime work on a holiday.

Overtime work must generally be ordered or approved. However, employees who are covered by the overtime pay provisions of the Fair Labor Standards Act of 1938, as amended (FLSA), also are entitled to overtime pay if overtime work

is "suffered or permitted" by a supervisor. One exception is that no "suffered and permitted" hours of work can be credited to employees under flexible work schedules.

Overtime work does not include credit hours worked voluntarily (earned) under a flexible work schedule. (See 5 U.S.C. 6121(6).)

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## Work on Holidays

### Night Work

Employees are entitled to night pay for regularly scheduled work at night, including actual work performed at night during holiday hours or overtime hours. Night pay is paid in addition to holiday premium pay or overtime pay. (See 5 CFR 550.122(c).)

Employees also are entitled to night pay when they are excused from regularly scheduled night work during

holiday hours. A General Schedule employee who is excused from night work during holiday hours receives his or her rate of basic pay plus night pay. (See 5 CFR 550.122(a).) Night shift differential is part of basic pay for Federal Wage System employees. (See 5 CFR 532.505(b).)

### Sunday Work

An employee is entitled to holiday premium pay and Sunday premium pay if he or

she is required to work during holiday hours on Sunday and Sunday work is part of the employee's regularly scheduled basic workweek (or basic work requirement). If an employee does not work during the holiday hours on Sunday, the employee receives basic pay for the holiday hours, but is not entitled to Sunday premium pay. This is because Sunday premium pay cannot be paid unless an employee actually performs work on Sunday.

## Lunch or Other Meal Periods

A lunch or other meal period is an approved period of time in a nonpay and nonwork status that interrupts a basic workday or a period of overtime work for the purpose of permitting employees to eat or engage in permitted personal activities. (See also Interruptions, below.)

### Employee Coverage

An agency may establish policies for meal periods for employees covered by 5 U.S.C. 6101. (This includes most white-collar and blue-collar employees – i.e., employees covered by premium pay under 5 U.S.C. 5541(2) and prevailing rate employees covered by 5 U.S.C. 5343 or 5349.)

### Authorization

The law does not provide employees with an explicit entitlement to a meal period. Each agency has the

authority to establish its own requirements for meal periods. An agency may require or permit unpaid meal periods during overtime hours, and the policy may be different from the one for the basic workweek. For example, an agency could permit employees to work 8 overtime hours on a Saturday or Sunday without any requirement for a meal period. In exceptional circumstances, an agency may permit employees to eat their meals while working.

### Duration

In most circumstances, an agency is prohibited from scheduling a break in working hours of more than 1 hour during a basic workday. (See 5 U.S.C. 6101(a)(3)(F).) This limitation applies to lunch and other meal periods. An agency may permit or require shorter

meal periods.

A basic workday is usually 8 hours, but the basic work requirement may be longer for certain days under alternative work schedules (i.e., flexible or compressed work schedules) authorized by subchapter II of chapter 61 of title 5, United States Code. The normal 1-hour meal period limitation does not apply if an agency permits an employee who works under a flexible work schedule to elect to take a longer unpaid meal period.

### Combination with Rest Periods Prohibited

An agency may not extend a regularly scheduled lunch break by permitting an employee to take an authorized rest period (with pay) prior to or immediately following lunch, since a rest period is considered part of the

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## Processing Terminations

employee's compensable basic workday. The lunch period may be extended only under the authority of 5 U.S.C. 6101(a)(3) (F). (See Comptroller General opinion B-190011, December 30, 1977.)

### Interruptions

Unpaid meal periods must provide bona fide breaks in the workday. If an employee is not excused from job duties, or if he or she is recalled to job duties, the employee is entitled to pay for compensable work, including work that is not de

minimis in nature. Note that there is no authority under title 5, United States Code, or the FLSA to compensate employees for being placed on-call or being required to carry a pager or cell phone.

OPM rules for crediting fractional hours of work for employees who are exempt from the FLSA are found in 5 CFR 550.112(a)(2). Parallel rules for FLSA nonexempt employees are found in 5 CFR 551.521(b).

### Restricted Areas

An agency may restrict employees to a limited area (such as a secure Government building or military installation) while in an on-call status during a meal period without creating an entitlement to pay for the meal period. (See 47 Comp. Gen. 311 (1967) and 62 Comp. Gen. 447 (1983).) See the exceptions below for certain firefighters and law enforcement officers.

## Firefighters and Law Enforcement Officers

**M**eal periods during 24-hour shifts are compensable hours of work for firefighters paid under 5 CFR part 550, subpart M.

Meal periods are hours of work for FLSA nonexempt employees engaged in law enforcement activities who receive annual premium pay for administratively uncontrollable overtime (AUO) work under 5 U.S.C. 5545(c)(2).

Bona fide meal periods are not actual hours of work for criminal investigators who receive law enforcement availability pay under 5 U.S.C. 5545a or for other FLSA-exempt law enforcement officers. An availability pay

recipient may perform work during a period scheduled as an off-duty meal period without supervisory preapproval, if circumstances require the work to meet agency needs, subject to agency policies and procedures. (See 5 CFR 550.182(c).) Such work would be unscheduled duty compensated by availability pay.

### Part-Time Employees

Agencies should establish policies stating whether meal periods will be required or permitted when part-time employees or employees who work under flexible work schedules have basic workdays that are less than 8 hours long.

### Agency Flexibility

When establishing or modifying policies for meal periods, an agency typically considers factors such as:

- Provisions in any applicable negotiated agreement
- The availability, convenience, and distance of eating establishments
- Whether employees must be present at work to fulfill agency work requirements (e.g., guards who cannot be excused)
- Whether work must be performed on weekends, during overtime hours, or at night, etc.

# Leave Administration



## Annual Leave

An employee may use annual leave for vacations, rest and relaxation, and personal business or emergencies. An employee has a right to take annual leave, subject to the right of the supervisor to schedule the time at which annual leave may be taken. An employee will receive a lump-sum payment for accumulated and accrued annual leave when he or she separates from Federal service or enters on active duty in the Armed Forces and elects to receive a lump-sum payment.

## Accrual Rates

Employee Type	Less than 3 years of service*	3 years but less than 15 years of service*	15 or more years of service*
Full-time employees	1/2 day (4 hours) for each pay period	3/4 day (6 hours) for each pay period, except 1.25 day (10 hours) in last pay period	1 day (8 hours) for each pay period
Part-time employees	1 hour of annual leave for each 20 hours in a pay status	1 hour of annual leave for each 13 hours in a pay status	1 hour of annual leave for each 10 hours in a pay status
Uncommon tours of duty	(4 hours) times (average # of hours per biweekly pay period) divided by 80 = biweekly accrual rate	(6 hours) times (average # of hours per biweekly pay period) divided by 80 = biweekly accrual rate.**	M(8 hours) times (average # of hours per biweekly pay period) divided by 80 = biweekly accrual rate
SES, Senior Level (SL), and Scientific or Professional (ST) positions, and employees in equivalent pay systems, as determined by OPM	8 hours for each pay period, regardless of years of service		

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## Accrual Rates *(continued)*

**Note 1:** A temporary employee with an appointment of less than 90 days is entitled to accrue annual leave only after being currently employed for a continuous period of 90 days under successive appointments without a break in service. (This restriction only applies to the accrual of annual leave. If an employee on such an appointment already has annual leave to his or her credit from a previous appointment, he or she is allowed to use

this annual leave during the temporary appointment.) After completing the 90-day period of continuous employment, the employee is entitled to be credited with the leave that would have accrued to him or her during that period.

**Note 2:** An intermittent employee (i.e., a part-time employee who does not have an established regular tour of duty during the administrative workweek) is not entitled to accrue annual leave.

*\* See Creditable Service for Leave Accrual section of this section. A change in accrual rate takes effect at the beginning of the pay period after the pay period an employee completes the required period of service.*

*\*\* In computing leave accrual for uncommon tours of duty, the accrual rate for the last full pay period in a calendar year must be adjusted to ensure the correct amount of leave is accrued.*

## Creditable Service for Leave Accrual

### Civilian Service

All civilian service that is potentially creditable for Civil Service Retirement Service (CSRS) purposes, including service covered by the Federal Employee Retirement Service (FERS) is also creditable for annual leave accrual. Potentially creditable service includes service that could be credited if the employee made deposits to the retirement fund. Temporary federal service that cannot be credited through such deposits (for FERS employees this is typically temporary service that occurs on or after January 1, 1989) are also creditable for annual leave accrual. Such deposits are not required before the employee gets credit for annual leave accrual purposes.

### Uniformed Service

- For non-retired members, full credit for uniformed service (including active duty and active duty for training) performed under honorable conditions is given for annual leave accrual purposes
- For retirees, annual leave accrual credit is given only for:
  - Actual service during a war declared by Congress (includes World War II covering the period December 7, 1941, to April 28, 1952) or while participating in a campaign or expedition for which a campaign badge is authorized
  - All active duty when retirement was based on a disability received as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war as defined in 38 U.S.C. 101(11). "Period of war" includes World War II, the Korean conflict, Vietnam era, the Persian Gulf War, or the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress.

## Creditable Service for Leave Accrual *(continued)*

### Non-Federal Service or Uniformed Service

A newly appointed or reappointed employee may receive service credit for prior non-Federal service or active-duty uniformed service that otherwise would not be creditable for the purpose of determining his or her annual leave accrual under the conditions prescribed in 5 CFR 630.205.

### Advance Annual Leave

At its discretion, an agency may advance annual leave to an employee in an amount not to exceed the amount the employee would accrue within the leave year. An agency should not advance annual leave to an employee when it is known (or reasonably expected) that the employee will not return to duty, e.g., when the employee has applied for

disability retirement. Before granting advanced annual leave, it is recommended that the approving authority consider such matters as the expectation of return to duty, the need for the employee's services, and the benefits to the agency of retaining the employee.

## Other Available Leave Options and Work Schedule Flexibilities

The Federal Government offers a wide range of leave options and workplace flexibilities to assist an employee who needs to be away from the workplace. These flexibilities include annual leave, sick leave, advanced annual leave or advanced sick leave, leave under the Family and Medical

Leave Act (FMLA), donated leave under the voluntary leave transfer program, leave without pay, alternative work schedules, credit hours under flexible work schedules, compensatory time off and telework. Agencies may also have a voluntary leave bank program.

## Annual Leave Ceilings

Maximum Annual Leave That May Be Carried Over into the New Leave Year	
Federal Employees Stationed within the United States	30 days
Federal Employees Stationed Overseas	45 days
Members of the Senior Executive Service, Senior-Level and Scientific and Professional Employees	90 days

### “Use or Lose” Annual Leave

“Use or lose” annual leave is the amount of annual leave that is in excess of the employee's applicable annual leave ceiling. Any accrued annual leave in excess of the ceiling will be forfeited if not used by the final day of the leave year. Forfeited annual leave may be restored under 5 U.S.C. 6304(d).

## Annual Leave Ceilings *(continued)*

### Annual Leave to Establish Retirement Eligibility

An employee may use annual leave to establish initial eligibility for retirement in reduction-in-force and other restructuring situations. An employee who has received a specific notice of termination in a RIF situation may use annual leave past the date the employee would otherwise have been separated in order

to establish initial eligibility for immediate retirement, including discontinued service or voluntary early retirement.

### Annual Leave Accrual Rates for Senior Executive Service, Senior Level and Scientific or Professional Positions, or Equivalent Pay Systems

Members of the Senior Executive Service (SES), employees in senior level (SL)

and scientific or professional (ST) positions immediately accrue annual leave at the rate of 1 day (8 hours) for each full biweekly pay period.

**In addition, OPM has extended coverage for the 8-hour category to employees in the following equivalent categories:**

Agency	Employee Category
Armed Forces Retirement Home	Chief Operating Officer
Corporation for National and Community Service	Employees in NX-2 pay band
Defense	Defense Intelligence Senior Executive Service
	Defense Intelligence Senior Level employees paid under 10 U.S.C. 1602
	Highly Qualified Experts, paid under 5 U.S.C. 9903(b)
	Senior Cryptologic Executive Service
Denali Commission	Federal Co-Chair
Education	Institute of Education Sciences, Commissioners appointed under 20 U.S.C. 9517(a)(2)
	National Assessment Governing Board, Executive Director
Energy	Employees in Pay Band V of the EJ, EK, and EN excepted pay systems
	Program Directors in pay bands II and III of the ET pay system

## Annual Leave Ceilings *(continued)*

Agency	Employee Category
Farm Credit Administration	Employees in grades VH 42-45
Federal Deposit Insurance Corporation	Corporate Expert (CX) positions
	Executive Manager (EM) positions
Federal Housing Finance Board	TF-1 through TF-5 employees
Federal Retirement Thrift Investment Board	Executive Director
Government Printing Office	Deputy Public Printer and Senior Level Service (SLS) employees
Homeland Security	AD position transferred from the Department of Energy under the authority of P.L. 107-296, Section 303
	Advanced Research Projects Agency, employees under section 307(b)(6) of P.L. 107-296
Justice	Executive Office of the U.S. Trustees' employees paid under 28 U.S.C. 587
	Federal Bureau of Investigation Senior Executive Service
Library of Congress	Executive Schedule (EX) positions - i.e., the Deputy Librarian of Congress, the Director of the Congressional Research Service, and the Register of Copyrights
Morris K. Udall Foundation	Executive Director
National Council on Disability	Executive Director
National Credit Union Administration	Senior Staff positions
National Defense University	AD employees hired under 10 U.S.C. 1595
Nuclear Regulatory Commission	Senior Level System (SLS) employees
Nuclear Waste Technical Review Board	Employees appointed under 42 U.S.C. 10266(b)

## Annual Leave Ceilings *(continued)*

Agency	Employee Category
Office of the Federal Housing Enterprise Oversight	OF23 - OF27 employees
State	Senior Foreign Service
Treasury	Internal Revenue Service streamlined critical pay employees paid under 5 U.S.C. 9503
U.S. Agency for International Development	Senior-level employees appointed under 22 U.S.C. 2385(b)
U.S. Holocaust Museum	Deputy Chief Information Officer
	Senior Counsel and Director, External Affairs

*Agency heads may request that OPM authorize an 8-hour annual leave accrual rate for employees who hold positions covered by pay systems which they believe are equivalent to the SES or SL/ST pay system.*

### **Court Leave**

An employee is entitled to paid time off without charge to leave for service as a juror or witness. An employee is responsible for informing his or her supervisor if he or she is excused from jury or witness service for 1 day or more or for a substantial part of a day. To avoid undue hardship, an agency may adjust the schedule of an employee who works nights or weekends and is called to jury duty. (If there is no jury/witness service, there is no court leave. The employee would be charged annual leave, sick leave, or leave without pay, as appropriate.)

### **Jury Duty**

An employee who is summoned to serve as a juror in a judicial

proceeding is entitled to court leave.

### **Witnesses**

An employee who is summoned as a witness in a judicial proceeding in which the Federal, State, or local government is a party is entitled to court leave.

### **Official Duty**

An employee who is summoned as a witness in an official capacity on behalf of the Federal Government is on official duty, not court leave.

### **Fees/Expenses**

Employees must reimburse their agency for fees paid for service as a juror or witness. However, monies paid to jurors or witnesses which are in the

nature of “expenses” (e.g., transportation) do not have to be reimbursed to the agency.

### **Emergency Leave Transfer Program**

In the event of major disasters or emergencies declared by the President, such as floods, earthquakes, tornadoes, bombings, etc., that result in severe adverse effects for a substantial number of employees, the President may direct the Office of Personnel Management (OPM) to establish an emergency leave transfer program. Under such a program, an employee in any Executive or Judicial branch agency may donate annual leave for transfer to employees of his or her agency or to

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## Annual Leave Ceilings *(continued)*

employees of other agencies who are adversely affected by the disaster or emergency. This program provides Federal employees with a special opportunity to help their fellow workers in times of need.

### The Agency's Role

Agencies are in the best position to determine whether donated annual leave is needed by their employees in disaster situations and can quickly facilitate the transfer of donated annual leave within their agencies. Therefore, each agency is responsible for determining whether, and how much, donated annual leave is needed by affected employees; approving leave donors and/or leave recipients within the agency; and facilitating the distribution of donated annual leave from approved leave donors to approved leave recipients within the agency.

### OPM's Role

When a Federal agency notifies OPM that the amount of annual leave donated by its employees is not sufficient to meet the needs of its approved emergency leave recipients, OPM will coordinate a Governmentwide transfer of annual leave from donating agencies to affected agencies for crediting to their emergency leave recipients.

### Voluntary Leave Bank Program

Each agency may establish voluntary leave banks under

which an employee may contribute unused accrued annual leave for use by a leave bank member who is experiencing a personal or family medical emergency and has exhausted his or her available paid leave. An agency is not required to establish a leave bank program. The agency's leave bank board operates the leave bank and determines how much donated annual leave an employee may receive from the leave bank. Any unused donated annual leave is returned to the leave bank. An employee may participate concurrently in the Voluntary Leave Bank Program (VLBP) and the **Voluntary Leave Transfer Program**.

### Leave Bank Board

A participating agency must establish one or more leave bank boards to administer its leave bank program. Each board consists of three members, at least one of which must represent a labor organization or employee group. Each leave bank board is responsible for establishing its internal decision-making procedures; reviewing and approving or disapproving each application to become a leave contributor and a leave recipient; monitoring the status of each leave recipient's medical emergency; monitoring the amount of leave in the leave bank and the number

of applications to become a leave recipient; and maintaining an adequate amount of annual leave in the leave bank.

### Leave Bank Member

To become and remain a leave bank member, an employee must make an application and contribute a minimum amount of annual leave to the leave bank each leave year. The application must specify the number of hours of annual leave to be contributed to the leave bank. The employee makes this donation to establish leave bank membership during annual open enrollment periods or within 30 days of the employee's appointment to the agency or return from extended absence.

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A leave bank member may contribute additional annual leave at any time and may also request that annual leave be donated to a specific leave bank member (other than his or her immediate supervisor). An employee who is not a leave bank member may apply to contribute leave at any time. A leave bank member who transfers from a different agency or to a different leave bank is subject to the policies and procedures of the new leave bank, including its minimum contribution requirements.

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## Annual Leave Ceilings *(continued)*

### Leave Recipients

#### Application to become a leave recipient

In order to receive donated annual leave, a leave bank member who is affected by a personal or family medical emergency must make written application to the leave bank board. If the member is not capable of making written application, a personal representative may make the application on behalf of the employee.

#### Each application should include:

- The name, position title, and grade or pay level of the leave bank member
- The reasons transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency, and if it is a recurring one, the approximate frequency of the medical emergency affecting the leave bank member
- If required by the leave bank board, certification regarding the medical emergency from one or more physicians or other appropriate experts (The agency must pay the expenses associated with obtaining agency-required certification from more than one source.)
- Any additional information required by the leave bank board

### Minimum and Maximum Limitations on Leave Donations

The minimum contribution required to become a leave bank member cannot be less than the amount of annual leave he or she normally accrues in a pay period (i.e., 4, 6, or 8 hours). In any leave year, an employee may donate not more than one-half of the amount of annual leave he or she would accrue during the leave year. An employee with “use or lose” annual leave may donate the lesser of one-half of the annual leave he or she would accrue in a leave year or the number of hours remaining in the leave year for which he or she is scheduled to work and receive

pay. These limitations apply to a combined total amount of annual leave donated by an employee under the VLTP and an agency leave bank program. Each agency must establish written criteria for waiving the limitations on donating annual leave. The maximum donation amount applies to the total amount of annual leave donated to the leave bank and leave transfer programs.

#### Set-Aside Accounts

While using donated leave, a leave recipient may accrue no more than 40 hours of annual leave and 40 hours of sick leave in “set-aside accounts.” The leave in the set-aside accounts will be transferred to

the employee’s regular leave accounts when the medical emergency ends or if the employee exhausts all

donated leave. Leave in set-aside accounts is not available for use by the employee until transferred to the employee’s regular leave accounts.

An employee who returns to work part-time and who uses donated leave part-time accrues leave in his or her regular annual and sick leave accounts for the time spent in work status and in his or her set aside annual and sick leave accounts for the time spent in shared leave status (when using donated leave).

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## Voluntary Leave Transfer Program

An employee may donate annual leave directly to another Federal employee who has a personal or family medical emergency and who has exhausted his or her available paid leave. Each agency must administer a voluntary leave transfer program for its employees. There is no limit on the amount of donated annual leave a leave recipient may receive from the leave donor(s). However, any unused donated leave must be returned to the leave donor(s) when the medical emergency ends.

### Leave Recipient

An employee should apply in writing to his or her agency to become a leave recipient. (See “Forms” below for an optional application form.) If the member is not capable of making written application, a personal representative may make the application on behalf of the employee.

### Each application should include:

- The name, position title, and grade or pay level of the potential leave recipient
- The reasons transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency, and if it is a recurring one, the approximate frequency of the medical emergency affecting the potential leave recipient
- If required by the potential leave recipient’s agency, certification regarding the

medical emergency from one or more physicians or other appropriate experts (The agency must pay the expenses associated with obtaining agency-required certification from more than one source.)

- Any additional information required by the potential leave recipient’s employing agency

### Limitations on Leave Donations

In any leave year, an employee may donate not more than one-half of the amount of annual leave he or she would accrue during a leave year. For employees with “use or lose” annual leave, the employee may donate the lesser of one-half of the annual leave he or she would accrue in a leave year or the number of hours remaining in the leave year for which the employee is scheduled to work and receive pay. These limitations apply to a combined total amount of annual leave donated by an employee under the VLTP and an agency leave bank program. Each agency must establish written criteria for waiving the limitations on donating annual leave.

### An employee may transfer leave to an employee of another agency only when:

- The donor is a family member employed by another agency
- The leave recipient’s agency believes that leave donations within the agency may not

be sufficient to meet the recipient’s needs

- The leave recipient’s agency concludes that the transfer of leave from another agency furthers the purpose of the voluntary leave transfer program

**Set-Aside Accounts.** While using donated leave, a leave recipient can accrue no more than 40 hours of annual leave and 40 hours of sick leave in “set-aside accounts.” The leave in the “set-aside accounts” will be transferred to the employee’s regular leave accounts when the medical emergency ends or if the employee exhausts all donated leave. Leave in set-aside accounts is not available for use by the employee until transferred to the employee’s regular leave accounts.

An employee who returns to work part-time and who uses donated leave part-time accrues leave in his or her regular annual and sick leave accounts for the time spent in work status and in his or her set aside annual and sick leave accounts for the time spent in shared leave status (when using donated leave).

## Leave Without Pay

Leave without pay (LWOP) is a temporary nonpay status and absence from duty that, in most cases, is granted at the employee's request.

**In most instances, granting LWOP is a matter of supervisory discretion and may be limited by agency internal policy. Employees, however, have an entitlement to LWOP in the following situations:**

- The Family and Medical Leave Act of 1993 (FMLA) (Public Law 103-3, February 5, 1993), provides

covered employees with an entitlement to a total of up to 12 weeks of unpaid leave (LWOP) during any 12-month period for certain family and medical needs (See 5 CFR part 630, subpart L.)

- The Uniformed Services Employment and Reemployment Rights Act of 1994 (Pub.L. 103-353) provides employees with an entitlement to LWOP when employment with an employer is interrupted by a period of service in the

uniformed service (See 5 CFR 353.106.)

- Executive Order 5396, July 17, 1930, provides that disabled veterans are entitled to LWOP for necessary medical treatment
- Employees may not be in a pay status while receiving Workers' Compensation payments from the Department of Labor

Employees should be aware that LWOP affects their entitlement to or eligibility for certain Federal benefits.



### Sick Leave

Sick leave is a paid absence from duty. **An employee may use sick leave for:**

- Personal Medical Needs
- Care of a Family Member
- Care of a Family Member with a Serious Health Condition
- Adoption Related Purposes

## Leave Without Pay

Sick Leave Accrual	
Full-Time Employee	1/2 day (4 hours) for each biweekly pay period
Part-Time Employee	1/2 day (4 hours) for each biweekly pay period

There are no limits on the amount of sick leave that can be accumulated. Unused sick leave accumulated by employees covered by the Civil Service Retirement System will be used in the calculation of their annuities.

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## Sick Leave *(continued)*

### **Requesting Sick Leave**

An employee must request sick leave within such time limits as the agency may require. An agency may require employees to request advance approval for sick leave for their own or a family member's medical, dental, or optical examination or treatment. To the extent possible, an employee may be required to request advanced approval for sick leave to attend to a family member receiving medical, dental, or optical examination or treatment, to care for a sick

family member or one with a serious health condition, for bereavement purposes, and for adoption-related proceedings. If the employee complies with the agency's notification and medical evidence/certification requirements, the agency must grant sick leave.

### **Granting Sick Leave**

An agency may grant sick leave only when supported by evidence administratively acceptable by the agency. For absences in excess of 3 days, or for a lesser period when

determined necessary by the agency, an agency may require a medical certificate or other administratively acceptable evidence.

### **Advance Sick Leave**

At the discretion of the agency, a maximum of 30 days of sick leave may be advanced to an employee with a medical emergency for purposes related to the adoption of a child, for family care or bereavement purposes, or to care for a family member with a serious health condition.

## Sick Leave for Personal Medical Needs

### **An employee may use sick leave when he or she:**

- Is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth
- Receives medical, dental, or optical examination or treatment
- Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease.

### **Requesting Sick Leave**

An employee must request sick leave within such time limits as the agency may require. An agency may require employees to request advance approval of sick leave for medical, dental, or optical examination or treatment.

### **Granting Sick Leave**

An agency may grant sick leave only when supported by evidence administratively acceptable to the agency. For absences in excess of 3 days, or for a lesser period when determined necessary by the agency, an agency may require a medical certificate or other administratively acceptable evidence.

### **Advance Sick Leave**

At the discretion of the agency, up to 104 hours (13 days) of sick leave may be advanced to an employee, when required by the exigencies of the situation, for an employee's own medical, dental, or optical examination or treatment. An agency may also grant up to 240 hours (30 days) of advanced sick leave for an employee's own illness, injury, pregnancy, childbirth, or exposure to a communicable disease.

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## Sick Leave for Family Care or Bereavement Purposes

### Entitlement

**Most Federal employees may use a total of up to 104 hours (13 workdays) of sick leave each leave year to:**

- Provide care for a family member who is incapacitated as a result of physical or mental illness, injury, pregnancy, or childbirth
- Provide care for a family member as a result of medical, dental, or optical examination or treatment
- Make arrangements necessitated by the death of a family member or attend the funeral of a family member

A covered full-time employee may use up to 104 hours (13 workdays) of sick leave each leave year for these purposes. Part-time employees and employees with uncommon tours of duty are also covered, and the amount of sick leave permitted for family care and bereavement purposes is pro-rated in proportion to the average number of hours of work in the employee's scheduled tour of duty each week.

### Definition of Family Member

**“Family member” is defined as an individual with any of the following relationships to the employee:**

- Spouse, and parents thereof
- Sons and daughters, and spouses thereof
- Parents, and spouses thereof

- Brothers and sisters, and spouses thereof
- Grandparents and grandchildren, and spouses thereof
- Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition
- Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship

### Immediate Relative

**An individual with any of the following relationships to the employee:**

- Spouse, and parents thereof
- Sons and daughters, and spouses thereof
- Parents, and spouses thereof
- Brothers and sisters, and spouses thereof
- Grandparents and grandchildren, and spouses thereof
- Domestic partner and parents thereof, including domestic partners of any individual in 1 through 5 of this definition
- Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship

### Parent

- A biological, adoptive, step, or foster parent of

the employee, or a person who was a foster parent of the employee when the employee was a minor

- A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian
- A person who stands in loco parentis to the employee or stood in loco parentis to the employee when the employee was a minor or required someone to stand in loco parentis
- A parent (as described in the above subparagraphs) of an employee's spouse or domestic partner

### Son or Daughter

- A biological, adopted, step, or foster son or daughter of the employee
- A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian
- A person for whom the employee stands in loco parentis or stood in loco parentis when that individual was a minor or required someone to stand in loco parentis
- A son or daughter (as described in 1-3) of an employee's spouse or domestic partner

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## Sick Leave for Family Care or Bereavement Purposes *(continued)*



### Administration

At the discretion of the agency, an employee may be advanced up to 104 hours of sick leave each leave year (or a proportional amount for an employee on a part-time schedule or uncommon tour of duty) for family care or bereavement purposes.

## Sick Leave to Care for a Family Member with a Serious Health Condition

### Entitlement

Most Federal employees may use a total of up to 12 administrative workweeks of sick leave each leave year to care for a family member with a serious health condition. If an employee previously has used any portion of the 13 days of sick leave for general family care or bereavement purposes in a leave year, that amount must be subtracted from the 12-week entitlement. If an employee has already used 12 weeks of sick leave to care for a family member with a serious health condition, he or she cannot use an additional 13 days in the same leave year for general family care purposes. An employee is entitled to a total of 12 weeks of sick leave each year for all family care purposes.

### Definition of Family Member

**“Family member” is defined as an individual with any of the following relationships to the employee:**

- Spouse, and parents thereof
- Sons and daughters, and spouses thereof
- Parents, and spouses thereof
- Brothers and sisters, and spouses thereof
- Grandparents and grandchildren, and spouses thereof
- Domestic partner and parents thereof
- Any individual related by blood or affinity, including domestic partners of any individual in 2 through 5 of this definition; and whose close association with the employee is the equivalent of a family relationship
- spouses thereof
- Parents, and spouses thereof
- Brothers and sisters, and spouses thereof
- Grandparents and grandchildren, and spouses thereof
- Domestic partner and parents thereof, including domestic partners of any individual in 1 through 5 of this definition
- Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship

### Immediate Relative

**An individual with any of the following relationships to the employee:**

- Spouse, and parents thereof
- Sons and daughters, and

### Parent

- A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor
- A person who is the legal guardian of the employee

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## Sick Leave to Care for a Family Member with a Serious Health Condition *(continued)*

or was the legal guardian of the employee when the employee was a minor or required a legal guardian

- A person who stands in loco parentis to the employee or stood in loco parentis to the employee when the employee was a minor or required someone to stand in loco parentis
- A parent (as described in the above subparagraphs) of an employee's spouse or domestic partner

### Son or Daughter

- A biological, adopted, step, or foster son or daughter of the employee
- A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian

- A person for whom the employee stands in loco parentis or stood in loco parentis when that individual was a minor or required someone to stand in loco parentis
- A son or daughter (as described in 1-3) of an employee's spouse or domestic partner

### Serious Health Condition

The term "serious health condition" has the same meaning as used in OPM's regulations for administering the Family and Medical Leave Act of 1993 (FMLA). That definition includes such conditions as cancer, heart attacks, strokes, severe injuries, Alzheimer's disease, pregnancy, and childbirth. The term "serious health condition" is not intended to cover short-term

conditions for which treatment and recovery are very brief. The common cold, the flu, earaches, upset stomach, headaches (other than migraines), routine dental or orthodontia problems, etc., are not serious health conditions unless complications arise. The agency may require medical certification of a serious health condition.

### Advanced Sick Leave

At the discretion of the agency, an employee may be advanced a maximum of 30 days of sick leave, up to a maximum of 240 hours, (or a proportional amount for an employee on a part-time schedule or uncommon tour of duty) to provide care for a family member with a serious health condition.

## Family and Medical Leave

### Entitlement

**Under the Family and Medical Leave Act of 1993 (FMLA), most Federal employees are entitled to a total of up to 12 workweeks of unpaid leave during any 12-month period for the following purposes:**

- The birth of a son or daughter of the employee and the care of such son or daughter

- The placement of a son or daughter with the employee for adoption or foster care
- The care of spouse, son, daughter, or parent of the employee who has a serious health condition
- A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her positions

- Any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces

Under certain conditions, an employee may use the 12 weeks of FMLA leave

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## Family and Medical Leave *(continued)*

intermittently. An employee may elect to substitute annual leave and/or sick leave, consistent with current laws and OPM's regulations for using annual and sick leave, for any unpaid leave under the FMLA. (The amount of sick leave that may be used to care for a family member is limited. FMLA leave is in addition to other paid time off available to an employee.)

### **Job Benefits and Protection**

Upon return from FMLA leave, an employee must be returned to the same position or to

an "equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment."

An employee who takes FMLA leave is entitled to maintain health benefits coverage. An employee on unpaid FMLA leave may pay the employee share of the premiums on a current basis or pay upon return to work.

### **Advance Notice and Medical Certification**

An employee must provide notice of his or her intent to take

family and medical leave not less than 30 days before leave is to begin or, in emergencies, as soon as is practicable.

An agency may request medical certification for FMLA leave taken to care for an employee's spouse, son, daughter, or parent who has a serious health condition or for the serious health condition of the employee.

**Note:** that FMLA leave cannot be taken to care for a domestic partner.

## **Bone Marrow or Organ Donor Leave**

An employee may use up to 7 days of paid leave each calendar year to serve as a bone-marrow donor. An employee also may use up to 30 days of paid leave each calendar year to serve as an organ donor. Leave for bone marrow and organ donation is a separate category of leave that is in addition to annual and sick leave.

Agencies are responsible for informing their employees of the entitlement to leave for bone marrow and organ donation.

## Leave and Work Scheduling Flexibilities Available for Childbirth

The Federal Government offers various leave and work scheduling flexibilities to assist employees in meeting their work and family obligations. This chapter explains the available leave options that can be used separately or in combination to help an employee balance his or her work and family life related to pregnancy and childbirth. An employee who is pregnant needs time off from work for her own pregnancy-related issues and recovery from childbirth, or to care for and bond with her baby.

An employee may need time off from work to care for a spouse who is pregnant or has just given birth, or to care for and bond with his or her baby. Note that an employee may also want to take leave to care for a variety of family members who are birth mothers—not just spouses—including a same or opposite sex domestic partner, a daughter or daughter-in-law, a mother, sister, or granddaughter, or also to care for new babies such as grandchildren.

### **Sick Leave**

An employee is entitled to use sick leave for personal medical needs while pregnant or recovering from childbirth, to care for a family member who is pregnant or recovering from childbirth, to care for a family member with a serious health condition, or for general family care purposes such as well-baby doctor visits or illnesses. An agency may request administratively acceptable evidence indicating the duration of the employee's

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## Leave and Work Scheduling Flexibilities Available for Childbirth

(continued)

or family member's recovery from childbirth. Most health care providers certify that the recovery period following childbirth is about 6-8 weeks.

**Tip:** Sick leave is an entitlement that may be used without invoking leave under the Family Medical Leave Act (FMLA). See the section on FMLA.

### **Sick Leave for Employee's Own Care**

An employee who is the birth mother is entitled to use any accumulated or accrued sick leave for prenatal care, any period of incapacity due to her pregnancy—including periods of morning sickness or medically prescribed bed rest—childbirth, and recovery from childbirth. There is no limit on the amount of sick leave that an employee may use for her own personal medical needs, however an employee has no entitlement to use sick leave except for authorized sick leave purposes.

### **Sick Leave to Care for a Family Member**

An employee is entitled to a total of 12 weeks (480 hours) of sick leave each leave year to care for a family member with a serious health condition. The individual for whom the employee is providing care must meet the definition of family member used for sick leave, voluntary leave transfer program (VLTP), and voluntary leave bank program (VLBP) purposes.

**A family member is an individual with any of the following relationships to the employee:**

- Spouse, and parents thereof
- Sons and daughters, and spouses thereof
- Parents, and spouses thereof
- Brothers and sisters, and spouses thereof
- Grandparents and grandchildren, and spouses thereof
- Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition
- Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship

The agency determines whom they consider to be an "individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship."

When an employee requests sick leave to care for a family member, the agency may require the employee to document his or her relationship with that family member. Agencies should establish consistent rules and follow the same documentation requirements for all relationships, but agencies have authority to request additional information in cases of suspected leave abuse.

### **Sick Leave to Care for Birth Mother**

An employee caring for a family member who is a birth mother is entitled to use sick leave for the mother's prenatal care, any period of incapacity due to her pregnancy—including severe morning sickness or medically prescribed bed rest—childbirth, or for the mother's recovery from childbirth. As mentioned above, most health care providers certify that the recovery period is about 6-8 weeks.

### **Sick Leave to Care for a Newborn**

Employees may not use sick leave to be absent from work to bond with or care for a healthy newborn. There is no provision in law or regulation that permits the use of sick leave to care for a healthy newborn, bond with a healthy child, or for other child care responsibilities. However, an employee is entitled to use sick leave for general family care purposes, i.e., to care for a child who has a routine illness or to take a child to medical, dental, or optical appointments or wellbaby doctor visits, or if the baby has a serious health condition. See previous discussion of the time limits on use of sick leave for family care purposes. An agency may request administratively acceptable evidence of a child's illness or treatment.

The child must meet the definition of family member (see above), or if applicable, the definition of

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## Leave and Work Scheduling Flexibilities Available for Childbirth

(continued)

son or daughter for sick leave, VLTP, and VLBP purposes.

### **Son or daughter means:**

- A biological, adopted, step, or foster son or daughter of the employee
- A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian
- A person for whom the employee stands in loco parentis or stood in loco parentis when that individual was a minor or required someone to stand in loco parentis
- A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner

**Tip:** Based on the definition of family member, an employee could take sick leave to care for a grandchild. Or based on the definition of son or daughter, a same-sex domestic partner could care for the son or daughter of his or her partner for whom the employee will stand in loco parentis, even if the employee is not the child's genetic parent or is not adopting the child.

### **Advanced Sick Leave**

Upon an employee's request, an employee must be granted advanced sick leave to the maximum extent practicable, in accordance with sick leave

laws and regulations and consistent with mission needs. Employees are eligible for a maximum of 240 hours (30 days) of advanced sick leave for purposes of a serious health condition and a maximum of 104 hours (13 days) for general family care purposes (see previous discussion of what types of activities are covered). An agency may grant advanced sick leave for the same reason it grants sick leave as specified in law and regulation, irrespective of the employee's existing annual leave balance. **Tip:** Advanced sick leave may be especially beneficial to new employees within their first year of Federal service who have little or no sick leave accumulated.

### **Annual Leave**

Annual leave may be used for any purpose, subject to the right of the supervisor to approve a time when the annual leave may be taken. Annual leave may be used for pregnancy, childbirth and recovery from childbirth, bonding with or caring for a baby, or for other child care responsibilities including taking the child to medical, dental, or optical appointments or well-baby doctor visits, or any other purpose.

Scheduling of Annual or Advanced Annual Leave Employees have the right to request annual leave, subject

to the right of the supervisor to approve the time when the employee takes the annual leave. For pregnancy and childbirth, agencies are encouraged to grant the leave to the maximum extent practicable consistent with mission needs.

**Tip:** An employee has an entitlement to substitute annual leave for any unpaid FMLA leave during any period approved under FMLA. See section E. on Family and Medical Leave.

### **Advanced Annual Leave**

Advanced annual leave should be granted to the maximum extent practicable, in accordance with annual leave laws and regulations and consistent with mission needs. An agency may advance the amount of annual leave an employee would accrue during the remainder of the leave year. Note that this means that the later in the leave year the employee requests advanced annual leave, the smaller the amount that may be advanced. Agencies are advised to advance annual leave to the maximum extent practicable for purposes related to pregnancy and childbirth. An agency may grant advanced annual leave for the same reasons it grants annual leave as specified in law and regulation, irrespective of the employee's existing annual leave balance. New employees

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## Leave and Work Scheduling Flexibilities Available for Childbirth

(continued)

are eligible to receive advanced annual leave.

**Tip:** Advanced annual leave may be especially beneficial to new employees, within their first year of Federal service, who have little or no leave accumulated.

**Family and Medical Leave Under the Family and Medical Leave Act (FMLA), Federal employees are entitled to a total of up to 12 workweeks of unpaid leave during any 12-month period for one or more of these purposes related to childbirth:**

- The birth of a son or daughter of the employee and the care of such son or daughter
- The care of spouse, son or daughter, or mother of the employee who has a serious health condition
- A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position

**Tip:** An employee must have completed at least 12 months of service (not required to be consecutive and not required to be at the same agency) as a covered Federal employee (generally, an employee at an executive agency) in order to be entitled to FMLA leave. However, an agency may still provide a new employee not eligible for FMLA with an FMLA like benefit.

### **FMLA for Employee's Own Care**

An employee who must be absent from work because of a serious health condition is entitled to unpaid FMLA leave for prenatal care or any period of incapacity due to pregnancy, childbirth, or recovery from childbirth.

This is because, according to the definition of serious health condition (see discussion of serious health condition under Section A. on Sick Leave), any period of incapacity due to pregnancy or childbirth, or for prenatal care, is considered a serious health condition, even if the employee does not receive active medical treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

**Tip:** Since sick leave and FMLA leave are two separate entitlements, an employee does not need to invoke FMLA to use sick leave for her period of recovery from childbirth. She can use 6-8 weeks of sick leave for recovery from childbirth, then later invoke FMLA to bond with her baby.

### **FMLA to Care for Birth Mother**

An employee is entitled to use FMLA leave to care for a wife, daughter (generally under 18 years of age, see definition of son or daughter used for FMLA below), or mother for prenatal care or any period of incapacity due to pregnancy, childbirth, or

recovery from childbirth. Note that the broad definition of family member used for sick leave, VLTP and VLBP purposes does not apply to the FMLA, therefore an employee can only use FMLA leave to provide care for the individuals specified in law.

### **Spouse**

The definition of spouse currently found in OPM's FMLA regulations is being amended in response to the Supreme Court's June 26, 2013 decision in *United States v. Windsor*, which determined Section 3 of the Defense of Marriage Act (DOMA) to be unconstitutional. In OPM's CPM 2013-14 entitled "Family and Medical Leave Act (FMLA) Coverage of Same-Sex Spouses" they explained that the ruling provides employees with same-sex spouses the same FMLA entitlements as those with opposite-sex spouses. Spouse now means a partner in any legally recognized marriage, regardless of the employee's State of residency.

**Tip:** The definition of spouse for FMLA purposes is not as broad as the definition of family member for sick leave and leave sharing purposes. Therefore, an employee cannot take FMLA leave to care for a same-sex or opposite-sex domestic partner who gives birth to a child unless the domestic partner is a common law spouse according to the State of residence.

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## Leave and Work Scheduling Flexibilities Available for Childbirth

(continued)

### **Son or Daughter**

An employee may not invoke FMLA leave to care for a daughter over 18 years of age who has given birth unless she is incapable of self-care due to a mental or physical disability.

**Son or daughter means a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis who is:**

- Under 18 years of age; or
- 18 years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” or “instrumental activities of daily living.” Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc. A “physical or mental disability” refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined in 29 CFR 1630.2 (h), (i) and (j).

### **FMLA to Care for a Newborn**

Each parent is entitled to use FMLA leave for the birth of a child and care of the newborn. An employee may elect to substitute annual leave and/or sick leave for any or all of the leave without pay used under the FMLA, consistent with the laws and regulations for using annual and sick leave. (See Sections A. on Sick Leave and C. on Annual Leave.) An employee’s entitlement to FMLA leave expires 12 months following the date of birth of a child.

### **Intermittent Use of FMLA Leave or Use on a Reduced Leave Schedule**

An employee is entitled to take FMLA leave on an intermittent basis or on a reduced leave schedule for absences in connection with a serious health condition. A reduced leave schedule is a special kind of intermittent leave that amounts to a change in an employee’s usual number of working hours in a workweek or workday, in many cases reducing an employee’s full-time schedule to a part-time schedule for the period of FMLA leave. Therefore, an employee is entitled to take FMLA leave for her own or an eligible birth mothers’ prenatal appointments, for any period of incapacity due to pregnancy, childbirth, or recovery from childbirth (including for “morning sickness”), or to care for his or her child with a serious health condition. Eligibility and medical certification for

the serious health condition are established only at the time of the employee first invokes FMLA for a serious health condition—a medical note is not required for each absence related to the serious health condition.

Upon mutual agreement between the agency and the employee, an employee may use FMLA leave intermittently or on a reduced leave schedule to bond with or care for his or her healthy baby. Agencies are encouraged to approve requests for intermittent FMLA leave for bonding to the maximum extent practicable. In fact, it may be to the benefit of the agency to have the employee take FMLA leave intermittently or on a reduced leave schedule basis and return to work sooner rather than being away from the job for the full 12-week block. It is important for employees to consult with their supervisors regarding scheduling requests in order to minimize the impact on agency operations. In other words, employees should schedule intermittent FMLA leave in advance and be flexible about their intermittent or reduced work schedule in consideration of agency needs.

### **Parents’ Eligibility**

For FMLA purposes, a parent means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a son or daughter. This term does not

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## Leave and Work Scheduling Flexibilities Available for Childbirth

(continued)

include parents “in law.” In loco parentis refers to the situation of an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary. See OPM’s CPM

2010-15 entitled, “Interpretation of “Son or Daughter” Under the Family and Medical Leave Act,” dated August 31, 2010, for more information and examples.

**Tip:** Any employee who will stand in loco parentis (see definition above) to a baby is considered a parent for FMLA purposes and is entitled to use FMLA leave to bond with or care for the child, even if the employee is not the child’s biological parent (see FMLA definition of parent above). For example, an employee whose same or opposite sex domestic partner is having a child, but the employee is not the child’s biological parent, or a grandparent who will raise a child, is entitled to use FMLA leave to bond with the child or to care for the child if the employee will stand in loco parentis to the child. For more examples, please see the OPM memo cited above.

### Leave Sharing Programs

An employee may be eligible to apply for and receive donated annual leave under an agency’s

leave sharing programs if the employee or the employee’s family member is experiencing a medical emergency and if the employee will exhaust his or her own annual and sick leave (referred to as the employee’s “available paid leave”). Donated annual leave may be provided to the birth mother or a family member caring for the birth mother during her period of incapacitation. There are two leave sharing programs that can be used during a birth mother’s period of incapacitation or to care for a child with a medical emergency—the Voluntary Leave Transfer Program (VLTP) and Voluntary Leave Bank Program (VLBP).

### Medical Emergency

The term medical emergency means a medical condition of either the employee or the employee’s family member that is likely to require an employee to be absent or expected to be absent from duty for a prolonged period and to result in a substantial loss of income (expected absence without available paid leave of at least 24 work hours for a full-time employee) because of the employee’s lack of available paid leave. An employee’s or family member’s incapacity of at least 24 hours due to pregnancy and/or recovery from childbirth would therefore constitute a medical emergency for purposes of the VLTP or VLBP. Care of an

employee’s child with a serious health condition would also constitute a medical emergency.

**Tip:** The medical emergency related to pregnancy and childbirth is for the birth mother’s period of incapacitation related to the birth of the child. Donated annual leave under the VLTP and VLBP cannot be used for bonding with a newborn.

### Voluntary Leave Transfer Program

The VLTP allows an employee to donate annual leave directly to another employee who has a personal or family medical emergency. Generally, employees receive donated annual leave under the VLTP from other employees in their agency. However, family members are entitled to donate annual leave to an approved leave recipient who works at another Federal agency. The agency may allow donations from Federal employees at other agencies if it believes that the employee may not otherwise receive enough donated annual leave to meet his or her needs.

### Voluntary Leave Bank Program

Each agency may establish a voluntary leave bank program (VLBP) under which an employee may contribute unused annual leave for use by a leave bank member who is experiencing a personal or family medical emergency. Agencies are strongly

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## Leave and Work Scheduling Flexibilities Available for Childbirth

(continued)

encouraged to establish a leave bank program. The agency's leave bank board operates the leave bank and determines how much donated annual leave an employee may receive from the leave bank. Any unused donated annual leave is returned to the leave bank.

**Tip:** Every agency is required to have a voluntary leave transfer program. To ensure employees are eligible for the maximum benefits possible, agencies are also encouraged to establish a voluntary leave bank program.

**Tip:** An employee is not required to use advanced annual leave or advanced sick leave before receiving donated annual leave under the leave transfer programs.

### Leave Without Pay

An employee may request leave without pay (LWOP) to be absent from work for purposes related to pregnancy and childbirth. An employee may request LWOP without invoking FMLA, even if he or she has available paid leave. Supervisors should refer to agency internal policy and collective bargaining and/or union agreements prior to granting approval. However, agencies are encouraged to offer leave without pay for a longer period than what is provided for under the FMLA, to the maximum extent practicable for pregnancy and childbirth. LWOP can be used in addition to the flexibilities that are already available, subject to

agency policy and any applicable collective bargaining agreement.

**Tip:** For new employees who are not yet eligible for FMLA, an agency can provide the employee with a LWOP benefit that would mirror an FMLA benefit.

### Compensatory Time Off

Three types of compensatory time off may be earned and used: compensatory time off in lieu of overtime pay; compensatory time off for travel; and religious compensatory time off.

### Compensatory Time Off in Lieu of Overtime Pay

**This is time off with pay for:**

1. Irregular or occasional overtime work
2. Regularly scheduled or irregular or occasional overtime work, when permitted under agency flexible work schedule programs. It is subject to agency policy and the premium pay limitation, and there are separate Fair Labor Standards Act (FLSA) rules for employees who are covered (i.e., FLSA non-exempt) or not covered (i.e., FLSA exempt). Accrued compensatory time off must generally be used by the end of the 26th pay period after the pay period during which it was earned. One hour of compensatory time off is granted for each hour of overtime work.

### Compensatory Time Off for Travel

This type of compensatory time may be earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable and be used as paid time off during an expected future absence.

There is no limitation on the amount of compensatory time off for travel an employee may earn, but it is generally forfeited if not used by the end of the 26th pay period after the pay period during which it is earned.

### Religious Compensatory Time Off

This authority permits an employee to rearrange work hours to fulfill his or her religious obligations. Employees may earn and use religious compensatory time off to the extent that doing so does not interfere with the efficient carrying out of agencies' missions. Employees interested in earning compensatory time off should speak with their supervisors.

### Alternative Work Schedule Facts Related to Pregnancy and Childbirth

#### Alternative Work Schedules:

Alternative Work Schedules (AWS) permit an employee to complete an 80-hour biweekly pay period in less than 10 days. Employees have a right to request an alternative

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## Leave and Work Scheduling Flexibilities Available for Childbirth

(continued)

work schedule without fear of retaliation in accordance with agency policy and any collective bargaining agreement. These schedules enable managers and supervisors to meet their program goals while, at the same time, helping employees to better balance work, personal, and family responsibilities. There are two categories of Alternative Work Schedules – compressed work schedules and flexible work schedules.

### **Compressed Work Schedules:**

These are fixed work schedules that enable full-time employees to complete the basic 80-hour biweekly work requirement in less than 10 workdays. These schedules must be negotiated through collective bargaining or, when not applying to a bargaining unit, voted on by a majority of the employees to be covered by the schedule.

### **Flexible Work Schedules:**

These are flexible work schedules that enable employees to select and alter their work schedules to better fit their personal needs and help balance work, personal, and family responsibilities.

### **There are various types of flexible work schedules that provide different degrees of flexibility within the 80-hour biweekly work requirement:**

- **Flexitour** – employees elect start/stop times, which then become fixed
- **Gliding** – employees may vary start/stop times daily

- **Variable Day** – employees may vary the length of the workday
- **Variable Week** – employees may vary the number of hours worked each week
- **Maxiflex** – employees may work less than 10 workdays biweekly

### **Credit Hours:**

Some agencies permit employees who work under a flexible work schedule to earn credit hours,

which can assist employees in better managing family responsibilities, including childbirth. Based on agency policy and any applicable collective bargaining agreement, employees may request to work additional hours to use at a later time. A total of 24 credit hours may be carried over to be used in a later pay period.

### **Telework:**

Telework provides employees the flexibility to better manage their work, family, and personal responsibilities. Under an agency's telework policy, an employee may be permitted to work at home or other worksites geographically convenient to the employee's residence.

Telework is a valuable tool that can be used when an employee transitions back to work after the birth of a child. Telework is often used in conjunction with paid leave during the transition period between childbirth and the return to full time official duties. Telework must be approved by the employee's supervisor based

on the agency telework policy and the ability of the employee to accomplish his or her work.

**Tip:** It is important to remember that an employee may not care for a newborn while engaged in the performance of official duties. However, when making a determination about telework eligibility following childbirth, the focus should remain on the work and the ability of the employee to perform official duties, not on the proximity of the newborn in the home. Decisions should be made on a case-by-case basis.

### **Part-time Employment and Job-Sharing Arrangements:**

Agencies are encouraged to offer part-time schedules to employees who are pregnant or have given birth, or to care for a newborn, to the maximum extent practicable. Agencies are also encouraged to develop job sharing programs in partnership with their unions and other stakeholders. Furthermore, when job sharing programs are planned for organizations where employees are represented by a labor organization with exclusive recognition, by law, agencies must notify the union and bargain in good faith on any negotiable proposals the union submits.

### **Part-time:**

A part-time employee works between 16 and 32 hours each week (or between 32 and 64 hours a pay period) on a prearranged schedule and is eligible for benefits. Part-time employees are eligible, on a prorated basis, for the same

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## Leave and Work Scheduling Flexibilities Available for Childbirth

(continued)

benefits as full-time employees: leave, retirement, and health and life insurance coverage.

### Job Sharing:

Job sharing is a form of part-time employment in which the schedules of two or more part-time employees are arranged to cover the duties of a single full-time position. Generally, a job-sharing team means two

employees at the same grade level but other arrangements are possible. Job sharers are subject to the same personnel policies as other part-time employees. Job sharing does not necessarily mean that each job sharer works half-time, or that the total number of hours is 40 per week.

**Tip:** Employees should carefully consider all the personal issues

involved in switching to a part-time or jobsharing schedule, such as a reduction in pay, increased share of health insurance premiums, and the change in leave earnings. Although procedures for requesting such schedules vary from agency to agency, the first step is usually to discuss the idea with the immediate supervisor.

## Leave and Work Scheduling Flexibilities for Adoption and Foster Care Available for Adoption

The Federal Government offers various leave and work scheduling flexibilities to assist employees in meeting their work and family obligations. This section explains the available leave options that can be used separately or in combination to help the

employee balance his or her work and family life for adoption and foster care.

**Note:** Guidance must be read in conjunction with agency and component-specific leave policies and any applicable collective bargaining agreements.

## Sick Leave

### Sick Leave for Adoption

An employee is entitled to use sick leave when he or she must be absent from work for purposes related to his or her adoption of a child.

**Examples of such adoption-related purposes may include but are not limited to:**

- Appointments with adoption agencies, social workers, and attorneys
- Court proceedings
- Required travel
- Any periods of time during which the employee is ordered

or required by the adoption agency or by the court to take time off from work to care for the adopted child

- Any other activities necessary to allow the adoption to proceed.

### Sick Leave for Care of the Child

Employees may not use sick leave to be absent from work to bond with or care for a healthy child. There is no provision in law or regulation that permits the use of sick leave to care for a healthy newborn, bond with a healthy child, or for other child care

responsibilities. An employee is also entitled to 12 weeks of sick leave each leave year to care for his or her adopted or foster child with a serious health condition. The employee may also use up to 13 days of the 12 weeks of sick leave for general family care purposes, i.e., to care for a child who has a routine illness or to take a child to medical, dental, or optical appointments or well-baby doctor visits. An employee is entitled to no more than a combined total of 12 weeks of sick leave each leave year for all family care purposes.

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## Sick Leave *(continued)*

**The child must meet the definition of son or daughter for sick leave, VLTP, and VLBP purposes:**

**Son or daughter means:**

1. A biological, adopted, step, or foster son or daughter of the employee
2. A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian
3. A person for whom the employee stands in loco parentis or stood in loco parentis when that individual was a minor or required someone to stand in loco parentis
4. A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner

**Tip:** Based on the definition of son or daughter, an employee with a domestic partner could care for the son or daughter of his or her partner for whom the employee will stand in loco parentis, even if the employee is not adopting or fostering the child.

**Advanced Sick Leave**

Upon an employee's request, an employee must be granted advanced sick leave to the maximum extent practicable, in accordance with the sick leave laws and regulations and consistent with mission needs. An employee is eligible for a maximum of 240 hours (30

days) of advanced sick leave for purposes related to his or her adoption of a child or to care for his or her adopted or foster child with a serious health condition, and a maximum of 104 hours (13 days) to care for his or her adopted or foster child with a routine illness or to take the child to medical, dental, or optical appointments or well-baby doctor visits (if applicable). Two hundred forty (240) hours is the maximum amount of advanced sick leave a full-time employee may have to his or her credit at any one time. An agency may grant advanced sick leave for the same reason it grants sick leave as specified in law and regulation, irrespective of the employee's existing annual leave balance.

**Tip:** Advanced sick leave may be especially beneficial to new employees who may have little or no sick leave accumulated.

**Annual Leave**

Annual leave may be used for any purpose, subject to the right of the supervisor to approve a time when the annual leave may be taken. Annual leave may be used for adoption or foster care purposes, for bonding with or caring for an adopted or foster child, or other child care responsibilities including taking the child to medical, dental, or optical appointments or well-baby doctor visits (if applicable), or any other purpose.

Scheduling of Annual or Advanced Annual Leave Employees have the right to request annual leave, subject

to the right of the supervisor to approve the time when the employee takes the annual leave. For adoption or foster care, agencies are encouraged to grant annual leave to the maximum extent practicable consistent with mission needs.

**Tip:** An employee has an entitlement to substitute annual leave for any unpaid FMLA leave during any period approved under FMLA.

**Advance Annual Leave**

Advanced annual leave should be granted to the maximum extent practicable, in accordance with annual leave laws and regulations and consistent with mission needs. An agency may advance the amount of annual leave an employee would accrue during the remainder of the leave year. Note that this means that the later in the leave year the employee requests advanced annual leave, the smaller the amount that may be advanced. Agencies are advised to advance annual leave to the maximum extent practicable for purposes related to adoption or foster care. An agency may grant advanced annual leave for the same reasons it grants annual leave as specified in law and regulation, irrespective of the employee's existing annual leave balance. New employees are eligible to receive advanced annual leave.

**Tip:** Advanced annual leave may be especially beneficial to new employees who may have little or no leave accumulated.

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## Sick Leave *(continued)*

**Family and Medical Leave Under the Family and Medical Leave Act (FMLA), Federal employees are entitled to a total of up to 12 workweeks of unpaid leave during any 12-month period for one or more of these purposes related to adoption and foster care:**

- The placement of a son or daughter with the employee for adoption or foster care
- The care of a son or daughter of the employee who has a serious health condition

**Tip:** An employee must have completed at least 12 months of service (not required to be consecutive and not required to be at the same agency) as a covered Federal employee (generally, an employee at an executive agency) in order to be entitled to FMLA leave. However, an agency may still provide a new employee not eligible for FMLA with an FMLA-like benefit.

An employee is entitled to FMLA leave for purposes of adoption or placement of a child with the employee for adoption or foster care and care of the child.

### **Intermittent Use of FMLA Leave or Leave on a Reduced Leave Schedule**

An employee is entitled to take FMLA leave on an intermittent basis or on a reduced leave schedule for absences in connection with a serious health condition. A reduced

leave schedule is a special kind of intermittent leave that amounts to a change in an employee's usual number of working hours in a workweek or workday, in many cases reducing an employee's full-time schedule to a part-time schedule for the period of FMLA leave. Therefore, an employee is entitled to take FMLA leave to care for his or her adopted or foster child if the child has a serious health condition. Eligibility and medical certification for the serious health condition are established only at the time the employee first invokes FMLA for a serious health condition—a medical note is not required for each absence related to the serious health condition.

Upon mutual agreement between the agency and the employee, an employee may use FMLA leave intermittently or on a reduced leave schedule for the placement of a son or daughter with the employee for adoption or foster care. Agencies are encouraged to approve requests for intermittent FMLA leave for placement of an adopted or foster child to the maximum extent practicable. In fact, it may be to the benefit of the agency to have the employee take FMLA leave intermittently or on a reduced leave schedule basis and return to work sooner rather than being away from the job for the full 12-week block.

It is important for an employee to consult with his

or her supervisor regarding scheduling requests in order to minimize the impact on agency operations. In other words, employees should schedule intermittent FMLA leave in advance and be flexible about their intermittent or reduced work schedule in consideration of agency needs.

**Substitution of Paid Leave** under FMLA. FMLA leave is unpaid leave. However, in order to remain in a pay status during FMLA leave, an employee may elect to substitute accrued, accumulated, or advanced annual leave or sick leave or annual leave donated under the VLTP or VLBP, for any unpaid leave under the FMLA, consistent with the laws and regulations for using annual and sick leave.

**Tip:** When one hears the word "leave" generally people think that means a type of paid leave. But did you know that FMLA leave is actually a type of leave without pay? The main purpose of FMLA leave is to provide a period of job-protected time away from the office for employees for certain purposes. FMLA leave ensures that an employee's job is protected even if he or she does not have enough paid leave to cover his or her absence.

### **Leave Sharing Programs**

An employee may be eligible to apply for and receive donated annual leave under an agency's leave sharing programs if the employee's adopted or foster

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## Sick Leave *(continued)*

child experiences a medical emergency and if the employee will exhaust his or her own annual and sick leave (referred to as the employee's "available paid leave"). There are two leave sharing programs that can be used to care for an adopted or foster child with a medical emergency—the Voluntary Leave Transfer Program (VLTP) and the Voluntary Leave Bank Program (VLBP).

### **Medical Emergency**

The term medical emergency means a medical condition of either the employee or the employee's family member that is likely to require an employee to be absent or expected to be absent from duty for a prolonged period and to result in a substantial loss of income (expected absence without available paid leave of at least 24 work hours for a full-time employee) because of the employee's lack of available paid leave.

**Tip:** Donated leave under the VLTP and VLBP cannot be used for purposes related to the adoption or foster placement of a child or for bonding with the child.

### **Voluntary Leave Transfer Program**

The VLTP allows an employee to donate annual leave directly to another employee who has a personal or family medical emergency. Generally, employees receive donated annual leave under the VLTP

from other employees in their agency. However, family members are entitled to donate annual leave to an approved leave recipient who works at another Federal agency. The agency may allow donations from Federal employees at other agencies if it believes that the employee may not otherwise receive enough donated annual leave to meet his or her needs.

### **Voluntary Leave Bank Program**

Each agency may establish a voluntary leave bank program (VLBP) under which an employee may contribute unused annual leave for use by a leave bank member who is experiencing a personal or family medical emergency. Agencies are strongly encouraged to establish a leave bank program. The agency's leave bank board operates the leave bank and determines how much donated annual leave an employee may receive from the leave bank. Any unused donated annual leave is returned to the leave banks.

**Tip:** Every agency is required to have a voluntary leave transfer program. To ensure employees are eligible for the maximum benefits possible, agencies are also encouraged to establish a voluntary leave bank program.

### **Leave Without Pay**

An employee may request leave without pay (LWOP) to be absent from work

for adoption or foster care purposes or to bond with or care for a newly-adopted child or newly-placed foster child. An employee may request LWOP without invoking FMLA, even if he or she has available paid leave. Supervisors should refer to agency internal policy and negotiated bargaining union agreements prior to approval. However, agencies are encouraged to offer leave without pay for a longer period than what is provided for under the FMLA, to the maximum extent practicable for pregnancy and childbirth.

**Tip:** For new employees who are not yet eligible for FMLA, an agency can provide the employee with a LWOP benefit that would mirror an FMLA benefit.

### **Effect of LWOP on Leave Accrual and other Benefits**

Being in a leave without pay (or unpaid leave) status affects various employee entitlements, including the accrual of annual and sick leave. For example, when a fulltime employee with an 80-hour biweekly tour of duty accumulates a total of 80 hours of nonpay status (either in one pay period, or over the course of several pay periods), the employee will not earn annual and sick leave in the pay period. If the employee again accumulates 80 hours of nonpay status, he or she will again not earn leave in the pay period in which that new 80-hour total is reached.

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## Sick Leave *(continued)*

### Compensatory Time Off

Three types of compensatory time off may be earned and used: compensatory time off in lieu of overtime pay; compensatory time off for travel; and religious compensatory time off.

### Compensatory Time Off in Lieu of Overtime Pay

**This is time off with pay for:**

1. Irregular or occasional overtime work
2. Regularly scheduled or irregular or occasional overtime work, when permitted under agency flexible work schedule programs. It is subject to agency policy and the premium pay limitation, and there are separate Fair Labor Standards Act (FLSA) rules for employees who are covered (i.e., FLSA non-exempt) or not covered (i.e., FLSA exempt). Accrued compensatory time off must generally be used by the end of the 26th pay period after the pay period during which it was earned. One hour of compensatory time off is granted for each hour of overtime work

### Compensatory Time Off for Travel

This type of compensatory time may be earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable and be

used as paid time off during an expected future absence. There is no limitation on the amount of compensatory time off for travel an employee may earn, but it is generally forfeited if not used by the end of the 26th pay period after the pay period during which it is earned.

### Religious Compensatory Time Off

This authority permits an employee to rearrange work hours to fulfill his or her religious obligations. Employees may earn and use religious compensatory time off to the extent that doing so does not interfere with the efficient carrying out of agencies' missions. Employees interested in earning compensatory time off should speak with their supervisors.

### Alternative Work Schedules

Alternative Work Schedules (AWS) permit an employee to complete an 80-hour biweekly pay period in less than 10 days. Employees have a right to request an alternative work schedule without fear of retaliation in accordance with agency policy and any collective bargaining 38 agreement. These schedules enable managers and supervisors to meet their program goals while, at the same time, helping employees to better balance work, personal, and family responsibilities. There are two categories of Alternative Work Schedules – compressed

work schedules and flexible work schedules.

### Compressed Work Schedules

These are fixed work schedules that enable full-time employees to complete the basic 80-hour biweekly work requirement in less than 10 workdays. These schedules must be negotiated through collective bargaining or, when not applying to a bargaining unit, voted on by a majority of the employees to be covered by the schedule.

### Flexible Work Schedules

These are flexible work schedules that enable employees to select and alter their work schedules to better fit their personal needs and help balance work, personal, and family responsibilities.

**There are various types of flexible work schedules that provide different degrees of flexibility within the 80-hour biweekly work requirement:**

- **Flexitour** – employees elect start/stop times, which then become fixed
- **Gliding** – employees may vary start/stop times daily
- **Variable Day** – employees may vary the length of the workday
- **Variable Week** – employees may vary the number of hours worked each week
- **Maxiflex** – employees may work less than 10 workdays biweekly.

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## Sick Leave *(continued)*

### **Credit Hours**

Some agencies permit employees who work under a flexible work schedule to earn credit hours, which can assist employees in better managing family responsibilities, including adoption and foster care.

Based on agency policy and any applicable collective bargaining agreement, employees may request to work additional hours to use at a later time. A total of 24 credit hours may be carried over to be used in a later pay period.

**Telework:** Telework provides employees the flexibility to better manage their work, family, and personal responsibilities. Under an agency's telework policy, an employee may be permitted to work at home or other worksites geographically convenient to the employee's residence. Telework is a valuable tool that can be used when an employee transitions back to work after the adoption of a child or placement of a child in foster care. Telework is often used in conjunction with other forms of paid leave during the transition period between placement of the child for adoption or foster care and the return to full-time official duties.

Telework must be approved by the employee's supervisor based on the agency telework policy and the ability of the employee to accomplish his or her work.

**Tip:** It is important to remember that an employee may not care for a child while engaged in the performance of official duties. However, when making a determination about telework eligibility following an adoption or placement of a child in foster care, the focus should remain on the work and the ability of the employee to perform official duties, not on the proximity of the child in the home. Decisions should be made on a case-by-case basis.

### **Part-time Employment and Job-Sharing Arrangements**

Agencies are encouraged to offer part-time schedules to employees who are pregnant or have given birth, or to care for a newborn, to the maximum extent practicable. Agencies are also encouraged to develop job sharing programs in partnership with their unions and other stakeholders. Furthermore, when job sharing programs are planned for organizations where employees are represented by a labor

organization with exclusive recognition, by law, agencies must notify the union and bargain in good faith on any negotiable proposals the union submits.

### **Part-time**

A part-time employee works between 16 and 32 hours each week (or between 32 and 64 hours a pay period) on a prearranged schedule and is eligible for benefits. Part-time employees are eligible, on a prorated basis, for the same benefits as full-time employees: leave, retirement, and health and life insurance coverage.

### **Job Sharing**

Job sharing is a form of part-time employment in which the schedules of two or more part-time employees are arranged to cover the duties of a single full-time position. Generally, a job-sharing team means two employees at the same grade level but other arrangements are possible. Job sharers are subject to the same personnel policies as other part-time employees. Job sharing does not necessarily mean that each job sharer works half-time, or that the total number of hours is 40 per week.

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## Military Leave

An employee is entitled to time off at full pay for certain types of active or inactive duty in the National Guard or as a Reserve of the Armed Forces.

### Coverage

Any full-time Federal civilian employee whose appointment is not limited to 1 year is entitled to military leave. Military leave under 5 U.S.C. 6323(a) is prorated for part-time career employees and employees on an uncommon tour of duty.

### Types of Military Leave

- a. 5 U.S.C. 6323 provides 15 days per fiscal year for active duty, active-duty training, and inactive duty training. An employee can carry over a maximum of 15 days into the next fiscal year.

Inactive Duty Training is authorized training performed by members of a Reserve component not on active duty and performed in connection with the prescribed activities of the Reserve component. It consists of regularly scheduled unit training periods, additional training periods, and equivalent training. For further information, see Department of Defense Instruction Number 1215.6, March 14, 1997

- b. 5 U.S.C. 6323 provides 22 workdays per calendar year for emergency duty as ordered by the President, the Secretary of Defense, or

a State Governor. This leave is provided for employees who perform military duties in support of civil authorities in the protection of life and property or who perform full-time military service as a result of a call or order to active duty in support of a contingency operation\* as defined in section 101(a)(13) of title 10, United States Code

- c. 5 U.S.C. 6323 provides unlimited military leave to members of the National Guard of the District of Columbia for certain types of duty ordered or authorized under title 39 of the District of Columbia Code
- d. 5 U.S.C. 6323 provides that Reserve and National Guard Technicians only are entitled to 44 workdays of military leave for duties overseas under certain conditions.

### \*The term “contingency operation” means a military operation that:

- Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force
- Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or

12406 of title 10, United States Code, chapter 15 of title 10, United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress

### Days of Leave

Military leave should be credited to a full-time employee on the basis of an 8-hour workday. The minimum charge to leave is 1 hour. An employee may be charged military leave only for hours that the employee would otherwise have worked and received pay.

Employees who request military leave for inactive duty training (which generally is 2, 4, or 6 hours in length) will now be charged only the amount of military leave necessary to cover the period of training and necessary travel. Members of the Reserves or National Guard will no longer be charged military leave for weekends and holidays that occur within the period of military service.

A full-time employee working a 40-hour workweek will accrue 120 hours (15 days x 8 hours) of military leave in a fiscal year, or the equivalent of three 40-hour workweeks. Military leave under 6323(a) will be prorated for part-time employees and for employees on uncommon tours of duty based proportionally on the number of hours in the employee's regularly scheduled biweekly pay period.

## Military Leave *(continued)*

### Examples:

Hours in the regularly scheduled biweekly pay period	Ratio of hours in the regularly scheduled pay period to an 80-hour pay period (the number of hours in the pay period 80)	Hours of military leave accrued each fiscal year	Pay Periods of military leave accrued each fiscal year
40	.5 (40 80)	.5 x 120 = 60 hours	1.5 40-hour pay periods
106	1.325 (106 80)	1.325 x 120 = 159 hours	1.5 106-hour pay periods
120	(1.5 (120 80)	1.5 x 120 = 180 hours	1.5 120-hour pay periods
140	1.8 (144 80)	1.8 x 120 = 216 hours	1.5 144-hour pay periods

### Effect on Civilian Pay

An employee's civilian pay remains the same for periods of military leave under 5 U.S.C. 6323(a), including any premium pay (except Sunday premium pay) an employee would have received if not on military leave. For military leave under 5 U.S.C. 6323(b) and (c), an employee's civilian pay is reduced by the amount of military pay for the days of military leave. However, an employee may choose not to take military leave and instead take annual leave, compensatory time off for travel, or sick leave, if appropriate, in order to retain both civilian and military pay.

# Alternative Work Schedules

## Alternative Work Schedules

An agency may implement for its employees an alternative work schedule (AWS) instead of traditional fixed work schedules (e.g., 8 hours per day, 40 hours per week). Within rules established by the agency, AWS can enable employees to have work schedules that help the employee balance work and family responsibilities.

There are two categories of AWS: flexible work schedules (FWS) and compressed work schedules (CWS).

FWS consists of workdays with (1) core hours and (2) flexible hours. Core hours are the designated period of the day when all employees must be at work. Flexible hours are the part of the workday when employees may (within limits or “bands”) choose their time of arrival and departure. Within limits set by their agencies, FWS can enable employees to select and alter their work schedules to better fit personal needs and help balance work, personal, and family responsibilities.

## Compressed Work Schedules (CWS)

CWS are fixed work schedules, but they enable full-time employees to complete the basic 80-hour biweekly work requirement in less than 10 workdays.

### Employee Coverage

A Federal employee, as defined in section 2105(a) or (c) of title 5, United States Code, who is employed by an agency, as defined in 5 U.S.C. 6121(1), may be covered by a CWS. An employee may request to be excluded for a personal hardship.

### Implementation Restrictions

**For employees in a bargaining unit:** The agency must successfully negotiate a

CWS program with the union for a represented group of employees prior to implementation (5 U.S.C. 6130).

**For employees not in a bargaining unit:** The agency must secure a favorable vote from the majority of employees in the affected group before implementing a CWS program (5 U.S.C. 6127(b)(1)).

### Credit Hours

Credit hours are not permitted under a CWS program.

### Overtime

For full-time employees, all hours worked in excess of the established compressed work schedule are overtime hours.

### Compensatory Time Off

An employee on a Compressed Work Schedule (CWS) may request compensatory time off only for the performance of irregular or occasional overtime work. Compensatory time off may not be approved for any member of the Senior Executive Service (SES).

### Night Pay

The normal premium pay rules apply for night pay. See 5 CFR 550.121 and 122 for General Schedule employees and 5 CFR 532.505 for prevailing rate employees.

### Holidays

On holidays, an employee is normally excused from work

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## Compressed Work Schedules (CWS) *(continued)*

and entitled to basic pay for the number of hours of his or her CWS on that day. In the event the President issues an Executive Order granting a “half-day” holiday, full-time CWS employees are normally excused from work during the last half of their “basic work requirement” (i.e., nonovertime hours) on that day.

### **Holiday Premium Pay**

Holiday premium pay (equal to 100 percent of the rate of basic pay) is paid for nonovertime hours of work that fall within the hours regularly scheduled on the holiday.

### **Sunday Premium Pay**

Sunday premium pay is paid for nonovertime work performed by full-time employees. For an

employee on a CWS, Sunday premium pay is paid for the entire nonovertime regularly scheduled tour of duty that begins or ends on Sunday. It may not be paid for periods of nonwork, including leave, holidays, and excused absence.

## Flexible Work Schedules (FWS)

FWS consists of workdays with:

- 1 Core Hours
- 2 Flexible Hours

Core hours are the designated period of the day when all employees must be at work. Flexible hours are the part of the workday when employees may (within limits or “bands”) choose their time of arrival and departure. Within limits set by their agencies, FWS can enable employees to select and alter their work schedules to better fit personal needs and help balance work, personal, and family responsibilities.

### **Employee Coverage**

A Federal employee, as defined in section 2105(a) or (c) of title 5, United States Code, who is employed by an agency, as defined in 5 U.S.C. 6121(1), may be covered by a flexible work schedule. Flexible work schedules are voluntary work schedules that are approved by supervisors or managers.

### **Credit Hours**

Credit hours are any hours within an FWS that are in excess of an employee’s basic work requirement (e.g., 40 hours a week) which the employee elects to work to vary the length of a workweek or a workday. Agencies may limit or restrict the earning and use of credit hours. OPM regulations prohibit Senior

Executive Service (SES) members from accumulating credit hours under AWS programs (5 CFR 610.408). The law prohibits carrying over more than 24 credit hours from one pay period to the next (5 U.S.C. 6126).

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## Flexible Work Schedules (FWS) *(continued)*

### Types of FWS

There are various types of FWS arrangements that provide different degrees of flexibility.

#### These include:

- Flexitour
- Gliding
- Variable day
- Variable week
- Maxiflex

### Overtime Hours

Overtime work means all hours of work in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance.

### Compensatory Time Off

An employee who is not a member of the Senior Executive Service may request compensatory time off in lieu of payment for irregular or occasional overtime work or regularly scheduled overtime work. (See 5 U.S.C. 6123(a)(1).)

### Night Pay

In general, premium pay for night work is not paid to a General Schedule (GS) employee solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time when night pay is authorized.

However, agencies must pay night pay to GS employees

for those hours that must be worked between 6 p.m. and 6 a.m. to complete an 8-hour tour of duty. Agencies must also pay night pay for all designated core hours worked between 6 p.m. and 6 a.m. and for any regularly scheduled overtime work between those hours.

**Note:** For prevailing rate (wage) employees, see 5 U.S.C. 6123(c)(2).

### Holidays

On holidays, a full-time Flexible Work Schedule (FWS) employee is limited to 8 hours of basic pay. A part-time FWS employee is entitled to basic pay for the number of hours scheduled for the holiday, not to exceed 8 hours. (See 5 U.S.C. 6124.) In the event the President issues an Executive Order granting a “half-day” holiday, full-time FWS

employees are entitled to basic pay for the last half of their “basic work requirement” (i.e., nonovertime hours) on that day, not to exceed 4 hours.

### Holiday Premium Pay

Holiday premium pay (equal to 100 percent of the rate of basic pay) is limited to nonovertime hours worked, not to exceed a maximum of 8 nonovertime hours per holiday.

### Sunday Premium Pay

Sunday premium pay is paid for nonovertime work performed by full-time employees only. A full-time FWS employee earns Sunday premium pay for an entire nonovertime regularly scheduled tour of duty (not to exceed 8 hours) that begins or ends on Sunday. It may not be paid for periods of nonwork, including leave, holidays, and excused absence.

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## Adjustment of Work Schedules for Religious Observances

To the extent that modifications in work schedules do not interfere with the efficient accomplishment of an agency's mission, an employee whose personal religious beliefs require that he or she abstain from work at certain times of the workday or workweek must be permitted to work alternative work hours so that the employee can meet the religious obligation. The hours worked in lieu of the normal work schedule do not create any entitlement to premium pay (including overtime pay).

### Employee Coverage

Adjustments of work schedules for religious observances may be approved for an employee who is employed in or under an executive agency, as defined in section 105 of title 5, United States Code.

### Approval

Agencies should require employees to submit a written request for an adjusted work schedule in advance. An employee should specifically state that his or her request for an adjusted work schedule is for religious purposes and should provide acceptable documentation of the need to abstain from work.

When deciding whether an employee's request for an adjusted work schedule should be approved, a supervisor should not make any judgment about the employee's religious beliefs or his or her

affiliation with a religious organization. A supervisor may disapprove an employee's request if modifications of an employee's work schedule would interfere with the efficient accomplishment of the agency's mission.

If an employee's request is approved, a supervisor may determine whether the alternative work hours will be scheduled before or after the religious observance.

### Documenting An Adjusted Work Schedule

An employee's request for time off should not be granted without simultaneously scheduling the hours during which the employee will work to make up the time. This provides a clear record of the employee's adjusted work schedule. An employee should be allowed to accumulate only the number of hours of work needed to make up for previous or anticipated absences from work for religious observances.

If an employee is absent when he or she is scheduled to perform work to make up for a planned absence for a without leave, if appropriate. These are the same options that apply to any other absence from an employee's basic work schedule.

### Impact on Pay

The overtime pay provisions of title 5, United States Code, and the Fair Labor Standards Act of 1938, as amended, do not

apply to employees who work different hours or days because of religious observances, even if an employee voluntarily works in excess of 40 hours per week or 8 hours per day for this purpose. If an employee is separated or transferred before using the time set aside for religious observances, any hours not used must be paid at the employee's rate of basic pay in effect when the extra hours of work were performed. If, after a religious observance, the employee must take paid leave, request leave without pay, or be charged absent without leave, if appropriate. These are the same options that apply to any other absence from an employee's basic work schedule.

### Impact on Pay

The overtime pay provisions of title 5, United States Code, and the Fair Labor Standards Act of 1938, as amended, do not apply to employees who work different hours or days because of religious observances, even if an employee voluntarily works in excess of 40 hours per week or 8 hours per day for this purpose. If an employee is separated or transferred before using the time set aside for religious observances, any hours not used must be paid at the employee's rate of basic pay in effect when the extra hours of work were performed.

# Employee Assistance Program

## What is an Employee Assistance Program (EAP)?

At some time in their careers, many employees will experience a problem that will affect a major aspect of their lives.

### Examples of these are:

- Alcoholism
- Drug abuse
- Divorce
- The death of a loved one
- Bankruptcy
- Some other family or workplace crisis.

The problem might not be the employee's concern; it might be the problem of a family member or a close friend. No matter where the problem originates, these problems can affect an employee's job performance or conduct.

The EAP is a voluntary, work-based program that provides cost-free and confidential

assessment, short-term counseling, referral, and follow-up services to employees who have personal and/or work-related problems that may affect attendance, work performance, and/or conduct. Every agency has an EAP which has a goal of restoring valuable employees to full productivity.

## Common Terms

### Alcoholism/Drug Addiction

A chronic and progressive disease, characterized by the loss of control over the use of alcohol and/or drugs, that adversely affects a person's physical, mental, emotional, and social capabilities, interpersonal relationships, and/or occupational, and economic functioning.

### Alcohol/Drug Abuse

The excessive use of alcohol or drugs in a manner that may impair a person's physical, mental, emotional, interpersonal, occupational, and economic functioning

### Self-Initiated Referral

An employee who voluntarily seeks EAP assistance or who

seeks EAP assistance at the recommendation of a union representative, co-worker, friend, family member, nurse, etc.

### Management-Initiated Referral

An employee who is formally referred to the EAP by a supervisor, usually as a result of a performance or conduct deficiency, or an employee who is identified as using or abusing drugs in accordance with Executive Order 12564.

### Self-Identification

An employee who admits to drug abuse to his or her supervisor or to the EAP and seeks rehabilitative assistance from the agency EAP in accordance with Executive

Order 12564 prior to being identified through other means.

### Firm Choice

A clear warning to an employee who has raised alcohol and/or drug use in connection with a specific performance, conduct, or leave use problem. The employee must make a choice between accepting treatment for the alcohol and/or drug problem and improving job performance or facing disciplinary action, up to and including removal.

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## Common Terms *(continued)*

### **Last Chance Agreement**

An agreement reached between the employee and the employer that holds in abeyance the employee's disciplinary action when certain conditions are met.

### **Emotional/ Behavioral Problems**

Problems, such as financial, family, marital issues, etc., that may have an adverse impact on employee performance, conduct, or reliability.

### **Services Provided**

In addition to alcohol and drug abuse counseling, your agency may offer counseling and referral services for a variety of problems through the EAPs, such as mental health, emotional, family, financial, elder and dependent care, legal difficulties, etc.

The EAP also plays a key role in educating employees on a variety of health and assistance topics such as HIV/AIDS, money management, parenting, caring for aging parents, stress management, and selecting quality child care.

### **The basic services of the EAP include:**

- Confidential, free, short-term counseling to identify and assess problem(s) and to help employees in problem solving
- Referral, where appropriate, to a community service or professional resource that provides treatment and/or rehabilitation. With the exception of illness or

injury directly resulting from employment, medical care and treatment are personal to the employee and, therefore, payment may not be made from appropriated funds unless provided for in a contract of employment or by statute or by regulation

- Follow-up services to help an employee readjust to his or her job during and after treatment, e.g., back-to-work conferences
- Training sessions for managers and supervisors on handling work-related problems that may be related to substance abuse or other personal, and/or health-related problems
- Orientation and educational programs to promote the services of the EAP
- Briefings to educate management and union officials on the role of EAPs

### **In addition, the EAP can be extremely important in:**

- Preventing and intervening in workplace violence incidents
- Delivering critical incident stress debriefings
- Providing assistance to management and employees during agency restructuring

### **How Are EAPs Administered?**

The EAP may be made part of the agency's overall employee health services program. It may be integrated organizationally and functionally to enhance

employee awareness and utilization of available services and to efficiently deliver health services to employees.

Your agency might set up an "in-house" program using agency staff, contract for EAP services or use a combination of both options. Contract and in-house EAPs provide the same basic services.

### **Agency In-House Programs**

Staff your in-house program with agency personnel on a full-time, part-time, or collateral-duty basis. Your agency may hire a full-time EAP program administrator, coordinator, and counselors to operate the program.

### **Contract Programs**

The majority of the EAPs are operated through contracts or interagency agreements with other organizations. These mechanisms can be cost effective when the programs are tailored to the specific needs of the agency.

Contract arrangements are often used to provide EAP services to employees working in remote locations. Contract arrangements also work in small agency installations where in-house EAPs would not be possible because the agency lacks in-house expertise or because the workforce population is not large enough to justify employing an in-house EAP staff.

In addition, your agency might choose to provide EAP services

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## Common Terms *(continued)*

to your employees through interagency agreements with the Division of Federal Occupational Health (FOH), DHHS. FOH operates many EAPs for Federal agencies throughout the country.

Contracting with outside organizations or providers for EAP services is a viable option for many agencies. Your agency might operate the EAPs either through a single agency contract or as part of a multi-agency contract. Larger agencies use a combination of these options.

### **Cooperative Programs**

Agencies in the same geographical area may determine that the only viable option for having an EAP is to combine their resources in a multi-agency contract. This is called a Cooperative Interagency Employee Assistance Program, or “Consortium.”

Typically, this process involves one agency agreeing to become the lead agency for the consortium, signing a contract with an outside organization for the counseling

and referral services, then monitoring how the contract is being performed. All of the participating agencies, in return, share the expenses of the contract, usually on a per capita basis, through an interagency agreement. FOH manages most EAPs through this type of arrangement and can act as the lead through an interagency agreement.

# Awards

## **Awards for Federal Employees**

**Regulations provide for four forms of awards that can be given to Federal employees:**

- Lump-sum cash awards
- Honorary awards,
- Informal recognition awards
- Time off awards

## **Restrictions on Case Awards**

The Office of Personnel Management must approve any cash award over \$10,000. For awards over \$25,000, the President must approve the amount over \$25,000. The Department of Defense and the Internal Revenue Service (IRS) only have to obtain OPM approval for awards over \$25,000. (This does not apply to SES performance and rank awards for SES and SL/ST employees.)

## **Honorary Award vs. Information Recognition Awards**

Honorary awards are generally symbolic and usually do not use monetary recognition at all. They are a gesture of respect given to employees to recognize their performance and value to the organization. Many agencies include this traditional form of high-level, formal recognition as part of their overall incentive awards programs. Informal recognition awards, on the other hand, are a type of award that may be given to reward performance that otherwise

might not merit an award such as cash, time-off, or an honorary award. Agencies use these awards to provide more frequent and timely informal recognition to employees.

## **Coverage for Federal Employees and Contract Employees**

Employees of outside contractors may not receive direct payments from the Federal Government. Their employment, including pay, rewards, and discipline, must be handled by their employer, who is the contractor, not the Government. We are aware that in some situations, Federal employees and contract employees work side-by-side as members of the same overall work teams. In such cases, it might be desirable to use procurement flexibilities to set up a parallel awards program for the

contract employees, which the contractor would be required to fund and administer. Under the terms of the contract, the Government could make additional payments to the contractor according to performance-related criteria specified in the contract, to provide the funds which the contractor would then distribute to the contract employees. Setting up and operating such a program would have to conform to procurement regulations, limitations, and requirements.

Personal services contracts could also be written to allow for performance contingent payments. The key issue is that such payments to individuals, whether under personal services or non-personal services contracts, would not be made under the awards authorities in title 5, United States Code.

## **Coverage for Civilian and Military Employees**

An award program can cover civilian and military employees but only to the extent that the program covers awards for suggestions, inventions, or scientific achievements. For those categories of awards, an agency can choose to have a single program in which both civilian and military employees can participate or even a specific award for which both might be eligible. Otherwise, for all other types of awards authorized by chapter 45 of title 5, United States Code, military employees are excluded.

## **Awards for Private Citizens**

The awards statute only authorizes granting awards to and recognition of Federal employees. An agency may have other authorities for recognizing the contributions of private citizens.

## **Awards for SES Employees under Subpart A of Part 451 of title 5, Code of Regulations**

Agencies can give Senior Executive Service (SES)

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## Awards *(continued)*

employees any awards under subpart A of part 451 for which they qualify and are eligible. The specific exception in the regulations at section 451.104(a)(3) of title 5, Code of Federal Regulations, refers to performance awards because there is a separate statutory and regulatory authority for granting performance awards to SES employees.

### **Suggestion Award Programs**

Suggestion award programs are not specifically required by law or regulation. The Office of Personnel Management (OPM) is aware that some agencies have redesigned and streamlined their programs to reward employee ideas and innovations. However, it is well to remember that Congress established the suggestion award authority as the foundation of all employee incentive award authorities. Further, the program is rooted in a presumption that Governmentwide—not just agencywide—benefits are to be determined and rewarded. Consequently, OPM expects agencies to extend their interdepartmental good will and cooperate when suggestions are referred to them from other agencies for evaluation and possible adoption, even if the receiving agency has curtailed formal procedures for its own employees. Agencies that have retained their existing submission and evaluation systems rightfully expect reasonable consideration

of ideas their employees put forward.

### **Performance Awards**

Performance awards are lump-sum cash awards based on ratings of record of Level 3 (Fully Successful or equivalent) or higher. Rating-based performance awards are included among the various types of awards available under part 451 of title 5, Code of Federal Regulations. Agencies can use the rating of record as the sole basis for granting a performance award.

### **Performance Awards of Agencies not covered by Part 430 of title 5, Code of Federal Regulations**

Under the authority of section 4505a of title 5, United States Code agencies may pay performance-based cash awards to GS only. Agencies that are not covered by the provisions of 5 CFR 430 can use their official agency performance rating as the justification for the award as long as the employee's most recent performance rating was at the fully successful level or higher (or the equivalent).

### **Non-GS Employees Using Authority at 5 U.S.C. 4505a**

The regulations at 5 CFR 451.101(e) allow agencies to grant performance-based cash awards under the authority of 5 U.S.C. 4505a to eligible non-GS employees who are covered by 5 U.S.C. chapter 45 and who are not otherwise covered by an explicit statutory

authority for the payment of rating-based awards.

### **Cash Performance Award for “Pass/Fail” Appraisal Program**

An agency can provide a cash award for a “pass” rating in a two-level appraisal program is a Level 3 (Fully Successful or equivalent) summary level. The law at section 4505a of title 5, United States Code, which covers General Schedule employees, states that “an employee whose most recent performance rating was at the Fully Successful level or higher (or the equivalent thereof) may be paid a cash award.” Eliminating the higher summary levels also eliminates the further performance distinctions that many agencies had applied in granting rating-based performance awards. Although not required, it was not uncommon for agencies to restrict the use of rating-based awards to employees with ratings of record above Level 3. Under a two-level appraisal program, agencies need to develop additional criteria for selecting employees who should receive cash performance awards and for granting awards of different amounts.

Technically, agencies will be free to continue to use just a Level 3 rating of record as the legal criterion for granting a cash award. However, the Office of Personnel Management advises agencies to make some record of

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## Awards *(continued)*

the additional performance distinctions they make to select award recipients and thereby prevent perceptions of awards being arbitrary or capricious.

### **Rating-based Performance Awards Subject to Approval Thresholds**

Under sections 4502(a) and (b) of title 5, United States Code, and the implementing regulations, such awards always have been subject to the Office of Personnel Management and Presidential approval, respectively. Section 4505a, of title 5, United States Code, further restricts performance awards to no more than 10 percent of the employee's annual rate of basic pay, except that a rating-based award may exceed 10 percent if the agency head determines that an employee's exceptional performance justifies such an award. However, in no case may a rating-based award exceed 20 percent of the employee's annual rate of basic pay. Note: The Department of Defense and the Internal Revenue Service only have to seek approval from the Office of Personnel Management to grant awards over \$25,000.

### **Performance Award for a Non-recurring Contribution**

Performance awards, as the terminology is used, refer to cash awards granted on the basis of the rating of record, which generally summarizes the employee's performance over an extended period of time, i.e., the full appraisal

period. The more important flexibility now in the regulations is that the contribution that may merit a special act or service award is no longer defined as a "non-recurring" contribution. This new flexibility should make it easier for agencies to design award programs that recognize the successful or improved accomplishment of work projects that by their nature can be considered "recurring contributions."

### **Honorary Awards**

An honorary award is a gesture of respect given to an employee to recognize his or her performance and value to the organization. Honorary awards are generally symbolic. Many agencies include as part of their overall incentive awards programs a traditional form of high-level, formal "honor awards." Often, such honor award programs do not use monetary recognition at all, but emphasize providing formal, highly symbolic recognition of significant contributions and publicly recognizing organizational heroes as examples for other employees to follow. They typically involve formal nominations, are granted in limited numbers, and are approved and presented by senior agency officials in formal ceremonies. The items presented, such as engraved plaques or gold medals, may be fairly expensive to obtain. However, they are principally symbolic in nature and should not convey a

sense of monetary value. In other, more routine situations, many honorary awards are provided to commemorate the presentation of cash or time-off awards. As mementos, such nonmonetary honorary award items may not be particularly expensive; indeed, they may be of only nominal value (e.g., simple certificates in inexpensive frames, lapel pins, paperweights). Nonetheless, all items used as honorary awards must meet specific criteria.

### **Special Criteria for Honorary Awards**

**Because honorary awards represent symbolic formal recognition, items presented as honorary awards must meet all of the following criteria:**

- The item must be something that the recipient could reasonably be expected to value, but not something that conveys a sense of monetary value
- The item must have a lasting trophy value
- The item must clearly symbolize the employer-employee relationship in some fashion
- The item must take an appropriate form to be used in the public sector and to be purchased with public funds

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## Awards *(continued)*

### Informal Recognition Awards

Informal recognition awards are a type of award that may be given to recognize performance that, taken alone, does not merit a larger award, such as cash, time-off, or an honorary award.

Agencies are finding that they can effectively and efficiently achieve many of the goals of a recognition and incentive award program by providing more frequent, timely, and informal recognition of employee and group contributions.

#### **Informal recognition awards must meet the following criteria:**

- The item must be of nominal value
- The item must take an appropriate form to be used in the public sector and to be purchased with public funds

#### **Merchandise Items as Awards**

In some limited circumstances merchandise items could be used as an honorary award or informal recognition award. Merchandise may be used for awards purposes if and only if the item meets the criteria for an honorary award or an informal recognition award. Agencies need to be aware that the Internal Revenue Service (IRS) considers merchandise to be a taxable fringe benefit that must be taxed on its fair market value. Further questions on taxable fringe benefits should be directed to the IRS.

### Gift Certificates as Awards

Agencies may present such certificates and vouchers if they are being used as informal recognition awards. Merchant gift certificates should not be confused with cash surrogates (which are vouchers or checks that can be easily and widely redeemable for cash, not merchandise). Gift certificates usually are given when the intent is to give something but let the recipient make the final choice. Merchandise certificates cannot meet a cash surrogate's criterion of being easily negotiable because of limitations on where, how, and for what they may be redeemed. Gift certificates fail to meet the criteria for honorary awards because they convey a clear monetary value and cannot be characterized as symbolizing the employer-employee relationship. Consequently, the only circumstance where a gift certificate may be used to recognize an employee contribution is as an informal recognition award, which may not exceed nominal value.

Agencies also need to be aware that the Internal Revenue Service (IRS) considers gift certificates to be taxable fringe benefits that must be taxed on their fair market value. The face value of a gift certificate would be considered its fair market value. Further questions on taxable fringe benefits should be directed to the IRS.

### Savings Bonds as Awards

The Office of Personnel Management has determined that U.S. Savings Bonds have distinctive, positive qualities that make them appropriate recognition items. Despite the fact that U.S. Savings Bonds clearly convey a sense of monetary value, a savings bond must be considered a form of honorary award since it is a Federal contract that must be purchased and held for a minimum of 6 months before it can be redeemed. Its "failure" to meet the honorary award criterion regarding a sense of monetary value need not preclude its use. The other criteria are met since its minimum 6-month holding period gives it some lasting value, it certainly can be considered symbolic of the employee-employer relationship for any Federal employee, and it is appropriate to the public sector. Consequently, the Office of Personnel Management has concluded that a savings bond may be used as an honorary award. When of nominal value, a savings bond also can be used as an informal recognition award since it meets the required criteria. We consider savings bonds to be a special case, however, and expect that all the criteria for using items as honorary awards and informal recognition awards will be applied in other cases.

Agencies also need to be aware that the Internal Revenue

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## Awards *(continued)*

Service (IRS) considers savings bonds to be taxable on their fair market value. The cost of a savings bond would be considered its fair market value. Further questions should be directed to the IRS.

### **Time-off Awards**

A time-off award is time off from duty, without loss of pay or charge to leave, granted to a Federal employee as a form of incentive or recognition. Agencies have their own internal policies for establishing and administering time-off awards to enhance their overall awards program and to support the achievement of the agency's goals and mission.

### **Major Features**

Time-off awards are a unique form of award agencies can grant Federal employees. (The other forms of awards are cash, honorary items, and informal recognition items). Agencies decide when and how to use time-off awards to enhance their overall awards program and support the achievement of the agency's goals and mission.

### **Major features of time-off awards include the following:**

- Time-off awards do not require additional funding or cash disbursement by agencies. Because the form of the award is time off from duty and it does not have explicit cash value, agencies do not have to provide additional funding or disburse additional cash.

However, they do need to remember these are salary dollars being paid for time not worked, so there is a cost involved.

- Agencies cannot convert time-off awards to cash under any circumstances. Agencies need to ensure employees will value, and are able to use, these awards. For example, if an agency grants a time-off award to an employee who plans to leave 2 months later, the agency cannot convert the award to cash, even though the employee might not be able to use the time-off award before leaving the agency.
- OPM does not set Governmentwide limits on the amount of time off an employee may receive. Agencies must establish their own guidelines and limitations on how much time off is appropriate for various employee contributions. Such guidelines should also contain any timeframes within which employees must use the award, which the agency determines are appropriate.
- Agencies may combine time-off awards with other forms of awards. Agencies may grant time-off awards along with other forms of awards as long as the total value of the awards given is commensurate with the contribution being recognized. For example,

an employee might receive an award consisting of both a 1-day time-off award and \$50 as recognition for a single contribution as long as the combined "value" of the awards is commensurate with the employee's contribution.

- Time-off awards are among the awards prohibited for certain employees during Presidential election periods. Section 4508 of title 5, United States Code, prohibits non-career Senior Executive Service employees or appointees in confidential or policy determining (Schedule C) positions from receiving certain awards during a Presidential election period. This period is from June 1 of any year in which there is a Presidential election through January 20 of the following calendar year.

### **Eligibility Criteria**

Most Federal employees are eligible for inclusion in a time-off award program. Federal agencies may grant time-off awards to any Federal civilian employee, either as an individual or member of a group, who meets the definition of employee in Section 2105 of title 5, United States Code.

### **This definition includes an individual appointed in the civil service by:**

- The President
- A member of Congress

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## Awards *(continued)*

- A member of a uniformed service
- An employee
- The head of a Government-controlled corporation
- An adjutant general designated by the Secretary concerned under section 709c of title 32

In addition, to meet the definition of employee, the individual must perform a Federal function and be subject to the supervision of an individual cited above while performing official duties. The definition of employee also includes employees who are individuals employed at the U.S. Naval Academy in specific

jobs (see 5 U.S.C. 2105 for a more detailed description).

### **Individuals Not Covered by Title 5 Awards Authority** **Individuals who do not meet the definition of employee as defined by 5 U.S.C. 2105 include the following:**

- Members of the military services
- Contractors
- Volunteers
- Employees of non appropriated fund instrumentalities
- Employees of the U.S. Postal Service

These individuals may not receive awards under the

authority of chapter 45 of title 5, U.S. Code, unless otherwise authorized and therefore cannot be included in a time-off award program administered under this authority. However, other authorities may allow agencies to grant paid time off to certain categories of employees excluded from 5 U.S.C. 2105. Agencies should consult their human resources offices or General Counsels to find out if they have another authority to grant paid time off to employees who are excluded from the definition of employee in 5 U.S.C. 2105.

## **Basis for Granting Time-off Awards**

### **Agencies may grant time-off awards for:**

- A suggestion, invention, superior accomplishment, productivity gain, or other personal effort that contributes to the efficiency, economy, or other improvement of Government operations or achieving a significant reduction in paperwork
- A special act or service in the public interest in connection with or related to official employment

### **Uses of Time-off Awards**

Agencies may use time-off awards as incentives or as recognition. Incentives help focus employees on the organization's goals and promise specific rewards to employees who provide specified results that

significantly help to achieve those goals. Incentives identify and communicate goals and reward formulas at the beginning of the performance period. Recognition provides after-the-fact acknowledgement to employees for their

accomplishments when there was no previous promise of reward. Recognition signals the types of achievements the organization values. Incentives and recognition may involve individual employees, groups, or entire organizations.

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## Awards *(continued)*

### **Presidential Rank Awards**

Each year, the President recognizes and celebrates a small group of career Senior Executives and senior career employees with the Presidential Rank Award. Recipients of this prestigious award are strong leaders, professionals, and scientists who achieve results and consistently demonstrate strength, integrity, industry and a relentless commitment to excellence in public service.

#### **There are two categories of rank awards:**

**1 Distinguished Rank Recipients**

These individuals are recognized for sustained extraordinary accomplishment and receive a cash award of 35 percent of their base salary. Only one percent of the career SES or SL/ST may receive this rank.

**2 Meritorious Rank Recipients**

These individuals are recognized for sustained accomplishment and receive a cash award of 20 percent of their base salary. No more than five percent of career SES or SL/ST members may receive this award.

Award winners are chosen through a rigorous selection process. They are nominated by their agency heads, evaluated by boards comprised of private citizens, and approved by the President. The evaluation criteria focus on leadership and results.

# Volunteer Service

Federal agencies are not allowed by law (section 1342 of title 31, United States Code) to accept volunteer service.

## The few exceptions are:

- Employment in emergencies involving the protection of life or property
- Employment of assistants to handicapped employees
- Employment of experts and consultants
- Employment of students to further their educational goals (see below)

In addition, some Federal agencies, such as the National Park Service and the Forest Service, have specific authorities to accept unpaid services for specific jobs or functions. Individuals who are interested in volunteering their services to the Federal Government should contact the agency of most interest to inquire about specific opportunities.

## Student Volunteer Service

Federal agencies and departments offer unpaid training opportunities to students in high school and college. These opportunities provide work experience related to your academic program. The program allows you to explore career options as well as develop your personal and professional skills. As a student volunteer, you will be exposed to the Federal work environment

and will learn about the missions and responsibilities of various Federal agencies and departments.

## Reasons to Join the Program

Student Volunteer Service can enrich your future.

## Some of the benefits include:

- Career exploration early in your academic studies
- Exposure to new and emerging occupations and professions
- Academic credit for the work you perform (This is determined by your academic institution.)
- Work experience which will enhance your ability to obtain paying jobs in the future

## Eligibility

You are eligible to participate as a Student Volunteer if you are enrolled, at least half-time, in:

- An accredited high school or trade school
- A technical or vocational school
- A junior or community college
- A four-year college or university
- Any other accredited educational institution

## What Types of Positions are Available for Student Volunteers?

Student volunteers are involved in professional projects and

work activities related to their academic studies. These activities run the gamut from developing computer skills to policy or research-oriented projects, depending upon the employing office and the student's academic pursuits. Student volunteer assignments will differ, but all promise to be stimulating and rewarding.

## Length and Timing of Work

Student volunteer work may be performed during the school year and/or during summer or school vacation periods. The nature of your volunteer assignment as well as your weekly work schedule should be part of your work agreement. Volunteer work assignments typically have duration of 3 – 4 months

## How to Become a Volunteer If you are interested in becoming a student volunteer with the Federal Government:

- Contact the Personnel/ Human Resources Office at the Federal agency or department where you wish to work. Historically, the Departments of Defense (Army, Air Force and Navy), Commerce, Health and Human Services, Interior, Justice, State, Treasury, and Veterans Affairs have utilized the largest number of student volunteers.
- Visit your school's guidance office, career counseling, placement, or internship office for further information.

# Reinstatement, Restoration and Transfers

## Reinstatement

**R**einstatement allows you to reenter the Federal competitive service workforce without competing with the public. Reinstatement eligibility also enables you to apply for Federal jobs open only to status candidates.

### Eligibility Requirements

You must have held a career or career-conditional appointment at some time in the past.

#### If so, there is no time limit on reinstatement eligibility for those who:

- Have Veterans' preference
- Acquired career tenure by completing 3 years of substantially continuous creditable service

If you do not have veterans' preference or did not acquire career tenure, you may be reinstated within 3 years after the date of your separation. Reinstatement eligibility may be extended by certain activities that occur during the 3-year period after separation from your last career or career-conditional appointment.

#### Examples of these activities:

- Federal employment under temporary, term, or similar appointments
- Federal employment in Excepted, Non-Appropriated

Fund, or Senior Executive Service positions

- Federal employment in the legislative and judicial branches
- Active military duty terminated under honorable conditions
- Service with the District of Columbia Government prior to January 1, 1980 (and other service for certain employees converted to the District's independent merit system)
- Certain government employment or full-time training that provided valuable training and experience for the job to be filled
- Periods of overseas residence of a dependent who followed a Federal military or civilian employee to an overseas post of duty

### How to Apply for Reinstatement

You must conduct your own job search. Reinstatement eligibility does not guarantee you a job offer. Hiring agencies have the discretion to determine the sources of applicants they will consider. Individuals usually apply to agencies in response to vacancies announced under the merit promotion program.

Some agencies accept applications only when they have an appropriate open merit promotion announcement, while others accept applications at any time. If you are seeking a higher grade or a position with more promotion potential than you previously held, generally you must apply under a merit promotion announcement and rank among the best-qualified applicants to be selected. Status applicants include individuals who are eligible for reinstatement.

To establish your reinstatement eligibility, you must provide a copy of your most recent SF 50, Notification of Personnel Action, showing tenure group 1 or 2, along with your application. You may obtain a copy of your personnel records from your former agency if you recently separated. Otherwise, send your request to the address below.

The Federal Records Center has been established as a depository for official personnel folders of persons no longer in the Federal service. Federal agencies, generally, transfer employment records to the Federal Records Center thirty days after the employee has been separated from Federal service.

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## Reinstatement *(continued)*

**Requests for this information should be directed to:**

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**National Personnel Records Center, Annex**

1411 Boulder Boulevard  
Valmeyer, IL 62295  
(314) 801-9250

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Such inquiries should include your full name under which formerly employed, Social Security number, date of birth, and to the extent known, former Federal employing agencies, addresses and dates of such employment. The Privacy Act of 1974 (5 USC 552a) and the Office of Personnel Management require a signed and dated written request for information from Federal records. No requests for information from personnel or any other type of records will be accepted by telephone or e-mail.

**Agency Merit Promotion Announcements**

The U.S. Office of Personnel Management makes job

announcements available through USAJOBS [www.usajobs.gov](http://www.usajobs.gov). You should contact the agencies in which you are interested in working for specific application instructions.

**Citizenship**

You must be a citizen of the United States.

**Qualifications**

You must meet the qualification requirements for the position. Written tests are not common but if one is required, arrangements will be made for you.

**Suitability**

You must meet the suitability standards for Federal employment. If you were removed for cause from your previous Federal employment, it will not necessarily bar you from further Federal service. The facts in each case as developed by inquiry or investigation, will determine the person's fitness for re-entry into the competitive service.

**Age**

There are no maximum age limits for appointment to most positions in the competitive service. Some jobs, such as law enforcement officers and firefighters, do have limits.

**Positions Restricted to Veterans**

Positions in the competitive service such as guard, messenger, elevator operator, and custodian have been restricted by law to veterans entitled to preference. Generally, a non-veteran may not be reinstated to such positions if qualified veterans are available.

**Probationary Period**

A former employee who did not complete a required probationary period during previous service under the appointment upon which his/her eligibility for reinstatement is based is required, in most cases, to serve a complete one-year probationary period after reinstatement.

## Restoration Rights of Federal Employees Who Sustain Job-Related Injuries or Illnesses

The Federal Employee's Compensation Act (FECA) provides Workers' Compensation benefits to Federal employees who sustain job-related injuries or illnesses. The law also guarantees employees certain job rights upon recovery. Upon their return to work, employees will be treated as though they had never left for purposes of rights and benefits based upon length of service.

The law assigns a dual responsibility to the Department of Labor's Office of Workers' Compensation Programs (OWCP) and to the U.S. Office of Personnel Management (OPM). OPM administers the restoration rights provision of the law. OWCP administers all other aspects of the law.

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## Restoration Rights of Federal Employees Who Sustain Job-Related Injuries or Illnesses *(continued)*

### Who Is Covered?

Virtually all Federal employees (including employees in the legislative and judicial branches), except those serving under time-limited appointment, have restoration rights upon full or partial recovery from a job-related injury or illness.

**Note:** Receipt of a “schedule award” which OWCP pays to an injured worker for permanent impairment of a specified member, function, or organ of the body (e.g., an arm, foot, lung, or loss of vision or hearing) does not necessarily mean the individual has recovered for purposes of restoration rights. It only means that part of the body has reached maximum medical improvement. Restoration rights for full recovery are triggered when compensation is terminated on the basis of medical evidence that the employee no longer has residual limitations from the injury and can return to the former job without limitations.

### Disability Retirement

Disability retirement and injury compensation are governed by two separate laws and are administered by two different agencies - OPM and OWCP. Thus, entitlement to one does not automatically establish entitlement to the other.

Ordinarily, an injured employee should apply for both disability retirement and injury compensation. If both are approved, he or she must decide between receiving one or the other. A person who chooses disability retirement instead of injury compensation has restoration rights, provided he or she applies for restoration as soon as the specific job-related injury has been overcome.

### Agency Obligations

An employee who sustains a job-related injury must be allowed to seek treatment from the physician of his or her choice without agency interference. The agency can require the employee to undergo a medical examination by its own doctors for the purpose of determining employability. An agency-required examination has no effect on the payment of compensation benefits by OWCP.

An employee who is unable to perform the full duties of his or her position may be placed on leave without pay (LWOP) or separated at any time. This is a non-disciplinary action and has no effect on the employee's restoration rights upon recovery. However, an agency must tell an employee who is being separated or placed on LWOP, how benefits will be affected and what the employee's restoration rights are. The

obligation to reemploy rests with the former agency; other agencies have no obligation to reemploy a recovered worker.

### Employee Obligations

The employee has an obligation to cooperate with the agency, to keep the agency informed of his or her medical status, and to seek restoration as soon as the medical condition permits.

### Restoration Rights

The restoration rights of employees who sustain compensable injuries fall into four separate categories depending on the length and extent of recovery. Other factors affecting restoration rights are the timeliness of the application for restoration, the employee's performance and conduct prior to the injury, and the availability of positions.

Full recovery is determined by the cut-off of compensation on the basis that the employee is medically able to resume regular employment.

**Note:** For purposes of restoration rights, a position with the same seniority, status, and pay means a position that is equivalent to the former one in terms of pay, grade, type of appointment, tenure, work schedule, and, where applicable, seniority. Standing in the organization, such as first or second supervisory level, is not a factor.

## Restoration Rights of Federal Employees Who Sustain Job-Related Injuries or Illnesses *(continued)*

<p><b>Fully Recovered Within One Year</b></p>	<p>An employee who fully recovers within one year from the date compensation began has mandatory restoration rights to the position he or she left, or to an equivalent position. An employee's basic entitlement is to a position in the former commuting area. If a suitable vacancy does not exist, the restoration right is agency-wide. The employee must apply for restoration immediately and must be restored immediately and unconditionally by his or her former agency.</p>
<p><b>Fully Recovered After One Year</b></p>	<p>If full recovery takes longer than one year from the date compensation begins, the individual is entitled to priority consideration for the former position or an equivalent one, provided he or she applies for restoration within 30 days of the date compensation ceases. Priority consideration means the agency enters the individual on its reemployment priority list. If the agency cannot place the individual in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency.</p>
<p><b>Physically Disqualified</b></p>	<p>An individual who is medically unable to return to his or her former occupation, but who is able to do other work, is considered to be physically disqualified. He or she is entitled, within one year of the date compensation begins, to be placed in a position that most closely approximates the seniority, status, and pay to which otherwise entitled, according to the circumstances in each case. This restoration right, too, is agency-wide. After one year, the individual is entitled to the same restoration rights as individuals who partially recover.</p> <p>The difference between a physically disqualified employee and one who is partially recovered is that the partially recovered employee is expected to fully recover eventually. By contrast, the physically disqualified employee typically has a permanent medical condition, such as the loss of an arm, which is disqualifying and makes it unlikely that he or she will ever be able to return to the former position.</p>
<p><b>Partially Recovered</b></p>	<p>An individual who has not yet fully recovered, but who is able to work in some capacity, is entitled to be considered for employment in the former commuting area. The agency must make every effort to place the employee but there is no absolute right to restoration. If the individual is restored at a lower grade or pay level, OWCP will make up the difference in pay, or the agency may elect to pay the employee at the former rate. If the employee later fully recovers, he or she is then entitled to the restoration rights of a fully recovered employee, according to the timing of the recovery.</p> <p>A partially recovered employee has an obligation to seek employment within his or her capabilities. If a partially recovered employee refuses to accept a suitable job offer, OWCP may terminate compensation. OWCP determines whether an agency job offer is suitable according to the individual's medical restrictions, education, and vocational background.</p>

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## Restoration Rights of Federal Employees Who Sustain Job-Related Injuries or Illnesses *(continued)*

### Effect of Performance and Conduct on Restoration Rights

If an employee was separated because of a compensable injury, the agency cannot refuse to restore the individual because of alleged poor performance prior to the injury. In other words, the agency may not use the injury as a basis to circumvent performance-based or adverse action procedures that would otherwise apply. However, an allegation of an on-the-job injury by an employee does not stop an agency from taking action against the employee for performance or conduct. If an employee is removed for cause (performance or conduct) he or she has no restoration rights.

### Status Upon Recovery

An employee who is restored following compensable injury is generally entitled to be treated as though he or she had never left. This means that the entire period the employee was receiving compensation or continuation of pay is creditable for purposes of rights and benefits based upon length of service, including within-grade increases, career tenure, time-in-grade restrictions, leave rate accrual, and completion of the probationary period. However, an employee does not earn sick or annual leave while off the rolls or in a non-pay status. The injured employee is also generally entitled to be considered for promotion as though still present. This

means that an employee who occupies a career ladder position, or whose position is reclassified at a higher grade, is entitled to be considered for promotion under the provisions of the agency's merit promotion plan. However, an employee on compensation is generally not entitled to a promotion unless it is clear that the employee would have been promoted if the injury had not occurred.

### RIF Protection

An injured employee enjoys no special protection in a Reduction In Force (RIF) and can be separated like any other employee. An injured employee separated by RIF has no restoration rights.

### Placement in Other Agencies

The primary responsibility to reemploy an injured worker rests with the employee's former agency. However, if the employee's executive branch agency has been abolished, or the legislative or judicial branch is unable to place employees eligible for competitive status, OPM will provide placement assistance.

### Appeal Rights

**Executive branch employees who are entitled to restoration or priority consideration because of a compensable injury, may appeal to the Merit Systems Protection Board as follows:**

- An employee who fully recovers within one

year or who is physically disqualified, may appeal the agency's failure to restore or improper restoration

- An employee who takes longer than one year to fully recover may appeal the agency's failure to place the employee on its reemployment priority list; the agency's failure to reemploy the individual from the priority list by showing that restoration was denied because of the employment of another person who otherwise could not properly have been appointed; or the agency's failure to place the employee in an equivalent position with credit for all rights and benefits
- A partially recovered employee may appeal by showing that the agency's failure to reemploy is arbitrary and capricious. If reemployed, the employee may appeal the agency's failure to credit time spent on compensation for all benefits based upon length of service

Appeals must generally be filed within 30 calendar days of the action being appealed.

### Where to Go for Help

Employees should direct all questions about compensation to the servicing OWCP office. Agency personnel offices can answer questions about restoration rights.

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## Transfers

A career or career-conditional employee of one agency may transfer, without a break in service of a single workday, to a competitive service position in another agency without competing in a civil service examination open to the public. A transfer eligible may apply under vacancy announcements open to status candidates. An employee may transfer to a position at the same, higher, or lower grade level.

### Transfer Eligibility

Present Federal employees who are serving in the competitive service under a career or career-conditional appointment have eligibility for transfer to a position in the competitive service.

To transfer, you must meet the qualification requirements for the position. Written tests are not common but if one is required, arrangements will be made for you to take it.

Employees must be found suitable for employment in competitive service positions. If your current appointment is subject to a suitability investigation, that condition continues after you transfer.

Generally, with a transfer, a career employee remains a career employee, and a career-conditional employee remains a career-conditional employee.

### Applying for Transfer

To apply for a transfer, you

must first conduct your own job search. Individuals usually apply to agencies in response to vacancies announced under the merit promotion program. Some agencies accept applications only when they have an appropriate open merit promotion announcement, while others accept applications at any time. If you are seeking a higher grade or a position with more promotion potential than you have previously held, generally you must apply under a merit promotion announcement and rank among the

best-qualified applicants to be selected. Status applicants include individuals who are eligible for transfer.

Also, transfer eligibility does not guarantee you a job offer. Hiring agencies have the discretion to determine the sources of applicants they will consider.

### Agency Merit Promotion Announcements

Merit Promotion announcements are posted on USAJOBS when jobs are announced outside of an agency's own workforce.

USAJOBS®, the government's official job web site provides access to more than 30,000 job listings daily as well as applications, forms, and employment fact sheets. Job postings are updated daily and are available to job seekers in a variety of formats to ensure accessibility for those

with differing physical and technological capabilities. You can search for jobs by location, job category, and agency and you can complete and submit your application directly to the agency online.

Applicants may also contact the agencies in which they are interested in working for specific application instructions.

The USAJOBS website also has an Online Resume Builder feature. Using the resume builder, job seekers can create online resumes specifically designed for applying for Federal jobs. Resumes created on the USAJOBS resume builder can be printed from the system for faxing or mailing to employers; and saved and edited for future use. For many of the vacancies listed on the site, job seekers can submit resumes created through USAJOBS directly to hiring agencies through an electronic submission process. The official world-wide website for jobs and employment information may be accessed at [www.USAJOBS.gov](http://www.USAJOBS.gov).

### Probationary Period

An employee is not required by the civil service rules and regulations to serve a new probationary period after transfer. However, the employee continues to serve the remainder of any probationary period which he/she was serving at the time of transfer. In most cases, an

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## Transfers *(continued)*

employee must wait at least three months after his/her latest non-temporary competitive appointment before he/she may be considered for transfer to a position in a different line of work, at a higher grade, or to a different geographical area. OPM may waive the restriction against movement to a different geographical area when it is satisfied that the waiver is consistent with the principles of open competition.

### **Positions Restricted to Veterans**

Some positions in the competitive service such as guard, messenger, elevator operator, and custodian have been restricted by law to persons entitled to preference under the veteran preference laws. Generally, a non-veteran employee cannot be transferred to such positions if there are veterans available for appointment to them. This

restriction does not apply to the filling of such positions by the transfer of a non-veteran already serving in a federal agency in a position covered by the same generic title.

**For example:** a non-veteran who is serving in the position of guard may be considered for transfer to the position of patrolman, guard, fireman, guard-laborer, etc.

# Federal Employees Health Benefits

## General Overview

The Federal Employees Health Benefits (FEHB) Program became effective in 1960 and is the largest employersponsored group health insurance program in the world, covering over 8 million Federal employees, retirees,

former employees, family members, and former spouses.

As a Federal employee, you are entitled to enroll yourself and any eligible family members in a health plan offered under the FEHB Program, unless

your position is excluded from coverage by law or regulation. If you meet the requirements, you will be eligible to continue group coverage into retirement.

There are  
three types of  
enrollments:

1 Self Only

2 Self and Family

3 Self Plus One

A Self and Family enrollment covers you, your spouse, and your children until they have reached 26 years of age. A Self Plus One enrollment covers the eligible family member you designate.

Each health plan carrier under the FEHB Program charges a different premium. The Government pays up to 75% of the cost of your health benefits coverage, and you pay the remainder, based on a formula set by law.

Over 200 health plan choices are offered under the FEHB Program. Of the available fee-for-service plans, several are open to all enrollees,

while others are available only to specific categories of employees. In addition, health maintenance organizations (HMOs) are available in most areas of the United States; you must live or work within a defined area to be eligible to enroll in a particular HMO.

Each year, an Open Season is held for FEHB Program enrollees to change health plans and/or the type of enrollment

they have. Eligible employees may also enroll during this time. Open Season runs from the Monday of the second full workweek in November through the Monday of the second full workweek in December.

There are limited opportunities to enroll, cancel your enrollment, or change your enrollment outside of an Open Season.

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## OPM Responsibilities

**The Office of Personnel Management (OPM) has the overall responsibility for the administration of the FEHB Program including:**

- Approving or disapproving carriers for participation in the FEHB Program
- Contracting for, and approving or disapproving plans
- Negotiating benefit and rate changes with carriers
- Approving the certified text on benefits for the brochures
- Publishing FEHB regulations, instructions, forms, and documents
- Receiving and depositing premium withholdings and contributions, remitting premiums to carriers, and accounting for the Employees Health Benefits Fund
- Making final determinations of the applicability of the FEHB law to specific employees or groups of employees
- Studying and evaluating the operation and administration of the FEHB law and the plans offered under it, and reporting findings to Congress
- Ordering corrections of administrative errors if it would be against equity and good conscience not to do so

- Providing guidance to agencies
- Auditing carriers' operations under the law
- Resolving disputed health insurance claims between the enrollee and the carrier
- Conducting employing agency FEHB responsibilities for retired employees and survivor annuitants

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## Agency Responsibilities

### Headquarters Benefits Officer

The head of each agency must designate a person to serve as the headquarters benefits officer (Benefits Officer) for the agency. The agency head must notify OPM in writing of the designee's name or any change in the designation. The Benefits Officer is OPM's contact for agency-wide insurance matters.

**Agency heads can send their notification to:**

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### Office of Personnel Management, Retirement and Insurance Service

Agency Services Division  
P.O. Box 57  
Washington DC 20044

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### Field Installation Responsibilities

The head of each agency must arrange for the designation of employees at the employing office level. This person will be responsible for explaining the FEHB Program to employees and other eligible persons. He/she will determine individual eligibility for enrollment, effective dates of health

benefits actions, and other related matters. An agency may also delegate responsibility for counseling and advising employees and maintaining records to decentralized local operating offices or field installations or provide the services in some other way.

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## Agency Responsibilities *(continued)*

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### Information and Counseling

Each agency has a responsibility to provide health insurance information and counseling to its employees. Agencies must become especially familiar with the participation requirements for continuing FEHB coverage into retirement and make this information available to employees, especially those considering retirement. OPM

encourages agencies to develop counseling programs that meet the needs of their own employees. While these services must be provided, agencies are using many different approaches. Specific information on resources within your agency should be available to you at your work site.

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### Contacts between Employees and Carriers

Authorized agency insurance officials should develop contacts with carrier representatives to assist their employees. These contacts must be limited to agency personnel who have FEHB Program responsibilities and to those employees enrolled in the carrier's plan, except during an Open Season. An agency may allow carrier representatives on agency premises to help enrollees with claim or service problems. A carrier representative may give information only about the plan's benefit provisions and claim procedures. Carrier representatives must be qualified to explain and assist with problems involving the plan's benefit structure and claims procedures and they must confine themselves to these matters. If you have any other questions, such as questions on the law, the regulations, or the FEHB Program

in general, you should ask authorized agency insurance officials.

Carrier representatives may address groups of employees during Open Seasons about their plan's benefits structure, methods of obtaining services, and similar matters. An agency may allow the use of its facilities or services for the distribution of OPM-authorized, carrier-supplied information on health benefits plans. An agency must treat employee organization carriers in accordance with current policies on labor-management relations in the Federal service, found in chapter 71 of title 5, United States Code. Distribution of materials is limited to official brochures and other carrier-supplied information on a health insurance plan that the carrier certifies are in compliance with OPM's supplemental literature guidelines.

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### Employing Office Questions

Employing office questions concerning the FEHB Program must be directed to the headquarters Benefits Officer. This person may refer questions to OPM's Insurance Services Program. Questions

about the benefits or claims procedure of a specific plan should be directed to a local office of that plan.

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### Claim Kits

Some carriers provide claim kits as a convenient way for you to maintain claims expense records. Generally, carriers issue the kits to their enrollees at the same time they issue identification cards.

Employing offices wanting information copies of these kits may obtain them from the nearest office of the plan.

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## Agency Responsibilities *(continued)*

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### Identification Cards

Your plan carrier will mail your identification cards directly to you. You will receive a new identification card if you change the type of enrollment within your plan or if your name changes. You will not receive a new identification card if you retire or change payroll or employing offices without changing your enrollment.

If you want a duplicate identification card, you must request the card from your carrier. Include in the request your date of birth, Social Security number, and any additional identifying number the plan may use. Your carrier will not display your Social Security number on your identification card.

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### Other Agency Responsibilities

#### Agencies also are responsible for:

- Providing eligible persons with information on their rights and responsibilities under the FEHB Program and ensuring that they have free choice among all plans in which they are eligible to enroll
- Determining the eligibility or ineligibility of, and enrolling employees, former employees, former spouses, and children (including decisions on belated enrollment and change of enrollment requests)
- Reviewing enrollment reconsideration requests
- Ensuring that election forms are properly completed, including the enrollee's Social Security number
- Processing health benefits actions and determining proper effective dates
- Determining capability of self-support of children 26 and over
- Stocking and distributing health benefits forms and literature
- Maintaining a controlled system of transmitting health benefits enrollment information to carriers
- Remitting and accounting for withholdings and contributions

- Maintaining and certifying necessary records
- Working with carriers to reconcile enrollment records

#### Carrier Responsibilities

##### Each carrier is responsible for:

- Adjudicating claims of, and providing health benefits to, enrollees and covered family members in accordance with its contract with OPM
- Typesetting, printing, and distributing brochures
- Furnishing each person enrolled in its health plan an identification card or other evidence of enrollment
- Contacting and working with agency payroll offices to reconcile enrollment records;
- Acting on enrollee requests for reconsideration of disputed claims
- Maintaining financial and statistical records and reporting on the operation of its plan
- Developing and maintaining effective communication and control techniques to ensure that its subcontractors and local offices comply with regulations and OPM instructions

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## Enrollee Responsibilities

### Your responsibilities include:

- Being aware of your plan's benefit package and premium charges
- Being aware of your plan's exclusions and limitations
- Reviewing the benefit and rate changes made to your plan during Open Season
- During Open Season, determining whether your plan will still meet your needs in the upcoming year
- Filing the appropriate forms with your employing office on a timely basis to enroll, change, or cancel enrollment
- Ensuring that the proper deduction has been recorded on your earnings and leave statement
- Examining plan provider directories or checking directly with a health care provider to see if that provider participates or will continue to participate in any plan networks or preferred provider arrangements
- Being aware of and following plan precertification and preauthorization requirements
- Filing claims on a timely basis with the necessary documentation
- Being aware of requirements for continuing your enrollment into retirement
- Promptly asking your employing office for information about Temporary Continuation of Coverage (TCC) if a family member ceases to be eligible under your enrollment
- Promptly requesting conversion to an individual contract when FEHB eligibility ends
- Notifying the carrier of your plan when your address changes
- Notifying the carrier of your plan when a new family member is added to yourself and family enrollment
- Notifying your agency or retirement office when you are switching a covered family member on your Self Plus One enrollment
- Notifying the carrier of your plan when a family member is no longer eligible under your Self and Family enrollment

# Types of Enrollments

## There are three types of enrollments

<b>Self Only</b>	A self only enrollment provides benefits only for you as the enrollee. You may enroll for self only even though you have a family, but they will not be eligible for FEHB coverage (even upon your death or disability).
<b>Self and Family</b>	A self and family enrollment provides benefits for you and your eligible family members. All of your eligible family members are automatically covered, even if you didn't list them on your Health Benefits Election Form (SF 2809) or other appropriate request. You cannot provide coverage for anyone who is not an eligible family member.
<b>Self Plus One</b>	A Self Plus One enrollment covers the enrollee and one designated eligible family member. The definition of eligible family members has not changed. Your eligible family member can include either a spouse OR a child up to age 26. A child age 26 or over who is incapable of self-support because of a mental or physical disability that existed before age 26 is also an eligible family member.

Generally, you cannot exclude any eligible family member.

**However, the following eligible family members may be removed from a Self and Family or Self Plus One at any time during the plan year in limited situations:**

- **Spouse**  
A spouse may be removed if the enrollee provides a notarized request for removal, signed by both the enrollee and the spouse, to the enrollee's agency.
- **Adult child**  
**A child who has reached the age of majority in the child's state of residence (the enrollee's state of residence if the child's**

**is not known) can be removed in one of two situations:**

- The enrollee provides proof that the child is no longer his or her dependent. The child can be removed without the child's consent
- The child requests to be removed and provides a notarized request for removal

See **BAL 18-201** for further details.

You may enroll for self and family coverage before you have any eligible family members. Then, a new eligible family member (such

as a newborn child or a new spouse) will be automatically covered by your family enrollment from the date he/she becomes a family member. When a new family member is added to your existing self and family enrollment, you do not have to complete a new SF 2809 or other appropriate request, but your carrier may ask you for information about your new family member. You will send the requested information directly to the carrier.

**Exception:** if you want to add a foster child to your coverage, you must provide eligibility information to your employing office.

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## There are three types of enrollments *(continued)*

### **General Eligibility for Coverage**

Family members eligible for coverage under your Self and Family enrollment are your spouse (including a valid common law marriage) and children under age 26, including legally adopted children, recognized natural (born out of wedlock) children and stepchildren. A child age 26 or over who is incapable of self-support because of a

mental or physical disability that existed before age 26 is also an eligible family member. Your employing office will look at the child's relationship to you as the enrollee to determine whether the child is a covered family member. You cannot cover other relatives, such as your mother, even if they are otherwise considered your dependents. An employee's agency makes enrollment eligibility decisions in

accordance with the law and regulations. Ask your Human Resources Office for help in deciding whether your circumstances meet the requirements.

# Eligibility for Health Benefits

As a Federal employee, you are eligible to elect FEHB coverage, unless your position is excluded by law or regulation. Your agency applies these rules and determines your eligibility.

**However, there are numerous special provisions for people in part-time or intermittent employment, temporary appointments, and specifically named positions as follows:**

**Cooperative Employees**  
You are eligible for FEHB coverage if you are:

- Appointed by a Federal agency for service in cooperation with a non-Federal agency
- Paid in whole or in part from non-Federal funds (such as certain employees of the Agriculture Extension Service)
- Your position is not excluded from coverage

Withholdings and contributions for your coverage must be made from Federally-controlled funds and must be timely paid, or the cooperating non-Federal agency must agree in writing with your agency to make

and timely remit the required withholdings and contributions from non-Federal funds. The withholdings and contributions arrangement must be approved by OPM.

**Agricultural Stabilization and Conservation County Committee Employees**

If you are employed by a county committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act, you are eligible for FEHB coverage (unless your position is excluded from coverage).

**Employees Transferred to Public International Organizations**

If you transfer to a public international organization under the Federal Employees International Organization Service Act, you may elect to retain your FEHB coverage. To keep your coverage, all necessary withholdings and contributions during your service with the international organization must be currently paid.

**U.S. Commissioners**

If you are a United States Commissioner subject to the

Civil Service Retirement law or the Federal Employees Retirement law, you are eligible for FEHB coverage.

**Personal Services Contractors of the U.S**

Department of the Treasury. Effective September 30, 1996, if you are a personal services contractor of the U.S. Department of the Treasury, you are eligible for FEHB coverage.

**Presidential Appointee**

You are eligible for FEHB coverage if you are a Presidential appointee appointed to fill an unexpired term.

**Provisional Appointee**

You are eligible for FEHB coverage if you are a temporary employee who receives a provisional appointment as defined in 5 CFR 316.401 and 316.403.

**Acting Postmaster**

You are eligible for FEHB coverage if you are an acting postmaster.

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## Coverage for Certain Employees on Temporary Appointments and Certain Employees on Seasonal and Intermittent Schedules

### If you are:

- An employee on a temporary appointment (appointment limited to one year or less)
- An employee on a seasonal schedule (working less than six months per year)
- An employee on an intermittent schedule

and you are expected to work 130 hours per month or more for at least 90 days you are eligible to enroll with a full government contribution, provided you are not covered under the **Part-time Career Act**.

Your agency will determine whether or not you are expected to meet the

requirements for coverage and offer coverage if you are eligible to enroll. Your agency must expect your total hours in pay status (including overtime hours) plus qualifying leave without pay hours to be at least 130 hours per month for the upcoming 90 days.

### Change in Expectation

A Self and Family enrollment covers you, your spouse, and your children until they have reached 26 years of age. A Self Plus One enrollment covers the eligible family member you designate.

### Employees Who Decline Coverage

If you are eligible as an employee on temporary appointments or as an employee on a seasonal or intermittent work schedule and you decline your first offer of coverage, to be eligible to enroll midyear under a QLE or during Open Season you must meet the requirement to be expected to work 130 hours per month or more for at least 90 days. Your agency will inform you of whether you meet that requirement for enrollment.

### Other Temporary Employees

Eligibility to Enroll at Own Cost. If your position is excluded from coverage because your appointment is limited to one year or less, and you were not expected to work 130 hours per month, you will be eligible to enroll under 5 U.S.C. 8906a when you have completed one year of current continuous employment, excluding any break in service of 5 days or less. You must pay both the employee and the Government shares of the premium.

The one-year requirement may be met at the end of a one-year appointment in a single agency or it may be based on a series of shorter appointments served in one or more agencies, as long as you have not had a break in service of more than 5 days.

In many cases, a temporary appointment lasts one year. If your appointment is renewed at the end of that year, you are eligible to enroll.

### Student Employees

- Student employees on appointments limited to one year or less who are expected to work 130 hours or more per month for at least 90 days,
- Employees under the Pathways Programs on appointments of at least one year's duration and who are expected to be in a pay status during not less than one-third of the total period of time from the date of the first appointment to the completion of the work-study program,

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## Coverage for Certain Employees on Temporary Appointments and Certain Employees on Seasonal and Intermittent Schedules *(continued)*

### Eligibility to Enroll at Own Cost

If your position is excluded from coverage because your appointment is limited to one year or less, and you were not expected to work 130 hours per month, you will be eligible to enroll under 5 U.S.C. 8906a when you have completed one year of current continuous employment, excluding any break in service of 5 days or less. You must pay both the employee and the Government shares of the premium.

The one-year requirement may be met at the end of a one-year appointment in a single agency or it may be based on a series of

shorter appointments served in one or more agencies, as long as you have not had a break in service of more than 5 days.

In many cases, a temporary appointment lasts one year. If your appointment is renewed at the end of that year, you are eligible to enroll.

### Student Employees:

- Student employees on appointments limited to one year or less who are expected to work 130 hours or more per month for at least 90 days
- Employees under the Pathways Programs on

appointments of at least one year's duration and who are expected to be in a pay status during not less than one-third of the total period of time from the date of the first appointment to the completion of the work-study program, may continue their enrollment in nonpay status so long as he/she is participating in the work-study program.

## Employees Excluded From Coverage

### District of Columbia Employees

You are excluded from FEHB coverage if you were first employed by the District of Columbia government on or after October 1, 1987.

### Exceptions: You are eligible for FEHB coverage if you are:

- An employee of St. Elizabeth's Hospital, who accepts employment with the District of Columbia government following Federal employment without a break in service, as provided in Pub. L. 98-621
- An employee of the D.C. Control Board (District

of Columbia Financial Responsibility and Management Assistance Authority), who makes an election under the Technical Corrections to Financial Responsibility and Management Assistance Act (section 153 of P. L. 104-134) to be considered a Federal employee for FEHB coverage and other benefits purposes

- Effective August 5, 1997, the Corrections Trustee and the Pretrial Services, Defense Services, Parole, Adult Probation, and Offender Supervision Trustee and employees of these Trustees who accept employment with the District of Columbia

Government within 3 days after separating from the Federal government, as provided by P. L. 105-33

- Effective October 1, 1997, a judge or nonjudicial employee of the District of Columbia Courts, as provided by Pub. L. 105-33

### Noncitizens

You are excluded from FEHB coverage if you are not a citizen or national of the United States and your permanent duty station is located outside the United States and its territories and possessions.

**Exception:** You are eligible for FEHB coverage if you met the definition of employee on

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## Employees Excluded From Coverage *(continued)*

September 30, 1979, by service in an Executive agency (as defined in 5 U.S.C. 105), the United States Postal Service, or the Smithsonian Institution in the area which was then known as the Canal Zone.

### **TVA Employees**

You are excluded from FEHB coverage if you are an employee of the Tennessee Valley Authority.

### **Employees of Farm Credit Administration-Supervised Corporations**

You are excluded from FEHB coverage if you are an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors. The corporations are Regional Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Land

Banks, Production Credit Corporations, and the Central Bank for Cooperatives.

### **Patient Employees**

You are excluded from FEHB coverage if you are a beneficiary or patient employee in a Government hospital or home.

### **Employees Paid on a Contract or Fee Basis**

You are excluded from FEHB coverage if you are paid on a contract or fee basis.

**Exception:** You are eligible for FEHB coverage when you are a:

- United States citizen, appointed by a contract between you and the Federal employing authority which requires your personal service, and paid on the basis of units of time
- Personal Service Contractor employed by the Department of the Treasury

### **Employees Paid on a Piecework Basis**

You are excluded from FEHB coverage if you are paid on a piecework basis.

**Exception:** You are eligible for FEHB coverage when your work schedule provides for full-time or part-time service with a regularly scheduled tour of duty.

### **OPM Determination**

OPM makes the final determination about whether the above categories apply to a specific employee or group of employees.

Part-time career employment or certain interim appointments are not excluded from FEHB coverage. If you are a part-time career employee, the Government contribution toward your health benefits is prorated in proportion to the percentage of full-time service you are regularly scheduled to perform.

# Types of Plans

## Plans are of three main types

- 1 Combined Preferred Provider Organization (PPO) and Fee-for-Service (FFS) Plans
- 2 High Deductible (HDHP) and Consumer Driven (CDHP) plans
- 3 Health Maintenance Organization (HMO) plans, some of which have Point of Service (POS) benefits outside the plan network

## Combined PPO and FFS Plans

These plans reimburse you or your health care provider for the cost of covered services. You may choose your own physician, hospital, and other health care providers. Most fee-for-service plans have preferred provider (PPO) arrangements. If you receive services from a preferred provider, you usually have lower out-of-pocket expenses (i.e., a smaller copayment and/or a reduced or waived deductible). All fee-for-service plans require precertification of inpatient admissions and preauthorization of certain procedures.

**Fee-For-Service (FFS) plans generally use two approaches:**

### **Fee-for-Service (FFS) Plans (non-PPO)**

A traditional type of insurance in which the health plan will either pay the medical provider directly

or reimburse you after you have filed an insurance claim for each covered medical expense. When you need medical attention, you visit the doctor or hospital of your choice. This approach may be more expensive for you and require extra paperwork.

### **Fee-for-Service (FFS) Plans with a Preferred Provider Organization (PPO)**

An FFS option that allows you to see medical providers who reduce their charges to the plan; you pay less money out-of-pocket when you use a PPO provider. When you visit a PPO, you usually won't have to file claims or paperwork. However, going to a PPO hospital does not guarantee PPO benefits for all services received within that hospital. For instance, lab work and radiology

services from independent practitioners within the hospital may not be covered by the PPO agreement. Most networks are quite wide, but they may not have all the doctors or hospitals you want. This approach usually will save you money.

Generally enrolling in an FFS plan does not guarantee that a PPO will be available in your area. PPOs have a stronger presence in some regions than others, and in areas where there are regional PPOs, the non-PPO benefit is the standard benefit. In "PPO-only" options, you must use PPO providers to get benefits.

### **Health Maintenance Organization (HMO)**

A health plan that provides care through a network of physicians and hospitals in particular geographic or service areas. HMOs coordinate the

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## Combined PPO and FFS Plans *(continued)*

health care service you receive and free you from completing paperwork or being billed for covered services. Your eligibility to enroll in an HMO is determined by where you live or, for some plans, where you work. Some HMOs are affiliated with or have arrangements with HMOs in other service areas for non-emergency care if you travel or are away from home for extended periods. Plans that offer reciprocity discuss it in their brochure. HMOs limit your out-of-pocket costs to the relatively low amounts shown in the benefit brochures.

The HMO provides a comprehensive set of services, as long as you use the doctors and hospitals affiliated with the HMO. HMOs charge a copayment for primary physician and specialist visits and generally no deductible or coinsurance for in-hospital care.

Most HMOs ask you to choose a doctor or medical group to be your primary care physician (PCP). Your PCP provides your general medical care. In many HMOs, you must get authorization or a “referral” from your PCP to see other providers. The referral is a recommendation by your physician for you to be evaluated and/or treated by a different physician or medical professional. The referral ensures that you see the right provider for the care most appropriate to your condition.

Care received from a provider not in the plan’s network is not covered unless it’s emergency care or the plan has a reciprocity arrangement.

### **HMO Plans Offering a Point of Service (POS) Product**

In an HMO, the POS product lets you use providers who are not part of the HMO network. However, you pay more for using these non-network providers. You usually pay higher deductibles and coinsurances than you pay with a plan provider. You will also need to file a claim for reimbursement, like in a FFS plan. The HMO plan wants you to use its network of providers but recognizes that sometimes enrollees want to choose their own provider. Some plans are Point of Service (POS) plans and have features similar to both FFS plans and HMOs.

### **Consumer-Driven Health Plans (CDHP)**

Describes a wide range of approaches to give you more incentive to control the cost of either your health benefits or health care. You have greater freedom in spending health care dollars up to a designated amount, and you receive full coverage for in-network preventive care. In return, you assume significantly higher cost sharing expenses after you have used up the designated amount. The catastrophic limit is usually higher than those common in other plans.

Health Reimbursement Arrangement (HRA). Health Reimbursement Arrangements are a common feature of Consumer-Driven Health Plans. They may be referred to by the health plan under a different name, such as Personal Care Account. They are also available to enrollees in High Deductible Health Plans who are ineligible for an HSA. HRAs are similar to HSAs except an enrollee cannot make deposits into an HRA, a health plan may impose a ceiling on the value of an HRA, interest is not earned on an HRA, and the amount in an HRA is not transferable if the enrollee leaves the health plan.

### **Health Savings Account (HSA)**

A Health Savings Account allows individuals to pay for current health expenses and save for future qualified medical expenses on a pretax basis. Funds deposited into an HSA are not taxed, the balance in the HSA grows tax-free, and that amount is available on a tax-free basis to pay medical costs. To open an HSA, you must be covered under a High Deductible Health Plan and cannot be eligible for Medicare or covered by another plan that is not a High Deductible Health Plan or a general purpose HCFSA or be dependent on another person’s tax return. HSAs are subject to a number of rules and limitations established by the Department

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## Combined PPO and FFS Plans *(continued)*

of Treasury. Visit [www.home.treasury.gov](http://www.home.treasury.gov) and search “HSA” for more information.

### High Deductible Health Plan (HDHP)

A High Deductible Health Plan is a health insurance plan in which the enrollee pays a deductible of at least \$1,300 (Self Only coverage) or \$3,000 (plus one

or family coverage). The annual out-of-pocket amount (including deductibles and copayments) the enrollee pays cannot exceed \$7,150 (Self Only coverage) or \$14,300 (family coverage). HDHPs can have first dollar coverage (no deductible) for preventive care and higher out-of-pocket copayments

and coinsurance for services received from non-network providers. HDHPs offered by the FEHB Program establish and partially fund HSAs for all eligible enrollees and provide a comparable HRA for enrollees who are eligible for an HSA. The HSA premium funding or HRA credit amounts vary by plan.

## Opportunities to Enroll or Change Enrollment

### Effective Date

Unless otherwise specified, enrollments or changes in enrollment become effective on the first day of the first pay period that begins after your employing office receives your enrollment request and that follows a pay period during any part of which you were in pay status.

### If You Participate in Premium Conversion (tax benefit), Can You Still Change Your Enrollment?

Yes, you can still make changes to your enrollment as detailed in this section with two exceptions. You must have a qualifying life event to change from self and family to self only or to cancel your FEHB coverage outside of Open Season.

### New Appointment

If you are a new employee, you may enroll in any available plan, option, and type of enrollment within 60 days after your date of appointment, unless your position is excluded from coverage. If you were

employed in a position that was excluded from coverage and then appointed to a position that conveys coverage, you may enroll within 60 days after the change.

If you are a Nonappropriated Fund (NAF) employee who moves to Federal employment, you are eligible for coverage just as any other new employee, even if you have continued coverage under the NAF retirement system.

### Change to Self Only If you participate in premium conversion, you may change your enrollment from self and family to self only:

- During the annual Open Season
- Within 60 days after you have a qualifying life event. Your change in enrollment must be consistent with and correspond to your qualifying life event.

**Example:** Joel gets divorced, and since he doesn't have any children,

he wants to change to a self only enrollment. He can make this enrollment change outside of Open Season since it is consistent with and corresponds to his qualifying life event (divorce).

If you do not participate in premium conversion, you may change your enrollment from self and family to self only at any time.

**Note:** Different rules apply for some U.S. Postal Service employees. Check with your employing office if you want to change to a self only enrollment.

A change from self and family to self only becomes effective on the first day of the first pay period that begins after the employing office receives your enrollment request.

Your spouse's death, your divorce, a child's marriage or a child's reaching age 26, may leave you as the only person covered by a self and family enrollment. If you are the only person left in a self and

## Opportunities to Enroll or Change Enrollment *(continued)*

family enrollment, you should change to a self only enrollment promptly so that you are not unnecessarily paying premiums for a family enrollment.

Your employing office can make a change to self only retroactive to the first day of the pay period after the pay period in which you

have no remaining eligible family members. Your employing office will make a retroactive change only upon your written request stating the event and date when you became the only person covered by the family enrollment. There will be an adjustment in your health benefits withholdings and contributions.

### Qualifying Life Event

A Qualifying Life Event (QLE) is a term defined by OPM to describe events deemed acceptable by the IRS that may allow premium conversion participants to change their participation election for premium conversion outside of an Open Season.

The qualifying life events that may allow you to change your premium conversion election include:

<p><b>Changes in entitlement to Medicare or Medicaid for you, your spouse or dependent</b></p>	<p>Your Spouse or dependent first becomes eligible for coverage under Medicare or Medicaid. You, your Spouse or dependent loses entitlement to Medicare or Medicaid.</p>
<p><b>Employment Status</b></p>	<p>Change in your employment status or that of your spouse or dependent from either full-time to part-time, or the reverse. Start of your spouse's employment. Your Spouse or dependent is employed in a position that offers health insurance. Start or end of an unpaid leave of absence by you, your spouse or your dependent.</p>
<p><b>Other</b></p>	<p>Significant change in the cost or conditions of your spouse's health care coverage related to your spouse's employment that affects you.</p>

### Open Season

You may enroll during the Open Season if you are an eligible employee. If you are enrolled, you may change plans, options, type of enrollment, or premium conversion status.

If you are a non-enrolled annuitant, you are not permitted to enroll during an Open Season unless you had suspended your FEHB enrollment to join a Medicare managed care plan or because

of your eligibility under Medicaid or a similar State-sponsored program of medical assistance for the needy.

### The effective dates of the annual Open Season enrollments and changes in enrollment are as follows:

- A new enrollment is effective the first day of the first pay period that begins in the following year and that follows a pay period during any part of which you are in pay status

- A change in enrollment is effective the first day of the first pay period that begins in the following year, regardless of whether you are in pay status
- When your employing office accepts a late Open Season enrollment or change in enrollment, it is effective retroactive to the same date that it would have been effective if it had been received on time

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## Opportunities to Enroll or Change Enrollment *(continued)*

### **Change in Family Status**

You may enroll or change enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes during the period beginning 31 days before and ending 60 days after a change in your family status. You can change your enrollment only once during this time period (unless there is another event during this time that would permit an enrollment change). You can also change your premium conversion status as long as the change in enrollment is on account of and consistent with a qualifying life event.

If you change from self only to self and family because of the birth or addition of a child, the effective date of your enrollment change is the first day of the pay period in which the child becomes a family member.

If you and your spouse each are enrolled for self only and you want a self and family enrollment because of a change in family status, one of you may change to a self and family enrollment if the other cancels the self only enrollment.

### **New Spouse**

If you want to provide immediate coverage for your new spouse, you may submit an enrollment request up to 31 days before the anticipated date of your marriage. If the effective date of the change

is before your marriage, your new spouse does not become eligible for coverage until the actual day of your marriage.

If you enroll or change your enrollment before the date of your marriage and intend to change your name, you must note on your request: "Now: [Current Name] will be: [Married Name]." The reason for the change and the date of the marriage must be given in your request.

If you enrolled or changed your enrollment before your anticipated marriage date and you do not get married, your employing office must void the request. If you changed plans, your employing office must be sure to notify both the old and the new carrier that your change was voided.

### **Divorce or Separation**

Even if you are legally separated, your spouse is still considered a family member and eligible for coverage under yourself and family enrollment. To continue to provide health benefits coverage for your children, you must continue yourself and family enrollment. Upon a final divorce decree, your spouse is no longer an eligible family member and is not covered under your enrollment.

When two Federal employees divorce, one person usually continues a self and family enrollment to provide coverage

for the children, while the other enrolls for self only. When the enrollment covering the children is canceled or changed to self only, you may change to a self and family enrollment to provide immediate coverage for your children.

### **Former Spouse**

If you are a former spouse who has coverage under the spouse equity or Temporary Continuation of Coverage (TCC) provisions of FEHB law, you may change from self only to self and family or from one plan or option to another, or both, within 60 days after the birth or acquisition of an eligible child. To be eligible, the child must be that of both you and the employee or annuitant on whose service your coverage is based.

### **Change in Employment Status**

Generally, you may enroll or change enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes within 60 days after a change in your employment status. You can also change your premium conversion status if the enrollment change is on account of and consistent with a qualifying life event. Various changes in employment status and the allowable enrollment changes that you may make are described below.

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## Opportunities to Enroll or Change Enrollment *(continued)*

### **Return to Pay Status after 365 Days in Leave Without Pay**

#### **If your enrollment terminated:**

- After you had been in leave without pay status for 365 days
- When you entered leave without pay status
- At any time during the first 365 days in leave without pay status, you may enroll for self only or self and family in any available plan or option when you return to pay status. If you were not enrolled at the time leave without pay status began, you may enroll upon return to pay status only if a qualifying event occurred while you were on leave without pay

### **Reemployment after More than 3-Day Break in Service**

If you move from one employing office to another (other than by retirement) with a break in service of more than 3 days, you may enroll the same as a new employee. If you are a Nonappropriated Fund (NAF) employee who returns to Federal employment, you are eligible for coverage, even when you have continued coverage under the NAF retirement system.

### **Return from Military Service**

If you are restored to a civilian position after serving in the uniformed services under

conditions that entitle you to benefits under 5 CFR part 353, or similar authority, you may enroll in any option of any available plan after returning to civilian duty. If your enrollment was terminated on entry into military service, you will have the same enrollment reinstated effective on the day of restoration to duty in a civilian position. In addition, you may change your enrollment based on your return to civilian duty.

### **Change from Temporary Appointment to Another Type of Covered Appointment**

When you are eligible to enroll as a temporary employee under 5 U.S.C. 8906a and you change to an appointment that makes you eligible for FEHB coverage with a Government contribution, you may change plans, options, and types of enrollment.

#### **Your change in health benefits status is effective:**

- On the same date as your change in employment status, if the change is on the first day of a pay period
- At the beginning of the pay period following your change in employment status, if the change is after the first day of the pay period

If there is a break in service of more than 3 days, your old enrollment terminates at the end of the pay period in which your temporary appointment ends. You have a new opportunity to enroll based on the new appointment.

### **Separating from Service**

If you are separating from service and you or your spouse are pregnant, you may enroll or change your enrollment during your final pay period. You must provide medical documentation of the pregnancy to your employing office.

The effective date of the change is the first day of the pay period in which your employing office receives your appropriate request.

Although you can usually enroll for family coverage under Temporary Continuation of Coverage (TCC) provisions, it does not become effective until the day after the 31-day extension of coverage. An enrollment election prior to separation will ensure that the baby's health care costs will be covered if he/she is born during the 31-day extension of coverage. If you are not eligible for TCC, a change to a self and family enrollment during your final pay period will allow you to convert to an individual policy for the whole family.

### **Transfer To or From Overseas Employment**

You may enroll or change enrollment when you transfer from a duty post within the United States to a duty post outside the United States or the reverse. You have 31 days before the date you are expected to leave your former duty post and 60 days after your arrival at the new duty post

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## Opportunities to Enroll or Change Enrollment *(continued)*

to enroll or change enrollment.

If you are at an overseas duty post at the time of your retirement, you may change your enrollment within 60 days after your retirement.

### **Change To or From Part-Time Career Employment**

When you change to part-time career employment (16 to 32 hours a week under 5 U.S.C. 3401(2)) with a break in service of 3 days or less, you may enroll or change your enrollment within 60 days from the change in your employment status. Similarly, when you change from part-time employment under 5 U.S.C. 3401(2) to full-time employment, you may enroll or change enrollment. This does not apply to part-time appointments of other than 16 to 32 hours per week (or 32 to 64 hours biweekly in the case of a flexible or compressed work schedule) nor to any noncareer appointment.

### **You Lose Coverage under FEHB or Another Group Insurance Plan**

If you are an employee eligible for FEHB coverage, you may enroll or change your enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes when you or an eligible family member lose coverage under FEHB or any other group

health benefits plan (including coverage under another Federally-sponsored health benefits program or under Medicaid). Except as otherwise provided below, you must enroll or change your enrollment within the period beginning 31 days before and ending 60 days after the loss of coverage. You can also change your premium conversion status if the enrollment change is on account of and consistent with a qualifying life event.

If you are eligible for FEHB coverage in your own right and you become a survivor annuitant, you have the option to continue the current enrollment with withholdings made from your survivor annuity. If you elect to enroll as an employee, and you later separate or your employment status changes so that your enrollment terminates, you may continue the enrollment as a survivor annuitant.

If you are an eligible employee under age 26 and covered under your parent's self and family enrollment, you are eligible to enroll if you are no longer dependent on your parent. Your employing office will permit you to enroll when it receives a statement from your parent that you are no longer a dependent. Your parent must also submit this statement to his/her employing office, which will notify the carrier that you

are no longer an eligible family member. Your employing office will note in your appropriate request that you are no longer a dependent and not eligible for benefits under your parent's enrollment.

### **Former Spouse Loses Regular FEHB Coverage**

If you are entitled to health benefits coverage as a former spouse, but you are instead enrolled as an employee or family member, you may enroll or resume enrollment under spouse equity when your coverage as an employee or family member ends (as long as you still meet the spouse equity requirements).

### **Former TCC Enrollee Loses Regular FEHB Coverage**

If you were enrolled under Temporary Continuation of Coverage (TCC) provisions and you acquired regular FEHB coverage (either as an employee or family member), you may reenroll in TCC if the regular coverage ends before the original TCC enrollment would have expired. You may reenroll in the same plan and option as your original TCC enrollment. If you are not eligible to enroll in the plan you had when your TCC enrollment ended, you may enroll in the same option of any available plan. The second TCC enrollment cannot extend beyond the date the original TCC enrollment would

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## Opportunities to Enroll or Change Enrollment *(continued)*

otherwise have stopped.

### **Termination of Membership in Employee Organization**

If you are enrolled in a plan sponsored by a union or employee organization and you stop being a member of that organization, your plan can ask your employing office to terminate your enrollment, subject to a 31-day extension of coverage.

Your plan will send a notice to your employing office and a copy to you. Your employing office will terminate your enrollment on a Notice of Change in Health Benefits Enrollment (SF 2810), effective at the end of the pay period in which it receives the notice. You may then enroll for self only or self and family in any available plan or option. If you reenroll within 60 days after termination, you are considered to have been continuously enrolled (for purposes of continuing enrollment after retirement) even though there actually may have been a break between the effective date of termination of your enrollment in the employee organization plan and the effective date of your new enrollment.

### **You are Enrolled in a Plan that is Discontinued**

You may change to another plan when you are enrolled in a plan that is discontinued in whole or in part. You may enroll in the new plan for either self only or self and

family coverage. If your plan is discontinued at the end of a contract year, you must change your enrollment during Open Season unless OPM establishes a different time. If the whole plan is discontinued and you do not change to another plan, you are considered to have canceled your enrollment. If one option of a two-option plan is discontinued and you do not change to another plan, you are considered to have enrolled in the remaining option of the plan.

Normally, a plan that terminates its participation in the FEHB Program will terminate as of December 31 of a given year. The plan will continue to provide benefits until the new coverage takes effect. When a plan is discontinued at any time other than at the end of a contract year, OPM will announce a special enrollment period and give instructions about the proration of premiums and the effective date of enrollment changes.

### **Change to Position out of Commuting Area**

When your or your spouse's loss of non-Federal coverage is due to a move outside of the commuting area, you must enroll or change enrollment within the period beginning 31 days before the date you leave employment in the old commuting area and ending 180 days after you enter on duty at the place of employment in the new commuting area.

### **Loss of Coverage under Spouse's Non-Federal Plan**

Your spouse may elect to temporarily continue the employer-provided group insurance under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). You may choose to enroll either at the time your spouse or child loses coverage through the non-Federal employer or whenever the COBRA coverage terminates for any reason.

Move from an HMO's Service Area. If you are enrolled in an HMO and you move or become employed outside the HMO's service area (or, if you are already living or working outside this area, you move or become employed further away), you may change your enrollment. Also, you may change your enrollment if an enrolled family member moves outside the service area (or moves further away). You must notify your employing office of the move.

The effective date of the change is the first day of the pay period that begins after your employing office receives your appropriate request.

### **You become Eligible for Medicare**

You may change your enrollment to any option of any available plan at any time beginning on the 30th day before you become eligible for Medicare. You may make an

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## Opportunities to Enroll or Change Enrollment *(continued)*

enrollment change under this event only once.

### **Salary of Temporary Employee Insufficient to Pay Withholdings**

If you are temporary employee eligible under 5 U.S.C. 8906a and your salary is not sufficient to pay your plan's premiums, your employing office must notify you of the plans available at a cost that does not exceed your available salary. You may enroll in another plan where the cost is no greater than your available salary within 60 days after receiving notification from your employing office.

Coverage under your new plan is effective immediately upon termination of your old plan's coverage.

### **Continuation of Old Plan**

### **during Confinement**

If you changed your enrollment from one plan or option to another and you or a covered family member are an inpatient in a hospital or other institution on the last day of your enrollment under the prior plan or option, the benefits of the prior plan or option will continue for the confined person for the length of the inpatient stay, up to 91 days from the last day of enrollment in the prior plan or option. This provision does not apply when a plan is discontinued or when OPM orders an enrollment change.

Your new plan or option does not pay benefits for you while you are receiving continued inpatient benefits from your old plan or option. The new plan or option will begin coverage on

the earlier of:

- The day of your discharge
- The day after maximum inpatient benefits available under the old plan or option have been paid or provided
- The 92nd day after the last day of enrollment in the old plan or option

Coverage for other family members (who are not confined in a hospital or other institution) under the new plan begins on the normal effective date of coverage.

## Dual Enrollment

### **Dual Enrollment Prohibited**

Dual enrollment is when you or an eligible family member under your self and family enrollment are covered under more than one FEHB enrollment. Generally, dual enrollment is prohibited except when you or a family member would otherwise lose coverage.

Your stepchildren that live with you in a regular parent-child relationship are eligible for coverage under your self and family enrollment. When all of either your children or your spouse's children live with you, only one self and family enrollment is needed. If both you and your spouse are enrolled for self and family, you must eliminate the dual enrollment.

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## Dual Enrollment *(continued)*

### Employing Office Actions

Your carrier must contact the employing offices involved when it discovers an unauthorized dual enrollment case. One of the enrollments must be voided or canceled from the date that dual enrollment began. The health benefits premiums you paid during the unallowable enrollment will be refunded, and your employing office must make a corresponding adjustment in the Government's contribution. The carrier of the enrollment that is voided or canceled may require that you refund any benefits it paid under the unallowable enrollment, although these benefits may be payable under the allowable enrollment.

If you and your spouse are unable to agree on which enrollment to continue, the enrollment of the spouse with a court order to provide coverage for the children will be continued. Otherwise, the second (later) enrollment must be voided or canceled.

### When Dual Enrollment is Allowed

Dual enrollment must be authorized by your employing office(s) and will only be allowed when you or an eligible family member would otherwise lose coverage.

### Some examples of allowable dual enrollment include when:

- You and your spouse legally separate and you or your

children would lose full health benefits coverage (e.g., you move outside your HMO's service area and your spouse refuses to change health plans; your spouse refuses to pass along reimbursements for health benefits claims filed)

- You and your spouse divorce
- You are under age 26, covered by your parent's enrollment, have your own family (spouse/children) and chose to cover them
- You are under age 26, covered by your parent's enrollment and you live outside the coverage area of your parent's HMO plan
- You and your spouse each have Self Only enrollments and one of you changes to a family enrollment and the other cancels their enrollment. A brief overlap of coverage is allowed to avoid a gap in coverage

### No enrollee or family member may receive benefits under more than one FEHB enrollment

If your employing office authorizes a dual enrollment, you may be covered and receive benefits only under your own enrollment. You must inform the carriers involved which family members will be covered and receive benefits under which enrollment. If you or a family member receive benefits under more than one plan, it is

considered fraud and you are subject to disciplinary action.

### Dates for Open Season

Each year OPM provides an Open Season from the Monday of the second full workweek in November through the Monday of the second full workweek in December. The Director of OPM may modify the dates of Open Season or announce additional Open Seasons. Your Open Season election generally will take effect the following January.

### Notification to Agencies

OPM notifies agencies of each regular Open Season by a Benefits Administration Letter (BAL). OPM gives specific instructions on the coordination of Open Season, and let the agencies know of any changes in materials to be issued or procedures to be followed during that period.

If your employing office's health benefits official needs additional Open Season information or assistance, he/she may contact the headquarters benefits officer. The headquarters benefits officer may contact OPM with questions.

### Employee Express

Your agency may allow or require you to make Open Season changes through "Employee Express," or another electronic method, instead of using a Health Benefits Election form (SF 2809). Check with your employing office to see which method is available for your use.

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## Dual Enrollment *(continued)*

### Other Enrollment Actions During Open Season

While new enrollments and other permissible enrollment changes can be made as usual during the Open Season, these should not be identified as Open Season changes on the appropriate request because Open Season changes do not take effect until January. You should make sure that you specify the reason for your enrollment change on your enrollment request.

### Timely Election

Your employing office must receive your Open Season election no later than the last day of Open Season to be considered timely filed.

Your employing office may accept and process a late election if it determines that you were unable to submit it timely for reasons beyond your control (e.g., your employing office did not distribute Open

Season literature until after Open Season). Your failure to read the available material is not considered a reason beyond your control.

If your employing office decides to accept a late election, it enters “belated Open Season enrollment/change” in the Remarks section of your enrollment request. You or your employing office must explain why you could not make a timely election and attach the statement to the file copy of your enrollment request.

If your employing office decides that your late election was not beyond your control, it must explain to you in writing why it did not accept your late request and give you notice of your reconsideration rights.

### Deductibles

If you change plans, any covered expenses you incur between January 1 and the

effective date of coverage under your new plan count towards the prior year’s deductible of your old plan.

### If You Don’t Want to Make an Open Season Change

You do not need to do anything if you want to continue your current enrollment (unless your plan is dropping out of the FEHB Program). If you do not change your enrollment, any benefit or rate changes apply beginning January 1.

### Processing Open Season Changes

OPM provides employing offices with instructions for processing Open Season enrollments and enrollment changes each year via a Benefits Administration Letter (BAL).

## Continuation of Enrollment

### Upon Transfer

When you move from one employing office to another, your enrollment continues without interruption (see **Employees Excluded from Coverage** for the only exceptions to this) as long as you do not have a break in service of more than three calendar days. This is regardless of whether or not your move is designated as

a transfer. You do not need to do anything to ensure your continued enrollment, but the gaining employing office must transfer your enrollment.

If you are enrolled in an HMO and transfer to a location outside of the HMO’s service area, your enrollment continues. However, you will be covered only for emergency care, Point of Service (POS) benefits

(if applicable), or care that you travel back to an HMO participating provider to receive. You may change to another plan before or after the move.

If you are enrolled in a plan sponsored by a union or employee organization and you transfer to another agency, you do not have the right to enroll in another plan because of your transfer.

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## Continuation of Enrollment *(continued)*

### Your current enrollment will continue until:

- You change plans when you have an opportunity (such as an Open Season)
- The plan terminates your enrollment because you are no longer a member of the organization

### Effective Date

The effective date of the enrollment transfer for the gaining employing office is the first day you enter on its rolls.

### Transfers to or from the District of Columbia Government

If you are a Federal employee with D.C. Government service prior to October 1, 1987, and you move back to D.C. Government without a break in service, your enrollment must be transferred in by the D.C. Government on the Notice of Change in Health Benefits Enrollment form (SF 2810). Since your personnel files are not transferred, the D.C. Government must request copies of your health benefits forms when it requests other employment information from the losing Federal employing office.

If you move from the D.C. Government to a Federal agency, the gaining office must transfer your enrollment in on SF 2810 and ask the D.C. Government for the personnel

folder copies of health benefits forms at the same time it asks for a transcript of personnel records.

The two personnel offices must verify your health insurance status so that withholdings can begin with the initial pay period even if documentation has not yet arrived from the losing office.

If you do not have D.C. Government service prior to October 1, 1987, and you transfer to the D.C. Government, your enrollment is terminated because you are no longer an eligible employee. If you were first employed by the D.C. Government on or after October 1, 1987, and you transfer to a Federal agency, you may enroll in the FEHB Program if you are otherwise eligible.

### Transfers to or from the U.S. Senate and House of Representatives

If you leave a Federal agency and become employed by the U.S. Senate or House of Representatives without a break in service of more than three calendar days, your health benefits enrollment is transferred.

If you leave employment with the U.S. Senate or House of Representatives and become employed by a Federal agency without a break in service of more than three calendar days, your enrollment will terminate

effective at the end of the month that you separate. Withholdings and contributions will be made for that entire month.

The gaining employing office will ask you for a copy of the termination Notice of Change in Health Benefits Enrollment (SF 2810), verify your eligibility for continued enrollment, and ask the losing office for the employing office copies of your health benefits forms. The gaining office will reinstate your enrollment on the SF 2810 effective the first day of the following month, so you will not have to pay double premiums.

### Continuation upon Retirement

When you retire and are eligible to continue FEHB coverage into retirement, your enrollment is transferred in by the retirement system and automatically continued.

### Continuation for Family Members upon Your Death

If you die in service while enrolled for self and family, enrollment for your family members automatically continues when they meet the requirements for continuation.

### Leave Without Pay Status

Generally, your enrollment may continue for up to 365 days of leave without pay. You must pay the employee share of premiums for every pay period that your enrollment continues.

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## Restoration to Duty After Erroneous Removal or Suspension

### Election

If you are suspended without pay, your enrollment may continue for up to 365 days in leave without pay status. If you are removed from service, your enrollment terminates at the end of the pay period in which you are removed.

**If your enrollment terminated and you are ordered restored to duty because the suspension or removal was unwarranted or unjustified, you may elect either to:**

- Have your prior enrollment reinstated retroactive to the date it was terminated
- Enroll the same as a new employee

Your employing office must notify you of the health benefits coverage choices available.

### Reinstatement of Enrollment

If you elect to have your prior enrollment reinstated

retroactively, premium withholdings and contributions must also be made retroactively as if the erroneous suspension or removal had not taken place. The amount of the retroactive withholdings due may be withheld from your backpay award. Your health benefits coverage is considered to have been continuously in effect and you and your covered family members are retroactively entitled to full plan benefits. If you had converted to an individual contract, you may get a refund of the premiums you paid for that coverage.

### New Enrollment

If you elect to enroll the same as a new employee instead of having your prior enrollment reinstated, your enrollment is effective the first day of the first pay period that begins after your employing office receives your appropriate request. You are not retroactively entitled to plan benefits and no retroactive

premium withholdings and contributions will be made.

The period of suspension or removal (during which the enrollment was not in effect) is not considered when determining your eligibility to continue coverage into retirement, as long as you enroll within 60 days after the date you are ordered restored to duty.

If you lose health benefits coverage because you separate from Federal service, whether voluntary or involuntary (except for removal due to gross misconduct), you may elect Temporary Continuation of Coverage (TCC).

## During an Interim Appointment

If you have an interim appointment under the Whistleblower Protection Act of 1989 [5 U.S.C. 7701(b)(2)(A)], you are entitled to the same coverage provisions as other employees with appointments that entitle them to coverage under the FEHB Program.

If your interim appointment is terminated and your prior

separation still stands, you have the same rights under the FEHB Program as any other employee whose appointment terminates. These rights are based on the termination from the interim appointment - the prior separation has no bearing. If you were ineligible for Temporary Continuation of Coverage (TCC) based on your

prior separation, this has no effect on your eligibility for TCC based on the separation from your interim appointment.

If you are eligible for retirement and you receive an interim appointment, your annuity will be suspended. Your employing office must notify the retirement system to transfer your enrollment back

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## During an Interim Appointment *(continued)*

to your employing office. If your interim appointment ends and your prior separation still stands, your enrollment will be transferred back to the retirement system.

If you are restored to duty and your interim appointment terminates, you may choose

retroactive reinstatement of your health benefits coverage. If you continued health benefits coverage under TCC between your prior separation and your interim appointment, a retroactive reinstatement terminates your TCC enrollment retroactively. You are due a refund for the premiums you

paid for the TCC enrollment. This amount may be applied to the premiums you owe for the retroactive reinstatement. If your backpay award and TCC enrollment refund will not cover the amount you owe for the retroactive reinstatement, you must pay the balance due directly to your employing office.

# Cost of Insurance



Generally, if you are a Federal employee or annuitant, you share the cost of your health benefits coverage with the Government as your employer. Some temporary employees enrolled under 5 U.S.C. 8906(a), former spouses enrolled under spouse equity provisions, and most persons covered under Temporary Continuation of Coverage (TCC) do not receive a Government contribution towards the cost of their health benefits.

## Government's Share

The Government's share of premiums paid is set by law. Amendments to the FEHB law under the Balanced Budget Act of 1997 (Public Law 105-33, approved August 5, 1997) authorized a new formula for calculating the Government contribution effective with the contract year that began in January 1999. This formula is known as the "Fair Share" formula because it maintains a

consistent level of Government contributions, as a percentage of total program costs, regardless of which health plan enrollees elect.

**For most employees and annuitants, the Government contribution equals the lesser of:**

- 72 percent of amounts OPM determines are the program-wide weighted average of

premiums in effect each year, for self only and for self and family enrollments, respectively

- 75 percent of the total premium for the particular plan an enrollee selects

## Government Contribution for Part-Time Employees

If you are a part-time career employee, the Government contribution toward your health benefits is prorated in proportion to the percentage of full-time service you are regularly scheduled to perform.

If you became a part-time career employee (working 16 to 32 hours a week or 32 to 64

hours biweekly) on or after April 8, 1979, you are entitled to a partial Government contribution in proportion to the number of hours you are scheduled to work in a pay period.

Employees who served on a part-time basis before April 8, 1979, and who have continued to serve on a part-time basis

without a break in service (in that or any other position) are eligible for the full Government contribution, as are part-time employees who work less than 16 hours or more than 32 hours per week.

The amount of the Government contribution is determined by dividing the number of hours

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## Government Contribution for Part-Time Employees *(continued)*

you are scheduled to work during the pay period by the number of hours worked by a full-time employee serving in the same or comparable position (normally 80 hours per biweekly pay period).

That percentage is then applied to the Government contribution made for full-time employees enrolled in that plan.

The amount of the Government contribution is then deducted from the total premium

(Government plus employee shares), and the remaining amount is withheld from your pay.

### Your Share

During each pay period in which your FEHB enrollment is in effect, you are responsible for paying all premiums in excess of the Government contribution, usually 25% of the total premium.

If your pay (after retirement, FICA tax, Medicare, and Federal income tax deductions) will cover the full employee share of your health benefits premiums, the withholding is taken from your salary. Group life insurance withholdings follow health benefits withholdings in the order of precedence set forth in the Treasury Fiscal Manual.

## Premium Conversion

### What is Premium Conversion?

Premium conversion is a tax benefit. It allows you to allot a portion of your pay to your employer, who will in turn use that amount to pay your contribution for FEHB coverage. This allotment is made on a pre-tax basis, which means that the money is not subject to Federal income, Medicare, or Social Security taxes, and in most cases, state and local taxes. The allotment reduces your taxable income, so less tax is withheld, and your paycheck is larger.

### Are You Eligible?

**You are eligible to have your FEHB premiums paid under the premium conversion plan when:**

- You are an employee of the Executive Branch of the Federal Government
- Your pay is issued by an Executive Branch agency
- You participate in the FEHB Program

If you are enrolled in the FEHB Program and are employed outside the Executive Branch, or your pay is not issued by

an agency of the Executive Branch, you may be eligible if your employer agrees to offer participation in the plan.

If you are an employee paying both your and the Government's share of the premiums, the entire amount deducted from your pay qualifies for premium conversion.

### Does Premium Conversion Apply Only to Employees?

Yes. At the present time, annuitants and compensationers whose FEHB premiums are deducted from annuities and benefits are not eligible to participate in premium

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## Premium Conversion *(continued)*

conversion. There are special rules for reemployed annuitants; see below.

Persons enrolled through Temporary Continuation of Coverage and Spouse Equity are not eligible for premium conversion.

### **Does Premium Conversion Apply to Reemployed Annuitants?**

Yes, if you are reemployed in a position that conveys FEHB eligibility, you may participate in premium conversion. See “Reemployed Annuitants” for more information.

### **How do You Enroll?**

You are automatically enrolled in premium conversion starting with the first pay period that began on or after October 1, 2000.

Once you participate in premium conversion, your participation continues automatically unless you elect not to participate. Each year during FEHB Open Season you may decide whether or not to participate for the following year.

### **Can You Choose Not to Participate in Premium Conversion?**

Yes, but you need to opt-out or waive participation in premium conversion. You should obtain, complete, and return a waiver/election form to your employing office. If your employing office receives that form before the beginning of the first pay period that begins on or after October 1, 2000, the waiver will be effective.

### **Who Should Not Participate?**

**Regardless of your marital status, and the number of dependents you have, if you:**

- Pay no federal income tax
- Earn less than \$6,400 per year

You should give serious consideration to waiving participation in premium conversion.

### **Can You Change Your Premium Conversion Participation Status?**

Yes, but your opportunities to do so are limited.

**You may waive participation:**

- **During Open Season**  
The effective date of the change is the first day of the first pay period that begins in the following calendar year
- When you make a change in FEHB enrollment that is on account of and consistent with a qualifying life event
- When you have a qualifying life event and the change is on account of and consistent with that event (even when you don't change your enrollment). You have 60 days after the qualifying life event to file your change with your employing office. The waiver is effective on the first day of the pay period following the date your employing office received your change request

**You may cancel your waiver and participate:**

- **During Open Season**  
The effective date of the change is the first day of the first pay period that begins in the following calendar year
- When you have a qualifying life event; the change in FEHB coverage is consistent with the qualifying life event; and you complete an election form to participate within 60 days from the qualifying life event

### **Does Premium Conversion Affect Your Other Federal Benefits?**

No. All Federal retirement, thrift savings and life insurance benefits are based on gross salary and are not affected by participation in premium conversion.

### **What's the Impact of Premium Conversion on Your Social Security Benefits?**

Premium conversion may slightly reduce the Social Security benefit you will receive upon retirement.

**The extent of the impact depends on several factors:**

- The retirement system that you participate in
- Whether your salary exceeds the Social Security wage base
- The number of years left until your retirement

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## Premium Conversion *(continued)*

### CSRS

If you are covered under CSRS, you are generally better off with premium conversion. Your tax savings are slightly less since you don't pay Social Security taxes. However, a reduction in Social Security benefits is not an issue for you since Social Security is not a component of your Civil Service Retirement.

Even if you have Social Security coverage as a result of a non-Federal job, premium conversion would not change your Social Security benefit.

be increased by almost the same amount. Participating in premium conversion is most likely a benefit to you.

### CSRS Offset

Under CSRS offset, your Social Security benefits would be slightly reduced, but your CSRS Offset benefits would

### FERS

Your Social Security benefits are calculated on your taxable earnings, so any reduction in your taxable income will affect your Social Security calculation.

The small reduction in Social Security benefits is greatly outweighed by the much larger tax savings.

#### Here is a simple formula you can use to estimate the difference in your Social Security benefit:

- Take the number of years you will participate in premium conversion (from now until your estimated retirement) and divide by 35
- Multiply this by your current annual FEHB premium
- Multiply the result of Step 2 by the marginal SSA rate (15% for most Federal employees)

- ▶ The result is the annual loss of Social Security benefits.

**Example:** Antonio participates in FERS. He's had a full career of FICA contributions, with an ending salary (today) of \$50,000 and projected retirement at age 66 in January 2016. His estimated Social Security benefit equals \$1,414 per month.

He begins participating in premium conversion and reduces his taxable income by \$2,000, the amount of his FEHB premium. By changing his salary to \$48,000, his monthly Social Security benefit is now \$1,403, an \$11.00 per month difference in today's dollars.

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$$15/35 = .4286 \times 2000 = 857 \times .15 = 128.55 = 10.71 \text{ or } 11$$

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- ▶ Compare that to the estimated \$67 increase in take home pay per month.

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## Making Withholdings and Contributions

### General

Your employing office must make the appropriate health benefits premium withholdings and contributions beginning with the first pay period that your enrollment is effective. It must submit the full cost of your enrollment to OPM on a current basis for each pay period that your enrollment continues, even if you are paid for only part of the period (except in transfer and reinstatement cases) or you are in leave without pay status.

You should check your pay statement to verify that the health benefits premium withholding is correct and report any discrepancy to your employing office immediately. You are obligated to make the correct payment, regardless of any error in withholding made by your employing office. When too little or no money has been withheld from your pay for health benefits, you incur a debt due the U.S. Government for the proper withholdings for each pay period that your enrollment continues.

### Terminated and Cancelled Enrollments

Generally, if your enrollment terminates (other than for

entry into military service), the effective date is the last day of the pay period in which the terminating event occurred. If you cancel your enrollment, the effective date is the last day of the pay period in which your employing office receives your cancellation request. Withholdings and contributions for the full pay period are required.

If your coverage terminates because you are in leave without pay status or you have insufficient pay to make the withholding, and you do not elect other payment options, the effective date is the last day of the pay period that you paid your share of the premiums.

Your coverage continues at no cost for 31 days after your enrollment terminates for any reason except when you voluntarily cancel your enrollment or your plan is discontinued. Separating employees who are not retiring or are otherwise ineligible to continue their FEHB coverage in retirement, are eligible for Temporary Continuation of Coverage (TCC) for up to 18 months. Children and former spouses of employees who lose their coverage are

entitled to TCC for 36 months. TCC enrollees must pay the full premium for the plans they select (that is both the employee and government share of premium) and a 2 percent administrative charge.

### When You Transfer to a Different Payroll Office (Daily Proration Rule)

Effective March 1, 1997, the Daily Proration Rule applies when you transfer to a position serviced by a different payroll office at a time other than at the beginning of the pay period. Each payroll office (gaining and losing) is responsible for withholdings and contributions for the actual time you occupied a position each office services.

If you owe a debt for health benefits withholdings to your former employing office, the gaining office must make arrangements for withholding your indebtedness and forward the amount collected to your former employing office.

**Daily Rate.** A daily rate must be computed as follows:

Daily withholding and contribution rate = Biweekly withholding and contribution rate  $\times$  26  $\div$  364

*Note: The denominator of 364 is always used, even during a leap year.*

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## Making Withholdings and Contributions *(continued)*

### Active Employees

The formula for determining the amount of withholdings and contributions for which the losing and gaining payroll offices are responsible is:

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$$\text{Daily Rate} \times \text{Days on Payroll}$$

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**Example:** During a pay period beginning August 4 and ending August 17, Henry transfers to a different agency, with his new appointment effective August 10. The biweekly employee share of his health benefits plan premium is \$21.46 and the biweekly Government share is \$61.51.

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#### The daily withholding rate

$$\$1.53 (\$21.46 \times 26 \div 364)$$

#### The daily contribution rate

$$\$4.39 (\$61.51 \times 26 \div 364)$$

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The losing agency is responsible for withholdings and contributions for 6 days (August 4 through 9), calculated as follows:

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#### Withholdings

$$\$1.53 \text{ daily rate} \times 6 \text{ days} = \$9.18$$

#### Contributions

$$\$4.39 \text{ daily rate} \times 6 \text{ days} = \$26.34$$

---

The gaining agency is responsible for withholdings and contributions for 8 days (August 10 through 17), calculated as follows:

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#### Withholdings

$$\$1.53 \text{ daily rate} \times 8 \text{ days} = \$12.24$$

#### Contributions

$$\$4.39 \text{ daily rate} \times 8 \text{ days} = \$35.12$$

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### When You Retire

When you retire, your employing office's responsibility for withholdings and contributions depends on when your annuity starts.

- If your annuity starts after the end of your final pay period, your employing office will make withholdings and contributions for the entire final pay period
- If your annuity starts before the end of your final pay period, your employing office will make withholdings and contributions through the day before the starting date of your annuity, using the Daily Proration Rule

*(For information about determining when your annuity starts, see the CSRS/FERS Handbook for Personnel and Payroll Offices.)*

**Example:** Mary Helen is retiring on May 31. The pay period begins on May 25 and ends on June 7. The biweekly employee share of her health benefits plan premium is \$32.26 and the biweekly Government share is \$61.51.

The daily withholding rate is \$2.30 ( $\$32.26 \times 26 \div 364$ ) and the daily contribution rate is \$4.39 ( $\$61.51 \times 26 \div 364$ ).

Her employing office will make withholdings and contributions for the period from May 25 through May 31 (7 days), calculated as follows:

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#### Withholdings

$$\$2.30 \text{ daily rate} \times 7 \text{ days} = \$16.10$$

#### Contributions

$$\$4.39 \text{ daily rate} \times 7 \text{ days} = \$30.73$$

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## Making Withholdings and Contributions *(continued)*

### When You Die

The daily proration rule applies when you die and you have a survivor annuitant eligible to continue your enrollment. If there is no survivor annuity or if you had a Self Only enrollment, your employing office must make full withholdings and contributions for the pay period in which you die.

### Upon Termination or Reinstatement for Military Service

The daily proration rule applies if your enrollment is terminated

or reinstated because of entry into, or return from, military service. The effective date of the action is the date you entered into or returned from military service.

### Retroactive Restoration

If you are retroactively restored to duty after an erroneous suspension or removal, you may either have your enrollment reinstated retroactively, or you may enroll in the plan and option of your choice, the same as a new employee. If you elect to have the enrollment

reinstated retroactively, withholdings for the period of suspension or removal must be made, and your employing office must make contributions from the appropriate fund, as though the suspension or removal had not occurred.

## Part-Time Career Appointment

Employees who became a part-time career employee (working 16 to 32 hours a week or 32 to 64 hours biweekly) on or after April 8, 1979, are entitled to a partial Government contribution in proportion to the number of hours they are scheduled to work in a pay period.

Employees who served on a part-time basis before April 8, 1979, and who have continued to serve on a part-time basis without a break in service (in that or any other position) are eligible for the full Government contribution, as are part-time employees who work less than 16 hours or more than 32 hours per week.

The amount of the Government contribution is determined by dividing the number of hours an employee is scheduled to work during the pay period by the number of hours worked by a full-time employee serving in the same or comparable position (normally 80 hours per biweekly pay period).

That percentage is then applied to the Government contribution made for full-time employees enrolled in that plan.

The amount of the Government contribution is then deducted from the total premium (Government plus employee shares), and the remaining amount is withheld from the employee's pay.

**Example:** Faith is scheduled to work 36 hours during a biweekly pay period, and the Government contribution for her health benefits plan is \$61.38 biweekly for full-time employees.

### The Government contribution for her health benefits is as follows:

$36 \text{ (Hours scheduled during pay period)} \div 80 \text{ (Hours worked by full-time employees)} = .4500$

### Her employing office will make withholdings and contributions for the period from May 25 through May 31 (7 days), calculated as follows:

Since the total premium (Government and employee share) for her health benefits plan is \$92.35, Faith's share of premiums is \$64.73 (\$92.35 - \$27.62).

## Government Contribution Factors for Part-Time Career Employees

The following chart shows the factor used to determine the amount of Government contribution for health benefits for part-time career employees who, if in a full-time position, would work 80 hours during a biweekly pay period (the amount considered as full-time employment for most positions).

If the comparable full-time position would require the employee to work a tour of duty other than 80 hours per biweekly pay period, or if the employee is paid on a monthly or semimonthly basis, divide the actual number of hours or days the employee is scheduled to work on the part-

time schedule by the number of hours or days required for a full-time employee in the same position to determine the Government contribution factor.

Hours Worked on a Regular Bi-Weekly Schedule	
Hours	Factor
32	0.4000
33	0.4125
34	0.4250
35	0.4375
36	0.4500
37	0.4625
38	0.4750
39	0.4875
40	0.5000
41	0.5125
42	0.5250
43	0.5375
44	0.5500
45	0.5625
46	0.5750
47	0.5875
48	0.6000

Hours Worked on a Regular Bi-Weekly Schedule	
Hours	Factor
49	0.6125
50	0.6250
51	0.6375
52	0.6500
53	0.6625
54	0.6750
55	0.6875
56	0.7000
57	0.7125
58	0.7250
59	0.7375
60	0.7500
61	0.7625
62	0.7750
63	0.7875
64	0.8000
<b>&lt; 32 or &gt; 64</b>	<b>1.00</b>

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## Government Contribution Factors for Part-Time Career Employees

(continued)

### Former Spouse Enrolled under Spouse Equity Provisions

Former spouses enrolled under the spouse equity provisions must pay both the employee and Government shares of the health benefits premium. They will normally make their payments directly to their ex-spouse's employing office.

### Temporary Employees

Temporary employees enrolled under 5 U.S.C. 8906a must pay both the employee and Government shares of the health benefits premium. **(Exception:** if the employee has a provisional appointment under 5 CFR 316.403, an interim

appointment under 5 CFR 772.102, or if he/she continues coverage after his/her employment status changes from non-temporary to temporary without a break in service exceeding 3 days, he/she receives a Government contribution.)

### Temporary Continuation of Coverage

Individuals who enroll under the Temporary Continuation of Coverage (TCC) provisions usually must pay the full amount of the premiums (both the employee and Government shares) plus an administrative charge of two percent (2%) of the total premium. Payments are made directly to the servicing employing office.

Former Department of Defense employees who qualify for TCC based on a separation due to a reduction in force described in 5 U.S.C. 8905a (d)(4) continue to pay the normal employee share of premiums.

### Leave Without Pay Status and Insufficient Pay

Employees must still pay the employee share of health benefits premiums if they are in a leave without pay status for an entire pay period or if their pay during a pay period doesn't cover the full amount of withholdings due, unless they want

their enrollment to terminate. The employing office must notify the employee of the choices available and provide the employee with a method to make direct premium payments.

# Coordination of Benefits

If you or a covered family member are entitled to benefits from a source other than your FEHB plan, such as a spouse's health insurance coverage, Medicare, Medicaid, or no-fault

automobile insurance, coordination of benefits will take place. You must disclose information about the other source of benefits to your plan's Carrier.

## Coordination with health care furnished by Uniformed Services Facilities (USF) and the Department of Veterans Affairs (DVA)

These Government agencies are entitled to seek reimbursement from FEHB plans for certain services and supplies furnished to you or a family member. Generally, FEHB benefits are payable for

(1) inpatient hospital costs at a Uniformed Services facility, and (2) services and supplies provided by a DVA facility for treatment of a non-service-connected disability.

## Coordination with TRICARE (formerly CHAMPUS)

TRICARE provides health care for active-duty military personnel whose orders do not specify a period of 30 days or less, and their dependents; retired and former military personnel currently entitled to retired or retainer pay, or equivalent pay, and their dependents; and dependents of

deceased military personnel. If you are covered by both an FEHB plan and TRICARE, the FEHB plan pays benefits first as the primary payer and TRICARE is the secondary payer. (All provisions applicable to CHAMPUS now apply to TRICARE.)

## Coordination with MEDICARE

### Basic Medicare Provisions

Medicare is generally for persons age 65 or over.

It has two parts:

- **Part A (Hospital Insurance)** helps pay for inpatient hospital care, skilled nursing facility

care, home health care, and hospice care. You are entitled to Part A without having to pay premiums if you or your spouse worked for at least 10 years in Medicare-covered employment. (You automatically qualify if you

were a Federal employee on January 1, 1983.) A percentage of your salary, up to a maximum determined by the Social Security Administration, is deducted from your pay for this coverage

## Coordination with MEDICARE *(continued)*

- Part B (Medical Insurance)** helps pay for doctors' services, outpatient hospital care, x-rays and laboratory tests, medical equipment and supplies, home health care (if you don't have Part A), certain preventive care, ambulance transportation, other outpatient services, and some other medical services Part A doesn't cover, such as physical and occupational therapy. You must pay premiums for Part B, which are withheld from your monthly Social Security payment. If you are not receiving Social Security

payments, you can have Medicare premiums withheld from your annuity payments. To do this, OPM must receive a request for the withholding from the Center for Medicare and Medicaid Services. OPM cannot withhold Medicare premiums based on your direct request or such a request from the Social Security Administration. Contact your Social Security office for additional information

You should contact the Social Security Administration for detailed information on Medicare eligibility and benefits.

### FEHB Plans and Medicare

Your enrollment in Medicare is a choice. Generally, plans under the FEHB Program provide protection against the same kind of expenses as Medicare, plus all FEHB plans provide prescription drug coverage, routine physicals, and a wider range of preventive services than Medicare. Whether your FEHB plan or Medicare is the primary payer depends on your current employment or health status, as shown in the following table. Each plan has more specific information in Section 9 of their FEHB brochure.

When Either You or Your Covered Spouse are Age 65 and over, Have Medicare and FEHB, and You are:	The Primary Payer is:
1. An active employee with Federal Government (including when you or a family member are eligible for Medicare solely because of a disability)	FEHB
2. An annuitant	Medicare
3. A reemployed annuitant with Federal Government	FEHB, if position not excluded from FEHB (ask your employing office)
4. A Federal judge who retired under title 28, U.S.C., or a Tax Court judge who retired under Section 7447 of title 26, U.S.C. (Or your covered spouse is this type of judge)	Medicare
5. Enrolled in Part B only, regardless of your employment status	Medicare, for Part B services
4. A former Federal employee receiving Workers' Compensation and the Office of Workers' Compensation has determined that you are unable to return to duty	Medicare, except for claims related to the Workers' Compensation injury or illness

## Coordination with MEDICARE *(continued)*

When You or a Covered Family Member Have Medicare based on End Stage Renal Disease (ESRD) and FEHB, and:	The Primary Payer is:
1. Are within the first 30 months of eligibility to receive Part A benefits solely because of ESRD	FEHB
2. Have completed the 30-month ESRD coordination period and are still eligible for Medicare due to ESRD	Medicare
3. Become eligible for Medicare due to ESRD after Medicare became primary for you under another provision	Medicare

When You or a Covered Family Member have FEHB, and:	The Primary Payer is:
1. Eligible for Medicare based on disability	Medicare, if you are an annuitant. FEHB, if you are an active employee

### When Your FEHB Plan is Primary

When your FEHB Plan is primary (see the table above), you should submit claims for benefits to your FEHB plan first. If a balance remains after the FEHB plan makes payment on the claim, you can then submit the claim and a copy of the FEHB plan's explanation of benefits (EOB) to Medicare.

### When Medicare is Primary

When Medicare is primary (see the table above), you should submit claims for benefits to Medicare first. If a balance remains after Medicare pays the claim, you can then submit the claim and a copy of

Medicare's Medicare Summary Notice (MSN) or explanation of benefits (EOB) to your FEHB plan. As the secondary payer, the FEHB plan won't process your claim without the Medicare MSN or EOB.

FEHB plan carriers have made arrangements with Medicare that automatically transfer claims information to it once Medicare processes your claim, so you generally don't need to file with both.

### Enrollment Change Permitted

You may change your FEHB enrollment to any available plan or option at any time beginning on the 30th day

before you become eligible for Medicare. You may use this enrollment change opportunity only once and is in addition to any other event (such as the annual Open Season) permitting enrollment changes.

You may discover that your current plan doesn't meet your needs once you start receiving Medicare benefits. You should review your plan's benefits and costs and determine if a different plan would be better for you.

### Payment of Benefits in Medically Underserved Areas

If you live in a medically underserved area and are

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## Coordination with MEDICARE *(continued)*

enrolled in a fee-for-service plan, your plan must pay benefits up to its contractual limits, for covered health services provided by any medical practitioner properly licensed under applicable State law.

Each year, before the FEHB Open Season begins, OPM determines which states qualify as medically underserved areas for the next calendar year. OPM announces the results of this determination before each Open Season in a public notice in the Federal Register. The

medically underserved areas are listed in each fee-for-service plan's brochure.

OPM currently designates the following states as medically underserved areas are Alabama, Arizona, Idaho, Illinois, Kentucky, Louisiana, Mississippi, Missouri, Montana, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, and Wyoming.

### **Your Health Plan Choice**

The right plan for you depends on many factors, including your

family composition, your family's health, your ability to meet out-of-pocket medical expenses, and your ability to pay the required insurance premiums. What may be a good choice for one person may not be so for another. Only you can decide which plan is best for you.

## Initial Decision and Reconsideration

### **Initial Decision**

Your employing office has the responsibility for determining whether you are eligible to enroll or change your enrollment in the FEHB Program or in the premium conversion plan. Its initial decision that you can enroll is given in writing and will inform you of the right to an independent level of review (reconsideration) by the appropriate agency office. The written initial decision will include the address of the office making reconsideration decisions, the time limit for requesting reconsideration, and a statement that you should include a copy of the initial decision with your reconsideration request.

### **Reconsideration Right**

You have the right to ask your employing office to reconsider its initial decision denying FEHB enrollment or the opportunity to change your enrollment, or your participation in the premium conversion plan. The reconsideration determines whether your employing office properly applied law and regulations in making its initial decision. This reconsideration is your final level of administrative review for enrollment decisions under the FEHB Program.

### **Who Does the Reconsideration?**

The office that makes the reconsideration decision must be at either a higher level or in a different office than the

office that made the initial decision. Employing offices that make initial decisions must be made aware of the identity of the agency office making reconsideration decisions because they must include that information with the initial decision.

### **How to Request Reconsideration**

You must request reconsideration in writing.

#### **The request must include:**

- Your name and address
- Your date of birth
- Your Social Security Number
- The reason(s) for the request
- A copy of the initial decision

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## Initial Decision and Reconsideration *(continued)*

### **Time Limit**

You must request reconsideration within 30 calendar days from the date of the initial decision.

**Exception:** you must request reconsideration of a carrier's disenrollment decision within 60 calendar days after the date of a carrier's disenrollment notice.

This time limit may be extended when you show that you were

not notified of the time limit and were not otherwise aware of it or that you were unable to make the request within the time limit for reasons beyond your control.

When the late election was the result of an administrative error, you may request that your employing office make the change retroactive to an earlier date, generally the date it would have been effective if

you had been able to make a timely election.

If on reconsideration your employing office decides that you are entitled to continued enrollment in a plan from which you were disenrolled by the carrier, the disenrollment is void and coverage is reinstated retroactively.

## Correction of Errors *(continued)*

### **Employing Office**

Your employing office can make corrections of administrative errors regarding eligibility to enroll or changes in enrollment at any time. Your employing office may retroactively correct an enrollment code error if you report the error by the end of the second pay period after you received written documentation showing the error (for example, a pay statement or enrollment change confirmation).

When retroactive corrections are made, your employing office must determine whether the proper amount of health benefits deductions were made from your pay. Your employing office must submit any uncollected deductions and Government contributions to OPM for deposit in the Employees Health Benefits Fund.

**Exception:** If the administrative error was made before January 1, 1995, your employing office does not have the authority to make a retroactive correction. Instead, you must request a retroactive correction from OPM, Retirement and Insurance Service, Office of Insurance Programs, P.O. Box 436, Washington, D.C. 20044.

### **OPM**

OPM can order correction of an administrative error after reviewing evidence that it would be against equity and good conscience not to do so.

**A request for review should be sent to:**

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### **OPM, Retirement and Insurance Service**

Office of Insurance Programs  
P.O. Box 436  
Washington, D.C. 20044

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### **Impaired Relationship**

OPM may order a change in your enrollment from a particular HMO when you can show that you cannot receive adequate medical care because you (or a family member) and your HMO's health care providers have a seriously impaired relationship.

**You should submit your request and documentation of the impaired relationship to:**

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### **OPM, Retirement and Insurance Service**

Office of Insurance Programs  
P.O. Box 436  
Washington, DC 20044

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# Family Coverage

## Employing Office Responsibilities

Your employing office is responsible for making decisions about whether a family member is eligible for coverage. If the carrier of your health benefits plan has any questions about whether someone is an eligible family member, it may ask you or your employing office for more information. The carrier must accept your employing office's decision on your family member's eligibility.

## General Eligibility for Coverage

Family members eligible for coverage under your Self and Family enrollment are your spouse (including a valid common law marriage) and children under age 26, including legally adopted children, recognized natural (born out of wedlock) children and stepchildren. A child is eligible for coverage under your Self and Family enrollment if a state-issued birth certificate lists you as a parent of that child. (Note: As a result of the Supreme Court's decision of January 1, 2016, children of same sex domestic partners who were covered under FEHB, are no longer covered based on domestic partner certification. Same sex couples must now be married to cover their spouses and eligible children.)

### Foster children are included if they meet the requirements listed here:

- The child must be under age 26 (if the child is age 26 or over, he/she must be incapable of self-support)
- The child must currently live with you
- The parent-child relationship must be with you, not the child's biological parent
- You must currently be the primary source of financial support for the child
- You must expect to raise the child to adulthood

A child age 26 or over who is incapable of self-support because of a mental or physical

disability that existed before age 26 is also an eligible family member. In determining whether the child is a covered family member, your employing office will look at the child's relationship to you as the enrollee. A grandchild is not an eligible family member unless the child qualifies as your foster child. Special rules apply to family members if you are enrolled as a survivor annuitant or under the Spouse Equity or Temporary Continuation of Coverage (TCC) provisions.

## Defense of Marriage Act

On June 26, 2013, the Supreme Court ruled that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional. As a result of the Supreme Court's June 26, 2013 ruling that Section 3 of DOMA is unconstitutional, legally married same-sex spouses will be eligible family members under a Self and Family enrollment. Coverage 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. 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.

On June 26, 2015, the Supreme Court legalized same-sex marriage in all 50 states and required all states to honor out-of-state same sex marriage licenses. The court ruled that same-sex couples can marry nationwide. As a result, same-sex domestic partners, and children of same-sex domestic partners are for the purpose of FEHB eligibility are no longer considered family members.

## Eligible Family Members Automatically Covered

When you enroll for Self and Family, you automatically include all eligible members of your family. If you don't list an eligible family member on your Health Benefits Election Form (SF 2809) or other enrollment request, that person is still entitled to coverage. If you list a person who is not an eligible family member, your employing office will explain why the person is not eligible for coverage and will remove the name from the list. The listing of an ineligible person on the SF 2809 doesn't entitle him/her to benefits.

### Adopted Children

Applicable State law governs whether a child has been

adopted. The child is adopted if the adoption decree is final. The child also is considered adopted if the adoption decree is interlocutory and State law provides that the rights of the child generally are the same as those of an adopted child

### Stepchildren

In general, your spouse's child born within or outside marriage or adopted child is considered to be your stepchild.

### Tax Treatment

If your stepchild is considered your tax dependent, providing coverage to your stepchild will have no effect on your taxable income.

If your stepchild is not considered your tax dependent,

you will be taxed on the fair market value of the coverage provided to your stepchild. Please consult your tax advisor for further information.

To alert your agency or retirement system of the tax status of your stepchild, you must submit a Tax Certification. Contact your employing office or retirement system for a copy of the Tax Certification. A Tax Certification is not a requirement for covering your child; but failure to submit a Tax Certification will result in taxation of the coverage provided to your stepchild. You need to submit a new Tax Certification to your employing office or retirement system if your stepchild's tax dependent status changes.

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## Eligible Family Members Automatically Covered *(continued)*

### Coverage of Stepchildren after Divorce

Under the FEHB Program, your stepchild remains a stepchild and an eligible family member after your divorce from, or the death of, the natural parent, provided that the stepchild continues to live with you in a regular parent-child relationship.

If your stepchild stops living with you in a regular parent-child relationship, the child is eligible for coverage under Temporary Continuation of Coverage (TCC) provisions because he/she no longer meets the definition of an eligible child.

If you divorce and your former spouse is eligible to enroll under either the Spouse Equity or TCC provisions, only the natural or adopted children of both you and your former spouse are covered under your former spouse's Self and Family enrollment. Your stepchildren are not covered even though they may have been covered previously by your Self and Family enrollment. However, they may qualify for a TCC enrollment of their own.

### Foster Children Requirements To be considered a foster child for health benefits purposes:

- The child must be under age 26 (if the child is over age 26 or over, he/she must be incapable of self-support)

- The child must currently live with you
- The parent-child relationship must be with you, not the child's biological parent
- You must currently be the primary source of financial support for the child
- You must expect to raise the child to adulthood
- You don't need to be related to the child nor do you need to legally adopt him/her
- A child living with an enrollee under a preadoption agreement
- A child who is in the legal custody of an enrollee

### How to Get a Foster Child Covered

For your foster child to be covered under your FEHB enrollment, you must provide documentation of your regular and substantial support of the child; sign a certification stating that your foster child meets all the requirements.

### Certification for Foster Children

An employee must provide his or her employing office with the following foster child certification to establish a foster child's eligibility for FEHB coverage. The employing office must file the original statement in the employee's Official Personal Folder or equivalent personnel file and send a copy to the FEHB Carrier.

### As long as the above requirements are met, you may have a foster parent-child relationship even when:

- The child's natural parents are alive
- The child's natural parent lives with you
- The child receives some support from sources other than you (for example, social security payments or support payments from a parent)

### Common examples of a foster parent-child relationship are:

- A child whose parents have died is living with, and being supported by, a close relative who is an enrollee
- A child who is living with and financially dependent on a grandparent who is an enrollee (The natural parent of the child may also be a dependent.)

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## Eligible Family Members Automatically Covered *(continued)*

### **Certification of Foster Child Status**

**This is to certify that my foster child meets the following requirements for coverage under my enrollment in the Federal Employees Health Benefits (FEHB) Program:**

- The child is unmarried and is under age 26 or over age 26 and incapable of self-support because of a disability that existed before age 26
- The child lives with me in a regular parent-child relationship
- I contribute regular and substantial support for the child
- I intend to raise the child into adulthood

Child's Name: \_\_\_\_\_

Child's Birth Date: \_\_\_\_\_

I have enclosed a Government-issued birth certificate or other document verifying my foster child's date of birth. I have also enclosed proof of my regular and substantial support for my foster child such as:

- Evidence of eligibility as my dependent child for benefits under other State or Federal programs
- Proof of inclusion of the child as a dependent on my income tax returns
- Canceled checks, money orders, or receipts for periodic payments from me for or on behalf of the child
- Evidence of goods or services which show regular and substantial contributions of considerable value
- Any other evidence which the Office of Personnel Management, in guidance, deems to be sufficient proof of support

I understand that I am required to immediately notify my employing office and my health benefits carrier if the child marries, moves out of my home, or ceases to be financially dependent on me. I understand that if this child moves out to live with a biological parent, the child loses coverage and cannot ever again be covered as a foster child unless the biological parent dies, is imprisoned, or becomes incapable of caring for the child due to a disability.

**Warning:** Any intentionally false statement or willful misrepresentation relative thereto is a violation of the law punishable by a fine of not more than \$10,000 or imprisonment of not more than 5 years, or both. (18 U.S.C. 1001).

Name: \_\_\_\_\_

Employing Agency or sub agency: \_\_\_\_\_

Duty Station Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

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## Eligible Family Members Automatically Covered *(continued)*

### **Effective Date**

The effective date of your foster child's coverage as a family member is the first day of the pay period in which your employing office receives all the properly completed documents that establish the eligibility of the child as a foster child. When your foster child's mother is an eligible family member under your enrollment, you may request that the effective date be the first day of the pay period in which the child is born.

### **When Coverage Ends**

Your foster child's coverage continues until he/she reaches age 26, becomes capable of self-support if age 26 or over, or is no longer living with you.

### **If your foster child moves out of your home to live with a biological parent, the child cannot again be covered as your foster child unless:**

- The biological parent dies
- The biological parent is imprisoned
- The biological parent becomes unable to care for the child due to a disability
- You obtain a court order for custody that takes parental responsibility from the biological parent and gives it to you

### **Grandchildren**

Grandchildren are not eligible family members. However, your grandchild can qualify as a foster child if all the requirements are met.

### **When a Child is Not Considered a Foster Child**

A child who has been placed in your home by a welfare or social service agency under an agreement where the agency retains control of the child or pays for maintenance does not qualify as a foster child because there is no regular parent-child relationship. A child living temporarily with you as a matter of convenience does not qualify as a foster child. For example, a child who lives with you only while attending school normally does not qualify as a foster child because this is considered an arrangement of convenience.

Since it is impossible to cover every family situation, it may be necessary for the agency headquarters Benefits Officer to contact OPM for assistance in making difficult determinations.

### **A Child's Temporary Absences**

If your foster child temporarily lives elsewhere while attending school or for other reasons, the child is still considered to

be an eligible family member if he/she is otherwise living with you in a regular Parent-Child Relationship. Your foster child who lives with you at least 6 months of a year under a court order directing shared custody may be considered living with you in a regular Parent-Child Relationship.

### **Parent-Child Relationship**

A "regular Parent Child Relationship" means that you are exercising parental authority, responsibility, and control over the child by caring for, supporting, disciplining, and guiding the child, including making decisions about the child's education and health care.

A Spouse Equity Self and Family enrollment is limited to natural and adopted children of both you and your former spouse. In this case, a foster child or stepchild is not a covered family member.

### **Relatives Who are Not Family Members**

Your parents and other relatives are not eligible family members, even if they live with and are dependent upon you.

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## Child Incapable of Self-Support

### Coverage

Your Self and Family enrollment covers your child age 26 or over who is incapable of self-support because of a physical or mental disability that existed before the child reached age 26.

### Requirements

Your child age 26 or over may be considered incapable of

self-support only if his/her physical or mental disability is expected to continue for at least one year and, because of the disability, he/she isn't capable of working at a self-supporting job.

A disability does not itself qualify a child over the age of 26 for continued coverage because

a disability doesn't preclude employment in all occupations or necessarily make them incapable of self-support. A child does not qualify for continued coverage as a family member if the onset of their disability before age 26 doesn't result in incapability of self-support until age 26 or after.

## Determination of Incapacity for Self-Support

### When Employing Office Must Make Determination

Your employing office is responsible for determining whether your dependent child age 26 or over is incapable of self-support because of a mental or physical disability that began before age 26 and for notifying the carrier of your plan of its determination. If your child's medical condition is listed below, the carrier may also approve coverage.

### Your dependent child is incapable of self-support when:

- He/she is certified by a state or federal rehabilitation agency as unemployable
  - He/she is receiving: (a) benefits from Social Security as a disabled child; (b) survivor benefits from CSRS or FERS as a disabled child; or (c) benefits from OWCP as a disabled child
  - A medical certificate documents that:
    - Your child is confined to an institution because of impairment due to a medical condition
    - Your child requires total supervisory, physical assistance, or custodial care
    - Treatment, rehabilitation, educational training or occupational accommodation has not and will not result in a self-supporting individual
  - A medical certificate describes a disability that appears on the **list of medical conditions**
  - You submit acceptable documentation that the medical condition is not compatible with employment, that there is a medical reason to restrict your child from working, or that he/she may suffer injury or harm by working
- ▶ If your child earns some income (generally no more than the equivalent of the GS 5, step 1), it doesn't necessarily mean that he/she is capable of self-support. Your employing office will take both your child's earnings and condition or prognosis into consideration when determining whether he/she is incapable of self-support.

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## Determination of Incapacity for Self-Support *(continued)*

### When Carrier May Approve Coverage

If your child has a medical condition listed, and he/she had the condition before reaching age 26, you don't need to ask your employing office for approval of continued coverage after your child reaches age

26. The carrier of your health benefits plan may approve continued coverage to your child without referring you to your employing office.

When the carrier determines your child's incapacity for self-support, it sends the approval

notice to you and advises you to give a copy of the notice to your employing office. Your employing office must file it with your other health benefits enrollment documentation in your Official Personnel Folder.

### List of Medical Conditions that would Cause a Child to be Incapable of Self-Support During Adulthood

If your child has one of the following disabilities noted in the medical certificate, and the disability began before age 26, your employing office or health benefits carrier can automatically extend continued coverage.

- AIDS - CDC classes A3, B3, C1, C2, and C3 (not seropositivity alone)
- Advanced Muscular Dystrophy
- Any malignancy with metastases or which is untreatable
- Chronic Hepatic Failure
- **Chronic neurological disease, whatever the reason, with severe mental retardation or neurologic impairment, for example:**
  - Cerebral Palsy
  - Ectodermal Dysplasia
  - Encephalopathies
  - Uncontrollable Seizure Disorder
  - Chronic Renal Failure
- **Inborn errors of Metabolism with complications such as the following:**
  - Adrenoleukodystrophy
  - Gaucher disease
  - Glycogen storage diseases
  - Homocystinuria
  - Lesch-Nyhan disease
  - Mucopolysaccharide disease
  - Nieman-Pick disease
  - Phenylketonuria
  - Primary hyperoxaluria
  - Tay-Sachs disease
  - Mental Retardation with IQ of 70 or less
  - Osteogenesis Imperfecta
  - Severe acquired or congenital Heart Disease with decompensation which is not correctable
  - Severe Autism
  - Severe Juvenile Rheumatoid Arthritis
  - Severe Mental Illness requiring prolonged or repeated hospitalization
  - Severe Organic Mental Disorder
  - Xeroderma Pigmentosa

► This list doesn't include all the disabilities that would cause a child to be incapable of self-support.

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## Determination of Incapacity for Self-Support *(continued)*

### Medical Certificate

Your child's doctor must complete a medical certificate for the employing office to make its determination of incapacity of self-support. The certificate must state that your child is incapable of self-support because of a physical or mental disability that existed before he/she became age 26 and that can be expected to continue for more than one year:

- Your child's name and birth date
- The type of disability
- The period of time the disability has existed and the date the impairment began
- Diagnosis and history of the specific medical condition(s), references to findings from previous examinations, treatment and responses to treatment
- Clinical findings from the most recent physical examination, including objective findings of physical examination, results of laboratory tests, x-rays, EKG's and other special evaluations or diagnostic procedures, and, in the case of psychiatric disease, the findings of mental status examinations and the results of psychological tests if applicable
- Assessment of the current clinical status and plans for future treatment
- Assessment of degree to which the medical condition has become static or stabilized and an explanation of the medical basis for the conclusion
- The probable future course and duration of the disability, including an estimate of the expected date of full or partial recovery, if any
- The special supervisory, physical assistance, or custodial care requirements of your child
- Any treatments, rehabilitation programs, educational training or occupational accommodation that would result in your child becoming self-supporting
- The doctor's name, signature, office address and telephone number

### When to Submit Certificate

You may submit the medical certificate to your employing office when you first enroll to cover your child under your Self and Family enrollment. To maintain continued coverage for your child after he or she turns

age 26, submit the medical certificate within 60 days of your child reaching age 26.

If the employing office determines that the child qualifies for FEHB because they are incapable of self-support, the employing office must notify

the enrollee's Carrier by letter. The letter must identify the enrollee by name and Social Security number and state the name and date of birth of the disabled child as well as the duration of the approval.

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## Determination of Incapacity for Self-Support *(continued)*

### Use of Physicians

In making its medical determinations, your employing office must use a physician's services if available, unless your child's condition is one for which it can automatically extend continued coverage

**In doubtful cases, or if no physician is available, your employing office may request assistance from:**

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### Office of Personnel Management, Healthcare and Insurance

P.O. Box 436,  
Washington, D.C. 20044.

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### Duration and Approval of Incapacity for Self-Support

Depending on your child's medical certificate, your employing office may approve

coverage due to disability for a limited period of time (1 year, for example), or without time limitation (permanent).

### Renewal of Medical Certificate

If your employing office approves your child's medical certificate for a limited period of time, it must remind you, at least 60 days before the date the certificate expires, to submit either a new certificate or a statement that the certificate will not be renewed. If it is renewed, your employing office must notify the carrier of your plan of the new expiration date by letter.

### Failure to Renew Certificate

If you don't renew a medical certificate for a disabled child age 26 or over, your child's

status as a family member automatically ends and he/she is no longer covered. Your employing office must notify you and the carrier of your plan that your child is no longer covered.

### Late Certificates

If you submit a medical certificate for a child after a previous certificate has expired, or after your child reaches age 26, your employing office must determine whether the disability existed before age 26. If your employing office determines that it did, and you continuously had a Self and Family enrollment, your child is considered to have been a covered family member continuously since age 26.

## Change in Family Status

### Election Opportunities

When you have a change in family status, including a change in marital status, you may enroll, change from Self Only to Self and Family, or change from one plan or option to another. You must submit your enrollment change from 31 days before to 60 days after the change in family status.

Certain restrictions apply if you are enrolled as a survivor annuitant or as a former spouse under the Spouse Equity or Temporary Continuation of Coverage (TCC) provisions.

### Events Considered to be Changes in Family Status

Generally, a change in family status is an event that adds to or decreases the number of your family members. Certain other events are also considered changes in family status.

### The following events are considered a change in family status for health benefits purposes:

- Your marriage, including a valid common law marriage (in accordance with applicable State law)

- Birth of your child (but not a stillborn child)
- Your legal adoption of a child under age 26 or the acquisition of a foster child under age 26
- Your child under age 26 or spouse enters into or is discharged from military service
- Issuance or termination of a court order granting to you or your spouse a final divorce, interlocutory divorce, limited divorce legal separation, or separate maintenance

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## Change in Family Status *(continued)*

- Issuance of a court decree of annulment, or in the case of a marriage void from its beginning (ab initio) also a declaratory judgment, or conviction of the spouse of bigamy
- Issuance of a court order specifically requiring you to enroll for your children or provide health benefits protection for them
- The death of your spouse, including a declaration by a court that your missing spouse is presumed dead

### **When a Court Order Requires You to Provide Coverage for Your Children (Children's Equity)**

Public Law 106-394 requires mandatory Self and Family coverage if you are eligible for FEHB coverage and you do not comply with a court or administrative order to provide health benefits for your children. If you are subject to such an order, you must enroll in Self and Family coverage in a plan that provides full benefits to your children in the area where they live or provide documentation that you have other health coverage for the children.

If you do not enroll in an appropriate health plan or provide documentation of other coverage for the children, your agency must enroll you for Self Plus One or Self and Family coverage in the lower option of the Blue Cross and Blue Shield Service Benefit.

### **Court/Administrative Orders**

The court or administrative order can be submitted by anyone, including the custodial parent, an attorney for the custodial parent, and the State administrative agency that issues the order.

If the court order deals only with health benefits, it does not have to be certified. If the court order also deals with life insurance or retirement benefits, then it does have to be certified. Administrative orders come from State child support agencies will not be certified.

For it to be considered valid under Pub. L. 106-394, your agency must receive the court/administrative order on or after October 30, 2000.

Anyone who submitted a court/administrative order relating to health benefits for your children before October 30, 2000, would have to resubmit it. The court/administrative order can be issued before October 30, 2000, but it doesn't have any validity for FEHB purposes unless your agency receives it on or after October 30, 2000.

### **Employing Office Review**

Your employing office must review your records to determine whether you are eligible for FEHB and, if so, whether you are enrolled in a Self Plus One or Self and Family plan that provides full benefits in the location where your children live. If

you have such coverage, your employing office will notify whoever sent in the court or administrative order. It will send a copy of your SF 2809 to your health benefits carrier, along with a copy of the court or administrative order to notify the carrier of the additional family members being covered under Self Plus One or the Self and Family enrollment.

Your employing office will file the order in your Official Personnel Folder (OPF) and flag the OPF or other file in some manner that it will know the file contains a court or administrative order relating to health benefits.

If You Don't Have Self and Family Coverage or Coverage that Provides Full Benefits in the Area Where the Children Live

If you are eligible for FEHB but don't have the appropriate coverage, your employing office will notify you that it has received a court order requiring you to provide health benefits for your children. Your employing office will give you until the end of the pay period following the one in which you get the notice to enroll in an appropriate health plan or provide documentation that you have other health benefits for the children.

Your employing office may use the following sample notification.

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## Change in Family Status *(continued)*

### Your employing office may use the following sample notification

Sample Notice

Dear [Employee's name]:

We have received a [court/administrative] order stating that you must provide health benefits for your child[ren]. You are not currently enrolled in a Self Plus One or Self and Family coverage under the Federal Employees Health Benefits (FEHB) Program in a health plan that provides full benefits in the area where your child[ren] live[s].

Pub. L. 106-394 requires Federal agencies to ensure that employees comply with the terms of such court and administrative orders. You must enroll in a Self Plus One or Self and Family coverage in a plan that provides full benefits where your child[ren] live[s] or provide documentation that you have other health benefits for your child[ren] by [insert date that is the last day of the pay period following the one in which this notice is issued].

If you do not enroll or provide documentation of other coverage for your child[ren] by [repeat date from paragraph above], we will enroll you for Self Plus One or Self and Family coverage under the lower option of the Blue Cross and Blue Shield Service Benefit Plan program. As long as the [court/administrative] order remains in effect and your child[ren] [is/are] eligible under the FEHB Program, you must continue Self Plus One or Self and Family coverage in a plan that provides full benefits where your child[ren] live[s], unless you provide documentation that you have obtained other coverage.

Sincerely,

[Signature, name, and title of appropriate official]

- ▶ In addition to sending a copy to the employee, keep a copy in the employee's OPF or other record.

### What Happens If You Don't Enroll or Provide Documentation of Other Coverage by the Due Date?

If you don't enroll in an appropriate plan or provide documentation of other coverage for the children, your employing office will enroll you as follows:

#### If You Are Not Enrolled at All

- If you are not enrolled for any FEHB coverage, your

employing office will enroll you in a Self Plus One or a Self and Family enrollment in the lower option of the Blue Cross and Blue Shield Service Benefit Plan

#### If You Have Self Only Coverage

- If you have a Self Only enrollment in a fee-for-service plan, your employing office will change your enrollment to Self Plus One or Self and Family in the same option of the same plan

- If you have a Self Only enrollment in an HMO, and the HMO serves the area where your children live, your employing office will change your enrollment to Self Plus One or Self and Family in the same option of the same plan
- If you have a Self Only enrollment in an HMO, and the HMO does not serve the area where the children live, your employing office will change your enrollment

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## Change in Family Status *(continued)*

to Self Plus One or Self and Family in the lower option of Blue Cross and Blue Shield Service Benefit Plan

### **If You Have Self and Family Coverage in an HMO That Doesn't Serve the Area Where Your Children Live**

- If you already have a Self and Family enrollment, but it's in an HMO that doesn't serve the area where your children live, your employing office will change your enrollment to Self Plus One or Self and Family in the lower option of Blue Cross and Blue Shield Service Benefit Plan

### **How an Agency Enrolls You Involuntarily**

- If your employing office needs to enroll you involuntarily, it will complete a Health Benefits Election form (SF 2809) with your identifying information. It will use event code 1C (Change in family status). In the signature block in Part G, it will write "See Remarks." In the remarks block in Part I, it will write "Being enrolled for Self Plus One or Self and Family coverage involuntarily under Pub. L. 106-394."

When your employing office sends the SF 2809 to your health plan, it will attach a copy of the court or administrative order. It will send your copy of the SF 2809 to the custodial

parent, along with a plan brochure, and make a copy for you.

### **What is the Effective Date If You are Enrolled Involuntarily?**

In most cases, the effective date will be the first day of the pay period following the one in which your employing office completes the SF 2809.

**Example:** Chester's employing office receives an administrative order on November 14, 2019 saying that he must provide health benefits for his two children. Chester doesn't have any FEHB coverage. His employing office notifies him that he has until December 7, 2019 (the end of the following pay period) to enroll or provide documentation that he has other coverage for them. He doesn't respond. On December 9, 2019, Chester's employing office completes an SF 2809 enrolling him for Self and Family coverage in the lower option of Blue Cross and Blue Shield Service Benefit Plan. The effective date would be December 22, 2019 (the first day of the next pay period).

**Exception:** There is one instance in which the enrollment would be retroactive, and that's if the court or administrative order specifies an effective date. In this case, your employing office must make the enrollment retroactive to the beginning of

the pay period that includes that effective date, but no further back than 2 years.

### **How Does My Employing Office Identify My Eligible Family Members?**

Usually, the court or administrative order will have the names and birthdates of the children. If the order does not have this information, your employing office will leave item 12 on the SF 2809 blank. The health plan will obtain the information from the custodial parent.

### **What Happens If You Go into a Nonpay Status or Your Pay is Insufficient to Make the Withholdings?**

The provisions of 5 CFR 890.502(b) apply (see "[Leave Without Pay Status and Insufficient Pay](#)"). However, in this case, you do not have the option of terminating coverage. You must continue the coverage and either make direct premium payments or incur a debt to the Government.

### **If Your Employing Office Enrolls You, Can You Later Make Enrollment Changes?**

If you are involuntarily enrolled and your employing office finds that circumstances beyond your control prevented you from making your own enrollment election, you may change the enrollment prospectively within 60 days after your employing office advises you of its finding.

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## Change in Family Status *(continued)*

Otherwise, it depends on the enrollment change you want to make. During Open Season or when you have an event that allows an enrollment change, you can change to a different fee-for-service plan or to an HMO that provides full benefits where your children covered under the court or administrative order live.

**As long as the court or administrative order is still in effect and the children are under the FEHB Program (unless you provide documentation that you have other coverage for the children), you cannot (even during Open Season):**

- Cancel your enrollment
- Change to Self Only
- Change to Self Plus One when more than one child must be covered
- Change to an HMO that doesn't provide coverage in the area where your children live

This applies whether you are enrolled voluntarily or involuntarily. If you submit an SF 2809 making such an enrollment change, your employing office will not process it. If it gets processed by mistake, your employing office will void it. Your employing office will notify you that you cannot make the change and that your existing Self Plus One or Self and Family enrollment will remain in effect.

### **What Happens If You Make a “Not-Allowed” Enrollment Change by Employee Express Express or other electronic system?**

Your payroll office should flag the records for all employees subject to a court or administrative order for health benefits. You will then not be able to make an enrollment change through Employee Express or another electronic system.

If your agency has its own electronic system for FEHB enrollments, it will take similar action.

### **How Long Must You Keep the Self Plus One or Self and Family Enrollment?**

If the court or administrative order doesn't specify a time limit on the coverage, you must keep the Self Plus One or Self and Family enrollment until the last child reaches age 26.

If the court or administrative order states that coverage must continue until a specific age – and that age is over age 26 – the coverage must continue until the last child reaches age 26. Unless they meet the requirements for being incapable of self-support, children cannot continue FEHB coverage beyond age 26, regardless of what the court or administrative order says.

**If the court or administrative order states that the coverage must continue until a specific age--and that age is below age 26, you may cancel the coverage or change to Self Plus One or**

**Self Only as follows:**

- **If You Participate in Premium Conversion**  
You may cancel or change to Self Only the Open Season following when the child reaches the age stated in the court/administrative order.
- **If You Waived Premium Conversion**  
You may cancel or change to Self Only at any time after the last child reaches the age stated in the court/administrative order.

### **What Happens When You Retire?**

If you are eligible to carry FEHB coverage into retirement, you must continue the Self Plus One or Self and Family coverage after retirement to provide coverage for the children covered under the court or administrative order.

**As long as the court/administrative order remains in effect, you cannot:**

- Cancel or suspend coverage
- Change to Self Only
- Change to Self Plus One when more than one child must be covered
- Change to an HMO that doesn't provide full benefits where the children live

If your retirement becomes insufficient to make the premium withholdings, you may not choose to terminate the enrollment. Instead, you must continue the coverage and make direct premium payments

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## Change in Family Status *(continued)*

to OPM for as long as the order remains in effect and the child or children continues to be eligible.

### What If Your Employing Office Gets More Than One Court/Administrative Order for You?

administrative order, and another court or administrative order is filed relating to a different child (or children), that child is automatically covered under your existing Self and Family enrollment.

Your employing office will send your health plan a copy of the subsequent court/administrative order, along with a copy of the SF 2809 marked “Duplicate.”

If you are enrolled in an HMO, and the children mentioned in the subsequent court or administrative order live in an area that the HMO doesn’t serve, your employing office will notify you and give you a chance to choose a different

health plan. If you don’t change plans, your employing office will change your enrollment to the lower option of Blue Cross and Blue Shield Service Benefit Plan. It will attach copies of all court/administrative orders to the SF 2809.

## Changes that Do Not Affect Enrollment

### Family Members

You don’t need to report to your employing office any change in the number of family members that doesn’t affect your health benefits enrollment.

However, the enrollee must report the change to the Carrier of your plan. The Carrier will request evidence of family relationship to add a new family member per [Carrier Letter](#)

**2021-06**, Family Member Eligibility Verification for Federal Employees Health Benefits (FEHB) Program Coverage.

### Your enrollment is not affected when:

- ✓ Your child is born when you already have a Self and Family enrollment
- ✓ Your spouse dies or you divorce and you have children still covered under your Self and Family enrollment
- ✓ Your child reaches age 26, and you have other children or a spouse still covered under your Self and Family enrollment; the Carrier will automatically end coverage for any child who reaches age 26. (If you want Temporary Continuation of Coverage (TCC) or a conversion contract for your child, you must inform your employing office of your child’s loss of FEHB eligibility within 60 days.)

### Name Changes

If you change your name for any reason, your employing office must report the change to the carrier of your plan. If

no other changes are involved (e.g., you legally change your name, or you change your name upon your marriage but keep your Self Only enrollment),

your employing office reports the name change on the Notice of Change in Health Benefits Enrollment (SF 2810).

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## Changes that Do Not Affect Enrollment *(continued)*

You are also eligible to change your enrollment upon your marriage. (Note: If your spouse is a Federal employee with a Self and Family enrollment, you are automatically covered as a family member under that enrollment, and you generally must cancel your enrollment to avoid dual enrollment.) If you change your enrollment, you must submit a new Health Benefits Election Form (SF 2809) under your new name, showing your former name in the Remarks section of the form.

### **Loss of Family Member Status**

When a family member loses coverage because he/she is no longer an eligible family member,

he/she will be entitled either to Temporary Continuation of Coverage or to convert to an individual policy with your carrier. If you are divorcing, your former spouse may be eligible for coverage under the spouse equity provisions.

### **When a Family Member is no Longer Eligible**

**Your family member immediately loses eligibility for coverage under your Self Plus One or Self and Family enrollment when:**

- Your divorce decree is final (according to State law)
- Your child reaches age 26, unless he/she is incapable of self-support

- Your foster child marries or stops living with you in a regular Parent-Child Relationship
- Your stepchild no longer meets requirements for coverage

# Former Spouses

## Spouse Equity Law

### Law

The Civil Service Retirement Spouse Equity Act of 1984 (Public Law 98-615) was enacted on November 8, 1984. Under this act, as amended, certain former spouses of Federal employees, former employees, and annuitants may qualify to enroll in a health benefits plan under the FEHB Program.

### Eligibility

**Your former spouse is eligible to enroll under Spouse Equity provisions if:**

- You were divorced during your employment or receipt of annuity
- He/she was covered as a family member under an FEHB enrollment at least one day during the 18 months before your marriage ended (**Note:** This requirement is also met when both you and your former spouse have FEHB enrollments)

- He/she is entitled to a portion of your annuity or to a former spouse survivor annuity
- He/she has not remarried before age 55

Your employing office will determine whether your former spouse is eligible to enroll.

### Loss of Coverage as a Family Member

Your former spouse loses coverage as a family member upon your divorce, subject to a 31-day extension of coverage. However, his/her enrollment under the spouse equity provisions may not begin for several months after the divorce, depending on how long it takes to establish eligibility.

**To avoid a gap in coverage for this period, your former spouse may:**

- Convert to an individual contract during the 31-day extension of coverage

- Continue FEHB coverage under the Temporary Continuation of Coverage (TCC) provisions of the FEHB law

If your former spouse will seek coverage under spouse equity provisions, it is advisable to stay with the same plan.

If your former spouse acts promptly, he/she may request retroactive enrollment once the application for enrollment under the spouse equity provisions has been approved. For enrollment to be retroactive, the employing office must receive an appropriate request and satisfactory proof of eligibility within 60 days after the date of divorce.

## Enrollment

**E**nrolling under the Spouse Equity provisions is a three-step process. First, your former spouse must apply to enroll within the required time limit. Second, he/she must establish eligibility to enroll. Third, actual enrollment can take place only after the first two steps have been completed.

### Type of Enrollment

Your former spouse may elect a self only, self plus one, or self and family enrollment. A self and family or self plus one enrollment covers only your former spouse and any unmarried dependent natural or adopted children of you and your former spouse.

### Where Former Spouses Apply

If your marriage ends before your retirement, your former spouse must apply and pay premiums to the employing office of the agency for which you worked when your marriage ended. If the application is approved, this will be your former spouse's

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## Enrollment *(continued)*

employing office until he/she begins receiving annuity payments, even if you transfer to another employing office.

**Your former spouse must apply and pay premiums to the retirement system responsible for your annuity payment if:**

- He/she is receiving a portion of your retirement benefit or a former spouse survivor annuity
- The divorce occurred after your retirement
- The divorce occurred before May 7, 1985, and you worked for the Central Intelligence Agency (CIA) or the Foreign Service

OPM is your former spouse's employing office if you are receiving compensation from the Office of Workers' Compensation Programs (OWCP), and your health benefits enrollment had been transferred to OWCP before your marriage ended.

### **Application to Enroll**

Your former spouse's application to enroll can either be a completed Health Benefits Election Form (SF 2809) or a written notice of intent to apply for health benefits. His/her own name, date of birth, and Social Security number is entered on Part A of the SF 2809. Your name and date of birth must be entered in the Remarks section.

If there is a mental or physical disability that prevents your former spouse from applying

for benefits, a court appointed guardian may file the application.

### **Time Limit**

**Your former spouse must apply to his/her employing office in writing by the latest of:**

- 60 days after your marriage ends
- 60 days after the date of OPM's notice of his/her eligibility to enroll based on a qualifying court order awarding entitlement to a portion of your future annuity or to a former spouse survivor annuity
- 60 days after the date of the notice of his/her eligibility to enroll based on entitlement to a former spouse annuity under another retirement system for Government employees

If your former spouse doesn't apply to the employing office in person, the employing office will use the postmark date on the application to determine if he/she meets the time limit.

### **Deferred Enrollment**

Once your former spouse has applied to enroll within the required time limit, he/she may postpone actual enrollment indefinitely.

### **Determination of Entitlement to Future Annuity**

**When your former spouse applies to the employing office for benefits, it will advise him/her that he/she**

**must send a written request to the retirement system for a determination of entitlement to either:**

- A portion of your future retirement annuity, or
- A former spouse survivor annuity

**The request must include:**

- A certified copy (not a photocopy of a certified copy) of the divorce decree, property settlement, and/or court order (if applicable)
- Your name, date of birth, Social Security number, and last employing agency

Unless you are subject to the CIA or Foreign Service retirement systems, OPM, not the agency, will make the annuity benefit determination based on the court order supplied. Your former spouse cannot enroll until OPM makes its determination.

OPM will send your former spouse a written decision. If eligibility is determined, he/she will submit the decision to your employing office.

## Retirement System Addresses

Your Retirement System	Request for Review Sent to
<b>CSRS or FERS</b>	<b>Office of Personnel Management Retirement Operations Center</b> P.O. Box 45 Boyers, PA 16017
<b>CIA</b>	<b>CIA Retirement and Disability System Central Intelligence Agency</b> P.O. Box 1925 Washington, D.C. 20505
<b>Foreign Service</b>	<b>Foreign Service Retirement and Disability System Department of State, Office of Retirement</b> SA-1 Room H-620 Washington, D.C. 20522-0108
<b>Any Other Retirement System</b>	Your former spouse must obtain that retirement system's certification of his/her eligibility to a portion of your future annuity or a former spouse survivor annuity and must submit the certificate to OPM when applying for eligibility to enroll.

### Determining a Former Spouse's Eligibility

When your former spouse applies for eligibility to enroll under the spouse equity provisions, his/her employing office must first verify that you were employed by the agency at the time of your divorce. If you separate from Federal service before becoming eligible for an immediate annuity, your former spouse is eligible to enroll only if your marriage ended before you left Federal service.

The employing office must then determine if your former spouse is eligible to enroll.

### To be eligible, he/she must meet all of the following requirements:

- He/she must not have remarried before age 55
- He/she must have been covered as a family member in an FEHB plan at least one day during the 18 months before your marriage ended
- He/she must provide documentation from OPM (or the CIA or Foreign Service retirement system, if applicable) of entitlement to a portion of your future annuity, or a former spouse survivor annuity

If you worked for the CIA, your former spouse could qualify to enroll based on your CIA employment, if you were married for at least 10 years during your CIA service, at least 5 years of which both of you spent outside the United States, and your marriage ended before May 7, 1985.

If you worked for the Foreign Service, your former spouse could also qualify to enroll based on your Foreign Service employment if you were married for at least 10 years during your Government service, and your marriage ended before May 7, 1985.

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## Enrollment *(continued)*

### **Effective Date**

The effective date of your former spouse's enrollment is the first day of the first pay period after the employing office receives the Health Benefits Election Form (SF 2809) and has approved eligibility.

If your former spouse requests immediate coverage, and the employing office receives the Health Benefits Election Form (SF 2809) and satisfactory proof of eligibility within 60 days after the date of the divorce, the enrollment may be made effective on the same day that Temporary Continuation of Coverage would otherwise take effect.

### **When both You and Your Former Spouse have FEHB Enrollments**

If both you and your spouse have your own FEHB enrollments and divorce, it is important for each of you to establish your eligibility for FEHB coverage under spouse equity provisions within the required time frame. In this way you can protect your future entitlement to FEHB coverage under spouse equity provisions if you lose your own FEHB coverage. You must apply to your former spouse's employing office for the determination, not your own employing office.

If you are enrolled as a Federal employee when your former spouse's employing office determines that you are eligible for coverage under spouse equity provisions, you must provide a copy of this determination to your current employing office. Your current employing office must note on your Individual Retirement Record that you are eligible for FEHB coverage under spouse equity provisions. Your former spouse's employing office must maintain a health benefits file for you and note that you are deferring your enrollment under spouse equity provisions until you lose enrollment as an employee.

# Military Service

## Entry into Military Service

### **For 30 days or Less**

If you enter one of the uniformed services for 30 days or less, your FEHB enrollment will continue without change. Withholdings and Government contributions will also continue, as long as you are in pay status or until your military orders are changed so that your period of duty is more than 30 days.

### **For More than 30 Days**

If you enter on active duty or active duty for training in one of the uniformed services for more than 30 days, you may continue your FEHB enrollment for up to 24 months. Or you may elect to terminate your enrollment as of the day before entering active duty.

If you terminate your enrollment, your employing office must promptly process a Notice of Change in Health Benefits Enrollment (SF 2810) to notify your health benefits carrier of the termination.

If you continue your enrollment during military service, you are responsible for the employee share of the premiums for the

first 12 months, just like any other employee in leave without pay status. During the last 12 months of the 24-month period, you must pay both the employee and the Government shares of the premium, plus an additional 2 percent of the total premium, on a current basis.

Your employing office may waive the requirement that you pay your share of FEHB premiums during all or any part of the 24-month period

### **If You are Separated**

If you are separated to enter into active military service, you are considered to be on military furlough (in leave without pay status) for the 24-month period if you continue to be eligible for reemployment rights under 5 CFR Part 353 or similar authority. You are entitled to continued coverage for up to 12 months in leave without pay status whether or not your eligibility for reemployment rights continues. To be entitled to the additional 12 months coverage, you must continue to be eligible for reemployment rights.

### **Notice Required**

If you enter military service for more than 30 days, your employing office must give you a notice explaining that your enrollment may continue for up to 24 months and that you are responsible for the employee share of the premiums for the first 12 months and for 102 percent of the premium afterwards. It must also explain that you must notify your employing office in writing if you decide to terminate your enrollment for the period of your military service.

### **Termination**

If you elect to terminate your enrollment, it must be terminated effective on the day you are separated, furloughed, or placed on leave of absence for entering military service. This applies even if part of your military service is covered by paid leave immediately followed by furlough or other leave without pay. You and your covered family members are entitled to a 31-day extension of coverage and to convert to an individual contract.

## Return from Military Service After Enrollment Termination

### **Not in Exercise of Reemployment Rights**

If you return from military duty after your enrollment terminated, but not in the

exercise of reemployment rights, you must (if eligible for coverage) elect to enroll within 60 days after returning to civilian duty, the same as a

new employee. You may elect to enroll for self only, self plus one, or self and family in either option of any plan available.

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## Return from Military Service After Enrollment Termination *(continued)*

### **In Exercise of Reemployment Rights**

If you exercise reemployment rights on your return from military duty, your terminated enrollment will be reinstated on the Notice of Change in Health Benefits Enrollment (SF 2810), effective on the day you return to civilian duty. Your employing office will show in the Remarks section of the reinstating SF 2810 that a previously terminated enrollment is being reinstated because of return from military service.

The reinstatement of your enrollment is effective on the day you return to civilian duty (the same date of the restoration action shown on SF 50, Notification of Personnel Action) and is not retroactive to the date you separated from military service. If there is a

gap between your separation from military service and return to active civilian duty, there will also be a gap in health benefits coverage because coverage under the Uniformed Services Health Benefits Program generally ends on the day of discharge without any extension of coverage.

If you return to civilian duty in the exercise of reemployment rights, you may change your reinstated enrollment to self only, self plus one, or self and family, and to either option of any plan available, within 60 days after you return to civilian service. If you weren't enrolled when you entered military duty, you may enroll within 60 days after your return to civilian service. Your election becomes effective on the first day of the pay period that begins after

your employing office receives your completed enrollment request and that follows a pay period during any part of which you were in pay status.

### **If You Die**

If you die after yourself and family enrollment was terminated or suspended upon your entry into military service, and your family members are entitled to an annuity or to a basic employee death benefit under the Federal Employees Retirement System, your family members may have the enrollment reinstated effective on the day after your death. Your family members also may change the enrollment just as if you were returning to civilian duty in the exercise of reemployment rights.

## **If You Retire**

### **If your enrollment was terminated and you:**

- Retire on an immediate annuity without having returned to duty
- Meet the participation requirements for continuing coverage as a retiree

you may request reinstatement of your enrollment within 60 days after your retirement,

regardless of whether you are still on active military duty. If you don't request reinstatement, the retirement system will automatically reinstate your enrollment when your military service ends.

**Continuous Enrollment For purposes of eligibility to continue enrollment after retirement, you are**

### **considered to have had continuous enrollment if your enrollment terminated for military service and:**

- It is reinstated when you return to civilian duty
- You reenroll within 60 days after returning to civilian duty
- You retire on an immediate annuity without returning to civilian duty

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## In Support of Contingency Operations

Federal employees called or ordered to active duty for more than 30 days, can keep their FEHB coverage for up to 24 months. FEHB law allows employees called to active duty to continue their enrollment for up to 365 days while on military duty. Current Federal law extends the period of FEHB eligibility an additional 12 months, during which the individual is responsible for paying both the agency and employee shares of the premium, plus an additional 2 percent administrative processing fee.

Federal law allows the employing agency the authority

to waive the requirement that employees pay their share of FEHB premiums during all or any part of the 24-month period, if eligibility requirements are met.

**In order to be eligible for payment of the employee's share of the FEHB premium, the employee must:**

- Be enrolled in an FEHB plan
- Be a member of a reserve component of the armed forces
- Be called or ordered to active duty in support of a contingency operation as defined at 10 U.S.C. § 101(a)(13)

- Be placed on leave without pay or separated from service to perform active duty; and
- Serve on active duty for a period of more than 30 consecutive days

If the employing agency waives collection of the employee share of the FEHB premium, it must remit the full premium (employee and agency share) to OPM on a current basis.

# Health Care Flexible Spending Accounts

## What is a Flexible Spending Account?

A Flexible Spending Account (FSA) is a tax-favored program offered by employers that allows their employees and their dependents to pay for eligible out-of-pocket health care and dependent care expenses with pre-tax dollars. By using pre-tax dollars to pay for eligible health care and dependent care expenses, an FSA gives you an immediate discount on these expenses that equals the taxes you would otherwise pay on that money.

In other words, with an FSA, you can both reduce your taxes and get more for your money by saving from 20% to more than 40% you would normally pay for out-of-pocket health care and dependent care expenses with after-tax (as opposed to pre-taxed) dollars.

### **FSAFEDS offers three types of FSAs:**

- The Health Care Flexible Spending Account (HCFSA), which can be used to pay for qualified medical costs and health care expenses that are not paid by your Federal Employees Health Benefits (FEHB) plan or any other insurance. **Please note:** A HCFSA cannot be used to pay for any type of insurance premiums, including long-term care insurance premiums
- The Limited Expense Health Care Flexible Spending

Account (LEX HCFSA), only available to employees who enroll in a Federal Employees Health Benefits (FEHB) Program or under a High Deductible Health Plan (HDHP) with a Health Savings Account (HSA). Eligible expenses are limited to dental and vision care services/products that meet the IRS definition of medical care. By using a LEX HCFSA, you can preserve the funds in your Health Savings Account to use/save for other purposes

- The Dependent Care Flexible Spending Account (DCFSA), used to pay for eligible dependent care expenses such as child care for children under age 13 or children who are physically or mentally incapable of self-care and, in some cases, elder care, so that you (and your spouse, if you are married) can work, look for work, or attend school full-time

Your participation in any FSA is completely voluntary, and it's important to remember that unlike other Federal benefits, your FSA election is only effective for one Benefit Period. In other words, you must enroll each year that you choose to participate. If you do not enroll during Open Season, you will not participate in the next Benefit Period, unless you

experience a Qualifying Life Event (QLE) that allows you to make an election outside of Open Season. Open Season for FSAFEDS runs concurrently with the FEHB Open Season in November and December each year for enrollment in the following year. The FSAFEDS Benefit Period for DCFSAs runs from January 1 of the current Benefit Period through March 15 of the following year. This includes a 2 ½ month grace period from January 1 through March 15 of the following year. During the grace period, eligible expenses incurred from January 1 through March 15 of the following year can be applied towards your prior year's balance. The intent is to help account holders avoid forfeiting any of the funds they deposited in FSA accounts. It is important to carefully consider the amount you choose to elect. The FSAFEDS Benefit Period for HCFSAs runs from January 1 through December 31 and has no grace period. However, up to \$610 (2023) in unclaimed expenditures can be rolled over and used in the following plan year.

FSAFEDS follows Internal Revenue Service (IRS) guidelines to determine eligible expenses and other requirements for participation in an FSA issued under Sections 105, 125, and 129 of the Internal Revenue Code.

## Differences Between Health Care Flexible Spending Account, Limited Expense Health Care Flexible Spending Account and the Dependent Care Flexible Spending Account

**A** Health Care Flexible Spending Account pays for the qualified medical expenses not covered or reimbursed by your FEHB plan or any other type of insurance. It is NOT limited to only dental and vision care services/products.

Though the LEX HCFSAs are similar to the HCFSAs, it differs by the type of expenses it covers. The expenses are limited to dental and vision care services/products that

meet the IRS definition of medical care. Also, only those employees who have a HDHP/HSA are eligible to enroll in a LEX HCFSAs.

The Dependent Care Flexible Spending Account pays for childcare or adult dependent care expenses that are necessary to allow you or your spouse to work or attend school full-time. It also pays while you or your spouse look for work. However, it does not pay if you

(or your spouse) did not find a job and have no earned income for the year. The Dependent Care Flexible Spending Account does NOT pay for medical care for your dependents.

Despite the differences between the accounts, each allows you to pay for qualified expenses with pre-tax dollars, money that is deducted from your paycheck before taxes are taken out by your employer - saving you 20% to 40% or more.

## FSA Tax Savings

An FSA offers tax savings by allowing you to pay for out-of-pocket expenses with pre-tax money. Without an FSA, you would still pay for these expenses, but you would do so using money remaining in your paycheck after federal (and often state and local) taxes are deducted.

The example below illustrates tax savings based on 25% Federal and 7.65% FICA taxes, resulting in a

32.65% discount on eligible expenses paid through an FSA. State and local taxes are not included. Actual savings will vary based on your individual tax situation, and on whether you are covered under Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS). You may wish to consult a tax professional for more information on the tax implications of an FSA.

Annual Tax Savings Example*	CSRS		FERS	
	FSA	No FSA	FSA	No FSA
If your taxable income is:	\$50,000	\$50,000	\$50,000	\$50,000
Pre-tax FSA contribution:	(2,000)	0	(2,000)	0
Taxable income:	\$48,000	\$50,000	\$48,000	\$50,000
Federal income and Social Security taxes:	(8,866)	(9,395)	(11,842)	(12,495)
After-tax dollars spent on eligible expenses:	0	(2,000)	0	(2,000)
Available after-tax income:	\$39,134	\$38,605	\$36,158	\$35,505
<b>Discount with an FSA:</b>	<b>\$529* or 26%</b>		<b>\$653* or 33%</b>	

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## How Does an FSA Work?

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### 1. You calculate your annual election (s)

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When you decide to enroll in FSAFEDS each year during Open Season, you first need to determine how much money you want to elect for your account (s) for the upcoming Benefit Period. The maximum you can elect for a Benefit Period is \$5,000 for a DCFSA and \$3,050 for an HCFSA (or LEX HCFSA). However, your election for a DCFSA can only be \$2,500 if you are married but filing separately. The minimum annual amount you can elect is \$100 per account. Most people review their current year expenses, think about expenses they may incur in the 2-1/2-month grace period, and take into account changes that will occur in the coming year when making their annual elections. You have 14-1/2 months to use up your annual DCFSA election, so you may wish to contribute more than you expect you'd spend in one year. However, you will also forfeit any monies you don't use within those 14-1/2 months, so plan carefully. **See FSAFEDS Important Information: [www.fsafeds.com](http://www.fsafeds.com).**

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### 2. You actually enroll in the program

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Once you have decided on your annual election, you formally enroll in a HCFSA, a LEX HCFSA, a DCFSA, or a combination of accounts (you cannot have a HCFSA and a LEX HCFSA), and you specify your annual election(s) — that is, how much money you want to have deducted from your pay and deposited into your account(s) during the upcoming year, for you to use during the upcoming Benefit Period. HealthEquity, Inc. is a third-party administrator for FSAFEDS sponsored by the U.S. Office of Personnel Management. You can enroll online during Open Season at [www.FSAFEDS.com](http://www.FSAFEDS.com) or if you have questions, you may contact an FSAFEDS Benefits Counselor, toll-free, at 1-877-FSAFEDS (372-3337), TTY: 866-353-8058, Monday through Friday, from 9:00 A.M. until 9:00 P.M., Eastern Time.

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### 3. Your annual election(s) is deducted from your pay in allotments

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After you make your election for the Benefit Period, FSAFEDS directs BENEFEDS to deduct your annual election(s) in installments, called allotments. The allotments are spread evenly over the number of pay dates remaining in the Benefit Period. In certain circumstances, you may be approved to have your allotments accelerated so your annual election is taken over a lesser number of pay periods.

**You can accelerate your allotments during enrollment for reasons such as the two listed below:**

- If you know you are going on a period of Leave Without Pay (LWOP), you may prefer to meet your annual election amount prior to beginning your LWOP.
- If you are a teacher, you may prefer to have your allotments match the months in the Benefit Period you are actively teaching.

Even though your enrollment may be effective, FSAFEDS will not be able to pay your claims until your employment is confirmed with your employing agency or its payroll provider. On occasion, reimbursements are delayed because of problems in setting up payroll deductions. These delays may be caused by incorrect data that was provided during enrollment, such as the wrong Social Security Number or employing agency.

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## How Does an FSA Work? *(continued)*

### Does participating in FSAFEDS cost you anything?

No. On November 24, 2003, President Bush signed the National Defense Authorization Act into law. Section 1127 of this law (Public Law 108-136) requires agencies participating in FSAFEDS to cover the administrative fee(s) on behalf of their enrolled employees.

### How do you know if you are eligible to enroll in FSAFEDS?

If you are an active employee of an Executive Branch agency, or an agency, commission, or other Federal entity that has adopted The Federal Flexible Spending

Account Program, you are most likely eligible to enroll in at least one flexible spending account. Refer to the **Eligibility** section to determine if you are eligible to enroll. Newly eligible employees include temporary employees who have completed one year of continuous service and are now eligible to enroll in FEHB, certain re-employed annuitants, and anyone whose appointment changes and is now eligible to enroll in the FEHB program.

Some Federal agencies do not participate in FSAFEDS but may offer their own FSA program to their employees.

### These agencies include:

- The Federal Judiciary
- District of Columbia Government
- Farm Credit Administration
- Farm Credit System Insurance Corporation
- Federal Reserve System
- Office of the Controller of the Currency
- United States Institute of Peace
- The Supreme Court of The United States

## Eligible Expenses for Reimbursement

Many of you and your dependents typical out-of-pocket health care expenses may be reimbursed by an HCFSAs. Some common reimbursable expenses not covered by most FEHB or FEDVIP plans are listed below. All of these items meet IRS criteria for a covered medical expense. For more complete listings of eligible medical expenses, please contact an FSAFEDS Benefits Counselor at 1-877-FSAFEDS (372-3337), TTY: 866-353-8058 Monday through Friday, from 9:00 a.m. until 9:00 p.m., Eastern Time.

- Chiropractic services
- Co-insurance, co-pay amounts and deductibles

- Contact lenses and cleaning solutions
- COVID tests
- Dental care and procedures not covered under a FEDVIP plan (including crowns, endodontic services, implants, oral surgery, periodontal services and sealants)
- Eye surgery not covered under a FEDVIP plan (cataract, LASIK, corneal rings, radial keratotomy, etc.)
- Eyeglasses not covered under a FEDVIP plan (including prescription sunglasses and over-the-counter reading glasses)
- Hearing aids and batteries
- Infertility treatments
- Masks
- Mileage
- Orthodontia not covered under a FEDVIP plan or temporary continuation of coverage premiums
- Over-the-counter medicines and products (including antacids, allergy medicines, birth control, cold medicines, menstrual care products, and pain relievers)
- Therapy (counseling, massage, occupational, physical, speech)

**Note:** Insurance premiums, including health insurance, life insurance, long-term care insurance and Temporary Continuation of Coverage, are not eligible for reimbursement.

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## Eligible Expenses for Reimbursement *(continued)*

### Expenses eligible for reimbursement only if medically necessary

Some expenses are eligible for reimbursement only when a doctor or other licensed health care practitioner certifies that they are medically necessary. Your doctor's certification (note or letter) must indicate your specific medical disorder, the specific treatment needed, how this treatment will alleviate your medical condition, and the length of treatment required.

#### Examples include:

- Air conditioners, central air, heaters, and humidifiers installed in your home for allergy relief
- Cosmetic surgery following an accident, disease, or other surgery

- Home Medical Equipment (e.g., reclining chairs, bed boards, special mattress)
- Weight loss program for treatment of a specific disease (e.g., heart disease), not including cost of food
- Wigs for hair loss due to chemotherapy or radiation treatment

FSAFEDS has a sample Letter of Medical Necessity (LMN) that you and your health care provider can use. A personal letter from your provider will also suffice as long as it includes all the information necessary to determine medical necessity. Please note, if the treatment extends beyond the time period listed, you need to submit a new certification/physician letter covering the

new time period.

### Your letter may be denied if it does not contain all of the information listed below:

- Date
- Employee Name and SSN/ UserID
- Patient Name
- Diagnosis (specific medical condition or disorder)
- CPT Code assigned to your diagnosis
- Specific treatment prescribed by the provider
- How the treatment will alleviate the condition
- Duration of the treatment
- Provider signature, license number, state and telephone number

## Expenses NOT eligible for Reimbursement

The following is a list of common medical expenses not eligible for reimbursement. For more complete listings of eligible medical expenses, please contact an FSAFEDS Benefits Counselor at 1-877-FSAFEDS (372-3337), TTY: 866-353-8058, Monday through Friday, 9:00 A.M. until 9:00 P.M., Eastern Time.

- Insurance premiums, including those for health insurance, dental and/ or vision insurance, life insurance, long-term care insurance, and Temporary Continuation of Coverage

- Cosmetic surgery or procedures
- Exercise and fitness programs for general health, including health club membership dues\*
- Expenses that have been reimbursed elsewhere
- Expenses not incurred during your period of coverage
- Fees paid to a health care provider in advance of services being rendered (this includes health maintenance fees but excludes braces)
- Personal use items (items ordinarily used for personal,

living or family purposes such as household disinfectants)

- Physician charges for services that are not direct medical care, such as monthly fees for guaranteed access and quicker appointments (so-called "boutique practice fees")

*\*Fees paid for a fitness program may be an eligible expense if prescribed by a physician and substantiated by his or her statement or letter of medical necessity that treatment is necessary to alleviate a medical problem.*

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## Eligible over-the-counter (OTC) medicines or products for reimbursement through HCFSA

All over-the-counter (OTC) medicines or drugs (including insulin) are eligible for reimbursement through a HCFSA. OTC products that are not medicines or drugs (such as sunscreen, bandages or contact lens solution), and are purchased to alleviate or treat a medical condition are also eligible items for reimbursement. Vitamins and other dietary supplements that are merely beneficial to the general health of an

individual remain ineligible for reimbursement.

Please refer to the HCFSA **Eligible Expenses** for more detailed information about specific OTC items.

In accordance with the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that was signed on March 27, 2020, over-the-counter (OTC) medicines or drugs (e.g., acne treatments, allergy and cold medicines,

antacids, etc.) are eligible for reimbursement from your Health Care FSA without a physician's prescription as of January 1, 2020. Any over-the-counter (OTC) medicines or drugs purchased prior to January 1, 2020 are only eligible for reimbursement with a physician's prescription. Any items used for general health or cosmetic purposes ARE NOT eligible.

### What OTC items are not eligible for reimbursement?

OTC items are not eligible for reimbursement if they are normally used for general health or are used even when there is not a medical condition being treated (ex. toothpaste, mouthwash, shampoo, lotion or moisturizer that also contains sunscreen) or are cosmetic in nature (teeth whitening products, wrinkle reducers).

## What is the “Use or Lose” Rule?

The IRS created the “use or lose” rule, which states that all money left in your FSA is forfeited after the benefit **period ends**. If you don't use all of your FSA funds during the benefit period, you risk losing money.

However, the HCFSA and the LEX HCFSA have Carryover, which allows you to carry over up to \$610 in unused funds into the next benefit period if you reenroll in FSAFEDS. Any remaining unused funds over

\$610 will be forfeited. You must reenroll in FSAFEDS in order to take advantage of the carryover of unused funds.

A DCFSA does not have Carryover, but this account has a grace period of 2 1/2 months (January 1 - March 15) during which you can incur eligible dependent care expenses and use funds remaining in your DCFSA from the previous benefit period. You have until midnight Eastern Time on April

30 following the end of the benefit period to file claims for eligible expenses incurred during the previous benefit period or grace period.

When you contribute to an FSA, you agree to reduce your salary by a specified amount and your employing agency contributes that amount to an FSA for you. Since you never received that money, you cannot be taxed on it. If you were to receive the

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## What is the “Use or Lose” Rule? *(continued)*

unused amount at the end of the benefit period, the IRS would consider this “deferred compensation”. Section 125 of the IRS Code prohibits deferred compensation, thus the “use or lose” rule.

Agencies cannot provide waivers for any employee regarding funds that might

be forfeited. Neither OPM, nor your employing agency, has the authority to make any exception to the “use or lose” rule. To reduce your risk of losing money at the end of the benefit period, carefully estimate your expenses when choosing your annual election amount before enrolling in an FSA. Please also keep

in mind that reimbursement for expenses is generally based on when an expense is incurred, not when it is paid. Use the FSAFEDS savings calculator on their website to help you calculate allotments based on your individual situation, as well as indicate your potential tax savings.

## What is a Qualifying Life Event?

**A** Qualifying Life Event is an event defined by the Internal Revenue Service in Section 125 that allows you to change your FSA election.

**FSAFEDS permits all QLE’s defined by the IRS. These QLEs include:**

- Change in your legal marital status (i.e., marriage, divorce, or death of your spouse)
- Change in employment status (for you, your spouse, or dependent) that affects eligibility for health insurance benefits
- Change in your number of tax dependents
- Birth or date you adopt a child, or placement for adoption
- Death of your spouse or dependent
- Change in your dependent’s eligibility (for example, your child reaches age 13 where

he/she is no longer eligible under a DCFSA)

- Change in your child care/elder care provider or cost or coverage, such as a significant cost increase charged by your current daycare provider, or a change in your daycare provider. This applies to a DCFSA only. It does NOT apply to a HCFSA or LEX HCFSA

**Note:** A dependent is anyone you claim on your federal income tax return or someone with whom you jointly file a federal income tax return.

If you or your dependents experience a QLE, you may enroll or change your current election(s) in the FSAFEDS Program; however, your requested change must be consistent with the event that prompted the election change. For example, if you adopt a baby, you may want to increase your HCFSA and/or DCFSA

elections to accommodate the added medical expenses and/or daycare costs you may incur for this adopted child. However, in general, you could not decrease your DCFSA elections for that QLE. You may wish to decrease your DCFSA, for example, if your spouse decided to stay home with your child and you no longer had eligible daycare costs.

If your requested change is due to the birth or adoption of a child, the change will be retroactive to the child’s date of birth, date of adoption, or placement for adoption, consistent with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

If you are a Federal employee and experience a QLE, such as the death of your spouse, you may enroll in the FSAFEDS Program.

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## What is a Qualifying Life Event? *(continued)*

Additionally, you cannot reduce your HCFSA, LEX HCFSA or DCFSA election(s) below the amount already reimbursed or already in your account.

After September 30 of any Benefit Period, only those QLEs resulting in a decrease in the annual election will be considered. QLEs resulting

in an increase in the annual election will not be accepted due to the limited number of pay periods remaining in the calendar year.

## HCFSA or LEX HCFSA Eligibility

If you are eligible for the Federal Employees Health Benefits (FEHB) Program and are an active employee of the Executive Branch or of another agency that participates in FSAFEDS, you are eligible to participate in a health care FSA with FSAFEDS. You need only be eligible to participate in FEHB — you do not need to be currently enrolled. There is no household limit on the amount of money that you can set aside for a HCFSA or LEX HCFSA, although

the FSAFEDS 2023 limit per Federal employee is \$3,050 (\$6,100 for a “Federal couple”). If your spouse is not a Federal employee, and has access to an FSA, he or she may enroll up to the maximum of his or her own company’s health care account.

A LEX HCFSA is for employees enrolled in a FEHB High Deductible Health Plan (HDHP) with a Health Savings Account (HSA), or whose spouse is enrolled in a non-FEHB HDHP with an HSA. The LEX HCFSA

is limited to eligible dental and vision expenses only. Under IRS rules, you are not eligible to contribute to an HSA and be enrolled in a FSAFEDS general purpose HCFSA at the same time.

Under the IRS Code, annuitants (other than re-employed annuitants) cannot participate in an FSA. An FSA is a way to set aside part of your salary – before taxes – for payment of eligible expenses. An annuity is not considered salary.

## DCFSA Eligibility

If you are an active employee of the Executive Branch or of another agency that participates in FSAFEDS, you are eligible to participate in a DCFSA with FSAFEDS. The only exception(s) are intermittent or “when actually employed” (WAE) employees who are expected to work less than six months in a calendar year. Also, there is a \$5,000 household limit (\$2,500 if single) on the amount that can be set aside in a DCFSA. It’s very important to discuss your

elections with your spouse to ensure the household limit is not exceeded. If you and your spouse elect more than the \$5,000 household limit, FSAFEDS will not be able to cancel your election per IRS guidelines. You will need to resolve the over-deduction through your federal income tax return.

Under the IRS Code, annuitants (other than re-employed annuitants) cannot participate in a DCFSA. An FSA

is a way to set aside pre-tax salary for payment of eligible expenses. An annuity is not considered salary.

**To be reimbursed through your DCFSA for child and dependent care expenses, you must meet the following conditions:**

- You must have incurred the expenses in order for you and your spouse, if married, to work, look for work, unless your spouse was either a full-time student

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## DCFSA Eligibility *(continued)*

was physically or mentally incapable of self-care or each of you have earned income during the year. However, if you did not find a job and have no earned income for the year, your dependent care costs are not eligible.

- You cannot have made the payments to someone

you can claim as your dependent on your Federal Income Tax return or to your child who is under age 19

- Your filing status must be single, qualifying widow(er) with a dependent child, married filing jointly, or married filing separately
- The care must have been provided for one or more

qualifying dependents identified on the form you use to claim the credit

- You and your spouse must maintain a home that you live in for more than half the year with the qualifying child or dependent

### **Maximum/minimum allotments for a flexible spending account**

For 2023, the maximum annual election is \$3,050 for the HCFSA and \$5,000 for the DCFSA. The minimum annual election for each FSA is \$100.00.

# Appendix – Glossary of Terms

## **Agency**

A department or independent establishment (e.g., the U.S. Postal Service) of the executive branch of the United States Government, including Government-owned or controlled corporations, the legislative and the judicial branches of the United States Government and entities under their supervision, the District of Columbia Government (for certain eligible employees), and Gallaudet College. The term agency refers to the whole organization, as distinguished from its subdivisions and field establishments.

In the executive branch, the Department of Defense, Department of the Army, Department of the Navy, and Department of the Air Force are considered to be separate agencies.

## **Annuitant**

A former employee entitled to an annuity under a retirement system established for employees. This includes the retirement system of a non-appropriated fund instrumentality of the Department of Defense or the Coast Guard. Compensationers are considered annuitants for health benefits purposes.

## **Cancel**

Your election on an enrollment request that you no longer want to be enrolled in the Federal Employees Health Benefits Program.

## **Carrier**

A legal entity that offers a health benefits plan approved by the Office of Personnel Management.

## **Compensation**

Compensation under subchapter I of chapter 81 of title 5, United States Code (Workers' Compensation), which is payable because of an on-the-job injury or disease.

## **Compensationner**

An employee or former employee who is entitled to workers' compensation and whom the Department of Labor determines is unable to return to duty. Compensationers are considered annuitants for health benefits purposes.

## **Contributions**

Amounts which each agency is required to pay from its salary appropriations or other available funds as the Government's share of the cost of the health benefits coverage of its enrolled employees. The Government contribution toward the cost of health benefits for most annuitants is paid from annual appropriations by Congress for this purpose.

## **Conversion Contract**

An individual, nongroup policy offered by a carrier to enrollees whose FEHB coverage terminates.

## **Coordination of Benefits**

When you are covered by more than one type of insurance that covers the same health care

expenses, one pays its benefits in full as the primary payer and others pay a reduced benefit as a secondary or third payer. When the primary payer doesn't cover a particular service but the secondary payer does, the secondary payer will pay up to its benefit limit as if it were the primary payer.

## **Court Order**

Any judgment or property settlement issued by, or approved by, any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court in connection with, or incident to, the divorce, annulment of marriage, or legal separation of a Federal employee or retiree.

## **CSRS**

The Civil Service Retirement System.

## **Current Continuous Employment**

For purposes of health benefits coverage for temporary employees, "current" means beginning with the present and counting back 1 full year (365 calendar days). "Continuous" means employment with no break in service of more than 5 days. A break in service occurs when you are off the employment rolls. A break in service of 1 to 4 days does not interrupt the 1 year of current continuous employment and is counted toward the service

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## Appendix – Glossary of Terms *(continued)*

requirement. Days on which a part-time employee is not scheduled to work are not breaks in service. “Employment” means full-time or part-time service that is not excluded by law or regulations applicable to the FEHB Program.

### **Days**

Whenever, in this Guide, a period of time is stated as a number of days, or as a number of days from an event, the period is computed in calendar days, excluding the day of the event.

### **Dual Enrollment**

Coverage under more than one FEHB enrollment at the same time; dual enrollment is prohibited under FEHB law.

### **Elect not to Enroll**

Upon your first eligibility, your request not to be enrolled in the Federal Employees Health Benefits Program.

### **Eligible.**

Not excluded from coverage under the Federal Employees Health Benefits Program by the law or the regulations.

### **Employee**

An individual appointed or elected to a position in or under the executive, legislative, or judicial branch of the United States Government, as defined at 5 U.S.C. 8901. This includes Government-owned or controlled corporations, the District of Columbia government (for certain eligible employees), and Gallaudet College.

### **Employee Organization**

An association or other organization of Federal or postal employees that sponsors a health benefits plan approved by the Office of Personnel Management.

### **Employing Office**

The agency office (or retirement system office) that has responsibility for health benefits actions.

### **Enroll**

Election to join a health benefits plan under the Federal Employees Health Benefits Program. Your election must be submitted to your employing office on a Health Benefits Election Form (SF 2809) or other enrollment request.

### **Enrollee**

The individual in whose name the health plan enrollment is carried. The term includes employees, annuitants, survivor annuitants, former employees, former spouses, or children who are enrolled after completing a valid election form or other enrollment request or who have continued an enrollment as an annuitant or survivor annuitant.

### **Enrollment Change**

Your election of a different plan or option, or a different type of coverage (self only or self and family), submitted to your employing office on a Health Benefits Election Form (SF 2809) or other enrollment request.

### **Enrollment Code**

A three-digit code assigned to a health plan and option. The first two digits identify the health plan; the third digit identifies the option (high or standard) and type of enrollment (self only or Self and family).

### **Enrollment Request**

A properly completed health benefits enrollment form (SF 2809) or an alternative method acceptable to both your employing office and OPM. Alternative methods must be capable of transmitting to the health benefits plans the information they need to accept an enrollment, change of enrollment, or cancellation. Electronic signatures, including the use of Personal Identification Numbers (PIN), have the same validity as a written signature.

### **Extension of Coverage**

Automatic continuation of your health benefits coverage for 31 days after FEHB eligibility terminates, except by your cancellation of coverage.

### **Family Members**

Your spouse and unmarried dependent children under age 26. **Such child includes:**

- A legitimate child
- An adopted child
- A stepchild, foster child, or recognized natural child who lives with you in a regular parent-child relationship

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## Appendix – Glossary of Terms *(continued)*

- A recognized natural child for whom a judicial determination of support has been obtained, or to whose support the enrollee makes regular and substantial contributions.

A child age 26 or over is covered if he/she is incapable of self-support because of mental or physical disability that existed before the child reached age 26.

Certain restrictions apply to coverage of family members under former spouses' enrollments, under temporary continuation of coverage (TCC) and spouse equity provisions.

No other person is considered a family member for health benefits purposes.

### **Fee-for-Service Plan**

A traditional type of insurance that lets you use any doctor or hospital, but you usually must pay a deductible and coinsurance. These plans are called fee-for-service because doctors and other providers are paid for each service, such as an office visit, or test. They help control costs by managing some aspects of patient care. Most FEHB fee-for-service plans also provide access to preferred provider organizations (PPOs).

### **FEHB**

The Federal Employees Health Benefits law or program.

### **FERS**

The Federal Employees Retirement System.

### **First Opportunity to Enroll**

The first time that you were employed in a position in which you were eligible to enroll in the FEHB Program and were entitled to a Government contribution towards premiums. You are considered to have enrolled at the first opportunity if you were covered at that time by the FEHB enrollment of another employee or annuitant.

### **Former Spouse**

A person whose marriage to a Federal employee or annuitant ended in divorce or annulment of the marriage. This term does not refer to widows or widowers.

### **Foster Child**

A child who lives with the enrollee in a regular parent-child relationship and is expected to be raised to adulthood by the enrollee.

### **Fund**

The Employees Health Benefits Fund.

### **Gross Misconduct**

For purposes of qualifying for temporary continuation of coverage (TCC), a flagrant and extreme transgression of law or established rule of action for which you are separated from service and for which a judicial or administrative finding of gross misconduct has been made.

### **Health Benefits Plan**

A group insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group

arrangement provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for, health services.

### **Health Maintenance Organization (HMO)**

A type of health benefits plan that provides care through a network of doctors and hospitals in particular geographic or service areas. HMOs coordinate the health care services you receive. Your eligibility to enroll in an HMO is determined by where you live or, for some plans, where you work. Some FEHB HMOs have agreements with providers in other service areas for non-emergency care if you travel or are away from home for extended periods.

### **Immediate Annuity**

An annuity that begins no later than one month after the end of the pay period during which you are separated from service; or An annuity under 5 CFR 842.204(a)(1) for which the starting date has been postponed.

### **Impaired Relationship**

An irreparable rift between an HMO's medical providers and the enrollee and/or family members, which jeopardizes the furnishing of adequate medical care.

### **Incapable of Self Support**

Dependent on the enrollee because of a physical or mental disability which occurred before the child reached age 26.

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## Appendix – Glossary of Terms *(continued)*

### **Interim Appointment**

The employment status of a person whose appeal of a personnel action to the Merit Systems Protection Board results in an initial decision granting relief, pending final action on a petition for review by a party to the appeal or OPM.

### **Interlocutory Divorce**

An intermediate divorce; one that has not become finalized. The spouse is still considered to be an eligible family member under an FEHB enrollment. An interlocutory divorce is considered to be a change in family status that allows the enrollee to change his/her enrollment.

### **Intermittent Employee.**

A non-full-time employee without a regularly scheduled tour of duty.

### **Law**

Chapter 89 of title 5, United States Code.

### **Medically Underserved Area**

Any of the 50 States of the United States where OPM determines that 25 percent or more of the residents are located in primary medical care manpower shortage areas designated under section 332 of the Public Health Service Act (42 U.S.C. 254e).

### **Medicare Managed Care Plan**

A managed care plan such as an HMO or PPO that contracts with Medicare to

enroll Medicare beneficiaries. Services must be obtained from the managed care plan's network of doctors and hospitals to receive full plan benefits. The managed care plan may charge a monthly premium and require copayments.

### **Official Personnel Folder**

Your personnel records that are maintained by your employing office.

### **Open Season**

The annual time period set by OPM in which all eligible persons may elect or change their health benefits, dental and vision, and flexible spending account coverages.

### **OPM**

The Office of Personnel Management.

### **Option**

A level of benefits provided by a health benefits plan. Some plans provide a high and a standard option; others provide only one option.

### **Overseas**

Outside a State of the United States and the District of Columbia.

### **OWCP**

The Office of Workers' Compensation Programs, U.S. Department of Labor, which administers compensation benefits for Federal employees under subchapter I of chapter 81 of title 5, United States Code.

### **Pay Period**

For former employees, former spouses, children enrolled under TCC provisions, and annuitants not actively receiving an annuity, pay period means any regular pay period for employees of the agency that is responsible for the health benefits actions for the enrollee.

### **Plan**

See Health Benefits Plan.

### **Preferred Provider Organization (PPO)**

A fee-for-service option where you can choose plan-selected providers who have agreements with the plan. When you use a PPO provider, you pay less money out-of-pocket for medical services than when you use a non-PPO provider.

### **Primary Payer**

When coordinating benefits, the health plan that pays benefits first and to the full extent of its coverage.

### **Program**

The Federal Employees Health Benefits Program.

### **Qualifying Court Order**

A court order that awards a portion of your future annuity or a survivor annuity to your former spouse and is determined by OPM, CIA, or the Foreign Service, as appropriate, to meet the requirement of a qualifying court order.

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## Appendix – Glossary of Terms *(continued)*

### **Recognized Natural Child**

#### **For whom the father:**

- Has acknowledged paternity in writing
- Was ordered by a court to provide support
- Before his death, was pronounced by a court to be the father
- Was established as the father by a certified copy of the public record of birth or church record of baptism, if he was the informant and named himself as the father of the child
- Established paternity on public records, such as records of schools or social welfare agencies, which show that with his knowledge he was named as the father of the child

If paternity is not established by one of the above means, other evidence such as the child's eligibility as a recognized natural child under other State or Federal programs or proof that the father included the child as a dependent child on his income tax returns may be considered.

### **Reconsideration**

The final level of administrative review of an employing office's initial decision about an enrollment or enrollment change to determine if the employing office followed the law and regulations correctly.

### **Reemployed Annuitant**

A Federal employee annuitant who has returned to active Federal service under conditions which do not result in termination of annuity.

### **Regular Tour of Duty**

Your work schedule that is determined in advance and expected to continue indefinitely. It consists of a certain number of hours or other time units in a day, week, biweekly pay period, month, or year.

### **Regulations**

Part 890 of title 5 and part 16 of title 48, Code of Federal Regulations.

### **Retired Federal Employees Health Benefits Program**

A program that provides health benefits coverage for Federal employees who retired before July 1, 1960 or their survivors.

### **Secondary Payer**

When coordinating benefits, the health plan that pays benefits only after the primary payer has paid its full benefits.

### **When an FEHB fee-for-service plan is the secondary payer, it will pay the lesser of:**

- Its benefits in full
- An amount that when added to the benefits payable by the primary payer, equals 100% of covered charges

### **Self and Family**

The type of FEHB enrollment that covers the enrollee and all eligible family members.

### **Self Plus One**

The type of FEHB enrollment that covers the enrollee and designated eligible family member.

### **Self Only**

The type of FEHB enrollment that covers only the enrollee.

### **Service**

Civilian service which is creditable under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, United States Code. This includes service under a non-appropriated fund instrumentality of the Department of Defense or the Coast Guard for an individual who elected to remain under a retirement system established for employees described in Section 2105 (c) of title 5.

### **Service Area**

The geographical area in which an HMO's medical providers are located.

### **Spouse Equity**

A provision of the FEHB law that allows eligible former spouses of Federal employees and annuitants to enroll in the FEHB Program in their own name.

### **Survivor Annuitant**

A surviving family member of a deceased Federal employee or annuitant who is entitled to an annuity under a retirement system established for employees.

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## Appendix – Glossary of Terms *(continued)*

### **Suspension of FEHB Enrollment**

When you notify your retirement system that you are giving up your FEHB coverage to enroll in a Medicare managed care plan, but still retain the right to reenroll in FEHB if your enrollment in the Medicare managed care plan ends. Otherwise, if you cancel your FEHB coverage as an annuitant, you probably may never reenroll.

### **Temporary Continuation of Coverage (TCC)**

A provision of the FEHB law that allows Federal employees who separate from service and family members who lose eligibility to temporarily continue FEHB coverage (up to 18 months for separating employees who lose their coverage, and 36 months for children and former spouses who lose coverage under employees).

### **Withholdings**

Amounts deducted from your pay, annuity, or compensation for your share of the cost of health benefits.

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## References for Attribution

OPM Facts About the Federal Wage System

[Learn More](#)

DCPAS Wage and Salary

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Federal Government Jobs – SES Jobs

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OPM Executive Core Qualifications

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OPM Fact Sheet: Promotions

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OPM Fact Sheet: How to Compute FLSA Overtime Pay

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OPM Fact Sheet: Within-Grade Increases

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OPM Fact Sheet: Night Pay for General Schedule Employees

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OPM Fact Sheet: Sunday Premium Pay

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OPM Hazardous Duty Pay FAQ

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OPM Pay Administration: Can Title 38 Employees Receive Hazardous Duty Pay?

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OPM Pay and Leave FAQ

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OPM Pay Administration: Hazardous Duty Questions (page 16)

[Can an employee be paid hazardous duty pay for performing a type of duty not listed under appendix A of 5 CFR part 550, subpart I?](#)

[What is the maximum amount of hazardous amount duty pay an employee may receive?](#)

[May an employee be paid hazardous duty pay for a hazard or physical hardship encountered on the way to work?](#)

[May an employee receive hazardous duty pay during overtime hours?](#)

[Can hazardous duty pay be paid during hours of paid leave?](#)

[May hazardous duty pay be paid for periods of leave without pay?](#)

[Is hazardous duty pay included in the biweekly maximum limitation on premium pay?](#)

Department of Commerce – Hazard Pay Differential

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OPM Pay and Administration Q & A

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OPM Pay Administration: Holiday Premium Pay on Federal Holiday

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OPM Fact Sheet: Compensatory Time Off for Travel

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OPM Q&A to Fact Sheet: Compensatory Time Off for Travel

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OPM Fact Sheet: Retention Incentives (likely to leave for a different Federal position)

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OPM Alternative Work Schedules (AWS) Flexible Work Schedules (FWS)

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OPM Fact Sheet: Lunch or Other Meal Periods

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OPM Fact Sheet: Federal Holidays – Work Schedules and Pay

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OPM Fact Sheet: Sick Leave (General Information)

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OPM Personal Sick Leave

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OPM Fact Sheet: Sick Leave for Family Care or Bereavement Purposes

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OPM Definitions Related to Family Member and Immediate Relative for Certain Leave Purposes  
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OPM Fact Sheet: Sick Leave to Care for a Family Member with a Serious Health Condition  
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OPM Fact Sheet: Family and Medical Leave  
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OPM Fact Sheet: Bone Marrow or Organ Donor Leave  
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OPM Handbook on Leave and Workplace Flexibilities for Childbirth, Adoption, and Foster Care  
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OPM Fact Sheet: Military Leave  
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OPM Employee Health Services Handbook; Employee Assistance Program  
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