

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 894

RIN 3206-AL03

### Federal Employees Dental and Vision Insurance Program

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to administer the Federal Employee Dental and Vision Benefits Enhancement Act of 2004, which was enacted December 23, 2004. This law establishes dental and vision benefits programs for Federal employees, annuitants, and their eligible family members.

**DATES:** Interim rules are effective November 14, 2007. OPM must receive comments on or before December 14, 2007.

**ADDRESSES:** Send written comments to Nataya Battle, Senior Policy Analyst, Center for Employee and Family Support Policy, Strategic Human Resources Policy Division, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415; or deliver to OPM, Room 3415, 1900 E Street, NW., Washington, DC; or FAX to (202) 606-0633.

**FOR FURTHER INFORMATION CONTACT:** Nataya Battle, (202) 606-1874, or e-mail at [nataya.battle@opm.gov](mailto:nataya.battle@opm.gov).

#### SUPPLEMENTARY INFORMATION:

#### Background

On December 23, 2004, Public Law 108-496, 118 Stat. 4001, was signed into law. This law established a dental benefits and vision benefits program for Federal employees, annuitants, and their eligible family members. The first

effective date of coverage was December 31, 2006.

#### Waiver of Notice of Proposed Rulemaking

In accordance with section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking for this rule because general notice of proposed rulemaking is unnecessary and would be contrary to the public interest. By law the Federal Employees Dental and Vision Insurance Program became effective in 2006. Congress and the Administration intended for the Program to be available to enrollees as of the end of 2006, and the rules governing the program are effectively established in the existing contracts that OPM has entered into with the dental and vision carriers pursuant to the FEDVIP law. These interim regulations explain the program rules to affected enrollees and the general public, and will assist the administration of the Program. OPM will accept comment on these interim rules, and will consider changes to the Program for future years.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects dental and vision benefits of Federal employees and annuitants.

#### Executive Order 12866, Regulatory Review

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

#### Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or Tribal governments.

#### List of Subjects in 5 CFR Part 894

Administrative practice and procedure, Employee benefit plans, Government employees, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

**Linda M. Springer,**

*Director.*

■ For the reasons stated in the Preamble, OPM is adding part 894 to title 5, Code of Federal Regulations, as follows:

### PART 894—FEDERAL EMPLOYEES DENTAL AND VISION INSURANCE PROGRAM

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Authority: 5 U.S.C. 8962; 5 U.S.C. 8992.

#### Subpart A—Administration and General Provisions

##### § 894.101 Definitions

This part is written as if the reader were an applicant or enrollee. Accordingly, the terms “you,” “your,” etc., refer, as appropriate, to the applicant or enrollee.

*Acquiring an eligible child* means one of the following:

- (1) Birth of a child;
- (2) Adoption of a child;
- (3) Acquisition of a foster child as described in § 894.306;
- (4) Residence change of the enrollee's stepchild or recognized natural child who moves in with the enrollee;
- (5) Establishment of dependency of a recognized natural child as described in § 890.302(b) of this chapter; and

(6) An otherwise eligible child's loss of spouse due to divorce or annulment of marriage, or death.

*Administrator* means the entity with which the Office of Personnel Management contracts to manage the enrollment and premium payment process for the Federal Employees Dental and Vision Insurance Program (FEDVIP).

*Annuity* means an individual defined at 5 U.S.C. 8901(3). General, the term means a former employee who is entitled to an immediate annuity or a disability annuity under a retirement system established for employees. The term also generally includes those receiving a survivor annuity due to the death of a Federal employee or annuitant (survivor annuitants) and those receiving compensation from the Office of Workers' Compensation Programs (compensationers). The term does not include former employees who retire with a deferred annuity under 5 U.S.C. 8413, or former spouses of annuitants.

*Carrier* means a company with which the Office of Personnel Management contracts to provide dental and/or vision benefits.

*Child* means one of the following:

- (1)(i) A child born within marriage;
  - (ii) An adopted child;
  - (iii) A stepchild or foster child who lives with the enrollee in a regular parent-child relationship; or
  - (iv) A recognized natural child.
- (2) This definition does not include a grandchild (unless the grandchild meets all the requirements of a foster child as stated in § 894.306).

(3) The child must be unmarried and under age 22. A child age 22 or over is eligible if the child is incapable of self-support because of a physical or mental disability that existed before the child reached age 22.

*Compensation* has the same meaning as found under subchapter I of chapter 81 of title 5, United States Code, which is payable because of an on-the-job injury or disease.

*Compensationner* means an individual who is receiving compensation and who the Department of Labor determines is unable to return to duty.

*Covered position* means a position in which an employee is not excluded from FEDVIP eligibility by law or regulation.

*Days* means calendar days.

*Dependent* means an unmarried child who is living with or receiving regular and substantial support from the enrollee.

*Employee* means an individual defined in 5 U.S.C. 8901. For the purposes of this subpart, the term

employee additionally means an employee of the United States Postal Service and an employee of the District of Columbia courts.

*Enrollment reconsideration* means the carriers' administrative review of its initial enrollment decision to determine if it followed the law and regulations correctly in making the initial decision concerning FEDVIP eligibility.

*Family member* means a spouse (including a spouse under a valid common law marriage) and/or unmarried dependent child(ren).

*OPM* means the Office of Personnel Management.

*OWCP* means the Office of Workers' Compensation Programs, U.S. Department of Labor.

*Premium conversion* means the payment of FEDVIP premiums using pre-tax dollars. See § 892.102 of this chapter for a discussion of how premium conversion works.

*QLE* means a qualifying life event.

*Recognized natural child* means a biological child born outside of marriage. A recognized natural child is an eligible family member if the child lives with the enrollee or receives financial support from the enrollee.

*Regular parent-child relationship* means that the enrollee is exercising parental authority, responsibility, and control over the child; is caring for, supporting the child; and is making the decisions about the child's education and medical care.

*Type of enrollment* means one of the following:

- (1) Self only;
- (2) Self plus one; or
- (3) Self and family.

##### § 894.102 If I have a pre-existing dental or vision condition, may I join FEDVIP?

Yes. Pre-existing conditions do not exclude you from coverage under FEDVIP. Carriers may not deny an individual the right to enroll solely because of a preexisting dental or vision condition.

##### § 894.103 How do I enroll?

You may enroll through an Administrator contracted by OPM to facilitate the enrollment process. Your Federal agency, retirement system, or OWCP office will advise you of the enrollment process available to you.

##### § 894.104 Who makes enrollment decisions and reconsiderations?

The carriers' make enrollment decisions and the carriers review requests for reconsideration of an enrollment decision. The carrier's initial enrollment decision denying enrollment or an opportunity to change coverage

must be in writing and must inform you about your right to reconsideration.

**§ 894.105 Who may correct an error in my enrollment?**

(a) The Administrator may correct administrative errors about the processing of your enrollment or changes in enrollment.

(b) OPM may order correction of an administrative error if it receives evidence that it would be against equity (fairness) and good conscience not to order the correction. This decision is made at the discretion of OPM and is not subject to review.

(c) If the correction gives you retroactive coverage, you must pay the premiums for all periods of the retroactive coverage. These premiums will not be on a pre-tax basis (they are not subject to premium conversion).

**Subpart B—Coverage and Types of Enrollment**

**§ 894.201 What types of enrollments are available under FEDVIP?**

FEDVIP has three types of enrollment:

(a) Self only, which covers only the enrolled employee or annuitant;

(b) Self plus one, which covers the enrolled employee or annuitant plus one eligible family member; and

(c) Self and family, which covers the enrolled employee or annuitant and all eligible family members.

**§ 894.202 If I enroll for self plus one, may I decide which family member to cover?**

Yes, if you enroll for self plus one, you must state at the time you enroll which eligible family member you want to cover under your enrollment.

**§ 894.203 If I have a self plus one enrollment, when may I change which family member I want to cover or change to self only?**

You may change your covered family member under a self plus one enrollment or change to self only coverage in the following situations:

(a) During the annual open season;

(b) If your covered family member dies during the year; or

(c) If your covered family member loses eligibility during the year.

**§ 894.204 May I be enrolled in more than one dental or vision plan at a time?**

You may be enrolled in a FEDVIP dental plan and a separate FEDVIP vision plan at the same time. But no one may enroll or be covered as a family member in a FEDVIP dental or vision plan if he or she is covered under another person's FEDVIP dental or vision self plus one or self and family enrollment, except as provided under § 890.302 (a)(2) through (4) of this

chapter, with respect to dual enrollments.

**Subpart C—Eligibility**

**§ 894.301 Am I eligible to enroll in the FEDVIP?**

You are eligible if you meet the definition of *employee* in 5 U.S.C. 8901(1), unless you are in an excluded position. You are eligible if you are an employee of the United States Postal Service or the District of Columbia courts.

**§ 894.302 What is an excluded position?**

Excluded positions are described in 5 U.S.C. 8901(1)(i) and 5 CFR 890.102(c), except that employees of the United States Postal Service and District of Columbia courts are not excluded positions.

You are in an excluded position if you are:

(a) An employee of a corporation supervised by the Farm Credit Administration, if private interests elect or appoint a member of the board of directors.

(b) An employee who is not a citizen or national of the United States and your permanent duty station is outside the United States. *Exception:* You are eligible if you met the definition of employee on September 30, 1979, by service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area that was then known as the Canal Zone.

(c) An employee of the Tennessee Valley Authority.

(d) An individual first employed by the Government of the District of Columbia on or after October 1, 1987, except employees of the District of Columbia Courts and those employees defined at § 890.102(c)(8) of this chapter.

(e) Serving under an appointment limited to 1 year or less. *Exceptions:* You are eligible if:

(1) You are an acting postmaster;

(2) You are a Presidential appointee appointed to fill an unexpired term;

(3) You are an employee with a provisional appointment, as defined in § 316.401 and § 316.403 of this chapter; or

(4) You have completed 1 year of current continuous employment, excluding any break in service of 5 days or less.

(f) You are expected to work fewer than 6 months in each year. *Exception:* You are eligible if you are employed under an OPM-approved career-related work-study program under Schedule B. To qualify, your work-study program must last at least 1 year, and you must

be expected to be in pay status for at least one-third of the total period of time from the date of your first appointment to the date you complete the work-study program.

(g) An intermittent employee (a non-full-time employee without a prearranged regular tour of duty).

(h) A beneficiary or patient employee in a Government hospital or home.

(i) Paid on a contract or fee basis. *Exception:* You are eligible if you are a United States citizen, and you are appointed by a contract between you and the Federal employing authority. To qualify, your contract must require your personal service, and you must be paid on the basis of units of time.

(j) Paid on a piecework basis.

*Exception:* You are eligible if your work schedule provides for full-time or part-time service, and you have a regularly scheduled tour of duty.

(k) The following positions are not excluded positions:

(1) An employee appointed to perform "part-time career employment," as defined in section 3401(2) of title 5, U.S.C., and 5 CFR part 430, subpart B; or

(2) An employee serving under an interim appointment established under § 772.102 of this chapter.

**§ 894.303 What happens to my enrollment if I transfer to an excluded position?**

(a) If you have FEDVIP coverage and you transfer to a position excluded under § 894.302(a) through (d), your enrollment stops.

(b) If you have FEDVIP coverage and you transfer to a position excluded under § 894.302(e) through (j) with no break in service of more than 3 days, your enrollment is not affected. If you have a break in service of more than 3 days, your enrollment stops.

(c) If you did not elect to enroll in FEDVIP and then transfer to an excluded position, you lose all rights to enroll at that time.

**§ 894.304 Am I eligible to enroll if I'm retired or receiving workers' compensation?**

If you are retired, receiving workers' compensation, or are a survivor annuitant, you are eligible if you meet the definition of annuitant in 5 U.S.C. 8901(3).

**§ 894.305 Am I eligible to enroll if I am a former spouse receiving an apportionment of annuity?**

No. Former spouses receiving an apportionment of annuity are not eligible to enroll in FEDVIP.

**§ 894.306 Are foster children eligible as family members?**

Yes, foster children may be eligible for coverage as family members under FEDVIP.

**§ 894.307 Are disabled children age 22 or over eligible as family members?**

A child age 22 or over is an eligible family member if the child is incapable of self-support because of a physical or mental disability that existed before the child reached age 22.

**Subpart D—Cost of Coverage****§ 894.401 How do I pay premiums?**

(a) Employees pay premiums through payroll allotments.

(b) Annuitants and survivor annuitants pay premiums through annuity allotments.

(c) Compensationers pay premiums through allotments from compensation payments.

(d) In limited circumstances, individuals may make direct premium payments. See § 894.405.

**§ 894.402 Do the premiums I pay reflect the cost of providing benefits?**

The premiums you pay shall reasonably and equitably reflect the cost of the benefits provided.

**§ 894.403 Are FEDVIP premiums paid on a pre-tax basis?**

(a) Your FEDVIP premiums are paid on a pre-tax basis (called premium conversion) if you are an active employee, your salary is sufficient to make the premium allotments, and your agency is able to make pre-tax allotments.

(b) Your FEDVIP premiums are not paid on a pre-tax basis if:

(1) You are an employee in nonpay status or an employee whose salary is not high enough to make premium allotments, or your agency is unable to make pre-tax allotments;

(2) You are an annuitant, a survivor annuitant, or a compensationer;

(3) Your enrollment change was made effective retroactively which resulted in additional premium withholdings, unless it is as a result of birth or adoption of a child.

(4) You have been approved to pay premiums directly to the Administrator.

**§ 894.404 May I opt out of premium conversion?**

No, all enrolled employees whose salary is sufficient to make premium allotments and whose agency is able to make pre-tax allotments must participate in premium conversion.

**§ 894.405 What happens if I go into nonpay status or if my pay/annuity is insufficient to cover the allotments?**

(a) If your pay, annuity, or compensation is too low to cover the premium allotments, or if you go into a nonpay status, contact the Administrator to arrange to pay your premiums directly to the Administrator.

(b) If you do not make the premium payments, your FEDVIP coverage will stop. You will not be able to reenroll until the next open season after:

(1) You are in pay status; or

(2) Your pay is sufficient to make the premium allotments.

**Subpart E—Enrollment and Changing Enrollment****§ 894.501 When may I enroll?**

You may enroll:

(a) During the annual open season;

(b) Within 60 days after you first become eligible as:

(1) A new employee;

(2) A previously ineligible employee who transfers to a covered position; or

(3) A new survivor annuitant, if not already covered under FEDVIP.

(c) Within 60 days of when you return to service following a break in service of at least 30 days; or

(d) Within 60 days of a QLE that allows you to enroll.

**§ 894.502 What are the Qualifying Life Events (QLEs) that allow me to enroll?**

(a) You or an eligible family member lose other dental/vision coverage;

(b) Your annuity or compensation is restored after having been terminated; or

(c) You return to pay status after being on leave without pay due to deployment to active military duty.

**§ 894.503 Are belated enrollments or changes allowed?**

(a) The time limit for enrolling or changing your enrollment may be extended up to 3 months after the date you became newly eligible or had a QLE or after the end of an open season. To qualify, you must demonstrate to the carrier that you were not able to enroll or change your enrollment on time for reasons beyond your control.

(b) If the carrier allows you to make a belated enrollment or enrollment change, you must enroll or change within 30 days after the carrier notifies you of its determination.

**§ 894.504 When is my enrollment effective?**

(a) Open season enrollments are effective on the date set by OPM.

(b) If you enroll when you first become eligible your enrollment is effective the 1st day of the pay period

following the one in which the Administrator receives your enrollment, but no earlier than December 31, 2006.

(c)(1) A belated open season enrollment is effective retroactive to the date it would have been effective if you had made a timely enrollment or request for a change.

(2) Any other belated enrollment or change is effective retroactive to the 1st day of the pay period following the one in which you became newly eligible or the date of your QLE.

(3) You are responsible for any retroactive premiums due to a belated enrollment or request for a change.

**§ 894.505 Are retroactive premiums paid with pre-tax dollars (premium conversion)?**

Retroactive premiums are not paid under premium conversion, except when you are changing your enrollment retroactively as a result of birth or adoption of a child. Any additional withholdings for retroactive premiums that are due must be made with after-tax dollars. The Administrator will bill you directly for any retroactive premiums that must be paid with after-tax dollars.

**§ 894.506 How often will there be open seasons?**

There will be an annual open season for FEDVIP at the same time as the annual FEHB Program open season.

**§ 894.507 After I'm enrolled, may I change from one dental or vision plan or plan option to another?**

(a) You may change from one dental and/or vision plan or one plan option to another option in that same plan during the annual open season.

(b)(1) If you are enrolled in a dental or vision plan with a geographically restricted service area, and you or a covered eligible family member move out of the service area, you may change to a different dental or vision plan that serves that area.

(2) You may make this change at any time before or after the move, once you or a covered eligible family member has a new address.

(3) The enrollment change is effective the first day of the pay period following the pay period in which you make the change.

(4) You may not change your type of enrollment unless you also have a QLE that allows you to change your type of enrollment.

**§ 894.508 When may I increase my type of enrollment?**

(a) You may increase your type of enrollment

(1) During the annual open season; or

(2) If you have a QLE that is consistent with increasing your type of enrollment.

(b) Increasing your type of enrollment means going from:

- (1) Self only to self plus one;
- (2) Self only to self and family; or
- (3) Self plus one to self and family.

(c) You may increase your type of enrollment during the time period beginning 31 days before the QLE and ending 60 days after the QLE.

(d) Your new type of enrollment is effective the 1st day of the pay period following the pay period in which you make the change.

(e) You may not change from one dental or vision plan to another, except as stated in § 894.508(b).

**§ 894.509 What are the QLEs that are consistent with increasing my type of enrollment?**

- (a) Marriage;
- (b) Acquiring an eligible child; or
- (c) Loss of other dental or vision coverage by an eligible family member.

**§ 894.510 When may I decrease my type of enrollment?**

- (a) You may decrease your type of enrollment
  - (1) During the annual open season; or
  - (2) If you have a QLE that is consistent with decreasing your type of enrollment.

(b) Decreasing your type of enrollment means going from:

- (1) Self and family to self plus one;
- (2) Self and family to self only; or
- (3) Self plus one to self only.

(c) You may decrease your type of enrollment during the time period beginning 31 days before your QLE and ending 60 days after your QLE.

(d) Your new type of enrollment is effective the 1st day of the pay period following the one in which you make the change.

(e) You may not change from one dental or vision plan or option to another, except as stated in § 894.508(b).

**§ 894.511 What are the QLEs that are consistent with decreasing my type of enrollment?**

(a) Loss of an eligible family member due to:

- (1) Divorce;
- (2) Death; or
- (3) Loss of eligibility of a previously enrolled child.

(b) Your spouse deploys to active military duty.

**§ 894.512 What happens if I leave Federal Government and then return?**

(a) Your FEDVIP coverage terminates at the end of the pay period in which you separate from government service. *Exception:* If you separate for retirement or while in receipt of workers' compensation as defined in § 894.701, your FEDVIP coverage continues.

(b)(1) If you return to Federal service after a break in service of fewer than 30 days, and you were not previously enrolled in FEDVIP, you may not enroll until the next open season or unless you have a QLE that allows you to enroll.

(2) If you return to Federal service after a break in service of fewer than 30 days, and you were previously enrolled in FEDVIP, you may reenroll in the same plan(s) and plan option and with the same type of enrollment you had before you separated. *Exceptions:*

(i) If you were enrolled in a dental or vision plan with a restricted geographic service area, and you have since moved out of the plan's service area, you may change to a different dental or vision plan that serves that area.

(ii) If you have since gained or lost an eligible family member, you may change your type of enrollment consistent with the change in the number of eligible family members.

(3) If you return to Federal service as a new hire after a break in service of 30 days or more, you may enroll if you were not previously enrolled, change your dental or vision plan, and/or change your type of enrollment.

**Subpart F—Termination or Cancellation of Coverage**

**§ 894.601 When does my FEDVIP coverage stop?**

(a) If you no longer meet the definition of an eligible employee or annuitant, your FEDVIP coverage stops at the end of the pay period in which you were last eligible.

(b) If you go into a period of nonpay or insufficient pay, and you do not make direct premium payments, your FEDVIP coverage stops at the end of the pay period for which your agency, retirement system, or OWCP last made a premium allotment from your pay.

(c) If you are making direct premium payments, and you stop making the payments, your FEDVIP coverage stops at the end of the pay period for which you last made a payment.

(d) If you cancel your enrollment during an open season, your FEDVIP coverage stops at midnight of the day before the effective date of an open season change as set by OPM.

(e) If you are enrolled with a combination dental and vision carrier with a restricted service area, and you move outside the carrier's service area to a service area that does not offer a combination carrier and you change to a dental only or vision only carrier, your existing combination plan coverage will stop at midnight of the day before the effective date of your new plan coverage.

(f) If your FEDVIP carrier discontinues participation in the program at the end of the contract year, then you must change to another carrier during the open season, unless OPM establishes a different time. If the discontinuance is at a time other than the end of the contract year, OPM will establish a time and effective date for you to change your carrier. If you do not change your carrier within the time set by OPM, your coverage will stop at midnight of the day before the effective date set by OPM for coverage with another carrier.

**§ 894.602 May I cancel my enrollment at any time?**

No. You may only cancel your enrollment during an open season. *Exceptions:* You may cancel your dental and/or vision enrollment if you transfer to an eligible position with a Federal agency that provides dental and/or vision coverage with 50 percent or more employer-paid premiums. You may also cancel upon deployment to active military duty. These cancellations will become effective at the end of the pay period that you submit your request.

**§ 894.603 Is there an extension of coverage and right to convert when my coverage stops or when a covered family member loses eligibility?**

No. There is no extension of coverage or right to convert to an individual policy or Temporary Continuation of Coverage (TCC) when your FEDVIP coverage stops or when a family member loses eligibility under the Program.

**Subpart G—Annuitants and Compensationers**

**§ 894.701 May I keep my dental and/or vision coverage when I retire or start receiving workers' compensation?**

(a) Your FEDVIP coverage continues if you retire on an immediate annuity or on a disability annuity, or start receiving compensation from OWCP.

(b) If you retire on a Minimum Retirement Age +10 annuity that you elect to postpone in accordance with 5 U.S.C. 8412(g), your FEDVIP coverage will stop when you separate from service. However, you may enroll again within 60 days of when your annuity starts.

(c) If you retire on a deferred annuity in accordance with 5 U.S.C. 8413, your FEDVIP coverage stops and you are not eligible to enroll.

**§ 894.702 May I participate in open season and make changes to my enrollment as an annuitant or compensationer?**

Yes. Annuitants and compensationers may participate in open season and

make enrollment changes under the same circumstances as active employees.

**§ 894.703 How long does my coverage as an annuitant or compensation last?**

Your coverage as an annuitant or compensation continues as long as you continue receiving an annuity or compensation and pay your premiums, unless you cancel your coverage during an open season or terminate coverage due to insufficient annuity or compensation.

**§ 894.704 What happens if I retire and then come back to work for the Federal Government?**

(a) If you have FEDVIP coverage as an annuitant, and you become reemployed in an eligible position in Federal service, you must contact the Administrator so it can send the request for allotments to your agency so your agency can start making the allotments from your pay.

(b) If you did not enroll in FEDVIP coverage as an annuitant and become reemployed in an eligible Federal position, you have 60 days to enroll in FEDVIP.

(c) If you enroll as an employee the Administrator will stop sending requests for allotments from your annuity.

**Subpart H—Benefits in Underserved Areas**

**§ 894.801 Will benefits be available in underserved areas?**

(a) Dental and vision plans under FEDVIP will include underserved areas in their service areas and provide benefits to enrollees in underserved areas.

(b) In any area where a FEDVIP dental or vision plan does not meet OPM access standards, including underserved areas, enrollees may receive services from non-network providers.

(c) Contracts under FEDVIP shall include access standards as defined by OPM and payment levels for services to non-network providers in areas that do not meet access standards.

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**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 711**

**Management Official Interlocks Threshold Change**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** The NCUA is amending its management interlocks rule to conform it to a change the Financial Services Regulatory Relief Act of 2006 (FSRAA) made in the dollar threshold that triggers the prohibition on management officials serving at unaffiliated depository organizations. This final rule changes the threshold from \$20 million to \$50 million.

**DATES:** This rule is effective as of October 15, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Annette Tapia, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Depository Institution Management Interlocks Act (Interlocks Act) prohibits individuals from simultaneously serving as a management official at two unaffiliated depository institutions or their holding companies (collectively, depository organizations) under certain circumstances. 12 U.S.C. 3201 *et seq.* Section 203(1) of the Interlocks Act prohibits interlocks between unaffiliated depository organizations if each depository organization or its affiliate has an office in the same relevant metropolitan statistical area (RMSA prohibition), unless each of the depository organizations or affiliates involved has total assets below a specified threshold. Before enactment of FSRRA, this asset threshold was \$20 million; however, section 610 of FSRRA amended the Interlocks Act by raising this asset threshold to \$50 million, effective October 13, 2006.

This final rule tracks changes the other federal financial institution regulators have made in their management interlocks rules. 72 FR 38753 (July 16, 2007).

**B. Regulatory Changes**

NCUA is amending § 711.3(b) to implement section 610 of FSRRA. Specifically, the final rule modifies the RMSA prohibition to allow a management official of one depository organization to serve as a management official of an unaffiliated depository organization that has an office in the same RMSA as the first organization if each of the depository organizations or affiliates involved has total assets of less than \$50 million.

**C. Regulatory Procedures**

*Final Rule Under the Administrative Procedure Act*

Generally, the Administrative Procedure Act (APA) requires a federal agency to provide the public with notice and the opportunity to comment on agency rulemakings. The amendment in this rule is not substantive but technical in that it merely incorporates into NCUA's regulations a statutory increase in the threshold. The APA permits an agency to forego the notice and comment period under certain circumstances, such as when a rulemaking is technical and not substantive. For these reasons, NCUA finds good cause that notice and public comment are unnecessary under Section 553(b)(3)(B) of the APA, 5 U.S.C. 553(b)(3)(B), and also finds good cause to dispense with the 30-day delayed effective date requirement under Section 553(d)(3) of the APA. 5 U.S.C. 553(d)(3). The rule will, therefore, be effective upon publication.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (those credit unions under ten million dollars in assets). This rule changes NCUA's regulation to conform to a statutory change. This rule will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

*Paperwork Reduction Act*

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

*Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism