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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AG31

Federal Employees Health Benefits Program: Limitation on Physician Charges and FEHB Program Payments

AGENCY: Office of Personnel
Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is making final its interim regulation that amends current Federal Employees Health Benefits (FEHB) Program regulations. The final regulation requires that the charges and FEHB fee-for-service plans' benefit payments for certain physician services furnished to retired enrolled individuals do not exceed the limits on charges and payments established under the Medicare fee schedule for physician services.

EFFECTIVE DATE: This final regulation is effective October 28, 1996.

FOR FURTHER INFORMATION CONTACT: Robert G. Iadicicco (202) 606-0004.

SUPPLEMENTARY INFORMATION: On May 18, 1995, OPM issued interim regulations in the Federal Register [60 FR 26667] that amended part 890 to implement section 11003 of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Public Law 103-66, which was enacted on August 10, 1993. Section 11003 of OBRA of 1993 amended the FEHB law at 5 U.S.C. 8904(b) to limit the charges and FEHB fee-for-service plans' benefit payments for certain physician services (as defined in section 1848(j) of the Social Security Act) received by retired enrolled individuals.

We received three written comments from two FEHB fee-for-service plans and one retiree organization. One FEHB plan

wrote that the interim regulation, though generally comprehensive, did not address coverage situations in which the FEHB plan is secondary to another group health plan. Since the limits on physician charges apply only to FEHB plans, if retired enrolled individuals have primary coverage under another group health plan, the primary plan cannot limit physician charges to the applicable Medicare limits.

The plan stated that it has determined the plan's secondary benefit payment under its coordination of benefits provision will not exceed the Medicare limits on virtually all claims arising under this coverage situation. Consequently, the plan believed that it will achieve time and administrative expense savings, and avoid customer service disputes, if the Medicare limits are not applied to these claims.

OBRA of 1993 was a deficit reduction measure, and the overriding goal of its FEHB provision was to reduce the Program's costs. When FEHB plans are secondary payers, it costs them more to apply the Medicare limits than they save by applying the limits. We do not believe this is the result intended by the law. Therefore, FEHB plans are not required to apply the Medicare limits when paying the claims of retired enrolled individuals who have primary coverage under another group health plan. The plans must pay these claims under their coordination of benefits provision.

Another FEHB plan noted that section 890.808 of the interim regulation states that plans, under the oversight of OPM, will notify the Department of Health and Human Services (HHS) of health care providers who knowingly, willfully, and repeatedly violate the Medicare limits. The plan requested that OPM provide the mailing address of a contact at HHS to forward member complaints about providers who violate the Medicare limits.

We agree that it is important to have a contact at HHS to whom FEHB plans can report providers who are violating the Medicare limits. We are working with HHS to select an appropriate contact. Once an HHS contact is selected, we will notify the FEHB plans.

The retiree organization noted that the FEHB plans are crucial to the success of the enforcement of the Medicare limits. The commenter expressed concern that

the plans do not have an adequate incentive to vigorously pursue providers who overcharge retirees. In fact, the plans have a powerful incentive to enforce the charge limits. If a plan fails to protect its members from overcharges, the members will soon consider choosing another plan that will protect them.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect the health care coverage of Federal annuitants, their spouses, and former spouses.

E.O. 12866, Regulatory Review

This rule has been reviewed by OMB in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management

James B. King,

Director.

Accordingly, under the authority of 5 U.S.C. 8913, OPM is adopting its interim regulation under 5 CFR part 890 as published on May 18, 1995, [60 FR 26667], as a final rule without change.

[FR Doc. 96-24831 Filed 9-26-96; 8:45 am]

BILLING CODE 6325-01-U

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209-AA04

Standards of Ethical Conduct for Employees of the Executive Branch; Exception for Gifts From a Political Organization

AGENCY: Office of Government Ethics (OGE).

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Government Ethics is amending the Standards of Ethical Conduct for Employees of the Executive Branch to conform with the Hatch Act Reform Amendments of 1993.

These amendments will thus bring the concerned provisions of the Standards up-to-date.

DATES: These interim rule amendments are effective September 27, 1996. Comments are invited and must be received on or before November 26, 1996.

ADDRESSES: Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: Stuart D. Rick.

FOR FURTHER INFORMATION CONTACT: Stuart D. Rick, Associate General Counsel, Office of Government Ethics; telephone: 202-208-8000; FAX: 202-208-8037; Internet E-mail address: oge@attmail.com (for E-mail messages, the subject line should include the following reference—Standards Exception/Political Organization Gifts).

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards) for codification at 5 CFR part 2635. See 57 FR 35006-35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, with additional grace period extensions for certain existing provisions at 59 FR 4779-4780, 60 FR 6390-6391, and 60 FR 66857-66858. The Standards, which took effect on February 3, 1993, set uniform ethical conduct standards applicable to all executive branch personnel.

Subpart B of the Standards, which contains regulations implementing the gift restrictions contained in 5 U.S.C. 7353 and section 101(d) of Executive Order 12674, as modified by E.O. 12731, includes an exception for benefits provided by certain sources in connection with political activities permitted by the Hatch Act. Subpart H of the Standards, which contains regulations relating to the outside activities of employees, includes a note explaining that fundraising permitted by the Hatch Act is not prohibited by the Standards, and includes a reference to the Hatch Act in a list of statutes and regulations applicable to outside activities.

The Hatch Act, at 5 U.S.C. 7321 *et seq.*, for many years governed the political activities of executive branch employees. Until recently, the Hatch Act provided that the only executive branch employees who were permitted to take an active part in political management or political campaigns were: an employee paid from the appropriation for the office of the

President; the head or the assistant head of an Executive department or military department; and an employee appointed by the President, by and with the advice and consent of the Senate, who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws. Those exceptions to the Hatch Act's coverage were codified at 5 U.S.C. 7324(d).

Under the Hatch Act Reform Amendments of 1993, Public Law 103-94, all executive branch employees, with the exception of employees in certain agencies and positions listed at 5 U.S.C. 7323(b) and members of the uniformed services, may take an active part in political management or political campaigns. However, no employee may knowingly solicit, accept, or receive a political contribution from any person except under limited circumstances. 5 U.S.C. 7323(a)(2). The Hatch Act Reform Amendments of 1993 went into effect on February 3, 1994. See also the regulations thereunder of the Office of Personnel Management, at 5 CFR 734.401 (as modified at 61 FR 35101) for a list of the agencies and positions in which employees are still subject to political activity restrictions.

II. Analysis of the Regulations

The following sections of 5 CFR part 2635 are being amended to conform with the Hatch Act Reform Amendments of 1993. The Office of Government Ethics has consulted with the Department of Justice and the Office of Personnel Management on these interim rule amendments.

Section 2635.204(f)

Section 2635.204 of the Standards sets forth exceptions to the gift prohibition in § 2635.202(a), which provides that, in the absence of an exception, an employee shall not directly or indirectly solicit or accept a gift from a "prohibited source," as that term is defined at 5 CFR 2635.203(d), or a gift that is "[g]iven because of the employee's official position," as that term is defined at 5 CFR 2635.203(e).

One of several exceptions set forth in § 2635.204 is the exception at § 2635.204(f), by which "[a]n employee who is exempt under 5 U.S.C. 7324(d) from the Hatch Act prohibitions against active participation in political management or political campaigns may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e)." In order to reflect the redefined class of

executive branch employees who, pursuant to the Hatch Act Reform Amendments of 1993, may take an active part in political management or political campaigns, and to permit those employees to accept from a political organization meals, lodgings, transportation and other benefits, including free attendance at events, when provided in connection with their active participation in political management or political campaigns, the reference in § 2635.204(f) to prior 5 U.S.C. 7324(d), now superseded, is being replaced with a reference to current 5 U.S.C. 7323 as revised. In addition, the exception and the example following it are being reworded to reflect the thrust of the Hatch Act, as amended, to permit political activities rather than prohibit them.

Section 2635.801(d)(7)

Section 2635.801(d) of the Standards lists the Hatch Act among other statutes and regulations applicable to employees' outside employment or other outside activities. The brief reference to the Hatch Act in this section, at 5 CFR 2635.801(d)(7), is being replaced with a reference to the Hatch Act Reform Amendments.

Section 2635.808(a)(2)

Section 2635.808 of the Standards describes the circumstances under which an employee may engage in fundraising. For purposes of § 2635.808, "fundraising" means "the raising of funds for a nonprofit organization, other than a political organization as defined in 26 U.S.C. 527(e) * * *." 5 CFR 2635.808(a)(1). Accordingly, a note following § 2635.808(a)(2) explains that § 2635.808 does not prohibit fundraising for political parties, but that such fundraising may be prohibited by other authorities, including the Hatch Act for employees "other than those exempt under 5 U.S.C. 7324(d)," and the restrictions on political solicitations in title 18 of the U.S. Code.

The note is being reworded to refer employees to the restrictions in the Hatch Act Reform Amendments, at 5 U.S.C. 7323(a)(2), on the solicitation, acceptance, or receipt of political contributions. In addition, the note is being reworded for clarity and to reflect changes made by the Hatch Act Reform Amendments to the restrictions on political solicitations in title 18 of the U.S. Code.

III. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), as Director of the Office of Government

Ethics, I have found that good cause exists for waiving the general requirements of notice of proposed rulemaking and 30-day delayed effective date for these interim rule Standards amendments. These requirements are being waived because it is in the public interest that these interim rule amendments, reflecting the broader class of executive branch employees who can engage in certain permitted political activities under the Hatch Act Reform Amendments be effective as soon as possible. Any comments received will be considered before OGE eventually adopts this interim final provision in a final rule.

Executive Order 12866

In promulgating these interim rule amendments, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Review and Planning. These amendments have also been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this amendatory rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these amendments do not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2635

Conflict of interests, Executive branch standards of conduct, Government employees, Political activities (Government employees).

Approved: July 26, 1996.
Stephen D. Potts,
Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2635 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2635—[AMENDED]

1. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart B—Gifts From Outside Sources

2. Section 2635.204 is amended by revising paragraph (f) and the example following it, to read as follows:

§ 2635.204 Exceptions.

* * * * *

(f) *Gifts in connection with political activities permitted by the Hatch Act Reform Amendments.* An employee who, in accordance with the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323, may take an active part in political management or in political campaigns, may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e). Any other employee, such as a security officer, whose official duties require him to accompany an employee to a political event may accept meals, free attendance and entertainment provided at the event by such an organization.

Example 1: The Secretary of the Department of Health and Human Services may accept an airline ticket and hotel accommodations furnished by the campaign committee of a candidate for the United States Senate in order to give a speech in support of the candidate.

* * * * *

Subpart H—Outside Activities

3. Section 2635.801 is amended by revising paragraph (d)(7) to read as follows:

§ 2635.801 Overview.

* * * * *

(d) * * *
(7) The Hatch Act Reform Amendments, 5 U.S.C. 7321 through 7326, which govern the political activities of executive branch employees;

* * * * *

4. Section 2635.808 is amended by revising the note following paragraph (a)(2) to read as follows:

§ 2635.808 Fundraising activities.

* * * * *

(a) * * *
(2) * * *

Note: This section does not prohibit fundraising for a political party, candidate for

partisan political office, or partisan political group. However, there are statutory restrictions that apply to statutory fundraising. For example, under the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323(a), employees may not knowingly solicit, accept, or receive a political contribution from any person, except under limited circumstances. In addition, employees are prohibited by 18 U.S.C. 607 from soliciting or receiving political contributions in Federal offices, and, except as permitted by the Hatch Act Reform Amendments, are prohibited by 18 U.S.C. 602 from knowingly soliciting political contributions from other employees.

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[FR Doc. 96-24581 Filed 9-26-96; 8:45 am]

BILLING CODE 6345-01-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV96-905-1 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule establishing an assessment rate for the Citrus Administrative Committee (Committee) under Marketing Order No. 905 for the 1996-97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of citrus grown in Florida. Authorization to assess citrus handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276, telephone (941) 299-4770 and FAX (941) 299-5169, or Tershirra Yeager, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone (202) 720-8139, FAX (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division,