

apply to construction permits that are awarded on a non-comparative basis, such as those awarded to non-mutually exclusive applicants or through settlement.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

17. The authority citation for part 74 continues to read:

Authority: 47 U.S.C. 154, 303, 307, and 554.

18. Section 74.1233 is amended by adding paragraphs (b)(3) and (b)(4); revising paragraph (c)(1); removing paragraph (e)(4) and revising paragraphs (e)(3) introductory text, (e)(3), (i), (e)(3)(ii), and (e)(3)(iii) to read as follows:

§ 74.1233 Processing FM translator and booster station applications.

* * * * *

(b) * * *

(3) Applications for reserved band FM translator stations will be processed using filing window procedures. The FCC will specify by Public Notice, a period for filing reserved band FM translator applications for a new station or for major modifications in the facilities of an authorized station. FM translator applications for new facilities or for major modifications will be accepted only during these specified periods. Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely.

(4) Timely filed applications for new facilities or for major modifications for reserved band FM Translators will be processed pursuant to the procedures set forth in subpart K of Part 73 (§ 73.7000 *et seq.*) Subsequently, the FCC will release Public Notices identifying: mutually exclusive groups of applications; applications received during the window filing period which are found to be non-mutually exclusive; tentative selectees determined pursuant to the point system procedures set forth in § 73.7003 of this chapter; and acceptable applications. The Public Notices will also announce: additional procedures to be followed for certain groups of applications; deadlines for filing additional information; and dates by which petitions to deny must be filed in accordance with the provisions of § 73.7004 of this chapter. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting

of the application, it will be granted. If an application is found not to be acceptable for filing, the application will be returned, and subject to the amendment requirements of § 73.3522 of this chapter.

(c) * * *

(1) There is not pending a mutually exclusive application.

* * * * *

(e) * * *

(3) Where there are no available frequencies to substitute for a mutually exclusive application, the FCC will apply the same point system identified for full service reserved band FM stations in § 73.7003(b) of this chapter. In the event of a tie, the FCC will consider:

(i) Each applicant's number of existing FM translator authorizations (licenses and construction permits) of the same type (fill-in or non fill-in as defined in paragraphs (e)(1) and (e)(2) of this section) as of the time of application shall be compared, and the applicant with the fewest authorizations will be chosen as tentative selectee;

(ii) If a tie remains, after the tie breaker in paragraph (c)(3)(i) of this section, the remaining applicant with the fewest pending new and major change applications for FM translators of the same type (fill-in or non fill-in) will be chosen as tentative selectee;

(iii) Where the procedures in paragraphs (e)(1), (e)(2) and (e)(3)(i) and (e)(3)(ii) of this section fail to resolve the mutual exclusivity, the applications will be processed on a first-come-first-served basis.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

Cable Television Consumer Protection and Competition Act of 1992; Horizontal Ownership Limits

AGENCY: Federal Communications Commission.

ACTION: Final rule; lifting of stay.

SUMMARY: This document announces that the Commission's voluntarily-imposed stay of the cable horizontal ownership rules was lifted on May 19, 2000 and that the cable horizontal ownership rules became effective on May 19, 2000.

DATES: The stay of 47 CFR 76.503(a) through (f) was lifted May 19, 2000. Parties not in compliance with the horizontal ownership rules on this date

must come into compliance on or before November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Darryl Cooper at (202) 418-7200 or via Internet at dacooper@fcc.gov.

SUPPLEMENTARY INFORMATION:

Synopsis of Action

1. On its own motion, the Commission reconsidered the conditions under which it would lift the voluntarily-imposed stay of the horizontal ownership rules, 47 CFR 76.503. These rules were adopted and stayed in part on October 8, 1999 at 64 FR 67198 (Dec 1, 1999).

2. Subsequently, the Commission ordered that its horizontal ownership rules be stayed until the U.S. Court of Appeals for the D.C Circuit issued a decision upholding the constitutionality of section 613(f)(1)(A) of the Communications Act of 1934, as amended, 47 U.S.C. 533(f)(1)(A). The Commission also ordered that parties not in compliance with the rules on the date the U.S. Court of Appeals for the D.C. Circuit issued such decision must come into compliance within 180 days of the court decision. This order was published in the **Federal Register** (65 FR 12135, March 8, 2000).

3. On May 19, 2000, the U.S. Court of Appeals for the D.C. Circuit issued its decision, upholding the constitutionality of section 613(f)(1)(A) of the Act, as amended 47 U.S.C. 533(f)(1)(A).

Federal Communications Commission.

William H. Johnson,

Deputy Bureau Chief, Cable Services Bureau.

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BILLING CODE 6712-01-U

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1604, 1615, 1632, and 1652

RIN 3206 AI67

Federal Employees Health Benefits (FEHB) Program and Department of Defense (DoD) Demonstration Project; and Other Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: OPM is issuing a final regulation to implement the portion of the Defense Authorization Act for 1999 that establishes authority for a demonstration project under which certain Medicare and other eligible DoD beneficiaries can enroll in health benefit

plans in certain geographic areas under the Federal Employees Health Benefits (FEHB) Program. The demonstration project will run for a period of three years from January 1, 2000, through December 31, 2002. This regulation specifies only the requirements that differ from existing FEHB Program regulations because of unique aspects of the demonstration project. This regulation also makes other miscellaneous changes to the Federal Employees Health Benefits Acquisition Regulations.

DATES: The effective date of this regulation is July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, Policy Analyst, Insurance Policy and Information Division, OPM, Room 3425, 1900 E Street, NW., Washington, DC 20415-0001. He can also be reached at (202) 606-0004 or by electronic mail (E-mail) at: mwkaszyn@opm.gov.

SUPPLEMENTARY INFORMATION: The purpose of this regulation is to implement the portion of the National Defense Authorization Act for 1999, Public Law 105-261, that amended chapter 55 of title 10, United States Code, and chapter 89 of title 5, United States Code, to establish a demonstration project under which certain Medicare and other eligible DoD beneficiaries can enroll in health benefit plans offered under the FEHB Program. The legislation was signed into law on October 17, 1998. The demonstration project will run for a period of three years from January 1, 2000, through December 31, 2002. DoD, with OPM concurrence, has selected eight geographic areas to serve as demonstration project areas. The legislation requires that between 6 and 10 geographic areas be selected. No more than 66,000 individuals can participate in the demonstration project at any one time. Beneficiaries who are provided coverage under the demonstration project will not be eligible to receive care at a military medical treatment facility or to enroll in a health care plan under DoD's TRICARE program. Individuals who disenroll or cancel enrollment from the demonstration project are not eligible to reenroll in the demonstration project. OPM will establish separate risk pools for developing demonstration project enrollee premium rates. The government contribution for demonstration enrollees will be paid by DoD and cannot exceed the maximum percentage or dollar amount that the government would have contributed had the enrollee been enrolled as a regular FEHB enrollee in the same

health benefits plan and at the same level of benefits.

The legislation requires OPM and DoD to jointly produce and submit two reports to Congress designed to assess the viability of expanding access to the FEHB Program to certain Medicare and other eligible DoD beneficiaries permanently. The first report is due by April 1, 2001; the second is due by December 31, 2002. The reports will focus on enrollee participation levels, impact on Medicare Part B enrollment, premium rates and costs as compared to those for regular FEHB enrollees, impact on accessibility of care in military treatment facilities, impact on medical readiness and training in military treatment facilities, impact on the cost, accessibility, and availability of prescription drugs for DoD beneficiaries, and recommendations on eligibility and enrollment.

OPM has determined it is necessary to specify certain differences from existing FEHB Program regulations because of the unique features of the demonstration project. This regulation amends chapter 16 of title 48, Code of Federal Regulations (CFR) to enumerate these differences.

When developing premium rates for demonstration project community-rated carriers, OPM will not use similarly sized subscriber group (SSSG) rating methodologies to determine the reasonableness of the carrier's demonstration project premium rates. We are not using SSSG's because we have learned from our consultations with community-rated carriers that there are no similar employer sponsored groups with which to compare. Instead we are benchmarking premiums against adjusted community rates if available, Medigap offerings, or other similar products to determine reasonableness. We believe that these data will result in competitively developed premium rates.

We have determined the most cost effective and administratively efficient way for the federal government to track expenditures is to allow experience-rated carriers participating in the demonstration project to draw funds from their existing FEHB Letter of Credit (LOC) account to pay demonstration project benefits costs in the same manner as they do for benefits costs incurred by regular FEHB members.

All carriers must account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project will be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated

to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the dollar amount of total claims processed for FEHB Program activity. This percentage will also be used to determine the amount of an experience-rated carrier's service charge that will be allocated to the demonstration project.

Because of the way premiums are collected from enrollees and annuitants and the way the government distributes them to carriers, there will be a period between the effective date of demonstration project enrollees' coverage and the first deposit of premium into experience-rated carriers' LOC accounts. DoD enrollments will become effective on January 1, 2000, and the first demonstration project premiums will be withheld from annuities on February 1, 2000. The enrollees' and government's share of the premiums are due to OPM from DoD on the first day of each month thereafter through the conclusion of the demonstration project. However, since enrollees will be entitled to coverage for at least a month before the first premium payment, there won't be an opportunity for carriers to build a sufficient cash flow to cover the costs of the demonstration project group during this period. We are addressing this problem by allowing experience-rated carriers to draw on their existing LOC accounts in the same manner as for regular FEHB claims.

Since this is a start-up program with no specific experience, we determined that experience-rated and community-rated carrier risk must be mitigated in order to keep premiums as low as possible. Carriers will report on demonstration project revenues, health benefits charges, and administrative expenses as directed by OPM. Experience-rated carriers will be required to perform a final reconciliation of revenue and costs for the demonstration group at the end of the demonstration project. If a community-rated carrier wants to make a claim on the Employees Health Benefits Fund, it will be required to perform annual reconciliations for the duration of the demonstration project. OPM will reimburse carrier costs in excess of the premiums first from the carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following

the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project. Should the program be extended beyond the three year demonstration project period, we will regulate to address any necessary changes to these provisions.

We also have made other miscellaneous changes to chapter 16 of title 48, CFR.

On July 6, 1999, OPM published an interim regulation in the **Federal Register** (64 FR 36271). OPM subsequently received comments from three organizations—one trade association representing FEHB fee-for-service/PPO plans, one fee-for-service/PPO health benefit carrier, and one employee union. One organization that commented on the proposed rule stated that OPM's proposed formula for allocating indirect administrative costs to the demonstration project is overly prescriptive and conflicts with Section 31.203 of the Federal Acquisition Regulations. The commenter indicates that the FAR allows contractors to allocate indirect administrative expenses using any sound method in accordance with generally accepted accounting principles. This entitles carriers to select among various methods of allocation. While it would seem reasonable to allow carriers to select among various methods for allocating administrative expenses to the demonstration project, OPM is required by the authorizing legislation, Public Law 105-261, to perform an analysis of the demonstration project's rates and costs. In order to perform this analysis, OPM must set a standard for comparison. Consequently, OPM is requiring that only one method be used to determine allocable indirect costs so that these costs can be credibly compared among carriers. We will continue to use claims as the basis for allocation of indirect administrative costs associated with the demonstration project.

One commenter believes that in order to fulfill its obligation to DoD retirees, the Department of Defense should pay DoD retirees' entire premium and reimburse them fully for any out-of-pocket charges they incur during the demonstration project. OPM and DoD do not have the legislative authority to fully pay the premiums and out-of-pocket costs for DoD beneficiaries and their family members. The National Defense Authorization Act for 1999 requires that the government contribution toward DoD beneficiaries be no more than the maximum the

government contributes toward the premiums of regular federal employees. The commenter also believes that sufficient utilization and claims experience exists on the DoD demonstration project group for OPM to set premium rates based on the experience of the group without having to base the rates on those of similarly sized subscriber groups. While utilization and claims data does exist on the demonstration project group, not all of the carriers in the FEHB Program are experience-rated, so not all of them rely solely on this information to set rates. A community-rated carrier under the regular FEHB Program is required to use the same rating methodology to develop its FEHB Program rates as it does for other groups of a similar size. The regulation eliminates the requirement that a carrier must use the same methodology as it uses for similar sized employers so that the carrier can develop its rates using Medigap or other Medicare supplemental rating methodologies.

One commenter questions how separate accounting for benefits and administrative costs will be accomplished and verified in the absence of requiring application of the government's Cost Accounting Standards. The commenter believes that to uphold the integrity of the FEHB Program and to gain a true assessment of the success or failure of the demonstration project, OPM should require the application of relevant Cost Accounting Standards to charges made by FEHB participating carriers. OPM cannot require carriers to account for operations using the Cost Accounting Standards because the National Defense Authorization Act, 2000 exempts FEHB carriers from the standards for fiscal year 2000.

The commenter believes that it is inappropriate to use regular FEHB reserves to pay any costs in excess of premiums for the DoD group since a portion of the funds that comprise the Administrative Reserve are deducted from regular FEHB enrollee premiums. The commenter asserts that regular FEHB enrollees should not subsidize the DoD group. The National Defense Authorization Act for 1999 authorizes OPM to use the Employees Health Benefits Fund, which includes the FEHB Administrative Reserve, to pay costs the office incurs for activities associated with implementing the demonstration project. OPM believes that availability of the Administrative Reserve to mitigate risk is essential to maintain reasonable premiums given the short duration of the demonstration project, and the potential that a carrier

could enroll a small number of enrollees. OPM believes that use of the Administrative Reserve is the most reliable and desirable manner in which to effectuate the intentions of Congress with regard to the demonstration project.

One commenter asserts that use of the Administrative Reserve to offset carrier losses, and requirements for carriers to pay surpluses to the Administrative Reserve, violates the FEHB Act and the demonstration project legislation. OPM believes that it has the legal authority to use the Administrative Reserve to mitigate carrier losses incurred as a result of the demonstration project. Therefore, OPM is retaining this aspect of the regulation in its final form.

The demonstration project constitutes a mandate to study the feasibility of providing coverage modeled after the FEHB Program to Medicare and other eligible military retirees and their families. This study will result in two reports to Congress that will influence the decision of Congress as to whether to expand the demonstration project to the entire population of eligible military retirees on a permanent basis.

The demonstration project is not a program of insurance in the same sense that the FEHB Program is a program of insurance. Although the carriers participating in the study are FEHB Program insurance carriers, and although the enrollees participating will be covered for their health insurance needs, the project is, in principle and in operation, a study rather than a continuing insurance program. Indeed, the statutory limitations imposed upon the project—limitations on number of enrollees and the duration of the project—are antithetical to a continuing program of insurance, but are appropriate to a study. OPM's mitigation of risk of losses during the study is analogous to self-insuring for purposes of mitigating risk, and allows the demonstration project to simulate normal conditions to overcome the artificial constraints of an uncertain number of enrollees and the short duration of the project.

OPM recognizes that the unknown participation rate and the short-term nature of the project generate an upward pressure on the premium rates for demonstration project enrollees. This is because in a typical, sustainable program of insurance, the risk pool is sufficiently large so that insurance risk is spread with some confidence across the pool while maintaining appropriate premium rates. In contrast, under the demonstration project, some plans may attract only a small number of beneficiaries, creating a small risk pool.

In addition, the indefinite duration of a typical, ongoing program allows a carrier to anticipate the experience of the risk pool and provides the opportunity to recoup unexpected losses over the long term by making appropriate adjustments to future premium rates based upon past experience with the insured group. However, where the period over which a carrier is expected to cover the risk pool is limited, there is a substantial likelihood that there will be insufficient opportunity to offset losses in subsequent years. Thus, OPM recognizes that the risk inherent in covering the demonstration project population requires mitigation if the project is to succeed.

FEHB Program carriers can expect to attract a small demonstration project enrollment, may not have reserves sufficient to cover claims in excess of premium income, and may have reinsurance arrangements that preclude the use of their FEHB Program reserves to pay demonstration project claims. Although other strategies for implementing the demonstration project are available, OPM has determined that the strategy set forth in these regulations is the most appropriate for all FEHB Program carriers.

We believe that the commenter has made a valid point with respect to the portion of the interim regulation that required carriers to return surplus premium to the Administrative Reserve upon completion of the demonstration project. OPM initially required the return of any surplus to the Administrative Reserve (1) as the corresponding alternative to the Administrative Reserve bearing the mitigation of loss; and (2) for equitable purposes, to enable all carriers in the FEHB Program to ultimately enjoy any gains as well as bear any losses. OPM reasoned that this alternative was preferable to allowing a windfall resulting from higher than required premiums to go to any one carrier. However, as an alternative approach, OPM agrees that it is appropriate to treat the surplus as any other surplus reserve that a carrier maintains upon termination of its participation in the FEHB Program. Therefore, OPM is changing the final regulation to require demonstration project surpluses to be distributed to the Contingency Reserves of all carriers continuing in the FEHB Program in the year after the demonstration project ends, in proportion to the subscription charges paid and accrued for the carrier for the last year of the demonstration project.

A commenter indicated its view that OPM failed to follow required notice

and comment procedures by failing to provide an opportunity for comment on the interim regulations. As we stated in the preamble to the interim regulations, carriers needed the information that was contained in the interim regulations in order to have sufficient time to develop reserve accounts and premiums for enrollments to be effective for contract year 2000. OPM has now followed all of the required procedures in adopting these final regulations. The final regulations are being issued after taking into consideration the carrier's comments together with other comments, in order for appropriate preparations to be made for contract year 2001. This commenter also indicated that because OPM does not advance any rationale for waiving notice and comment on 48 CFR 1652.216-71, Accounting and Allowable Cost, the rule making should be rendered invalid. OPM has simply rewritten this section of the FEHBAR in plain language, and has made no substantive changes to the regulation. The Administrative Procedures Act waives the advance notice and comment requirement when a change is not substantive. The commenter states that the date of the Audit Guide currently in effect is July 24, 1998, and that this date should be stated in the regulation. We did not list the specific date of the Audit Guide in the regulation because we want to be able to use the most recent version of the Audit Guide in effect at any given time. The commenter indicates that the regulation makes an erroneous statement that the Audit Guide should be used to resolve all audit findings, while the commenter believes that corrective action plans should apply only to audits of IPAs and should not be extended to OPM audit findings. We have revised the regulation accordingly. The commenter indicated that the word "actual" needs to be deleted from the phrase "actual, reasonable, allowable, and allocable" because the FAR makes certain imputed costs, such as facilities capital cost of money, allowable. The Armed Services Board of Contract Appeals has ruled that the cost of capital is an actual cost. Therefore, no changes were made to the regulation based on this comment. The commenter also stated that OPM had included a new requirement in paragraph (b)(1)(i) of 1652.216-71 by asking the carrier to justify that costs chargeable to the contract are reasonable and necessary. While we have reworded the paragraph in plain language, the requirement is not new. Carriers have always been required to show proper justification that costs are actual, necessary, and reasonable.

The previous language in paragraph (b)(1)(i) stated that "The allowable costs chargeable to the contract for a contract period shall be the actual, necessary, and reasonable amounts incurred with proper justification and accounting support * * *." We are simply clarifying the requirement by stating it in the active voice. The carrier correctly notes that this requirement differs from a related FAR requirement.

Because we became aware during the rate negotiation process that some participating carriers did not understand that the risk mitigation provisions applied to all carriers, the regulation was clarified to indicate that community-rated carrier risk will be mitigated using the Employees Health Benefits Fund Administrative Reserve.

Section 7701(c) of title 31, United States Code, requires each contractor doing business with a government agency to furnish its Taxpayer Identification Number (TIN) to that agency [see FAR 4.902]. Accordingly, we have added a new clause FEHBAR 1652.204-73, Taxpayer Identification Number, to FEHBAR Subpart 1652.2 and the FEHBP Clause Matrix at Subpart 1652.3. We have also made reference changes and updated the Matrix to conform to changes in the Federal Acquisition Regulation (FAR) since the Matrix was last revised.

In addition to the above definitions, in 1652.216-70(b), we have clarified that the term "State" as used in 5 U.S.C. 8909(f) includes a U.S. territory or possession.

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 will only affect health insurance carriers under the Federal Employees Health Benefits Program.

Executive Order 12866, Regulatory Review

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

List of Subjects in 48 CFR Parts 1604, 1615, 1632, and 1652

Government employees, Government procurement, Health insurance.

U.S. Office of Personnel Management.

Janice R. Lachance,
Director.

For the reasons set forth in the preamble, OPM is amending chapter 16 of title 48, CFR as follows:

**CHAPTER 16—OFFICE OF PERSONNEL
MANAGEMENT FEDERAL EMPLOYEES
HEALTH BENEFITS ACQUISITION
REGULATIONS**

1. The authority citation for 48 CFR Parts 1604, 1615, 1632, and 1652 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

**PART 1604—ADMINISTRATIVE
MATTERS**

2. Subpart 1604.9 consisting of § 1604.970 is added to read as follows:

**Subpart 1604.9—Taxpayer
Identification Number**

1604.970 Taxpayer Identification Number.

Insert the clause at section 1652.204–73 in all FEHBP contracts.

**PART 1615—CONTRACTING BY
NEGOTIATION**

Subpart 1615.8—Price Negotiation

3. In section 1615.802 paragraph (e) is revised to read as follows:

1615.802 Policy.

* * * * *

(e) *Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).*

(1) Similarly sized subscriber group (SSSG) rating methodologies will not be used to determine the reasonableness of a community-rated carrier's demonstration project premium rates. Carrier premium rates will not be adjusted for equivalency with SSSG rating methodologies. Carriers will benchmark premiums against adjusted community rates if available, Medigap offerings, or other similar products.

(2) Community-rated carriers must propose premium rates with cost or pricing data and rating methodology, and experience-rated carriers must propose premium rates with cost data and rating methodology regardless of group size or annual premiums.

PART 1632—CONTRACT FINANCING

Subpart 1632.1—General

4. In section 1632.170 paragraph (c) is revised to read as follows:

1632.170 Recurring premium payments to carriers.

* * * * *

(c) *Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108)*

(1) Carriers will create and maintain separate risk pools for demonstration project experience and regular FEHB experience for the purpose of establishing separate premium rates.

(2) OPM will create and maintain a demonstration project Contingency Reserve separate from the regular FEHB Contingency Reserve for each carrier participating in the demonstration project.

(3) Carriers will account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project will be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the dollar amount of total claims processed for FEHB Program activity.

(4) The same percentage used to determine indirect cost allocation will also be used to determine the amount of an experience-rated carrier's service charge that will be allocated to the demonstration project.

(5) Experience-rated carriers participating in the demonstration project will draw funds from their Letter of Credit (LOC) account to pay demonstration project benefits costs in the same manner as they do for benefits costs incurred by regular FEHB members.

(6) Carriers will report on demonstration project revenues, health benefits charges, and administrative expenses as directed by OPM.

(7) Experience-rated carriers will perform a final reconciliation of revenue and costs for the demonstration group at the end of the demonstration project. OPM will reimburse carrier costs in excess of the premiums first from the carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project.

(8) Community-rated carriers may, at their discretion, request funds from the Employees Health Benefits Fund to mitigate excessive costs in relation to premiums. If a community-rated carrier requests funds from the Employees Health Benefits Fund to mitigate risk, it will be required to perform annual reconciliations for the duration of the

demonstration project. OPM will reimburse carrier costs significantly in excess of the premiums first from the carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project.

(9) Should the program be extended beyond the 3 year demonstration project period, OPM will regulate to address any necessary changes to these provisions.

PART 1652—CONTRACT CLAUSES

**Subpart 1652.2—Texts of FEHBP
Clauses**

5. Section 1652.204–73 is added to read as follows:

**1652.204–73 Taxpayer Identification
Number.**

As prescribed in 1604.970, insert the following clause.

Taxpayer Identification Number (Jan 2000)

(a) *Definitions.*

Common parent, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Carrier is a member.

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Carrier in reporting income tax and other returns.

(b) The Carrier must submit the information required in paragraphs (d) through (f) of this clause to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. The Carrier is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904. The Carrier's failure or refusal to furnish the information will result in payment being withheld until the TIN number is provided.

(c) The Government may use the TIN to collect and report on any delinquent amounts arising out of the Carrier's relationship with the Government (31 U.S.C. 7701(c)(3)). The TIN provided hereunder may be matched with IRS records to verify its accuracy.

(d) Taxpayer Identification Number (TIN).

TIN: _____

(e) Type of organization.

Sole proprietorship;

- Partnership;
 Corporate entity (not tax-exempt);
 Corporate entity (tax-exempt);
 Other _____.

(f) Common parent.

- Carrier is not owned or controlled by a common parent as defined in paragraph (a) of this clause.

- Name and TIN of common parent:

Name _____

TIN _____

(End of Clause)

6. Section 1652.215–70 is amended by removing “(JAN 1998)” from the clause heading and adding in its place “(JAN 2000)” and by revising a new paragraph (d) to read as follows:

1652.215–70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

* * * * *

(d) *Exception for the 3-Year DoD Demonstration Project* (10 U.S.C. 1108).

(1) Similarly sized subscriber group (SSSG) rating methodologies shall not be used to determine the reasonableness of the Carrier’s demonstration project premium rates. The Carrier’s rates shall not be adjusted for equivalency with SSSG rating methodologies. The Carrier shall benchmark premiums against adjusted community rates if available, Medigap offerings, or other similar products.

(2) The Carrier shall account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project shall be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the dollar amount of total claims processed for FEHB Program activity.

(End of Clause)

7. Section 1652.216–70 is amended by removing “(JAN 1998)” from the clause heading and adding in its place “(JAN 2000)” and by revising a new paragraph (c) to read as follows:

1652.2161–70 Accounting and price adjustment.

* * * * *

(c) *Exception for the 3-Year DoD Demonstration Project* (10 U.S.C. 1108).

(1) Similarly sized subscriber group (SSSG) rating methodologies shall not be used to determine the reasonableness of the Carrier’s demonstration project premium rates. The Carrier’s rates shall not be adjusted for equivalency with SSSG rating methodologies. The Carrier shall benchmark premiums against adjusted community rates if available, Medigap offerings, or other similar products.

(2) The Carrier shall account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project shall be fully chargeable to the

demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the dollar amount of total claims processed for FEHB Program activity.

(End of Clause)

8. Section 1652.216–71 is amended by revising the clause to read as follows:

1652.216–71 Accounting and allowable cost.

* * * * *

ACCOUNTING AND ALLOWABLE COST (FEHBAR 1652.216–71) (JAN 2000)

(a) *Annual Accounting Statements.* (1) The Carrier shall furnish to OPM an accounting of its operations under the contract. In preparing the accounting, the Carrier shall follow the reporting requirements and statement formats prescribed by OPM in the OPM Annual and Fiscal Year Financial Reporting Instructions.

(2) The Carrier shall have its Annual Accounting Statements and that of its underwriter, if any, audited in accordance with the FEHBP Experienced-Rated Carrier and Service Organization Audit Guide (Guide). The Carrier shall submit the audit report and the Annual Accounting Statements to OPM in accordance with the requirements of the Guide.

(3) Based on the results of either the independent audit prescribed by the Guide or a Government audit, OPM may require the Carrier adjust its annual accounting statements (i) by amounts found not to constitute actual, allowable, allocable and reasonable costs; or (ii) to reflect prior overpayments or underpayments.

(4) The Carrier shall develop corrective action plans to resolve audit findings identified in audits that were performed in accordance with the Guide. The corrective action plans will be prepared in accordance with and as defined by the Guide.

(b) *Definition of costs.* (1) The Carrier may charge a cost to the contract for a contract term if the cost is actual, allowable, allocable, and reasonable. In addition, the Carrier must:

(i) on request, document and make available accounting support for the cost to justify that the cost is actual, reasonable and necessary; and

(ii) determine the cost in accordance with: (A) the terms of this contract, and (B) Subpart 31.2 of the Federal Acquisition Regulation (FAR) and Subpart 1631.2 of the Federal Employees Health Benefits Program Acquisition Regulation (FEHBAR) applicable on the first day of the contract period.

(2) In the absence of specific contract terms to the contrary, the Carrier shall classify contract costs in accordance with the following criteria:

(i) *Benefits.* Benefit costs consist of payments made and liabilities incurred for covered health care services on behalf of FEHBP subscribers less any refunds, rebates, allowances or other credits received.

(ii) *Administrative expenses.* Administrative expenses consist of all actual,

allowable, allocable and reasonable expenses incurred in the adjudication of subscriber benefit claims or incurred in the Carrier’s overall operation of the business. Unless otherwise stated in the contract, administrative expenses include, in part: all taxes (excluding premium taxes, as provided in section 1631.205–41), insurance and reinsurance premiums, medical and dental consultants used in the adjudication process, concurrent or managed care review when not billed by a health care provider and other forms of utilization review, the cost of maintaining eligibility files, legal expenses incurred in the litigation of benefit payments and bank charges for letters of credit.

Administrative expenses exclude the cost of Carrier personnel, equipment, and facilities directly used in the delivery of health care services, which are benefit costs, and the expense of managing the FEHBP investment program which is a reduction of investment income earned.

(iii) *Investment income.* While compliance with the checks presented letter of credit methodology will minimize funds on hand, the Carrier shall invest and reinvest all funds on hand, including any in the Special Reserve or any attributable to the reserve for incurred but unpaid claims, which are in excess of the funds needed to discharge promptly the obligations incurred under the contract. Investment income represents the net amount earned by the Carrier after deducting investment expenses. Investment expenses are those actual, allowable, allocable, and reasonable contract costs that are attributable to the investment of funds, such as consultant or management fees.

(iv) *Other charges.* (A) *Mandatory statutory reserve.* Charges for mandatory statutory reserves are not allowable unless specifically provided for in the contract. When the term “mandatory statutory reserve” is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law upon the Carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the Carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the Carrier, the Carrier shall return to the FEHBP a pro rata share based upon FEHBP’s contribution to the total Carrier’s set aside shall be returned to the FEHBP in accordance with FAR 31.201–5.

(B) *Premium taxes.* (1) When the term “premium taxes” is used in this contract without further definition or explanation, it means a tax, fee, or other monetary payment directly or indirectly imposed on FEHB premiums by any State, the District of Columbia, or the Commonwealth of Puerto Rico or by any political subdivision or other governmental authority of those entities, with the sole exception of a tax on net income or profit, if that tax, fee, or payment is

applicable to a broad range of business activity.

(2) For purposes of this paragraph (B), OPM has determined that the term "State" as used in 5 U.S.C. 8909(f) includes, but is not limited to, a territory or possession of the United States.

(c) *Certification of Accounting Statement Accuracy.* (1) The Carrier shall certify the annual and fiscal year accounting statements in the form set forth in paragraph (c)(3) of this clause. The Carrier's chief executive officer and the chief financial officer shall sign the certificate.

(2) The Carrier shall require an authorized agent of its underwriter, if any, also to certify the annual accounting statement.

(3) The certificate required shall be in the following form:

Certification of Accounting Statement Accuracy

This is to certify that I have reviewed this accounting statement and to the best of my knowledge and belief:

1. The statement was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this reporting period in conformity with those guidelines.

2. The costs included in the statement are actual, allowable, allocable, and reasonable in accordance with the terms of the contract and with the cost principles of the Federal Employees Health Benefits Acquisition Regulation and the Federal Acquisition Regulation;

3. Income, rebates, allowances, refunds and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement;

4. If applicable, the letter of credit account was managed in accordance with 5 CFR part 890, 48 CFR chapter 16, and OPM guidelines.

Carrier Name: _____

Name of Chief Executive Officer: _____
(Type or Print)

Name of Chief Financial Officer: _____

Signature of Chief Executive Officer: _____

Signature of Chief Financial Officer: _____

Date Signed: _____

Date Signed: _____

Underwriter: _____

Name and Title of Responsible Corporate _____

Official: _____
(Type or Print:)

Signature of Responsible Corporate Official: _____

Date Signed: _____
(End of Certificate)

(d) Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).

(1) The Carrier shall draw funds from its Letter of Credit (LOC) account to pay demonstration project benefits costs in the same manner as it does for benefits costs incurred by regular FEHB members. The Carrier shall account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project shall be fully chargeable to the demonstration project.

Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the dollar amount of total claims processed for FEHB Program activity. This same percentage will also be used to determine the amount of the Carrier's service charge that will be allocated to the demonstration project.

(2) The Carrier shall submit a separate annual accounting statement and monthly incurred claims report for demonstration project experience.

(End of Clause)

9. Section 1652.232-70 is amended by removing "JAN 1998" from the clause heading and adding in its place "JAN 2000," and adding a new paragraph (f) to read as follows:

1652.232-70 Payments—community-rated contracts.

* * * * *

(f) Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).

The Carrier may, at its discretion, request funds from the Employees Health Benefits Fund to mitigate excessive costs in relation to premiums. If the Carrier requests funds from the Employees Health Benefits Fund to mitigate risk, it will be required to perform annual reconciliations for the duration of the

demonstration project. OPM will reimburse the Carrier's costs significantly in excess of the premiums first from the Carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project.

(End of Clause)

10. Section 1652.232-71 is amended by revising paragraph (f) to read as follows:

1652.232-71 Payments—experience-rated contracts.

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(f) Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).

The Carrier will perform a final reconciliation of revenue and costs for the demonstration project group at the end of the demonstration project. OPM will reimburse the Carrier's costs in excess of the premiums first from the Carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project.

(End of Clause)

Subpart 1652.3—FEHBP Clause Matrix

11. In section 1652.370, the FEHB Program Clause Matrix, is revised to read as follows:

1652.370 Use of matrix.

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FEHBP CLAUSE MATRIX

Clause No.	Text reference	Title	Use status	Use with experience rated contracts	Use with community rated contracts
FAR 52.202-1	FAR 2.201	Definitions	M	T	T
FAR 52.203-3	FAR 3.202	Gratuities	M	T	T
FAR 52.203-5	FAR 3.404	Covenant Against Contingent Fees	M	T	T
FAR 52.203-7	FAR 3.502-3	Anti-Kickback Procedures	M	T	T
FAR 52.203-12	FAR 3.808(b)	Limitation on Payments to Influence Certain Federal Transactions.	M	T	T
1652.203-70	1603-7003	Misleading, Deceptive, or Unfair Advertising	M	T	T
1652.204-70	1604.705	Contractors Records Retention	M	T	T
1652.204-71	1604.7001	Coordination of Benefits	M	T	T

FEHBP CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use status	Use with experience rated contracts	Use with community rated contracts
1652.204-72	1604.7101	Filing Health Benefit Claims/Court Review of Disputed Claims.	M	T	T
1652.204-73	1604.970	Taxpayer Identification Number	M	T	T
FAR 52.209-6	FAR 9.409(b)	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.	M	T	T
FAR 52.215-2	FAR 15.209(b)	Audit & Records—Negotiation	M	T	T
FAR 52.215-10	FAR 15.408(b)	Price Reduction for Defective Cost or Pricing Data ...	M	T	
FAR 52.215-12	FAR 15.408(d)	Subcontractor Cost or Pricing Data	M	T	
FAR 52.215-15	FAR 15.408(g)	Pension Adjustments and Asset Reversions	M	T	
FAR 52.215-16	FAR 15.408(h)	Facilities Capital Cost of Money	M	T	
FAR 52.215-17	FAR 15.408(i)	Waiver of Facilities Capital Cost of Money	A	T	
FAR 52.215-18	FAR 15.408(j)	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.	M	T	
1652.215-70	1615.804-72	Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.	M		T
1652.215-71	1615.805-71	Investment Income	M	T	
1652.216-70	1616.7001	Accounting and Price Adjustment	M	T	T
1652.216-71	1616.7002	Accounting and Allowable Cost	M	T	
FAR 52.219-8	FAR 19.708(a)	Utilization of Small Business Concerns	M	T	T
FAR 52.222-1	FAR 22.103-5(a)	Notice to the Government of Labor Disputes	M	T	T
FAR 52.222-3	FAR 22.202	Convict Labor	M	T	T
FAR 52.222-4	FAR 22.305	Contract Work Hours and Safety Standards Act—Overtime Compensation.	M	T	T
FAR 52.222-21	FAR 22.810(a)(1)	Prohibition of Segregated Facilities	M	T	T
FAR 52.222-26	FAR 22.810(a)	Equal Opportunity	M	T	T
FAR 52.222-29	FAR 22.810(g)	Notification of Visa Denial	A	T	T
FAR 52.222-35	FAR 22.1308(a)	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.	M	T	T
FAR 52.222-36	FAR 22.1408(a)	Affirmative Action for Workers With Disabilities	M	T	T
FAR 52.222-37	FAR 22.1308(b)	Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.	M	T	T
1652.222-70	1622.103-70	Notice of Significant Events	M	T	T
FAR 52.223-2	FAR 23.105(b)	Clean Air and Water	A	T	T
FAR 52.223-6	FAR 23.505	Drug-Free Workplace	A	T	T
1652.224-70	1624.104	Confidentiality of Records	M	T	T
FAR 52.227-1	FAR 27.201-2(a)	Authorization and Consent	M	T	T
FAR 52.227-2	FAR 27.202-2	Notice and Assistance Regarding Patent and Copyright Infringement.	M	T	T
FAR 52.229-3	FAR 29.401-3	Federal, State and Local Taxes	M		T
FAR 52.229-4	FAR 29.401-4	Federal, State and Local Taxes (Noncompetitive Contract).	M	T	
FAR 52.229-5	FAR 29.401-5	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.	A	T	T
1652.229-70	FEHBP 1629.402	Taxes—Foreign Negotiated Benefits Contracts	A	T	T
FAR 52.230-2	FAR 30.201-4(a)(1)	Cost Accounting Standards	A	T	T
FAR 52.230-3	FAR 30.201-4(b)(1)	Disclosure and Consistency of Cost Accounting Practices.	A	T	T
FAR 52.230-6	FAR 30.201-4(d)(1)	Administration of Cost Accounting Standards	A	T	T
FAR 52.232-8	FAR 32.111(c)(1)	Discounts for Prompt Payment	M	T	T
FAR 52.232-17	FAR 32.617(a)	Interest	M	T	T
	Modification: 1632.617				
FAR 52.232-23	FAR 32.806(a)(1)	Assignment of Claims	A	T	T
FAR 52.232-33	FAR 32.1103(a)	Payment by Electronic Funds Transfer—Central Contractor Registration.	M	T	T
1652.232-70	1632.171	Payments—Community-Rated Contracts	A		T
1652.232-71	1632.172	Payments—Experience-Rated Contracts	A	T	
1652.232-72	1632.772	Non-Commingling of FEHBP Funds	M	T	
1652.232-73	1632.806-70	Approval for Assignment of Claims	M	T	T
FAR 52.233-1	FAR 33.215	Disputes	M	T	T
FAR 52.242-1	FAR 42.802	Notice of Intent to Disallow Costs	M	T	
FAR 52.242-3	FAR 42.709-6	Penalties for Unallowable Costs	M	T	
FAR 52.242-13	FAR 42.903	Bankruptcy	M	T	T
1652.243-70	1643.205-70	Changes—Negotiated Benefits Contracts	M	T	T
FAR 52.244-5	FAR 44.204(c)	Competition in Subcontracting	M	T	
FAR 52.244-6	FAR 44.403	Subcontracts for Commercial Items and commercial components.	M	T	

FEHBP CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use status	Use with experience rated contracts	Use with community rated contracts
1652.244-70	1644.270	Subcontracts	M	T	
1652.245-70	1645.303-70	Government Property (Negotiated Benefits Contracts).	M	T	T
FAR 52.246-25	FAR 6.805(a)(4)	Limitation of Liability—Services	M	T	
1652.246-70	1646.301	FEHB Inspection	M	T	T
FAR 52.247-63	FAR 47.405	Preference for U.S.-Flag Air Carriers	M	T	T
1652.249-70	1649.101-70	Renewal and Withdrawal of Approval	M	T	T
1652.249-71	1649.101-71	FEHBP Termination for Convenience of the Government—Negotiated Benefits Contracts.	M	T	T
1652.249-72	1649.101-72	FEHBP Termination for Default—Negotiated Benefits Contracts.	M	T	T
FAR 52.251-1	FAR 51.107	Government Supply Sources	A	T	
FAR 52.252-4	FAR 52.107(d)	Alterations in Contract	A	T	T
FAR 52.252-6	FAR 52.107(f)	Authorized Deviations in Clauses	M	T	T

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