

**Note: The information in this document has been superseded by BAL 13-207.**

## **Questions and Answers**

### **Health Insurance Coverage: Members of Congress and Congressional Staff**

#### **Q. Why is OPM publishing this proposed rule?**

A. This proposed rule is being published to implement the provisions of the Affordable Care Act that require the enrollment of Members of Congress and official staff into Exchange plans. The proposed regulation, open for comment, would implement the requirement that Members of Congress get their health benefits from the Exchanges along with their designated congressional staff and it establishes a way for premiums to continue to be paid with an employer contribution.

#### **Q. Why are Members of Congress and certain Congressional staff no longer eligible for FEHB?**

A. The Affordable Care Act includes a provision that Members of Congress and congressional staff employed by the official office of a Member of Congress must obtain coverage from health plans created under the Act or coverage offered via an Affordable Insurance Exchange (Exchanges).

#### **Q. When will these individuals lose FEHB eligibility?**

A. Members of Congress and their congressional staff employed by the official office will no longer be eligible for FEHB coverage as of January 1, 2014.

#### **Q. Which Congressional staff will remain eligible for FEHB?**

A. This provision of the Act, Section 1312, defines congressional staff as all full-time and part-time employees employed by the official office of a Member of Congress. Because there is not an existing statutory or regulatory definition, OPM believes that Members of Congress are best able to designate which of their staff members work in their official office (and therefore, must choose health plans from the Exchanges). Under the proposed rule, the designation must be made by October of the year before the coverage year so individuals know whether, during open enrollment, to participate in the appropriate state Exchange or the FEHB Program for the

following year. OPM may extend the deadline for designation of staff for up to 30 days for the first year. The proposed rule states that this designation will be effective for the entire plan year during which the staff member works for that Member of Congress.

**Q. Will Members of Congress and their staff continue to receive a Government Contribution toward the cost of their health insurance premiums?**

A. Members of Congress and their congressional staff who are no longer eligible for enrollment in an FEHB plan will continue to receive a Government contribution toward the cost of their premiums for health plans purchased on the Exchange. This contribution will be no greater than the Government contribution provided for other Federal employees eligible for FEHB coverage and purchasing coverage offered by an FEHB plan.

**Q. What will be the amount of the employer contribution for Members of Congress and congressional staff?**

A. The amount of the employer contribution for Members of Congress and official staff will be the same as for other Federal employees. OPM annually determines the government contribution based on the average of health plan premiums for the two types of enrollments (self only and self and family) allowed in the FEHB Program. By statute, the government contribution is the lesser of 72 percent of the weighted average of all FEHB plan premiums or 75 percent of the individual plan premium. OPM will apply the same employer contribution amounts up to 75 percent of the total cost of the health plan premium on the Exchange, the same as for an FEHB health plan. An individual with an enrollment on the Exchange for more than one person (i.e. self plus one) will receive the employer contribution amount the same as for an FEHB self and family enrollment.

**Q. How are employer contributions for health care coverage premiums treated under the Affordable Care Act and for Federal tax purposes with respect to Members of Congress and congressional employees on the Exchange?**

A. Under pre-Affordable Care Act law, Members of Congress and their staff are offered health insurance coverage through the Federal Employees Health Benefits Program (FEHB), which allows them to choose among various health plans that have contracted with FEHB. As with other health coverage provided in connection with employment, both employer contributions and contributions pursuant to a salary reduction election by employees towards the cost of FEHB coverage may be excluded from the employee's income and wages for both income and employment tax purposes.

Section 1312(d)(3)(D) of the Affordable Care Act provides in relevant part that “[n]otwithstanding any other provision of law ... the only health plans that the Federal Government may make available to Members of Congress” and certain congressional staff are those offered through an Exchange or provided under the Affordable Care Act. This provision effectively requires substituting, in the case of Members of Congress and the applicable members

of their staffs, a choice among individual qualified health plans offered through an Exchange for their current choice among plans that have contracted with FEHB. Section 1312(d)(3)(D) of the Affordable Care Act provides that this arrangement is permissible in the case of Members of Congress and congressional staff employed by the official office of the Member of Congress explicitly stating that the requirement applies notwithstanding any other provision of law. Therefore, the arrangement described is not subject to the rule in the Affordable Care Act that prohibits an employer from providing a qualified health plan through an Exchange as a benefit under its cafeteria plan.

In addition, the generally applicable federal income and employment tax rules related to employer-provided health care coverage apply to the arrangement described in this Q&A. As a result, participation in the arrangement will not result in any income or wages to the participating employee. Moreover, contributions pursuant to a salary reduction election by employees toward the cost of coverage under this arrangement may be excluded from income and wages under the same terms that employee contributions to FEHB coverage are excluded today.

Because the arrangement described here is an eligible employer-sponsored plan and all qualified health plans on the Exchange provide minimum value, a Member of Congress or an applicable congressional employee will not be eligible for a premium tax credit if the coverage offered is affordable, within the meaning of the Affordable Care Act, for that individual.

**Q. Will individuals who enroll in Exchange plans follow the eligibility and enrollment requirements of Exchanges or the FEHB program?**

A. The individuals who enroll in Exchange plans will be subject to the same rules established for others on the Exchanges. For additional information, please see [www.healthcare.gov](http://www.healthcare.gov)

**Q. Will individuals who enroll in Exchange plans follow the same claim dispute process as FEHB if they disagree with their Exchange plan's decision about benefits coverage or the provision of a medical service?**

A. No. There are separate external appeal provisions that apply to health plans participating on Exchanges. For information, please see [www.healthcare.gov](http://www.healthcare.gov).

**Q. Will Members of Congress and their staff be able to carry coverage purchased on the Exchange into retirement?**

A. Yes. Members of Congress and their staff who purchase health insurance coverage on the Exchange will be eligible to carry that coverage, with the Government Contribution, into retirement; pursuant to the same eligibility requirement for FEHB enrollees (e.g. enrolled in a health insurance plan for five years prior to retirement or since their earliest opportunity to

enroll). Members of Congress and their staff who retire with Exchange plan coverage are not eligible to switch to an FEHB plan from an Exchange plan for coverage in retirement.

**Q. Will Members of Congress and congressional staff be able to enroll for health plan coverage as individuals or as members of a SHOP?**

A. Initially, OPM expects that Members of Congress and congressional staff will enroll in the individual market on Exchanges. However, OPM plans to work with stakeholders to determine whether employing offices could purchase insurance in the SHOP.

**Q. Where do Members of Congress and their official staff enroll on Exchanges?**

A. The Exchanges are established for individuals to enroll for health insurance coverage in the place where they reside. For information, please see [www.healthcare.gov](http://www.healthcare.gov).