CFR Workshop
(Inquiries/Reconsiderations)

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1. Provide background on the Federal Register
2. Provide an overview of the rulemaking process
3. Provide an understanding of the Code of Federal Regulations (CFR)
4. Provide an overview of inquiries
5. Provide an overview of reconsiderations
6. Understand how to research and respond to inquiries and reconsiderations
Why was the Federal Register established?

- New Deal legislation of the 1930’s delegated responsibility from Congress to agencies to regulate complex social and economic issues
- Citizens needed access to new regulations to know their effect in advance
- Agencies and citizens needed a centralized filing and publication system to keep track of rules
- Courts began to rule on “secret law” as a violation of right to due process under the Constitution
What is the Federal Register Act?

- Enacted in 1935, the Federal Register Act established the basic legal structure of the regulatory system:
  - A central location for filing documents for public inspection
  - The daily Federal Register – a single, uniform publication for Executive agency rules and notices and Presidential documents
  - The Code of Federal Regulations – a codification (numerical arrangement) of rules
What is the Effect of Publishing in the Federal Register?

- Provides official notice of a document’s existence, its contents and legal effect
- Specifies the legal authority of the agency
- Gives documents evidentiary status
- Shows how and when the CFR will be amended
The Administrative Procedure Act (1946)

- Added procedural requirement to ensure:
  - Due Process (fairness)
    Generally:
    - Rules cannot be enforced if not published in the Federal Register
    - Rules cannot be effective until 30 days after publication
    - Must provide public statement of organization and procedure for the “who” and “how” to contact at the agency

- Public Participation (notice and comment rulemaking)
  Agencies:
  - Must give notice of proposed rules
  - Must take public comments and respond in final rule
  - Must state the legal basis and purpose of their actions
Overview of Rulemaking Process

1. Grant of rule making authority
   • Congress delegates authority directly to agencies
   • President may delegate constitutional authority to subordinates
   • President of Agency Head may re-delegate authority to subordinates

2. Proposed Rule Stage
   • OMB Reviews under E.O. 12866
   • Agencies publish Proposed Rule in FR for public comment

3. Final Rule Stage
   • OMB Reviews again under E.O. 12866
   • Agencies publish final rule in FR
   • Responds to comments, amends CFR, sets effective date
4. Congressional Review
   • Agencies submit rules to Congress and GAO

5. Effective Date
   • 30 Day minimum, 60 days for major rule, no minimum for good cause
   • An agency may delay or withdraw a rule before it becomes effective
Tracking Law to Codification in the CFR

- Public Law
- Federal Register
- Proposed Rule
- Federal Register
- Rule
- Code of Federal Regulations (CFR)
What is the Code of Federal Regulations?

The Code of Federal Regulations (CFR) is an annual publication which is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government.

The CFR is divided into 50 titles that represent broad areas subject to Federal regulation, i.e., Environment, Defense, Public Health, Transportation.

Each volume of the CFR is updated once each calendar year and is issued on a quarterly basis.
When is it updated?

The 50 subject matter titles contain one or more individual volumes, which are updated once each calendar year, on a staggered basis. The annual update cycle is as follows:

- Titles 1-16 are revised as of January 1
- Titles 17-27 are revised as of April 1
- Titles 28-41 are revised as of July 1
- Titles 42-50 are revised as of October 1
Title 5 Code of Federal Regulations (CFR) provides rules and regulations that are published in the Federal Register concerning Administrative Personnel
Title 5 is divided into the three volumes and numerous parts:

1 - 699

700-1199

1200 - end
The following table illustrates the CFR numbering system:

<table>
<thead>
<tr>
<th>Title</th>
<th>5</th>
<th>Broad subject area of regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter</td>
<td>830</td>
<td>Rules of issuing agency</td>
</tr>
<tr>
<td>Part</td>
<td>303</td>
<td>Rules on a single program or function</td>
</tr>
<tr>
<td>Section</td>
<td>303.1</td>
<td>One provision of a program or function rule</td>
</tr>
<tr>
<td>Paragraph</td>
<td>303.1(a)</td>
<td>Detailed, specific requirement</td>
</tr>
</tbody>
</table>
The figure above is read aloud as:
“Title 5 U.S.C. Chapter 89, Section 8905, Subsection “B”, Paragraph “1”
Title 5 for HR Professionals

• Title 5, Chapter 1 – Office of Personnel Management
  • Subchapter A – Civil Service Rules (Parts 1 -10)
  • Subchapter B – Civil Service Regulations (Parts 110-990)
  • Subchapter C – Regulations governing employees of the Office of Personnel Management (Parts 1001-1002-1199)

• Subchapter B covers Retirement and Benefit Programs such as the Federal Employee Health Benefits and Federal Employee Life Insurance program
Significant Parts of Title 5

- 831: Retirement
- 837: Reemployment of Annuitants
- 839: FERCCA
- 841: FERS
- 870: FEGLI
- 890: FEHB
Inquiries

• Any written, verbal, or electronic communication seeking information on benefits and retirement programs

• General or complex questions that the employee, HR Specialist/Officer has within the Component

• Should always be responded to with reference(s)

• Responses are provided between 1-2 business days of receipt

• An is opportunity to inform, assist and build trust with customers
Top 5 Reasons for Inquiries

1. DoD Retired Civilian Identification Card
2. ACA 1095-C
3. Creditable Service
4. Retirement general questions
5. FEHB/FEGLI general questions
To who it may concern:

I am a retired DOD firefighter who retired in 2011, I visited my local DEERS/RAPIDS office to have my wife added to my profile and to get a new retired ID card. The clerk who was helping me informed me that my DOD Civilian Retiree profile/record was not the DEERS/RAPIDS system and said I needed to contact you to find out why.

I am requesting that you investigate this issue and let me know what you need from me to add me into the DEERS/RAPIDS system. I retired out of Washington State and received my retiree ID card with no issues, thank you for your time and consideration into this matter, standing-by to assist.

Sincerely,
How to Research and Respond to Inquiries

- Review the inquiry to determine what is really being asked by the customer
- Review the information to determine which Federal law(s) or regulation(s) should be cited
- Begin by restating the issue
- Response should be professional in tone and language

- Always review the response for technical accuracy and grammar before sending out to the customer
- Extension of time may be required if additional documentation is required to provide a final response
- An initial response should be sent to let the individual know that the case is under review
Inquiry Example

We are bringing employees on board the last day of the pay period reporting on 19 Jan 2019. If they elect their benefits by the close of benefits on 20 January will the insurance be effective Jan 22?

Also, we have a student hire that is converting to permanent and then going on LWOP. If she does not elect FEHB when she converts, will she have a 60 day window to pick up FEHB when she returns to pay status?
Thank you for your inquiry regarding new employee enrollments in FEHB and LWOP enrollments within FEHB. To answer your question about bringing employees on board and would their insurance be effective Jan 22, the answer is yes.

In accordance with 5 CFR § 890.301, unless otherwise specified, enrollments or changes in enrollment become effective on the first day of the first pay period that begins after employee’s employing office receives the enrollment request and that follows a pay period during any part of which employee was in pay status. The effective date of benefits for the new employees would be January 22, since it is the beginning of the pay period and the individuals would be in a pay status.

Your second question was regarding the student hire converting to permanent and then going LWOP, and whether she could elect FEHB when she returns to pay status. The answer is in accordance with 5 CFR § 890.102(j), if the employee did not enroll within the 60 day window of being eligible, she would have to wait for a qualifying life event or open season in order to enroll.
The reconsideration is the employee’s right to ask the DoD Insurance Officer to review the initial decision made by the employee’s employing agency on his/her FEHB or FEGLI request.
Reconsiderations: DCPAS

- Reconsiderations focus solely on the Agency initial decision regarding an employee’s benefits request.

- The reconsideration determines whether the agency properly applied law and regulations in making its initial decision.

- The Initial Agency decision commonly involves issues of enrollment, cancellation and changes to FEHB or FEGLI coverage.

- If the employee’s agency denies the employee’s request, the agency must inform the employee how to appeal to DCPAS for a reconsideration of their situation.
Top 3 Reasons for Reconsiderations

- Requests outside of a QLE or Open Season
- Requests to change insurance carriers
- Requests to change from self only to self and family
Reconsiderations: DCPAS

- Benefits, WAGE & NAF Policy Line of Business (LoB), DCPAS, will only accept reconsiderations that include the following items:

  The request for reconsideration must be filed **within 30 calendar days** from the date of initial decision and must:

  - Be made in writing by the employee to DCPAS
  - Include the employee’s name, address, DOB, social security number (SSN), name of the carrier, and reason for the request
  - Include a copy of the Agency initial decision letter
  - Include the Employee’s initial statement to the Agency seeking consideration
Reconsideration Request

Must Be Forwarded To:

Defense Civilian Personnel Advisory Service
Benefits & Work Life Programs Division
ATTN: DoD Insurance Officer
4800 Mark Center Drive Suite 05G21
Alexandria, VA  22350

Or Fax to:  DSN 372-1661
Commercial (571) 372-1661

Fax accepted to meet the filing deadline, but originals must be provided.
When denying an employee request of election or change in enrollment, the agency must provide to the employee the following information in writing:

1. **Explanation of the reason(s) for the denial**
2. **Right to reconsideration**
3. **Timeframe for requesting reconsideration**
4. **Address of the office making the reconsideration decision**
Employee’s Initial Statement to the Agency

• A statement, written or typed by the employee, that affirmatively states:
  a) The employee is requesting the Component level HRO to consider a matter
  b) The matter that is to be considered
  c) The action the employee wants the Agency to take regarding the matter

• This statement may be in a form of a letter or an email, but must have the required information
Incomplete Reconsiderations

• An incomplete reconsideration is one that does not include all of the following items:
  ▪ The Employee’s Reconsideration request to DCPAS
  ▪ The Agency Initial Decision Letter
  ▪ The Employee’s Initial Statement to the Agency seeking consideration

• Benefits, WAGE & NAF Policy LoB will contact the Agency for the missing item before sending the reconsideration back to the Agency
How to Research and Respond to Reconsiderations

A review of the entire case will determine if the employing office misapplied any Federal law or regulation and if the proper decision was made in declining the employee’s request. A draft response letter for review by the Insurance Officer or their designee should be provided within 2 weeks (14 business days) after receipt of the original case. Extension of time may be required if additional documentation is required from the employee or employing office in order to provide a final reconsideration decision.

**Concurrence:** If concurrence with the employing office decision is determined, draft a letter of declination and include the statement of law from Title 5 CFR or any regulation or procedure supporting the denial.

**Overruling:** If an overrule of the employing office decision is determined prepare a written response instructing the agency to reinstate or reverse their decision, support the decision with applicable law, regulation or OPM procedure.
To Whom It May Concern:

I wish to change my current FEHB from a Family Plan with BCBS Plan #112 to a Self + One Plan with BCBS Plan #113. Requesting this change due to our son turning 26 years of age. As I understand it, BCBS retains a child for 31 days after their 26th birthday so he was still on our plan.

Since BCBS sent a written letter stating he was coming off our insurance, I further assumed they would automatically change our plan to a Self + One. I keep checking my pay stub and finally decided I needed to follow up since I’ve not seen a change in my bi-weekly payroll health insurance deduction. BCBS told me I needed to work through my HR office. Called my HR office only to have them tell me I had to make the change in EBIS. Went to EBIS only to find out I had to contact [ ]. Contacted [ ] and now because it’s been more than 60 days I was told I needed to submit a letter.

Please let me know if there is anything else I need to accomplish to get this changed.

Regards,

[Signature]
Employee’s Initial Email Statement to the Agency Example

From: [Redacted]
Sent: Thursday, January 10, 2019 10:51 AM
To: [Redacted]
Subject: FW: FEHB

Good Morning:

My name is [Redacted] and I’m sending you this form to be switched from Basic to Standard. I have Blue Cross Blue Shield.

When open season came, on November and December, I called Blue Cross Blue Shield over the phone (many times) and explained to them, that I wanted to switch from Basic to standard option.

They helped me through the process, I called today to see status of the change and they said to me that they don't see any formation on their system.

I have a medication that the standard option covers [Redacted].

I need help on switching, any questions please call me [Redacted].

Thank you for your help!

Here the employee is making a request for consideration and stating the action the employee wants the Agency to take.

Shows the employee sent the request to the Component level HRO.

Here is the matter that the employee wants to be considered.
FEGLI Reconsideration Example

Here is a scenario of a letter that has come into the Agency...

• I have been a Federal Government employee since September 1992. During my initial employment, I had very basic needs for life insurance and signed up for the most Basic Plan with Option A.

• Recently, I’ve had two major events that have caused a need to modify my life insurance coverage: I got married on 29 October 2005, and my first child was born on 23 April 2007. After each of these events, I made plans to protect my new family members that included making modifications to existing health insurance.

• Each of these events caused an establishment of new conditions and, as you can imagine, we had several things to consider. Due to these modification, it was only recently I had time to analyze my life insurance and what I should change to cover my new family.
• Needless to say, I was very surprised to learn that I could only increase my coverage within 60 days of either of the events mentioned above. Clearly, it is past the 60 day limit. Had I been notified, in which case I had not, that I had only 60 days to complete the modification, I would have been more responsive to completed it in a timely manner. At this point, I can only claim to be blindsided by the extreme restrictions of time that FEGLI requires for changes to be made.

• I am request of change to my FEGLI benefits to “Option C with a Multiple of 5”.
Component’s Denial Decision Example

Here is how the Agency responded to the employee....

According to Title 5, Code of Federal Regulations (CFR), section 870.506 (a) (2), an employee who has fewer than 5 multiples of Option B may increase the number of multiples, upon his/her marriage or divorce, upon a spouse’s death, or upon acquiring an eligible child. In addition to 5 CFR section 870.506 (4) (i) states an employee who has waived Option C coverage can elect coverage upon his/her marriage or upon acquiring an eligible child. 5 CFR section 870.506 (5) (i) states the employee must file an election under paragraph (a) (2) or (a) (4) of this section with the employing office, along with proof of the event, no later than 60 days following the event that permits the election. We have reviewed the documentation you provided and are unable to grant your request.

You may request a reconsideration of our decision to deny your enrollment by writing to DCPAS. Your request .......
After receiving information provided and providing that DCPAS receives every document as requested, here is how the DCPAS responded to the employee...

In accordance with Section 870.506(b) of title 5, Code of Federal Regulations (CFR), an employee must elect or waive Optional insurance coverage within 31 days after becoming eligible. Section 870.504(a)(5)(ii) provides limited authority for the employing office to accept belated elections. Belated elections must be received by the employing office within 6 months after eligibility. It does not appear that you were unable to file a timely election for reasons beyond your control. Therefore, your employing office’s denial of your request is in line with regulatory requirements.

In order to reverse an initial decision made by your employing office, it must be determined that in making their initial decision, the officials misapplied law or government-wide regulation. Based on the reference cited above and after review of your situation, we find no violation or misapplication of law or regulation by your employing office.
The letter would be signed by the DoD Insurance Officer and state that this is your final administrative review concerning this matter. There are no further reconsideration rights.
References

- Executive Order 12866
- Part 870 of Title 5 CFR
- Part 890 of Title 5 CFR
- FEHB Handbook
- FEGLI Handbook
- CSRS/FERS Handbook
Questions?