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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206-AJ16

Pretax Allotments for Health Insurance Premiums

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations dealing with the use of OPM's allotment authority to allow for Federal Employees Health Benefits (FEHB) employee premium payments to be deducted on a pretax basis under section 125 of the Internal Revenue Code. The allotment regulations work in tandem with related FEHB regulations dealing with this premium conversion.

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Bryce Baker, (202) 606-2858, FAX: (202) 606-0824, or e-mail: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: On July 19, 2000, the Office of Personnel Management (OPM) published interim regulations (65 FR 44643) that allowed employees to pay their Federal Employees Health Benefits (FEHB) premiums through an allotment from the employee's pay to the employing agency. Use of this allotment mechanism allows FEHB premiums to be paid with pretax dollars, as permitted under section 125 of the Internal Revenue Code. The amendments to the allotment regulations were accompanied by a separate interim rule making necessary changes in the FEHB regulations (65 FR 44644) to allow this premium conversion.

OPM received comments from one agency representative and two individual employees on the changes in the allotment regulations.

The agency comment noted that a part of the allotment regulations not amended in the interim rule contained a reference to an obsolete Treasury regulation. It recommended that this be corrected in the final regulations.

Section 550.311(a)(5) of title 5, Code of Federal Regulations, specifies that agencies must allow employees to have "up to two allotments for savings under Department of the Treasury regulations as codified at part 209 of title 31, Code of Federal Regulations." However, the Treasury Department removed part 209 from its title 31 regulations effective on January 27, 1997. (See 61 FR 68155, December 27, 1996.) Part 209 dealt with certain wage, salary, annuity, and allotment payments for credit to the accounts of Federal employees and beneficiaries generally made by paper check. These payments are now made by electronic funds transfer and are regulated by part 210. Part 210 does not impose a limit on the number of allotments for savings. Instead, it leaves the matter to the paying agency.

We are revising § 550.311(a)(5) to remove the obsolete reference to part 209 of title 31. The revised language provides that an agency must allow an employee to have "at least two allotments for savings." Thus, the OPM regulations continue to require that agencies allow employees to have a minimum of two savings allotments, but there are no restrictions on the maximum number of savings allotment that may be permitted under an agency's discretionary authority in § 550.311(b).

An individual commenter questioned why only health insurance premium payments under the FEHB Program could be deducted on a pretax basis. The commenter is a civilian employee who is covered by certain health insurance programs established for retired military members. At the President's direction, the allotment regulations were amended to provide specifically that FEHB premiums may be deducted on a pretax basis. Section 550.311(b) provides that pretax allotments are permitted only when there is an authority (*i.e.*, statute, Executive order, Presidential directive, or OPM regulations) specific to Federal employees. For example, certain transportation fringe benefit allotments may be made on a pretax basis as allowed by 5 U.S.C. 7905(b) and Executive Order 13150, April 21, 2000.

Another commenter expressed concern about whether Federal employees would be provided with information on the impact that pretax FEHB premium allotments would have on Social Security benefits, so that they could make an informed decision on whether to waive participation in premium conversion. In fact, prior to implementation of premium conversion, OPM provided agencies with extensive information about the premium conversion program to share with employees. That information included a sample employee handout with a section highlighting the Social Security benefit issue and a financial worksheet with a section on estimating the impact on a person's Social Security benefits. (See Benefits Administration Letter 00-215 issued by OPM's Retirement and Insurance Service on August 24, 2000.) This information also was made available on OPM's website.

These final regulations adopt the interim regulations without any changes to the amendments contained in the interim regulations. However, as described above, we are making a correction dealing with the obsolete reference to a withdrawn Treasury regulation.

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Education, Government employees, Wages.

U.S. Office of Personnel Management.

Kay Coles James,
Director.

Accordingly, the interim rule amending part 550 of title 5 of the Code of Federal Regulations, which was published at 65 FR 44643, is adopted as a final rule with the following change:

**PART 550—PAY ADMINISTRATION
(GENERAL)****Subpart C—Allotments and
Assignments from Federal Employees**

1. The authority citation for subpart C of part 550 continues to read as follows:

Authority: 5 U.S.C. 5527; E.O. 10982, 3 CFR 1959–1963 Comp., p. 502.

2. In § 550.311, paragraph (a)(5) is revised to read as follows:

§ 550.311 Authority of agency.

(a) * * *

(5) At least two allotments for savings;

* * * * *

[FR Doc. 01–24103 Filed 9–25–01; 8:45 am]

BILLING CODE 6325–39–P

**OFFICE OF PERSONNEL
MANAGEMENT****5 CFR Part 890**

RIN: 3206–AJ36

**Suspension of TRICARE-Eligible's
Enrollment in the Federal Employees
Health Benefits (FEHB) Program**

AGENCY: Office of Personnel Management.

ACTION: Interim Rule.

SUMMARY: The Office of Personnel Management is issuing an interim rule to allow TRICARE-eligible FEHB Program annuitants and former spouses to suspend their FEHB enrollments, and then return to the FEHB Program during the Open Season, or return to FEHB coverage immediately, if they involuntarily lose TRICARE coverage. The intent of this rule is to allow TRICARE-eligible beneficiaries to avoid the expense of continuing to pay FEHB Program premiums while they are using TRICARE coverage, without endangering their ability to return to the FEHB Program in the future.

DATES: Effective September 26, 2001. Comments received on or before November 26, 2001.

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: Effective October 1, 2001, the National Defense Authorization Act for 2001 will reinstate TRICARE coverage for Medicare-eligible uniformed services retirees, their survivors and eligible

dependents. TRICARE coverage will be advantageous to many Medicare-eligible military system beneficiaries who now are covered under the FEHB Program as Federal civilian retirees, family members, or former spouses.

Under current FEHB regulations, however, an annuitant or former spouse who cancels his or her FEHB coverage to use TRICARE coverage would not be allowed to return to FEHB coverage. Therefore, OPM is issuing these interim regulations, with a request for comments, to allow these FEHB participants to suspend, rather than cancel, their FEHB coverage when they begin TRICARE coverage. Under this rule, they would be allowed to return to FEHB coverage immediately if they involuntarily lose TRICARE coverage or, if not, during the next annual FEHB Open Season.

We are also amending our regulations to clarify a similar situation involving FEHB-covered annuitants and former spouses. The regulations allow an individual who drops FEHB coverage when he or she enrolls in a Medicare-sponsored plan, or in Medicaid or a similar State-sponsored program of medical assistance for the needy, to return to FEHB coverage during the annual Open Season or immediately upon being involuntarily disenrolled from the non-FEHB coverage.

**Waiver of Notice of Proposed Rule
Making**

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rule making. The notice is being waived so that FEHB enrollees who are eligible for the new TRICARE benefits can suspend their FEHB coverage and use their new benefits at their first opportunity.

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

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Iraq,

Kuwait, Lebanon, Reporting and record keeping requirements, Retirement.

U.S. Office of Personnel Management.

Kay Coles James,
Director.

For the reasons set forth in the preamble, OPM is amending 5 CFR Part 890 as follows:

**PART 890—FEDERAL EMPLOYEES
HEALTH BENEFITS PROGRAM**

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

**PART 890—FEDERAL EMPLOYEES
HEALTH BENEFITS PROGRAM**

2. In § 890.304, paragraph (d)(2) is revised to read as follows:

§ 890.304 Termination of enrollment.

* * * * *

(d) * * *

(2) An annuitant may suspend enrollment in FEHB for the purpose of enrolling in a Medicare-sponsored plan under sections 1833, 1876, or 1851 of the Social Security Act, or to enroll in the Medicaid program or a similar State-sponsored program of medical assistance for the needy, or for the purpose of using TRICARE coverage (including coverage provided by the Uniformed Services Family Health Plan) under title 10 U.S.C. instead of FEHB coverage. To suspend FEHB coverage, documentation must be submitted to the employing office or retirement system within the period beginning 31 days before and ending 31 days after the effective date of the enrollment in the Medicare-sponsored plan, or the Medicaid or similar program, or the first day of using TRICARE (including the Uniformed Services Family Health Plan) instead of FEHB coverage. The suspension becomes effective on the day before the effective date of the enrollment in the Medicare-sponsored plan, or Medicaid or a similar program, or the day before the day designated by the annuitant as the first day of using TRICARE (including the Uniformed Services Family Health Plan) instead of FEHB coverage.

* * * * *

3. In § 890.306 paragraphs (f)(1)(ii) and (f)(1)(iii) are revised, paragraph (f)(1)(iv) is added and paragraphs (h) and (i) are revised to read as follows: