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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 550 and 892

RIN 3206-AJ88

Allotments From Federal Employees

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations dealing with the use of OPM's allotment authority to allow for pretax salary reductions as part of OPM's flexible benefits plan. Using an allotment from an employee's pay to the employing agency allows certain payments (e.g., employee health insurance premiums, contributions to a flexible spending arrangement, and contributions to a health savings account) to be paid with pretax dollars, as provided under section 125 of the Internal Revenue Code. In addition, these regulations include certain policy clarifications and changes to make the regulations more readable.

DATES: *Effective Date:* The interim regulations are effective on December 18, 2006.

Comment Date: Comments must be received on or before January 16, 2007.

ADDRESSES: Send or deliver written comments to Jerome D. Mikowicz, Acting Deputy Associate Director for Pay and Performance Policy, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200, by FAX at (202) 606-0824; or by e-mail at pay-performance-policy@opm.gov.

FOR FURTHER INFORMATION CONTACT: Gene Holson by telephone at (202) 606-2858; by fax at (202) 606-0824; or by e-mail at pay-performance-policy@opm.gov.

SUPPLEMENTARY INFORMATION:

Definitions

In § 550.301, we are revising the definition of *employee* to clarify that it covers only those who meet the definition of employee in 5 U.S.C. 2105.

Allotments to Financial Organizations

We are removing § 550.361, which covers allotments for savings, because these provisions cite the Department of the Treasury's regulations in 31 CFR part 209. As we explained in the supplementary information accompanying a final rule published on September 26, 2001 (66 FR 49085), the Department of the Treasury removed 31 CFR part 209 effective on January 27, 1997. (See 61 FR 68155, December 27, 1996.) In that final rule, we removed the reference to part 209 in § 550.311(a)(5). However, we neglected to remove the related rules in § 550.361, which we are doing now. We are also removing the language in current § 550.311(a)(6), which deals with an allotment for savings for an employee assigned to a post of duty outside the continental United States and references obsolete § 550.361. Finally, we are revising § 550.311(a)(5) to remove an obsolete limitation restricting mandatory allotments to "savings accounts." The revised language is broadly stated to encompass any allotments to "an employee's personal account(s) at a financial organization" (e.g., a checking account or savings account).

Pretax Salary Reductions as Part of OPM's Flexible Benefits Plan

On September 26, 2001, the Office of Personnel Management (OPM) published final regulations (66 FR 49085) allowing an employee to pay his or her 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 a pretax salary reduction as part of a "cafeteria plan" (i.e., flexible benefits plan) established under section 125 of the Internal Revenue Code. Because pretax salary reductions lower an employee's taxable income, they reduce his or her tax burden.

Most employees in the executive branch of the Federal Government are covered by OPM's cafeteria plan, the Federal Flexible Benefits Plan

(FedFlex). (Certain executive branch agencies with independent compensation authority have established their own flexible benefits plans.) Also, employees of Federal agencies outside the executive branch or whose pay is not issued by an executive branch agency, and who are otherwise qualified, can participate in FedFlex if their employer agrees to adopt FedFlex. The initial FedFlex benefit, FEHB premium conversion, was implemented in October 2000. In 2003, OPM expanded FedFlex by offering flexible spending arrangements (FSAs). In late 2006, enrollment will begin for FedFlex dental and vision benefits. In 2007, employees enrolled in high deductible health plans with health savings accounts will be able to make allotments for pretax contributions to their health savings accounts through FedFlex. To ensure that all current and future allotments necessary for participation in FedFlex programs are eligible for pretax treatment, OPM is amending its allotment regulations at 5 CFR part 550, subpart C. Interim § 550.311(a)(7) broadens the current language at § 550.311(a)(8) addressing FEHB premiums to include any allotment effecting a salary reduction as part of FedFlex. We are making conforming changes to § 550.312(f) and § 892.301.

Order of Precedence for Deductions

We are removing § 550.313, which deals with the order of precedence for deductions from pay when there is insufficient pay to cover all deductions. The introduction of new pretax benefits under FedFlex creates additional complexities for agencies in determining the proper order of precedence for allotments when there is insufficient pay to cover all deductions. As part of its leadership role for the e-Payroll initiative, OPM has begun issuing payroll policy guidance to agencies to ensure timely, accurate, and uniform payroll practices across Government. In the near future, OPM will issue payroll policy guidance regarding the order of precedence for deductions when there is insufficient pay to cover all deductions. We believe OPM's payroll policy guidance under the e-Payroll initiative, rather than regulations, provides the flexibility needed to respond to the introduction of new types of allotments such as those for FedFlex benefits.

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. An opportunity for public comment prior to issuing this rule is impracticable and contrary to the public interest. These regulations are needed to ensure that agencies treat employee premiums for dental and vision benefits offered beginning in December 2006 as pretax salary reductions under Federal tax law. OPM's allotment regulations are the vehicle for converting these premiums into salary reductions that qualify for pretax treatment as part of a flexible benefits plan under section 125 of title 26, United States Code. In enacting the Federal Employee Dental and Vision Benefits Enhancement Act of 2004 (Pub. L. 108-496, December 23, 2004), Congress anticipated that these dental and vision premiums would be paid on a pretax basis and described this pretax treatment as a major advantage of the new benefits. (See Senate Report 108-393.)

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.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

List of Subjects in 5 CFR Parts 550 and 892

Administrative practice and procedure, Claims, Government employees, Wages, Health insurance, and Taxes.

Office of Personnel Management.

Linda M. Springer,
Director.

■ Accordingly, OPM is amending 5 CFR parts 550 and 892 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart C—Allotments 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 § 550.301, the definition of *employee* is revised to read as follows:

§ 550.301 Definitions.

* * * * *

Employee means an employee of an agency who satisfies the definition of that term in 5 U.S.C. 2105.

* * * * *

■ 3. In § 550.311, paragraph (a)(8) is removed, and the introductory text of paragraph (a), as well as paragraphs (a)(5)–(7) and (b) are revised to read as follows:

§ 550.311 Authority of agency.

(a) *Mandatory allotments.* An agency must permit an employee to make—

* * * * *

(5) Two or more allotments to an employee's personal account(s) at a financial organization;

(6) An allotment for child support and/or alimony payments under § 550.361; and

(7) Any allotment effecting a salary reduction as part of a flexible benefits plan established by the Office of Personnel Management in conformance with section 125 of title 26, United States Code.

(b) *Discretionary allotments.* In addition to those allotments provided for in paragraph (a) of this section, an agency may permit an employee to make an allotment for any legal purpose deemed appropriate by the head of the agency (or designee). This paragraph does not constitute an independent authority for an agency to permit pretax allotments in addition to those authorized by the Office of Personnel Management as described in paragraph (a)(7) of this section.

■ 4. In § 550.312, paragraph (f) is revised to read as follows:

§ 550.312 General limitations.

* * * * *

(f) Notwithstanding the requirements in paragraphs (a) and (c) of this section, an agency may make an allotment for an employee's share of Federal Employees Health Benefits premiums under § 550.311(a)(7) and part 892 of this chapter without specific authorization from the employee, unless the employee specifically waives such allotment. Agency procedures for processing employee waivers must be consistent with procedures established by the Office of Personnel Management. (See part 892 of this chapter.)

§ 550.313 [Removed]

■ 5. Section 550.313 is removed.

§ 550.361 [Removed]

■ 6. Section 550.361 is removed.

§§ 550.371 and 550.381 [Redesignated as §§ 550.361 and 550.371]

■ 7. Sections 550.371 and 550.381 are redesignated as 550.361 and 550.371, respectively.

PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENT OF HEALTH BENEFITS PREMIUMS

Subpart C—Contributions and Withholdings

■ 8. The authority citation for part 892 continues to read as follows:

Authority: 5 U.S.C. 8913; 5 U.S.C. 1103(a)(7); 26 U.S.C. 125.

§ 892.301 [Amended]

■ 9. Section 892.301 is amended by removing the reference “550.311(a)(8)” and adding the reference “550.311(a)(7)” in its place.

[FR Doc. E6-19273 Filed 11-16-06; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AK90

Suspension of Enrollment in the Federal Employees Health Benefits (FEHB) Program for Peace Corps Volunteers

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final regulation to allow Peace Corps volunteers who are FEHB Program enrolled annuitants, survivors, 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 health benefits coverage under the Peace Corps. The intent of this final rule is to allow these beneficiaries to avoid the expense of continuing to pay FEHB Program premiums while they have other health coverage as Peace Corps volunteers, without endangering their ability to return to the FEHB Program in the future.

DATES: *Effective Date:* Effective December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, Policy Analyst, Insurance Policy, OPM, Room 3425, 1900 E Street, NW., Washington, DC 20415-0001. Phone number: 202-606-0004. E-mail: mwkaszy@opm.gov.