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United States General Accounting Office
Washington, DC 20548

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October 20, 2003

The Honorable Susan M. Collins
Chairman
The Honorable Joseph I. Lieberman
Ranking Minority Member
Committee on Governmental Affairs
United States Senate

The Honorable Tom Davis
Chairman
The Honorable Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
House of Representatives

Subject: *Office of Personnel Management: Health Insurance Premium Conversion*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Office of Personnel Management (OPM), entitled "Health Insurance Premium Conversion" (RIN: 3206-AJ17). We received the rule on October 6, 2003. It was published in the Federal Register as a final rule on October 1, 2003. 68 Fed. Reg. 56525.

The final rule implements the health insurance premium conversion plan for employees participating in the Federal Employees Health Benefits Program and enables employees to pay premiums with pre-tax dollars. The rule finalizes an interim final rule issued on July 19, 2000 (65 Fed. Reg. 44644), which made the program effective on September 18, 2000.

The final rule has an announced effective date of October 31, 2003. The Congressional Review Act requires a 60-day delay in the effective date of a major rule from the date of publication in the Federal Register or receipt of the rule by Congress, whichever is later. 5 U.S.C. 801(a)(3)(A). As of the date of this report, we have been advised that neither the Senate nor the House has received the rule. It was published in the Federal Register on October 1, 2003. Therefore, the rule does not have the required 60-day delay in its effective date for congressional review. However, as noted above, the premium conversion program has been in effect for more than 3 years without congressional objection.

Enclosed is our assessment of the OPM's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that, with the exception of the above-noted delay in the effective date, OPM complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Victor Rezendes, Managing Director, Strategic Issues. Mr. Rezendes can be reached at (202) 512-6806.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Kay Coles James
Director, Office of Personnel
Management

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
OFFICE OF PERSONNEL MANAGEMENT
ENTITLED
"HEALTH INSURANCE PREMIUM CONVERSION"
(RIN: 3206-AJ17)

(i) Cost-benefit analysis

OPM estimates that the tax benefit to employees in fiscal year 2003 to be \$848 million: \$692 million in federal income taxes; \$113 million in Medicare taxes; and \$43 million in Social Security taxes. OPM expects these estimates will increase by 7 percent a year in subsequent years.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Director of OPM has certified that the final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in any one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On July 20, 2000, OPM published an interim final rule in the Federal Register, which also requested public comments. 65 Fed. Reg. 44644. OPM received four comments, and its responses are discussed in the preamble to the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule does not contain any information collections that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated pursuant to the authority found at 5 U.S.C. 8913 and 1103(a)(7) and 26 U.S.C. 125.

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

OPM has determined that the final rule will not have any negative impact on the rights, roles, and responsibilities of state, local, or tribal governments.