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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: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to enable employees to pay 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 pre-tax dollars, as provided under section 125 of the Internal Revenue Code. These allotment regulations are connected to a separate interim rule, published in this issue of the **Federal Register**, which will amend the FEHB regulations to establish the premium conversion program.

DATES: This interim rule is effective September 18, 2000. Comments must be received on or before September 18, 2000.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415-8200 (FAX: (202) 606-0824 or EMAIL: payleave@opm.gov).

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

SUPPLEMENTARY INFORMATION: At the President's direction, OPM will implement a health insurance premium

conversion plan for employees participating in the FEHB Program. The premium conversion plan is part of a "cafeteria plan" under Section 125 of the Internal Revenue Code.

The premium conversion plan will take effect on October 1, 2000. Under the plan, employees' FEHB premium withholdings are treated as a pre-tax salary reduction. Because premium conversion lowers employees' taxable income, it reduces their tax burden. The reduction in taxable income reduces the base for Federal income tax, Social Security and Medicare taxes, and, in most States and localities, State and local taxes based on income.

Employees in the Executive Branch of the Federal Government who are participating in the Program and whose pay is issued by an Executive Branch agency, will automatically have their salaries reduced and their health benefit premiums paid under the premium conversion plan. Also, individuals enrolled in the FEHB Program who are employed outside the Executive Branch, or whose pay is not issued by an agency of the Executive Branch, will have their salaries reduced and their FEHB premiums paid under our premium conversion plan if their employer, in coordination with their payroll office, agrees to offer participation in the plan. However, any individual enrolled in the FEHB Program who does not want to participate in premium conversion may waive participation, subject to certain limitations.

Premium conversion has no effect on: statutory pay provisions or the General Schedule; the amount of any employee's health insurance premium; or on the amount of the Government share towards the FEHB Program premium on behalf of any employee. Base pay for retirement, life insurance and Thrift Savings Plan purposes is unaffected.

To ensure that the premium conversion plan qualifies for pre-tax treatment of health insurance premiums, OPM is amending its allotment regulations at 5 CFR part 550, subpart C. Each employee participating in premium conversion will make an allotment to his or her employing agency in the amount of the employee share of the FEHB premium. The agency will then use that amount to pay the employee's FEHB premium. The allotment will be automatic unless the

employee elects to waive premium conversion.

We are also amending the allotment regulations to make clear that except where there is an authority specific to Federal employees (i.e., a statute, Executive order, Presidential directive, or OPM regulations) agencies may not authorize allotments for the purpose of reducing taxable income. For example, a salary reduction for a transportation fringe benefit under 26 U.S.C. 132(f)(4) is another type of pre-tax allotment that is permitted by 5 U.S.C. 7905(b) and Executive Order 13150.

OPM is issuing a separate interim rule amending its FEHB regulations to establish the premium conversion program effective in October 2000. No FEHB premium may be allotted except as allowed under the premium conversion program. Therefore, no allotment of FEHB premiums is permitted until the first day of the first pay period beginning on or after October 1, 2000.

Waiver of Notice of Proposed Rulemaking

In accordance with section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. An opportunity for public comment prior to issuing this rule is unnecessary and contrary to the public interest. In developing this regulation, OPM worked extensively with affected stakeholders. OPM followed the Internal Revenue Code to develop a plan document and regulations that comply with tax law and parallel the practices of private sector employers. It is necessary that payroll offices begin work on systems changes so that this benefit will be available at the start of Fiscal Year 2001—a logical time in terms of Federal agency budget and payroll administration.

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 tax withholdings for Federal employees.

Executive Order 12866, Regulatory Review

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

List of Subjects in 5 CFR Part 550

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

U.S. Office of Personnel Management.

Janice R. Lachance,
Director.

Accordingly, OPM is amending 5 CFR part 550 as follows:

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.

§ 550.301 [Amended]

2. Section 550.301 is amended by removing the definition of *pay*.

3. In § 550.311:

A. Paragraph (a) is amended by removing the period at the end of paragraph (a)(7) and adding a semicolon in its place;

B. A new paragraph (a)(8) is added; and

C. Paragraph (b) is revised.

The addition and revision read as follows:

§ 550.311 Authority of agency.

(a) * * *

(8) An allotment to the employing Federal agency to pay an employee's share of Federal Employees Health Benefits premiums, consistent with part 892 of this chapter.

(b) 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. This authority does not extend to allotments to the paying agency for the purpose of reducing taxable income, except where there is an authority specific to Federal employees (statute, Executive order, Presidential directive, or OPM regulations) permitting agencies to provide the pretax benefit in question.

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

§ 550.312 General limitations.

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(f) Notwithstanding the requirements in paragraphs (a) and (c) of this section, an agency may make an allotment for an employee's share of health benefits premiums under § 550.311(a)(8) 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.)

5. Section 550.313 is added to read as follows:

§ 550.313 Order of precedence when there is insufficient pay to cover all deductions.

(a) Except as provided in paragraph (b) of this section, an agency must deduct allotments from any net pay remaining after applying all deductions authorized by law, including any deductions for retirement and other benefits, Social Security and income tax withholdings, collection of a debt to the Government via levy or salary offset, and garnishment. If there is insufficient net pay to cover all of the employee's allotments, the agency must deduct allotments in the order specified under its established rules of precedence.

(b) An agency must deduct an allotment for an employee's share of health benefits premiums under § 550.311(a)(8) before deducting any type of tax withholding.

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OFFICE OF PERSONNEL MANAGEMENT**5 CFR Parts 890 and 892**

RIN 3206–AJ17

Health Insurance Premium Conversion

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to enable employees to pay Federal Employees Health Benefits (FEHB) premiums with pre-tax dollars, as provided under section 125 of the Internal Revenue Code. These regulations establish the basic rules under which this premium conversion plan will operate, beginning October 2000.

DATES: This interim rule is effective September 18, 2000. Comments must be received on or before September 18, 2000.

ADDRESSES: Send written comments to Abby L. Block, Chief, Insurance Policy and Information Division, Office of Insurance Programs, Retirement and Insurance Service, Office of Personnel

Management, 1900 E Street NW., Washington, DC 20415–3666; or deliver to OPM, Room 3425, 1900 E Street NW., Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT:

Laurie Bodenheimer, (202) 606–0004, or email to lrbodenh@opm.gov.

SUPPLEMENTARY INFORMATION:**Background**

At the President's direction, OPM will implement a health insurance premium conversion plan for employees participating in the FEHB Program. The premium conversion plan is part of a "cafeteria plan" under Section 125 of the Internal Revenue Code. OPM will execute a separate plan document to comply with Section 125 requirements and will make that document available on OPM's website: www.opm.gov. OPM is also issuing separate instructions to personnel and payroll offices.

The premium conversion plan will take effect on October 1, 2000. Under the plan, employees' health benefit premium withholdings are treated as a pre-tax salary deduction. Because premium conversion lowers employees' taxable income, it reduces their tax burden. The reduction in taxable income reduces the base for Federal income tax, Social Security and Medicare taxes, and, in most States and localities, State and local taxes based on income.

While most Federal employees are currently not covered by a premium conversion plan, the Federal Judiciary, the United States Postal Service, and some smaller Executive Branch agencies with independent compensation-setting authority have already implemented their own premium conversion plans. Employees of those entities will not be covered by the premium conversion plan described here.

All other employees in the Executive Branch of the Federal Government who are participating in the FEHB Program, and whose pay is issued by an Executive Branch agency, will automatically have their salary reduced (through a Federal allotment) and their FEHB premiums paid under the premium conversion plan. Also, individuals enrolled in the FEHB Program who are employed outside the Executive Branch, or whose pay is not issued by an agency of the Executive Branch, will have their salaries reduced and their FEHB premiums paid under our premium conversion plan if their employer, in coordination with their payroll office, agrees to offer participation in the plan. However, any individual enrolled in the FEHB