



441 G St. N.W.
Washington, DC 20548

B-332435

August 26, 2020

The Honorable Ron Johnson
Chairman
The Honorable Gary Peters
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Carolyn B. Maloney
Chairwoman
The Honorable James Comer
Ranking Member
Committee on Oversight and Reform
House of Representatives

Subject: *Office of Personnel Management: Paid Parental Leave*

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 “Paid Parental Leave” (RIN: 3206-AN96). We received the rule on August 12, 2020. It was published in the *Federal Register* as an interim final rule on August 10, 2020. 85 Fed. Reg. 48075. The stated effective date of the rule is October 1, 2020.

This interim final rule implements the Federal Employee Paid Leave Act (FEPLA). Pub. L. No. 116-92, div. F, title XXVI, subtitle A, 133 Stat. 1198, 2304 (Dec. 20, 2019). According to OPM, FEPLA provides 12 weeks of paid parental leave to certain federal employees in connection with the birth of an employee’s son or daughter, or placement of a son or daughter with an employee for adoption or foster care. In order to implement FEPLA, OPM states this rule adds a new subpart and makes other changes to the Code of Federal Regulations.

The Congressional Review Act (CRA) 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). The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. §§ 553(b)(3)(B), 808(2). Here, although OPM did not specifically mention the CRA’s 60-day delay in effective date requirement, the agency found good cause to waive notice and comment procedures and incorporated a brief statement of reasons. Specifically, OPM stated that it would be impracticable and contrary to the public interest to delay a final regulation until a public notice and comment process has been completed, and that good cause exists for waiving proposed rulemaking. According to OPM, the conclusion of a public notice and comment period before the rule is finalized would be

impracticable because the effective date for the new paid parental leave rules was established by law as October 1, 2020, which was 9 months after enactment of the law. OPM provided that this was insufficient time for the notice and comment rulemaking process. In addition, OPM noted that it had to unexpectedly devote its pay and leave policy resources to coordinate federal employee policies in response to the COVID-19 public health emergency. Also, according to OPM, the conclusion of a public notice and comment period before the rule is finalized would be contrary to the public interest because OPM needed to have regulations in place with sufficient lead time for federal agencies to implement their policies and procedures so eligible employees can claim their paid parental leave benefits on October 1, 2020.

Enclosed is our assessment of 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. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in cursive script that reads "Shirley A. Jones".

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Michael J. Rigas
Acting Director
Office of Personnel Management

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
OFFICE OF PERSONNEL MANAGEMENT
ENTITLED
“PAID PARENTAL LEAVE”
(RIN: 3206-AN96)

(i) Cost-benefit analysis

The Office of Personnel Management (OPM) stated that this interim final rule will require agencies to spend time in order to update agency policies and procedures for parental leave, and to devote additional time to manage staffing following increased utilization of parental leave. OPM stated that in the first year of implementation, the estimated costs are about \$21,000 per agency, and about \$2.5 million in total government wide. According to OPM, the estimated annually recurring costs average about \$69,000 per agency, and about \$8.2 million in total government wide. OPM provided that the rule results in shifts in activity toward the care of young children by federal employees, a benefit that OPM is unable to quantify. OPM explained that qualitative benefits include increased time for bonding between parent and child, improved health of the birth mother and child, preservation of annual and sick leave balances for future family needs, and a positive impact to the U.S. economy by addressing women’s declining labor force participation.

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

OPM certified that this interim final rule will not have a significant economic impact on a substantial number of small entities because it will apply only to federal agencies and employees.

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

OPM did not discuss the Unfunded Mandates Reform Act of 1995 in this interim final rule. In its submission to us, the agency indicated that it prepared a written statement under section 202 of the Act.

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

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

OPM stated that it would be impracticable and contrary to the public interest to delay a final regulation until a public notice and comment process has been completed and that good cause exists for waiving proposed rulemaking. According to OPM, the conclusion of a public notice and comment period before the rule is finalized would be impracticable because the effective date for the new paid parental leave rules was established by law as October 1, 2020, which was 9 months after enactment of the law. OPM provided that this was insufficient time for the notice and comment rulemaking process. In addition, OPM noted that it had to unexpectedly devote its pay and leave policy resources to coordinate federal employee policies in response to

the COVID-19 public health emergency. Also, according to OPM, the conclusion of a public notice and comment period before the rule is finalized would be contrary to the public interest because OPM needed to have regulations in place with sufficient lead time for federal agencies to implement their policies and procedures so eligible employees can claim their paid parental leave benefits on October 1, 2020. OPM stated that it will promulgate a final rule as soon as practical after receiving public comments on the interim final rule.

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

OPM determined that this interim final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

OPM promulgated this interim final rule pursuant to various subparts of chapter 63 of title 5 of the U.S. Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

OPM stated that the Office of Management and Budget (OMB) determined that this interim final rule is economically significant under the Order and stated that OMB reviewed the rule.

Executive Order No. 13,132 (Federalism)

OPM did not discuss federalism in this interim final rule. In its submission to us, the agency indicated that it did not discuss federalism in the preamble to the rule.