



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

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April 20, 2023

The Honorable Gary C. Peters
Chairman
The Honorable Rand Paul, M.D.
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable James Comer
Chairman
The Honorable Jamie Raskin
Ranking Member
Committee on Oversight and Accountability
House of Representatives

Subject: *Office of Personnel Management: Postal Service Reform Act; Establishment of the Postal Service Health Benefits Program*

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) titled "Postal Service Reform Act; Establishment of the Postal Service Health Benefits Program" (RIN: 3206-AO43). We received the rule on April 3, 2023. It was published in the *Federal Register* as an interim final rule with request for comments on April 6, 2023. 88 Fed. Reg. 20383. The effective date is June 5, 2023.

According to OPM, it is issuing an interim final rule with comment period (IFC) to establish and administer the Postal Service Health Benefits (PSHB) Program pursuant to the Postal Service Reform Act of 2022 (PSRA). Pub. L. No. 117-108, 136 Stat. 1127 (Apr. 6, 2022). OPM stated that under the statute, it must establish a PSHB Program for U.S. Postal Service (USPS) employees, annuitants, and their eligible family members, and not later than one year after the date of enactment, the OPM Director must issue regulations to carry out the statute.

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 CRA's 60-day delay in effective date requirement, OPM stated that notice and comment procedures are unnecessary for this IFC and the agency finds good cause to waive such procedures under section 553(b)(3)(B) of the Administrative Procedure Act. Specifically, OPM stated that notice and comment procedures would be impracticable here

because doing so would not allow sufficient time for the PSHB Program to be in effect by January 2025, as required by the PSRA. OPM also stated that failure to meet this deadline would not only violate the PSRA but would also result in a potential gap in health insurance coverage for USPS employees, annuitants, and their families.

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 black ink, reading "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Kiran A. Ahuja
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
TITLED
“POSTAL SERVICE REFORM ACT;
ESTABLISHMENT OF THE POSTAL SERVICE HEALTH BENEFITS PROGRAM”
(RIN: 3206-AO43)

(i) Cost-benefit analysis

The Office of Personnel Management (OPM) provided an analysis of the costs, benefits, and transfers associated with this interim final rule with comment period (IFC). According to OPM, the IFC will reduce costs related to U.S. Postal Service (USPS) retiree health benefits. OPM stated that the reduction in cost will benefit USPS by increasing its financial stability. OPM stated further that more stable USPS operations would benefit the country overall because USPS plays a critical role in the nation’s communications, commerce, and voting infrastructure.

OPM provided an accounting statement summarizing its assessment of the administrative costs associated with the IFC. OPM estimates the total startup costs to implement the IFC to be \$100,976,208 and the total ongoing costs to be \$51,150,584 from fiscal year 2023 through fiscal year 2032. Lastly, OPM stated that the IFC will result in the transfer of costs from USPS to the Medicare Program, which is funded by taxpayers, including USPS and beneficiaries. OPM also stated that a portion of premium costs will likely be transferred to the pharmaceutical manufacturers due to reduced payments received from Medicare Part D enrollees.

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

OPM certified that this IFC 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

OPM determined that this IFC does not mandate any requirements for state, local, or tribal governments, or for the private sector.

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

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

OPM stated that notice and comment procedures are unnecessary for this IFC and it found good cause to waive such procedures under section 553(b)(3)(B) of the Administrative Procedure Act. Specifically, OPM stated that notice and comment procedures would be impracticable here because doing so would not allow sufficient time for the Postal Service Health Benefits Program to be in effect by January 2025, as required by the Postal Service Reform Act of 2022 (PSRA). OPM also stated that failure to meet this deadline would not only

violate the PSRA but would also result in a potential gap in health insurance coverage for USPS employees, annuitants, and their families.

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

OPM stated that it is investigating whether to create a new information collection or revise an existing information collection and it is seeking public comment on this question. OPM also stated that if an information collection is revised, it will be the SF-2809, Health Benefits Election Form, under Office of Management and Budget Control Number 3206-0160.

Statutory authorization for the rule

OPM promulgated this final rule pursuant to section 2051 of title 2; sections 5561 note, 8702 note, 8903c, 8913 of title 5; section 1108 of title 10; sections 4069c and 4069c-1 of title 22; section 1647b of title 25; section 9801 of title 26; section 5522 of title 36; section 486 of title 40; section 300gg-14 of title 42; section 3516 of title 50, United States Code; sections 11202(f), 11232(e), 11246 (b) of Public Law 105-33; and section 1110 of Public Law 116-92.

Executive Order No. 12866 (Regulatory Planning and Review)

OPM determined that this IFC is likely to have economic impacts of \$100 million or more in at least one year, and constitutes a “significant rule” under the Order.

Executive Order No. 13132 (Federalism)

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