



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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

B-330560

December 10, 2018

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

The Honorable Trey Gowdy
Chairman
The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

Subject: *Office of Personnel Management: Federal Employees Dental and Vision Insurance Program: Extension of Eligibility to Certain TRICARE-Eligible Individuals; Effective Date of Enrollment*

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 "Federal Employees Dental and Vision Insurance Program: Extension of Eligibility to Certain TRICARE-Eligible Individuals; Effective Date of Enrollment" (RIN: 3206-AN58). We received the rule on November 26, 2018. It was published in the *Federal Register* as an interim final rule; request for comments on November 19, 2018. 83 Fed. Reg. 58,175. The effective date of the interim final rule was November 14, 2018.

The interim final rule expands eligibility for enrollment in the Federal Employees Dental and Vision Insurance Program to additional groups. The National Defense Authorization Act for Fiscal Year 2017 expanded the program to certain TRICARE-eligible individuals.

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). This final rule was received on November 26, 2018. It was published in the *Federal Register* on November 19, 2018, and has a stated effective date of November 14, 2018. 83 Fed. Reg. 58,175. Therefore the interim final rule does not have the required 60-day delay in its effective date.

The 60-day delay in effective date can be waived however, if the agencies find for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agencies incorporate a statement of the findings and their reasons in the rule issued. 5 U.S.C. § 808(2). OPM found good cause to issue the rule effective upon November 14, 2018. OPM stated that if it waited to finalize the rule after the notice and comment period, it would be impeded from

fulfilling its statutory functions because TRICARE-eligible individuals would not be able to participate in the 2018 Open Season.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Julia C. Matta
Managing Associate General Counsel

Enclosure

cc: Margaret M. Weichert
Acting Director
Office of Personnel Management

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
OFFICE OF PERSONNEL MANAGEMENT
ENTITLED
“FEDERAL EMPLOYEES DENTAL AND VISION INSURANCE
PROGRAM: EXTENSION OF ELIGIBILITY TO CERTAIN
TRICARE-ELIGIBLE INDIVIDUALS; EFFECTIVE DATE OF ENROLLMENT”
(RIN: 3206-AN58)

(i) Cost-benefit analysis

The Office of Personnel Management (OPM) stated the rule would offer more dental coverage options and new vision coverage in the Federal Employees Dental and Vision Insurance Program for TRICARE-eligible individuals. OPM stated these individuals currently only have one dental option and that vision is a new benefit under the rule.

OPM further stated it estimates that approximately 7.82 million individuals will be newly eligible for vision benefits under the rule and 5.93 million individuals will be newly eligible for dental benefits. OPM also stated it did not expect every newly eligible individual to enroll. However, OPM stated it did not have extensive data on and could not estimate the uptake of TRICARE-eligible individuals, so it could not determine the impact of the rule.

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

OPM certified the rule would 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 stated the rule will not result in the expenditure by state, local, or tribal governments of more than \$100 million annually.

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

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

OPM issued the rule as an interim final rule without notice and comment. OPM stated it waived notice and comment rulemaking under 5 U.S.C. § 553(b)(B) because the conclusion of a public notice and comment period before the rule is finalized would be impractical. OPM stated that if it conducted a notice and comment period, then it could not finalize the rule before the end of 2018 Open Season.

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

OPM stated the rule does involve a collection of information that it has submitted to the Office of Management and Budget (OMB) for approval. OPM estimated the total burden for this collection to be 44,307 hours.

Statutory authorization for the rule

OPM stated it promulgated the rule under section 715 of the National Defense Authorization Act for Fiscal Year 2017.

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

OPM stated the rule had been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

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