



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

FOR: Department of Treasury and Internal Revenue Service

FROM: Office of Personnel Management

SUBJECT: Comments regarding Notice 2015-52: Section 4980I — Excise Tax on High Cost Employer-Sponsored Health Coverage

Date: October 1, 2015

Thank you for the opportunity to comment on the Internal Revenue Service's (IRS) notice for the excise tax on High Cost Employer-Sponsored Health Coverage (Notice 2015-52). The Office of Personnel Management (OPM) administers the Federal Employees Health Benefits (FEHB) Program. The FEHB is a \$48 billion health insurance program covering more than 8.2 million federal employees, retirees and their dependents as well as employees of tribal organizations. To administer the program, OPM contracts with 97 health insurance carriers which offer 257 plan options.

FEHB is one of the premier benefits the government uses to recruit individuals to the federal workforce. As currently described in Notice 2015-52, and without relief, the administration of the excise tax will most likely require a reduction in FEHB benefits and elimination of other benefit programs. This will impact the lives of current enrollees and will affect the ability of agencies to recruit and retain a world class workforce.

Below we detail issues that raise concern for us and the FEHB program.

I. Medicare and Annuitants

As stated in our previous response, we strongly recommend IRS allow employers who are unable to require Medicare participation to exclude claims that would otherwise be paid by Medicare from the cost of applicable coverage for retirees that are eligible for, but not enrolled in Medicare. These costs for other employers that provide retiree health coverage would be paid by the Medicare program which is not subject to the tax.

This exclusion would include both medical and prescription drug claims that would otherwise be paid under any part of Medicare.

II. Employer aggregation

OPM would like IRS to clarify on the treatment of the government when it comes to employer aggregation. We recommend that for the purposes of the excise tax, the United States government is given flexibility to determine the employer when administering this tax on the FEHB health plans. This is the current method that is being used in implementing other provisions of the Affordable Care Act and would help maintain consistency within our program.

III. Calculating the cost of coverage

When it comes to calculating the cost of coverage, OPM intends to use the program wide weighted average premium to determine the cost of applicable coverage.

IV. Timing with plan year

- A. In the second notice, Treasury and IRS are considering a requirement that an employer use the first day of the plan year as a snapshot date for determining the composition of its employee population. OPM recommends that employers are given flexibility on the date used to determine the age and gender composition of the workforce. Due to open season dates and retirement patterns, our enrollment systems would not be able to produce an accurate count on the first day of the plan year. We recommend that Treasury and IRS give employers the flexibility to choose a date that would produce the most accurate representation of their enrollees. We also support the IRS in requiring the date, once chosen by the employer, to remain consistent year over year.
- B. When it comes to determining the cost of coverage, OPM recommends that Treasury allow us flexibility when it comes to calculating our enrollment data. While the notice suggests that employers use monthly enrollment data, we recommend that we are allowed to base our annual enrollment numbers on our March enrollment data. The method mentioned by IRS would create an administrative burden on the FEHB Program. OPM does not anticipate any major enrollment shifts throughout the plan year and we also expect a stable premium through the calendar year as well.

V. FSA spending accounts

OPM supports the IRS proposal in Notice 2015-52 that the employee's total contributions would be the amount used to determine the excise tax. The alternative method which uses the amounts used would be an extreme administrative burden for OPM to collect the spending of all enrollees in the FSA program.

OPM also continues to make the recommendation that IRS explore the idea of a limited FSA. Because the law explicitly exempts the costs of Dental and Vision care from the excise tax, we recommend that a limited FSA program that only covers Dental and Vision and other exempted benefits under the law be excluded in the calculation for the total cost of applicable coverage.

VI. Income Tax Reimbursement

OPM agrees that the excise tax reimbursement, as well as additional taxes that result from reimbursing the excise tax, should be excluded from the cost of applicable coverage. The notice states IRS is considering exempting these amounts from the cost of applicable coverage if these amounts are separately billed. OPM does not have a mechanism to “separately bill” carriers for expenses and it would require a change in law for us to do so. All reimbursements to carriers are handled through premiums. We request that a line item in a premium rate development fulfill the “separately billed” requirement for exempting these costs from the cost of applicable coverage.

VII. Age and Gender adjustment

OPM recommends that when considering the Age and Gender adjustment, IRS considers all enrollees in the employer-sponsored plan, to include retirees and not only current active employees.

VIII. Conclusion

We request that above stated issues and suggested solutions be considered during the drafting of the regulation. We also request that the recommended adjustments be used logically and fairly to minimize the cost plus administrative burden imposed upon Federal Agencies to comply with the law. Thank you for your consideration of these comments.