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B-335090

March 10, 2023

The Honorable Bernard Sanders
Chairman
The Honorable Bill Cassidy
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Virginia Foxx
Chairwoman
The Honorable Bobby Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of Labor, Employee Benefits Security Administration: Annual Reporting and Disclosure*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Labor, Employee Benefits Security Administration (DOL), titled, "Annual Reporting and Disclosure" (RIN: 1210-AB97). We received the rule on February 24, 2023. It was published in the *Federal Register* as a final rule on February 24, 2023. 88 Fed. Reg. 11793. The stated effective date is April 25, 2023.

According to DOL, this document contains amendments to DOL regulations relating to annual reporting requirements under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). ERISA, Pub. L. No. 93-406, 88 Stat. 829 (Sept. 2, 1974). DOL stated that the amendments contained in this document conform the DOL reporting regulations to revisions to Form 5500, "Annual Return/Report of Employee Benefit Plan," and Form 5500-SF, "Short Form Annual Return/Report of Small Employee Benefit Plan," being published in the *Federal Register* jointly by DOL, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation as a separate Notice of Final Form Revisions titled, "Annual Information Return/Reports" (NFFR). 88 Fed. Reg. 11984 (Feb. 24, 2023). DOL also stated that conforming changes are being made to the requirements for the summary annual report. DOL stated further that the regulatory amendments in this final rule and revisions in the NFFR affect employee benefit plans, plan sponsors, administrators, and service providers to plans subject to annual reporting requirements under ERISA and the Internal Revenue Code.

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). This final rule was published in the *Federal Register* on February 24, 2023. 88 Fed. Reg. 11793. The *Congressional Record* reflects that

the House received the final rule on February 28, 2023. 169 Cong. Rec. H1111 (daily ed. Mar. 3, 2023). The *Congressional Record* does not as of yet reflect the date of receipt by the Senate. The rule has a stated effective date of April 25, 2023. Therefore, based on the date of House receipt, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of DOL'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 that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Lisa M. Gomez
Assistant Secretary
Employee Benefits Security Administration

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF LABOR,
EMPLOYEE BENEFITS SECURITY ADMINISTRATION
TITLED
“ANNUAL REPORTING AND DISCLOSURE”
(RIN: 1210-AB97)

(i) Cost-benefit analysis

The Department of Labor, Employee Benefits Security Administration (DOL) provided an assessment of the potential costs, benefits, and transfers associated with this final rule. This assessment included a discussion of the affected entities, benefits, and cost estimates and savings.

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

DOL determined that this final rule is likely to have a significant economic impact on a substantial number of small entities. DOL prepared a final regulatory flexibility analysis for the final rule. The analysis included a discussion of: (1) the need for, and objectives of the rule; (2) public comments received; (3) affected small entities; (4) the impact of the rule; (5) duplicate, overlapping, or relevant federal rules; and (6) a description of steps taken to minimize the impact on small entities.

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

DOL determined this final rule does not include any federal mandate that the DOL expects would result in expenditures by state, local, or tribal governments, or the private sector of \$100 million or more (adjusted annually for inflation with the base year of 1995).

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

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

According to DOL, on September 15, 2021, DOL, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation (Agencies) published a notice of proposed forms revisions proposing amendments to Form 5500 Annual Return/Report (NPFR). 86 Fed. Reg. 51488. DOL stated that it simultaneously published a notice of proposed rulemaking setting forth proposed amendments to its Title I annual reporting regulations to implement the proposed forms revisions. 86 Fed. Reg. 51284 (Sept. 15, 2021); *see generally* Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (Sept. 2, 1974). The aforementioned proposed rules are collectively referred to as the September 2021 proposal. DOL also stated that the Agencies received 114 comments on the September 2021 proposal and that comments generally focused on the proposed changes for the 2022 plan year forms and on future rulemakings. DOL stated further that the Agencies released two final rules related to the September 2021 proposal and that this final rule and the Annual Information

Return/Reports final rule issued by the Agencies represents Final Rule Phase III of the September 2021 proposal. See *generally Annual Information Return/Reports*, 88 Fed. Reg. 11984 (Feb. 24, 2023); 88 Fed. Reg. 11793 (Feb 24, 2023).

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

DOL determined that this final rule contains information collection requirements (ICRs) under the Act, and it submitted them to the Office of Management and Budget (OMB) for review. According to DOL, the Agencies submitted ICRs to OMB requesting a revision of the collections of information under OMB Control Numbers 1210-0110 (DOL), 1545-1610 (Internal Revenue Service), 1212-0057 (Pension Benefit Guaranty Corporation), and 1210-0040 (DOL for Summary Annual Report). DOL stated that the Annual Information Return/Reports final rule issued in conjunction with this final rule includes a PRA discussion of the burden imposed by the ICRs.

Statutory authorization for the rule

DOL promulgated this final rule pursuant to section 401 note of title 26; sections 1002, 1003, 1021–1025, 1021 note, 1027, 1029–1031, 1059, 1132, 1134, 1135, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c of title 29, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

OMB determined that this rule is economically significant as defined by the Order.

Executive Order No. 13132 (Federalism)

DOL determined that this final rule would not have federalism implications because it would not have direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government.