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January 5, 2024

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 the Treasury, Internal Revenue Service; Department of Labor, Employee Benefits Security Administration; Department of Health and Human Services: Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges*

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 the Treasury, Internal Revenue Service; Department of Labor, Employee Benefits Security Administration; and the Department of Health and Human Services (the Departments) entitled “Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges” (RINs: 0938-AV39, 1210-AC24, and 1545-BQ94). We received the rule on December 27, 2023. It was published in the *Federal Register* as final rules on December 21, 2023. 88 Fed. Reg. 88494. The stated effective date is January 22, 2024.

The final rule relates to fees for the federal independent dispute resolution (IDR) process, as established by the No Surprises Act of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, div. BB § 109 (Dec. 27, 2020). Specifically, the final rule amends existing regulations to provide that the administrative fee amount charged by the Departments to participate in the federal IDR process, and the ranges for certified IDR entity fees for single and batched determinations, will be set by the Departments through notice and comment rulemaking. The final rule also finalizes the amount of the administrative fee for disputes initiated on or after the effective date of the rule. Additionally, the final rule finalizes the certified IDR entity fee ranges for disputes initiated on or after the effective date of the final rule.

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 *Congressional Record* does not yet reflect receipt by the Senate, but the Departments provided documentation showing receipt by both

Houses on December 20, 2023. Email from Regulations Coordinator, Department of Health and Human Services, to CRA Rules, GAO, *Subject: Official Submission - RIN 0938-AV39* (Dec. 20, 2023). The rule was published in the *Federal Register* on December 21, 2023, and it has a stated effective date of January 22, 2024. 88 Fed. Reg. 88494. Therefore, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of the Departments' 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, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Calvin E. Dukes II
Regulations Coordinator
Department of Health and Human Services

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE;
DEPARTMENT OF LABOR, EMPLOYEE BENEFITS SECURITY ADMINISTRATION;
DEPARTMENT OF HEALTH AND HUMAN SERVICES
ENTITLED
“FEDERAL INDEPENDENT DISPUTE RESOLUTION (IDR) PROCESS
ADMINISTRATIVE FEE AND CERTIFIED IDR ENTITY FEE RANGES”
(RIN: 0938-AV39)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service; Department of Labor, Employee Benefits Security Administration; and the Department of Health and Human Services (the Departments) conducted a cost-benefit analysis with respect to the final rule. The Departments summarized their analysis in the following accounting table:

Benefits:				
Non-Quantified:				
<ul style="list-style-type: none"> Increased interested party transparency as a result of the policies to establish the administrative fee amount and certified independent dispute resolution (IDR) entity fee ranges in notice and comment rulemaking, as well as setting forth the methodology for calculating the administrative fee amount and the considerations for developing the certified IDR entity fee ranges. 				
Costs:	Estimate	Year Dollar	Discount Rate	Period Covered
Annualized	\$0.14 million	2023	7 percent	2023–2027
Monetized (\$/Year)	\$0.13 million	2023	3 percent	2023–2027
Quantified:				
<ul style="list-style-type: none"> Costs to interested parties of \$638,631 to review and interpret these rules in 2023. 				
Transfers:	Estimate	Year Dollar	Discount Rate	Period Covered
Annualized	\$31.65 million	2023	7 percent	2023–2027
Monetized (\$/year)	\$32.31 million	2023	3 percent	2023–2027
Quantified:				
<ul style="list-style-type: none"> Transfers from the parties to the federal government of approximately \$32 million annually beginning in 2024 as a result of the policy to set the administrative fee amount at \$115 per party per dispute for disputes initiated on or after the effective date of these rules. Transfers from the parties to certified IDR entities of approximately \$9 million annually beginning in 2024 as a result of the policy to set the certified IDR entity fee ranges at \$200–\$840 for single determinations, \$268–\$1,173 for batched determinations, and an additional \$75–\$250 for every 25 line items in excess of the first 25 line items. 				

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

The Departments certified that the final rule 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

The Departments determined that this final rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$177 million (\$100 million, adjusted for inflation) or more in any one year.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

The Departments did not discuss the Administrative Pay-As-You-Go-Act of 2023 in this final rule. However, in its submission to us, the Departments stated that this Act does not apply to this rule because it meets one of the Act’s exemptions, the direct spending is less than \$100 million in any given year during such 10-year period.

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

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

On September 26, 2023, the Departments promulgated the “Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges” proposed rules. 88 Fed. Reg. 65888. And on November 3, 2023, the Departments promulgated the Federal Independent Dispute Resolution Operations proposed rules. 88 Fed. Reg. 75744. The Departments received 44 comments on the proposed rules. The Departments responded to comments in the final rule.

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

The Departments stated that the final rule is not subject to the Act because the Departments anticipate that fewer than 10 certified IDR entities will submit requests to update their certified IDR entity fees an additional time during the calendar year based on current experience operating the federal IDR process, and because the final rule does not contain any other collection of information as defined in the Act.

Statutory authorization for the rule

The Departments promulgated the final rule pursuant to sections 7805 and 9816 of title 26, sections 1027, 1059, 1135, 1161–1169, 1181–1183, 1181 note, 1185, 1185a-n, 1191, 1191a, 1191b, 1191c of title 29, and sections 651 note, 300gg-92, and 300gg-111 through 300gg-139, as amended, of title 42, United States Code, as well as Public Laws 104-191, 110-343, 111-148, 111-152, 113-235, and 116-260.

Executive Order No. 12866 (Regulatory Planning and Review)

The Departments stated that OMB's Office of Information and Regulatory Affairs (OIRA) deemed this rule significant under the Order and that the Departments thus prepared a regulatory impact analysis under the Order.

Executive Order No. 13132 (Federalism)

The Departments stated that they do not anticipate the final rule will have federalism implications or limit the policy-making discretion of the states, thus complying with the requirements of the Order. The Departments further stated that they have engaged in efforts to consult with and work cooperatively with affected states, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners and consulting with state insurance officials on an individual basis. Finally, the Departments stated that while developing the final rule, the Departments attempted to balance the states' interests in regulating health insurance issuers with the need to ensure market stability, which the Departments assert showed compliance with the requirements of the Order.