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May 10, 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 Labor, Employee Benefits Security Administration: Amendment to Prohibited Transaction Exemption 84-24*

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 (Department) entitled "Amendment to Prohibited Transaction Exemption 84-24" (ZRIN 1210-ZA33). We received the rule on April 25, 2024. It was published in the *Federal Register* on April 25, 2024. 89 Fed. Reg. 32302. The effective date of the rule is September 23, 2024.

According to the Department, this final rule contains a notice of amendment to Prohibited Transaction Exemption (PTE) 84-24, which is an exemption from certain prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986. The Department stated that the amendment affects participants and beneficiaries of plans, individual retirement account (IRA) owners, and certain fiduciaries of plans and IRAs.

Enclosed is our assessment of the Department'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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads "Shirley A. Jones".

Shirley A. Jones
Managing Associate General Counsel

Enclosure

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

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF LABOR,
EMPLOYEE BENEFITS SECURITY ADMINISTRATION
ENTITLED
“AMENDMENT TO PROHIBITED TRANSACTION EXEMPTION 84-24”
(ZRIN 1210-ZA33)

(i) Cost-benefit analysis

The Department of Labor, Employee Benefits Security Administration (Department), conducted an economic analysis of this final rule. In total, the Department estimated that the written authorization requirement, under the new conditions of relief, is expected to result in an annual total hour burden of 17,756 hours with an equivalent cost of \$2,942,374. The Department also estimated that in total, providing pre-authorization materials is expected to impose an annual total hour burden of 7,230 hours with an equivalent cost of \$1,083,388.

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

The Department prepared a final regulatory flexibility analysis. The Department explained that this amended exemption, along with related amended exemptions and a rule amendment published in the same issue of the *Federal Register*, is part of a rulemaking regarding the definition of fiduciary investment advice that it has determined will likely have a significant economic impact on a substantial number of small entities. The Department stated that the impact of this final rule on small entities is included in the final regulatory flexibility analysis for the entire project, which can be found in a related notice of rulemaking in the same *Federal Register* issue. See 89 Fed. Reg. 32240. For Prohibited Transaction Exemption (PTE) 84-24, the Department estimated that 86,769 small financial entities will be affected by the amendments, including 924 pension consultants, 20 investment company principal underwriters, 85,564 Independent Producers, and 261 insurance companies. 89 Fed. Reg. 32250.

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

The Department 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 \$100 million or more, adjusted annually for inflation, 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 Department did not discuss the Act in this final rule. In its submission to us, the Department stated that the Act does not apply because it does not increase direct spending.

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

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

On October 31, 2023, the Department stated it released the proposed amendment to PTE 84-24 and invited all interested persons to submit written comments. On November 3, 2023, the Department published the proposed amendment. 88 Fed. Reg. 75979. The Department also explained that it proposed amendments to PTEs 75-1, 77-4, 80-83, 83-1, 86-128, and 2020-02. The Department stated that it received written comments on the proposed amendment to PTE 84-24, and on December 12 and 13, 2023, held a virtual public hearing at which witnesses provided commentary on the proposal. Moreover, the Department stated that, after carefully considering the comments it received and the hearing testimony, including insurers' representations regarding impediments they have confronted in complying with the current conditions of PTE 2020-02 when distributing annuities through independent agents, it was granting this amendment to PTE 84-24 on its own motion.

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

The Department determined that this final rule contains information collection requirements under the Act. According to the Department, it solicited comments concerning the information collection requirements included in the proposed rulemaking. The Department stated it received comments that addressed the burden estimates used in the analysis of the proposed rulemaking. The Department explained that it reviewed these public comments in developing the paperwork burden analysis and subsequently revised the burden estimates in the amendments to the PTEs. Additionally, the Department estimated that the revision of an existing collection, titled "Prohibited Transaction Exemption (PTE) 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters" (OMB Control Number 1210-0158), will result in a total annual burden of 1,093,403 hours and a total annual burden cost of \$191,759.

Statutory authorization for the rule

The Department stated that it is granting the amendments to the class exemption on its own motion pursuant to section 4975(c)(2) of title 26 and section 1108(a) of title 29, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

The Department stated that it has been determined that this final rule is significant under the Order and submitted it to OMB for review.

Executive Order No. 13132 (Federalism)

The Department determined that this final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.