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October 5, 2020

The Honorable Lamar Alexander
Chairman
The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, Pensions
United States Senate

The Honorable Bobby Scott
Chairman
The Honorable Virginia Foxx
Ranking Member
Committee on Education and Labor
House of Representatives

Subject: *Department of Labor, Employee Benefits Security Administration: Pension Benefit Statements—Lifetime Income Illustrations*

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 “Pension Benefit Statements—Lifetime Income Illustrations” (RIN: 1210-AB20). We received the rule on September 18, 2020. It was published in the *Federal Register* as an interim final rule with request for comments on September 18, 2020. 85 Fed. Reg. 59132. The comment period for the interim final rule closes on November 17, 2020. The effective date of the interim final rule is September 18, 2021.

According to the Department, the interim final rule requires plan administrators of defined contribution plans under the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (Sept. 2, 1974), to express a participant’s current account balance, both as a single life annuity and a qualified joint and survivor annuity income stream. The Department stated these two income stream illustrations, which must be on the same pension benefit statement, will help participants better understand how the amount of money they have saved so far converts into an estimated monthly payment for the rest of their lives, and how this impacts their retirement planning. The Department further stated the interim final rule provides plan administrators with a set of assumptions to use in preparing the lifetime income illustrations, as well as model language that may be used for benefit statements by plan administrators who wish to obtain relief from liability for the illustrations.

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 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: Jeanne Klinefelter Wilson
Acting 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
“PENSION BENEFIT STATEMENTS—
LIFETIME INCOME ILLUSTRATIONS”
(RIN: 1210-AB20)

(i) Cost-benefit analysis

The Department of Labor, Employee Benefits Security Administration (Department) estimated the interim final rule would create one-time costs of (1) developing a system to produce lifetime income illustrations, and (2) transitioning from existing assumptions and language to the required assumptions and language or model language and integrating the new illustrations into existing paper and online benefit statement formats. The Department further estimated ongoing costs including answering increased calls from participants, printing lifetime income illustrations, converting the account balance to annuities based on the DOL-specified assumptions at the statement date, and training internal staff about lifetime income illustrations and efficient navigation of the system. Using a 3 percent discount rate, the Department estimated that total costs over 10 years will be \$240 million. Using a 7 percent discount rate, the Department estimated that total costs over 10 years will be \$233 million.

The Department also estimated the interim final rule would create benefits of strengthening retirement security by encouraging those currently contributing too little to increase their plan contributions, and saving some participants' time in understanding how prepared (or unprepared) they are for retirement by making lifetime income information readily available. The Department estimated the benefits could increase aggregate annual contributions by \$5.1 billion.

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

Because the Department was not required to publish a notice of proposed rulemaking, the Department determined the interim final rule is exempt from the Act.

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

The Department stated the Act does not apply to interim final rules or non-notice rules issued under the good cause exemption in 5 U.S.C. § 553. The Department also determined the interim final rule does not include any federal mandate that the Department expects to result in an expenditure of \$100 million (adjusted for inflation) or more in any one year by state, local, or tribal governments.

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

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

The Department waived notice and comment procedures for good cause. The Department determined it had good cause because Congress's explicit direction in the Setting Every Community Up for Retirement Enhancement Act of 2019, Pub. L. No. 116-94, div. O, 133 Stat. 2534, 3137 (Dec. 20, 2019), to publish an interim final rule within 1 year, combined with the regulated community's need for regulatory guidance and the Department's intention to publish a final rule after receiving comments, make pre-interim final rule notice and public comment procedures impracticable, unnecessary, or contrary to the public interest in this instance.

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

The Department determined the interim final rule contains an information collection requirement (ICR) subject to the Act. The ICR is titled "Pension Benefit Statement" and is associated with Office of Management and Budget (OMB) Control Number 1210-NEW. The Department estimated the total annual burden hours for the ICR would be 19,253, based on a 3-year average. The Department estimated the total annual burden cost would be \$497,108,843, based on a 3-year average.

Statutory authorization for the rule

The Department promulgated the interim final rule pursuant to section 401 note of title 26, and sections 1003, 1021–1025, 1027, 1029–31, 1059, 1132, 1134, 1135, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c of title 29, United States Code; and section 501 of Public Law 109-280 and section 105 of Public Law 110-458.

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

The Department stated that OMB determined the interim final rule was economically significant under the Order.

Executive Order No. 13,132 (Federalism)

The Department determined the interim final rule will not have federalism implications because it will not have direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibilities among various levels of government.