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December 13, 2022

The Honorable Patty Murray
Chairwoman
The Honorable Richard Burr
Ranking Member
Committee on Health, Education, Labor, and 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: Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*

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 (EBSA) entitled "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" (RIN: 1210-AC03). We received the rule on December 1, 2022. It was published in the *Federal Register* as a final rule on December 1, 2022. 87 Fed. Reg. 73822. The effective date is January 30, 2023.

According to EBSA, the final rule clarifies the application of the Employee Retirement Income Security Act of 1974's, 29 U.S.C. § 1001 *et seq.*, fiduciary duties of prudence and loyalty to selecting investments and investment courses of action, including selecting qualified default investment alternatives, exercising shareholder rights, such as proxy voting, and the use of written proxy voting policies and guidelines. EBSA further stated the final rule reverses and modifies certain amendments to the Investment Duties regulation adopted in 2020.

Enclosed is our assessment of EBSA'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".

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
“PRUDENCE AND LOYALTY IN SELECTING PLAN INVESTMENTS
AND EXERCISING SHAREHOLDER RIGHTS”
(RIN: 1210-AC03)

(i) Cost-benefit analysis

The Department of Labor, Employee Benefits Security Administration (EBSA) estimated the final rule would lead to an aggregate cost of \$135,407,458 attributed to the costs of reviewing plan investment practices, the costs of reviewing proxy voting practices, and the costs of updating proxy voting policies. EBSA also estimated the final rule would lead to costs savings of \$18,222,207 in its first year and \$6,072,526 in its second year attributed to removal of the special collateral benefit documentation requirement under the tie-breaker rule, removal of the special recordkeeping requirement for proxy voting, and removal of the proxy voting “safe harbors.”

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

EBSA prepared a Final Regulatory Flexibility Analysis. The analysis discussed: (1) the need for and objectives of the rule; (2) comments made on the proposed rule; (3) a description of affected small entities; (4) the impact of the final rule; (5) regulatory alternatives; and (6) duplicate, overlapping, or relevant federal rules.

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

EBSA determined the final rule does not include any federal mandate that EBSA expects would result in such expenditures by state, local, or tribal governments, or the private sector.

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

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

On October 14, 2021, EBSA published a proposed rule. 86 Fed. Reg. 57272. EBSA received more than 895 written comments and 21,469 form letters submitted during the open comment period. EBSA stated the comments came from a variety of parties, including plan sponsors and other plan fiduciaries, individual plan participants and beneficiaries, financial services companies, academics, elected government officials, trade and industry associations, and others.

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

EBSA stated the final rule eliminates the information collection requirements associated with Office of Management and Budget (OMB) Control Numbers 1210-0162 and 1210-0165.

Statutory authorization for the rule

EBSA promulgated the final rule pursuant to sections 1101, 1104, 1108, 1112, and 1135 of title 29, United States Code, as well as Public Laws 107-16 and 109-280.

Executive Order No. 12866 (Regulatory Planning and Review)

EBSA stated OMB determined the final rule was economically significant.

Executive Order No. 13132 (Federalism)

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