



441 G St. N.W.
Washington, DC 20548

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August 8, 2024

The Honorable Sherrod Brown
Chairman
The Honorable Tim Scott
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Patrick McHenry
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Registration for Index-Linked Annuities and Registered Market Value Adjustment Annuities; Amendments to Form N-4 for Index-Linked Annuities, Registered Market Value Adjustment Annuities, and Variable Annuities; Other Technical Amendments*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (SEC) entitled “Registration for Index-Linked Annuities and Registered Market Value Adjustment Annuities; Amendments to Form N-4 for Index-Linked Annuities, Registered Market Value Adjustment Annuities, and Variable Annuities; Other Technical Amendments” (RIN: 3235-AN30). We received the rule on July 10, 2024. It was published in the *Federal Register* as a final rule on July 24, 2024. 89 Fed. Reg. 59978. The effective date of the rule is September 23, 2024.

According to SEC, this final rule adopts rule and form amendments to provide a tailored form to register the offerings of registered index-linked annuities (RILAs). SEC states the rule, among other things, requires insurance companies to register RILA offerings on the registration form for most variable annuities.

Enclosed is our assessment of SEC’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.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Vanessa A. Countryman
Secretary
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
“REGISTRATION FOR INDEX-LINKED ANNUITIES AND REGISTERED MARKET VALUE
ADJUSTMENT ANNUITIES; AMENDMENTS TO FORM N-4 FOR INDEX-LINKED ANNUITIES,
REGISTERED MARKET VALUE ADJUSTMENT ANNUITIES,
AND VARIABLE ANNUITIES; OTHER TECHNICAL AMENDMENTS”
(RIN: 3235-AN30)

(i) Cost-benefit analysis

The Securities and Exchange Commission (SEC) conducted an economic analysis of this final rule. This analysis included discussion of (1) a baseline addressing affected parties, current regulatory requirements, and market practice; (2) benefits and costs; (3) effects on efficiency, competition, and capital formation; and (4) reasonable alternatives considered. SEC stated it believed the rule’s total costs and benefits, including those SEC was unable to quantify, will likely have an annual effect on the economy of \$100 million or more in the first year.

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

SEC certified that this 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

As an independent regulatory agency, SEC is not subject to the Act.

(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.

As an independent regulatory agency, SEC is not subject to the Act.

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

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

On October 13, 2023, SEC published a proposed rule. 88 Fed. Reg. 71088. SEC stated the comment period closed on November 28, 2023, but it considered all public comments received through May 28, 2024. According to SEC, it received comments from a variety of interested parties including life insurance companies, professional and trade associations, a public interest advocacy organization, and individuals. SEC responded to comments in this final rule, but noted that some were beyond the rulemaking's scope.

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

SEC determined that this final rule contains information collection requirements (ICRs) under the Act. SEC stated it submitted them to OMB for review. According to SEC, the amendments contained within the rule will impact the current collections of information burdens of: (1) "Rule 498A Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts" (OMB Control Number 3235-0765), which SEC is retitling to "Rule 498A Summary Prospectus for Variable and Non-Variable Annuity and Variable Life Insurance Contracts;" (2) "Form N-4, Registration Statement of Separate Accounts Organized as Unit Investment Trust" (OMB Control Number 3235-0318), which SEC is retitling to "Form N-4, Registration Statement of Separate Accounts Organized as Unit Investment Trust or of Index-Linked Annuity Contracts;" (3) "Annual Notice of Securities Sold Pursuant to Rule 24f-2" (OMB Control Number 3235-0456), which SEC is retitling to "Annual Notice of Securities Sold Pursuant to 17 CFR 270.24f-2 or 230.456(e);" and (4) "Investment Company Interactive Data" (OMB Control Number 3235-0642). SEC estimated the total costs associated with the rule will be \$67,236,332.

Statutory authorization for the rule

SEC promulgated this final rule pursuant to the Securities Act, particularly sections 6, 7, 8, 10, 19, and 28, 15 U.S.C. §§ 77a *et seq.*; the Exchange Act, particularly sections 3, 4, 10, 12, 13, 14, 15, 17, 23, 35A, and 36, 15 U.S.C. §§ 78a *et seq.*; the Investment Company Act of 1940, particularly sections 8, 30, and 38, 15 U.S.C. §§ 80a-1 *et seq.*; and the RILA Act, particularly section 101, Pub. L. No. 117-328, div. AA, title I, 136 Stat. 4459, 5528 (Dec. 29, 2022).

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, SEC is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, SEC is not subject to the Order.