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United States Government Accountability Office
Washington, DC 20548

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February 9, 2009

The Honorable Edward M. Kennedy
Chairman
The Honorable Michael B. Enzi
Ranking Minority Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable George Miller
Chairman
The Honorable Howard P. "Buck" McKeon
Ranking Minority Member
Committee on Education and Labor
House of Representatives

Subject: *Department of Labor, Employee Benefits Security Administration:
Investment Advice--Participants and Beneficiaries*

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 (Labor), Employee Benefits Security Administration, entitled "Investment Advice--Participants and Beneficiaries" (RIN: 1210-AB13). We received the rule on January 23, 2009. It was published in the *Federal Register* as a final rule on January 21, 2009. 74 Fed. Reg. 3822.

The final rule relates to the provision of investment advice by a fiduciary adviser to participants and beneficiaries in participant-directed individual account plans, such as 401(k) plans, and beneficiaries of individual retirement accounts. The final rule implements part of the Pension Protection Act of 2006 to permit a broader array of investment advice providers to offer their services to participants and beneficiaries responsible for investment of accounts in their individual accounts and, accordingly, for the adequacy of their retirement savings.

Enclosed is our assessment of Labor's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that Labor complied with the applicable requirements.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Bradford P. Campbell
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
"INVESTMENT ADVICE--PARTICIPANTS AND BENEFICIARIES"
(RIN: 1210-AB13)

(i) Cost-benefit analysis

Labor prepared a cost-benefit analysis in conjunction with the final rule. Labor anticipates that the final rule will increase the availability of investment advice to defined contribution plan participants and the use of advice by IRA beneficiaries. Labor notes that the costs of this regulation are due to the cost of providing (or paying for) investment advice so will be incurred only to the extent that participants seek advice and anticipate improved returns on their investment. Accordingly, Labor is confident that these actions will yield positive net benefits but is uncertain as to the magnitude.

By increasing the availability of investment advice, Labor expects that the final rule will reduce investment errors to the benefit of participants. Labor estimates the reduction of errors will save participants \$27 billion annually. Labor estimates that the costs for advice arrangements will total \$8.5 billion annually.

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

Labor certified that the final rule will not have a significant 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

Labor determined that the final rule does not include any federal mandate that will result in expenditures by state, local, or tribal governments in the aggregate of more than \$100 million, adjusted for inflation, or increase expenditures by the private sector of more than \$100 million, adjusted for inflation.

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

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

Labor published two separate proposed rules on August 22, 2008. 73 Fed. Reg. 49,896 and 73 Fed. Reg. 49,924. Labor received 43 comment letters in response to the proposals. Labor held a public meeting on October 21, 2008, at which members of the public were afforded an additional opportunity to present their views on the proposals, and eight organizations testified at the hearing. Labor responded to the comments in the final rule. 74 Fed. Reg. 3,822.

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

Labor submitted the information collection request associated with the final rule to the Office of Management and Budget (OMB), and OMB approved the information collection request on January 9, 2009, under OMB Control Number 1210-0134.

Labor estimates that the final rule will require approximately 16.1 million burden hours with an equivalent cost of approximately \$1.41 billion and a cost burden of approximately \$642.6 million in the first year. The labor burden hours in each subsequent year are approximately 13.5 million hours with an equivalent cost of approximately \$1.12 billion, and the cost burden in each subsequent year is approximately \$493.3 million per year.

Statutory authorization for the rule

The final rule is authorized by section 601 of the Pension Protection Act of 2006, Public Law 109-280, 120 Stat. 780 (August 17, 2006).

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

Labor determined that the final rule is an economically significant regulatory action under the Order and prepared an analysis of the impacts of the final rule.

Executive Order No. 13,132 (Federalism)

Labor determined that the final rule does not have federalism implications, because it has no substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.