U.S. GOVERNMENT ACCOUNTABILITY OFFICE
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Washington, DC 20548

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August 14, 2019

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

The Honorable Robert C. "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: Definition of "Employer" Under Section 3(5) of ERISA—Association Retirement Plans and Other Multiple-Employer Plans*

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 "Definition of 'Employer' Under Section 3(5) of ERISA—Association Retirement Plans and Other Multiple-Employer Plans" (RIN: 1210-AB88). We received the rule on July 31, 2019. It was published in the *Federal Register* as a final rule on July 31, 2019. 84 Fed. Reg. 37508. The effective date of the rule is September 30, 2019.

Labor stated the final rule expands access to affordable quality retirement saving options by clarifying the circumstances under which an employer group or association or a professional employer group or association or professional employer organization (PEO) may sponsor a multiple employer workplace retirement plan under title I of the Employee Retirement Income Security Act (ERISA). Labor stated the final rule does this by clarifying that employer groups or associations and PEOs can, when satisfying certain criteria, constitute "employers" within the meaning of ERISA. As an "employer," a group, association, or PEO can sponsor a defined contribution retirement plan for its members. Thus, according to Labor, different businesses may join a multiple employer plan (MEP), either through a group or association or through a PEO. Labor further stated the final rule also permits certain working owners without employees to participate in a MEP sponsored by an employer group or association.

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. 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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Preston Rutledge
Assistant Secretary, Employee Benefits
Security Administration
Department of Labor

ENCLOSURE

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
"DEFINITION OF 'EMPLOYER' UNDER SECTION 3(5) OF
ERISA—ASSOCIATION RETIREMENT PLANS AND OTHER
MULTIPLE-EMPLOYER PLANS"
(RIN: 1210-AB88)

(i) Cost-benefit analysis

The Department of Labor, Employee Benefits Security Administration (Labor) stated the final rule does not impose any direct costs because it merely clarifies which persons may act as an "employer" within the meaning of the Employee Retirement Income Security Act. Labor further stated the rule imposes no mandates but rather is permissive relative to baseline conditions. Labor also stated abuses, such as fraud, might result from the fact that employers are not directly overseeing the plan. Labor stated if multiple employer plans (MEP) are at greater risk of fraud and abuse than single-employer plans and some employers who are currently sponsoring single-employer retirement plans decide to join a MEP, more participants and their assets could be at greater risk of fraud and abuse, but single-employer plans are also vulnerable to these abuses and some MEPs may be more secure than single-employer plans. Labor further stated it does not have a basis to believe that there will be increased risk of fraud and abuse due to the final rule.

Labor stated the final rule benefits employees and employers by expanding access to coverage of retirement savings plans. Labor also stated MEPs would potentially benefit from the final rule because of reduced fees and other administrative savings due to economies of scale. Labor further stated MEPs could save by reduced reporting and audit requirements. Labor stated an MEP that is a large, single plan can file a single report and undergo a single audit; this could lead to substantial savings for employers that would otherwise be subject to stringent reporting and audit requirements if on their own plan. Labor also stated the final rule would lead MEPs to enjoy lower bonding costs than would an otherwise equivalent collection of smaller, separate plans. Labor also stated the final rule would lead to increased retirement savings, improved portability of retirement plans, increase labor market efficiency, and improved data collection.

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

Labor prepared a Final Regulatory Flexibility Analysis. The analysis included (1) the need for and objectives of the rule; (2) a description of affected small entities; (3) the impact of the rule, and (4) a discussion on 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

Labor stated the final rule does not include any federal mandate that it expects will result in expenditures covered by the Act 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 23, 2018, Labor published a proposed rule. 83 Fed. Reg. 53534. Labor responded to comments in the final rule.

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

Labor stated the final rule is not subject to the Act because it does not contain a collection of information.

Statutory authorization for the rule

Labor stated it promulgated the final rule under sections 1002, 1031, and 1035 of title 29, United States Code, and Pub. L. No. 105-72, § 1, 111 Stat. 1457 (1997).

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

Labor stated the final rule has been determined that the rule is economically significant and that the Office of Management and Budget has reviewed the rule.

Executive Order No. 13,132 (Federalism)

Labor stated the final rule does not have federalism implications because it does not have a direct effect 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.