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June 5, 2020

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: Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA*

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 (Labor) entitled "Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA" (RIN: 1210-AB90). We received the rule on May 27, 2020. It was published in the *Federal Register* as a final rule on May 27, 2020. 85 Fed. Reg. 31884. The effective date of the rule is July 27, 2020.

According to Labor, this final rule adopts a new, additional safe harbor for employee benefit plan administrators to use electronic media, as a default, to furnish information to participants and beneficiaries of plans subject to the Employee Retirement Income Security Act of 1974 (ERISA). Pub. L. 93-406, 88 Stat. 829. Labor stated that the rule allows plan administrators who satisfy specified conditions to provide participants and beneficiaries with a notice that certain disclosures will be made available on a website, or to furnish disclosures via email. Labor further stated that individuals who prefer to receive disclosures on paper can request paper copies of disclosures and opt out of electronic delivery entirely. Labor expects the rule to enhance the effectiveness of ERISA disclosures and significantly reduce the costs and burden associated with furnishing many of the recurring and most costly disclosures. According to Labor, in addition to benefiting workers, this rule will immediately assist employers and the retirement plan industry as they face a number of economic challenges due to the COVID-19 emergency, including logistical and other impediments to compliance.

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 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 style with a large initial 'S' and 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Preston Rutledge
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
“DEFAULT ELECTRONIC DISCLOSURE BY
EMPLOYEE PENSION BENEFIT PLANS UNDER ERISA”
(RIN: 1210-AB90)

(i) Cost-benefit analysis

The Department of Labor, Employee Benefit Security Administration (Labor) stated that it expects this final rule to increase electronic delivery and result in cost savings by reducing the production and mailing costs associated with paper disclosures. Labor estimates that it costs plans approximately \$514 million annually to mail seven specific disclosures and further estimates that switching to electronic disclosures will likely save plans \$419 million in the first year. Labor states that such savings would be partly offset by the estimated \$232 million plans may pay to maintain websites, prepare notices of internet availability, and produce and distribute initial notifications. According to Labor, these added costs bring net savings to \$187 million, a 36 percent reduction from the current \$514 million burden. In the second year, Labor expects the net savings to increase to \$338 million, a 66 percent reduction from the current burden, because of the decrease in cost to produce and distribute initial notifications. Labor estimates that, over 10 years, the new rule would save approximately \$3.2 billion net, annualized to \$371 million per year (at a 3 percent discount rate). Using a perpetual time horizon, the annualized cost savings in 2016 dollars would be \$319 million (at a 7 percent discount rate).

In addition to the quantified costs, Labor states that certain non-quantified costs in the form of potential adverse impacts may offset some benefits of the rule, including negative impacts suffered by covered individuals in groups with low internet access rates who may fail to request paper copies or exercise their opt-out rights, and increased risks of exposing participants' information to data breach. Labor further states that certain non-quantified benefits may also result from the rule, including some plan administrators choosing to develop new formats and content for electronic disclosures, which may improve the quality and accessibility of information; and competition among service providers, ensuring cost savings to benefit plan sponsors and participants in the form of lower fees.

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

Labor determined that this final rule will significantly impact a substantial number of small entities, defined as employee benefit plans with fewer than 100 participants. Therefore, Labor provided its final regulatory flexibility analysis, including: (1) the need for and objectives of the rule; (2) a description of affected small entities; (3) the projected reporting, recordkeeping, and other compliance requirements; and (4) a discussion of any duplication, overlap, or conflict with other rules and regulations.

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

Labor did not address the Unfunded Mandates Reform Act in the rule. In its submission to us, Labor indicated that section 202 of the Act was not applicable to this rule.

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

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

On October 23, 2019, Labor published a proposed rule. 84 Fed. Reg. 56894. Labor received 257 comments from plan sponsors and fiduciaries, plan service and investment providers, and employee benefit plan and participant representatives. Labor responded to comments in this final rule.

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

Labor determined that this final rule contains information collection requirements (ICR) under the Act. Labor states it is submitting an information collection request to the Office of Management and Budget (OMB) requesting approval of a revised ICR under OMB control number 1210-0121. Labor identified two sections of the rule that contain new information collections (section 2520.104b-31(d)(2), Annual Notice of Internet Availability, and section 2520.104b-31(g), Initial Notification) and states that this new collection will result in an increased burden of 2,388,000 hours and an equivalent cost of \$44,737,000. Labor also states that the rule will result in reduction of burden estimates for several existing information collections of covered disclosures and estimates the burden reduction of each ICR.

Statutory authorization for the rule

Labor promulgated this final rule under the authority of sections 1021-1025, 1027, 1029-1031, 1059, 1134, and 1135 of title 29, United States Code.

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

Labor determined that this final rule is economically significant under the Order and stated that the rule was reviewed by OMB.

Executive Order No. 13,132 (Federalism)

Labor determined that this 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.