



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

B-332821

December 31, 2020

The Honorable Lamar Alexander
Chairman
The Honorable Patty Murray
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: Prohibited Transaction Exemption 2020–02, Improving Investment Advice for Workers & Retirees*

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 (Department) entitled “Prohibited Transaction Exemption 2020–02, Improving Investment Advice for Workers & Retirees” (ZRIN: 1210–ZA29). We received the rule on December 18, 2020. It was published in the *Federal Register* as an “adoption of class exemption and interpretation” on December 18, 2020. 85 Fed. Reg. 82798. The effective date of the rule is February 16, 2021.

According to the Department, the final rule provides a class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C. 1001 *et seq.* The Department stated this exemption allows investment advice fiduciaries to plans under both title I of ERISA and the Internal Revenue Code (Code) to receive compensation, including as a result of advice to roll over assets from a workplace retirement plan (Plan) to an individual retirement account and annuity (IRA), and to engage in principal transactions that would otherwise violate the prohibited transaction provisions of title I of ERISA and the Code. The Department further stated the exemption includes protective conditions designed to safeguard the interests of Plans, participants and beneficiaries, and IRA owners. The Department also stated the final rule contains its final interpretation of when advice to roll over Plan assets to an IRA will be considered fiduciary investment advice under title I of ERISA and the Code.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The House of Representatives received the rule on December 21, 2020. 166 Cong. Rec. H9165 (daily ed. Dec. 28, 2020). The *Congressional*

Record does not yet indicate when the Senate received the rule. The rule was published on December 18, 2020. 85 Fed. Reg. 82798. The rule has a stated effective date of February 16, 2021. Therefore, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of the Department'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, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Jeanne Klinefelter Wilson
Acting Assistant Secretary, EBSA
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
“PROHIBITED TRANSACTION EXEMPTION 2020-02,
IMPROVING INVESTMENT ADVICE FOR WORKERS & RETIREES”
(ZRIN: 1210-ZA29)

(i) Cost-benefit analysis

The Department of Labor, Employee Benefits Security Administration (Department) estimated the final rule would impose costs of more than \$87.8 million in the first year and \$78.9 million in each subsequent year. Over 10 years, the Department estimated the costs associated with the exemption would total approximately \$562 million, annualized to \$80.1 million per year (using a 7 percent discount rate).

The Department stated the final rule will generate significant benefits, however, it does not have sufficient data to quantify such benefits. The Department stated the final rule will provide financial institutions and investment professionals with flexibility to choose between this new exemption or existing exemptions, depending on their needs and business models. The Department further stated this exemption is broadly available for a wide variety of investment advice transactions and compensation arrangements, which gives financial institutions greater flexibility and simplifies compliance. The Department also stated the final rule’s alignment with other regulatory conduct standards can result in a reduction in overall regulatory burden as well. The Department also stated it believes that the exemption will provide significant protections for retirement investors.

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

The Department prepared a Final Regulatory Impact Analysis. The analysis included (1) a statement of the need for and objectives of the final rule; (2) a description of significant issues raised by public comments; (3) a description of affected small entities; (4) a description of projected reporting, recordkeeping, and other compliance requirements; and (5) a statement of steps taken to minimize impacts and significant alternatives considered.

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

The Department determined this exemption does not include any federal mandate that will result in expenditures in excess of the statutory threshold.

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

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

On July 7, 2020, the Department published a proposed rule. 85 Fed. Reg. 40834. The Department received 106 comments and held a public hearing on September 3, 2020. The Department addressed the comments in the final rule.

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

The Department determined the final rule contains information collection requests (ICRs) subject to the Act. The Department stated it submitted the ICR to the Office of Management and Budget (OMB) for review under OMB Control Number 1210-0163. The Department estimated the cost and burden hours of the ICR in the final rule.

Statutory authorization for the rule

The Department promulgated the final rule pursuant to section 4975 of title 26 and section 1108 of title 29, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

The Department determined the final rule was economically significant and stated the rule was reviewed by OMB.

Executive Order No. 13132 (Federalism)

The Department stated it does not believe this class exemption has 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.