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United States Government Accountability Office
Washington, DC 20548

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December 10, 2007

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: Annual Reporting and Disclosure*

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 (Department), Employee Benefits Security Administration, entitled "Annual Reporting and Disclosure" (RIN: 1210-AB06). The final rule amends the annual reporting and disclosure requirements under Part 1 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The amendments are necessary to conform the annual reporting and disclosure regulations to revisions to the Form 5500, filed for employee pensions and welfare benefit plans under ERISA and the Internal Revenue Code. The Form 5500 changes are intended to facilitate the transition to an electronic filing system; reduce and streamline annual reporting burdens, especially for small businesses; and update the annual reporting forms to reflect current issues, agency priorities, and new requirements under the Pension Protection Act of 2006.

The Form 5500 Annual Return/Report (Form 5500) is the primary source of information concerning the operation, funding, assets, and investments of pension and other employee benefit plans. In addition to being an important disclosure document for plan participants and beneficiaries, the Form 5500 is a compliance and research tool for the Department, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation (collectively, the Agencies) and a source of

information and data for use by other federal agencies, Congress, and the private sector.

We received the rule on November 26, 2007. It was published in the *Federal Register* as a final rule on November 16, 2007. 72 Fed. Reg. 64,710. The final rule is effective on January 15, 2008. *Id.* The Congressional Review Act requires major rules to have a 60-day delay in their effective date following publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). Congress received this rule on November 27, 2007, and our Office received the rule on November 26, 2007, which means that the final rule will 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. Our review indicates that, except for the delay in the effective date, the Department complied with the applicable requirements.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Bradford P. Campbell
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
"ANNUAL REPORTING AND DISCLOSURE"
(RIN: 1210-AB06)

(i) Cost-benefit analysis

The Department concluded that the use of the 5500 Forms will relieve plans subject to the annual reporting requirements from increased costs and unreasonable administrative burdens by providing a standardized format that facilitates reporting, eliminates duplicative reporting requirements, and simplifies the content of the annual report in general. The 5500 Forms are intended to reduce further the administrative burdens and costs attributable to compliance with the annual reporting requirements. Over the next 10 years, the Department anticipates an average annual reduction in costs of over \$97 million.

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

A Final Regulatory Flexibility Analysis was prepared in connection with the final rule. The analysis complies with the requirements of the Act, including the steps taken to reduce the economic burden on small entities.

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

The Department concluded that this final rule does not contain either an intergovernmental or private sector mandate, as defined in Title II, of more than \$122 million in any one year.

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

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

The Department promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. On July 21, 2006, the Department (the Agencies) published a notice of proposed forms revisions with changes to the Form 5500 for the 2008 reporting year. 71 Fed. Reg. 41,615. The Department also published a final rule on July 21, 2006, requiring electronic filing of

the Form 5500 for plan years beginning January 1, 2008. 71 Fed. Reg. 41,359. On December 11, 2006, the Department (the Agencies) published a Notice of Supplemental Proposed Forms Revisions (Supplemental Notice). 71 Fed. Reg. 71,562. The Supplemental Notice was necessary to make changes to the Form 5500 required by the Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780. In the final rule, the Department stated it received 38 comments to the proposed rule and 7 comments to the Supplemental Notice; it addressed these comments in the final rule.

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

The information collection requirements contained in the final rule are being reviewed by the Office of Management and Budget (OMB). The Department intends to publish a notice announcing OMB's decision on this matter. (OMB previously approved the information collection request submitted by the Department with respect to the proposed rule; the Department has recently submitted the changes to the information collection request with respect to the final rule.)

Statutory authorization for the rule

The final rule was promulgated under the authority of 29 U.S.C. §§ 1003, 1021-1025, 1027, 1029-31, 1059, 1132, 1134-35, 1181-83, 1181 note, 1185, 1185a-b, 1191, 1191a-c, and 26 U.S.C. § 401 note.

Executive Order No. 12,866

The final rule was reviewed by OMB and found to be an "economically significant" regulatory action under the order.

Executive Order No. 13,132 (Federalism)

The Department concluded that the final rule would not have federalism implications. Specifically, the Department concluded that the final rule would not have a 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.