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United States Government Accountability Office
Washington, DC 20548

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August 2, 2010

The Honorable Tom Harkin
Chairman
The Honorable Michael B. Enzi
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable George Miller
Chairman
The Honorable John Kline
Ranking Member
Committee on Education and Labor
House of Representatives

Subject: *Department of Labor, Employee Benefits Security Administration:
Reasonable Contract or Arrangement Under Section 408(b)(2)-Fee
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, Employee Benefits Security Administration (EBSA), entitled “Reasonable Contract or Arrangement Under Section 408(b)(2)-Fee Disclosure” (RIN: 1210-AB08). It was published in the *Federal Register* on July 16, 2010, as an interim final rule with a request for comments by August 30, 2010. We received the rule on July 19, 2010. The stated effective date of this interim final rule is July 16, 2011. 75 Fed. Reg. 41,600.

The interim final rule requires that certain service providers to employee pension benefit plans disclose information to assist plan fiduciaries in assessing the reasonableness of contracts or arrangements, including the reasonableness of the service providers’ compensation and potential conflicts of interest that may affect the service providers’ performance. EBSA is establishing these disclosure requirements as part of a statutory exemption from the prohibited transaction provisions of the Employee Income Security Act of 1974.¹ This interim final rule will

¹ 29 U.S.C. §§ 1001–1461.

affect employee pension benefit plan sponsors and fiduciaries and certain service providers to such plans.

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
Managing Associate General Counsel

Enclosure

cc: Phyllis C. Borzi
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
"REASONABLE CONTRACT OR ARRANGEMENT
UNDER SECTION 408(B)(2)--FEE DISCLOSURE"
(RIN: 1210-AB08)

(i) Cost-benefit analysis

The Employee Benefits Security Administration (EBSA) evaluated the costs and benefits of this interim final rule. EBSA believes that mandatory proactive disclosure will reduce sponsor information costs, discourage harmful conflicts of interest, and enhance service value and that additional benefits will flow from EBSA's enhanced ability to redress abuse. EBSA did not quantify the benefits of this rule, but is confident they more than justify the cost. EBSA estimates that the annual cost of this rule from 2011 to 2020 to be approximately \$58.7 million at a 7-percent discount rate and \$54.3 million at a 3-percent discount rate. EBSA acknowledges in the rule that its estimates of the effects of the rule are, however, subject to some uncertainty.

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

EBSA prepared a Final Regulatory Flexibility Analysis which covered the need for and objectives of the rule; significant issues raised by public comment and responses to those comments; a description and estimate of small entities affected; a description of reporting, recordkeeping, and other compliance requirements and their impact on small entities; and steps the agency took to minimize any adverse economic impact 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

EBSA determined that this interim final rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments in the aggregate of more than \$100 million, or increase expenditures by the private sector of more than \$100 million.

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

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

On December 13, 2007, EBSA published a notice of proposed rulemaking and a proposed class exemption. 72 Fed. Reg. 70,893, 70,988. In response, EBSA received over 100 written comments from a variety of parties including plan sponsors and fiduciaries, plan service providers, financial institutions, and employee benefits plan and participant industry representatives. EBSA also held a public hearing on March 31–April 1, 2008, to further develop the public record and EBSA’s understanding of the issues raised in the public comments. As a result of the public hearing, EBSA received a significant number of additional comments. EBSA addressed the comments in the interim final rule.

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

EBSA determined that this interim final rule contains information collection requirements under the Act. EBSA submitted its new information collection to the Office of Management and Budget (OMB) for review under the title “Reasonable Contract or Arrangement Under Section 408(b)(2)–Fee Disclosure” and OMB Control Number 1210–0133. EBSA estimates that in the first year there will be 79,000 respondents with 1,528,000 responses incurring an annual burden of 2,930,000 hours and an annual burden cost of \$8,830,000. Over the first 3 years, EBSA estimates that there will be an average of 56,000 respondents with 1,194,000 responses each year incurring an annual burden of 1,694,000 hours and an annual burden cost of \$3,900,000.

Statutory authorization for the rule

EBSA promulgated this interim final rule under the authority of section 401 note of title 26 and sections 1101, 1104, 1107, 1108, 1112, and 1135 of title 29, United States Code.

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

As discussed above, EBSA evaluated the benefits and costs of this final rule under the Order.

Executive Order No. 13,132 (Federalism)

EBSA determined that this 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.