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February 27, 2012

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

The Honorable John Kline
Chairman
The Honorable George Miller
Ranking Member
Committee on Education and the Workforce
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). We received the rule on February 10, 2012. It was published in the *Federal Register* as a final rule on February 3, 2012, with an effective date of July 1, 2012. 77 Fed. Reg. 5632.

The final rule implements a regulation under the Employee Retirement Income Security Act of 1974 (ERISA) requiring that certain service providers to pension plans disclose information about the service providers’ compensation and potential conflicts of interest. These disclosure requirements are established as part of a statutory exemption from ERISA’s prohibited transaction provisions. The final rule will affect pension plan sponsors and fiduciaries and certain service providers to such plans.

Enclosed is our assessment of EBSA’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 (EBSA) 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: Allison E. Wielobb
Office of Regulations and Interpretations
Employment 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 benefits and costs of this final rule. EBSA believes that mandatory proactive disclosure will reduce plan sponsor information costs, discourage harmful conflicts, and enhance service value. EBSA believes additional benefits will flow from EBSA enhanced ability to redress abuse. Although EBSA notes that the benefits are difficult to quantify, EBSA is confident they more than justify the cost.

EBSA estimated costs for the rule over a 10-year time frame for purposes of this analysis and used information from the quantitative characterization of the service provider market as a basis for these cost estimates. According to EBSA, this characterization did not account for all service providers, but it does provide information on the segments of the service provider industry that are likely to be most affected by the rule (*i.e.*, those with contracts listed on the Form 5500). In addition to the costs to service providers, EBSA also considered and discussed the potential costs to plans. EBSA notes that the costs are identical to the estimates in the interim final regulation except they have been updated to reflect more recent Form 5500 data and 2011 labor rates. EBSA also states that total costs for covered service providers and covered plans total approximately \$164 million for the year 2012.

(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; 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 the 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, adjusted for inflation, or increase expenditures by the private sector of more than \$100 million, adjusted for inflation.

(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. 70,988. Following review of public comments on the proposal and testimony presented at the EBSA's 2008 public hearing, EBSA published an interim final rule on July 16, 2010. 75 Fed. Reg. 41,600. EBSA received 45 written comments from a variety of persons, including plan sponsors, fiduciaries, service providers, financial institutions, and industry representatives of employee benefit plans and participants. EBSA addressed the comments in the final rule.

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

In accordance with the requirements of the Paperwork Reduction Act of 1995, EBSA submitted an information collection request (ICR) to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. § 3507(d), contemporaneously with the publication of the interim final regulation, for OMB's review. EBSA states that OMB approved the ICR under OMB Control Number 1210-0133 on May 20, 2010, which will expire on May 31, 2013. In connection with publication of this final rule, EBSA submitted a revised ICR to OMB for approval and intends to publish a notice announcing OMB's decision regarding the revised ICR upon completion of OMB review.

Statutory authorization for the rule

EBSA promulgated the 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 states that the 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.