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April 18, 2024

The Honorable Bernard Sanders  
Chairman  
The Honorable Bill Cassidy  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Virginia Foxx  
Chairwoman  
The Honorable Bobby Scott  
Ranking Member  
Committee on Education and the Workforce  
House of Representatives

Subject: *Department of Labor, Employee Benefits Security Administration: Amendment to Prohibited Transaction Class Exemption 84–14 for Transactions Determined by Independent Qualified Professional Asset Managers (the QPAM Exemption)*

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 “Amendment to Prohibited Transaction Class Exemption 84–14 for Transactions Determined by Independent Qualified Professional Asset Managers (the QPAM Exemption)” (Z–RIN 1210 ZA07). We received the rule on April 3, 2024. It was published in the *Federal Register* as a final amendment to class exemption on April 3, 2024. 89 Fed. Reg. 23090. The effective date is June 17, 2024.

According to EBSA, the final rule grants an amendment to prohibited transaction class exemption 84–14 (the QPAM Exemption). EBSA stated that the QPAM Exemption provides relief from certain prohibited transaction restrictions of title I and title II of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (Sept. 2, 1974), as amended.

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. 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.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Lisa M. Gomez  
Assistant Secretary  
Employee Benefits Security Administration

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  
“AMENDMENT TO PROHIBITED TRANSACTION CLASS EXEMPTION 84–14  
FOR TRANSACTIONS DETERMINED BY INDEPENDENT QUALIFIED  
PROFESSIONAL ASSET MANAGERS (THE QPAM EXEMPTION)”  
(Z–RIN 1210 ZA07)

(i) Cost-benefit analysis

The Department of Labor, Employee Benefits Security Administration (EBSA) estimated the annualized monetized costs of the rule to be \$1.56 million at the seven percent discount rate and \$1.44 million at the three percent discount rate. EBSA stated the non-quantifiable benefits of the rule would be to ensure the Qualified Professional Asset Managers (QPAM) Exemption’s integrity is enhanced compared to the regulatory baseline, which will protect plans affected by the exemption. EBSA also stated the final rule would provide more clarity, certainty, protection, and transitional support for client plans of an ineligible QPAM and that the final rule would update the asset management and equity thresholds to ensure that QPAMs are sufficiently large to be able to withstand improper influence.

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

EBSA stated the final rule could have a significant economic impact on a substantial number of small entities. EBSA performed a Regulatory Flexibility Analysis which was included in the final rule.

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

EBSA determined the final rule does not include any federal mandate that would result in expenditures by state, local, or tribal governments, or the private sector of \$100 million (adjusted for inflation) or more in any one year.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the

OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

In its submission to us, EBSA indicated the Act does not apply to the final rule.

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

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

On July 27, 2022, EBSA published a proposed rule. 87 Fed. Reg. 45204. EBSA received 31 comment letters and held a virtual public hearing on November 17, 2022, and opened an additional comment period. In the second comment period, EBSA received 150 comments. EBSA addressed the comments in the final rule.

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

EBSA determined the final rule contained information collection requirements (ICRs) subject to PRA. EBSA stated the ICR is entitled “Proposed Amendment to Prohibited Transaction Class Exemption 84–14”. EBSA stated the ICR is associated with OMB Control Number 1210-0128. EBSA estimated the ICR would have a total annual burden of 15,353 hours and a total annual burden cost of \$1,250,752.

Statutory authorization for the rule

EBSA promulgated the final rule pursuant to section 4975 of title 26, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

EBSA stated that OMB determined the final rule was a significant regulatory action.

Executive Order No. 13132 (Federalism)

EBSA stated the final rule will not have federalism implications because it would not have direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibilities among various levels of government.