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March 8, 2002

The Honorable Edward M. Kennedy
Chairman
The Honorable Judd Gregg
Ranking Minority Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable John A. Boehner
Chairman
The Honorable George Miller
Ranking Minority Member
Committee on Education and the Workforce
House of Representatives

Subject: Department of Labor, Pension and Welfare Benefits Administration: Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds

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 (DOL), Pension and Welfare Benefits Administration, entitled "Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds" (Prohibited Transaction Exemption 2002-12; Application No. D-10851). The Congress received the rule on February 12, 2002. It was published in the Federal Register as a notice on February 12, 2002. 67 Fed. Reg. 6614.

The notice contains a final exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, the Federal Employees' Retirement System Act, and from certain taxes imposed by the Internal Revenue Code of 1986. The exemption permits cross-trades of securities among Index and Model-Driven Funds managed by investment managers, and among such Funds and certain large accounts that engage such managers to carry out a specific portfolio restructuring program or to otherwise act as a "trading adviser" for such a program.

Enclosed is our assessment of the DOL'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, with the exception of the 60-day delay in the effective date, DOL complied with the applicable requirements

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Cynthia Fagnoni, Managing Director, Education, Workforce, and Income Security. Ms. Fagnoni can be reached at (202) 512-7215.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Alan D. Lebowitz
Deputy Assistant Secretary for
Program Operations, PWBA
Department of Labor

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
DEPARTMENT OF LABOR,
PENSION AND WELFARE BENEFITS ADMINISTRATION
ENTITLED
"CLASS EXEMPTION FOR CROSS-TRADES OF SECURITIES BY
INDEX AND MODEL-DRIVEN FUNDS"

(i) Cost-benefit analysis

The DOL conducted a cost-benefit analysis in connection with the notice. DOL expects the class exemption permitting plans to cross-trade to have positive economic effects that will exceed the direct costs incurred by the plans to comply with the recordkeeping and reporting requirements.

Because of the limited availability of data regarding the size of model-driven assets, the analysis was limited to index funds and the savings attributable to the elimination of commission fees. Therefore, DOL expects that the estimated savings are conservatively stated and represent the lower bound of the expected level of savings.

Based on the \$584 billion of ERISA pension funds currently managed as index funds and applying a saving estimate of \$.00057 for each dollar of assets results in savings of approximately \$332 million per year.

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

Since the notice did not follow the issuance of a notice of proposed rulemaking, DOL was not required to prepare a regulatory flexibility analysis.

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

The notice does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 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.

On December 15, 1999, DOL published a notice of the pendency of the proposed class exemption in the Federal Register. 64 Fed. Reg. 70057. In response, DOL received 14 comments, which are discussed in the notice's preamble.

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

The notice contains an information collection that is subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. DOL has submitted the required information to OMB and OMB has approved the collection under OMB control No. 1210-0115, which expires on April 30, 2003.

Statutory authorization for the rule

The notice was promulgated under the authority contained in section 408(a) of the Employee Retirement Income Security Act of 1974 and section 4975(c)(2) of the Internal Revenue Code of 1986.

Executive Order No. 12866

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