trustee's request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), the NDR must also include the following information:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Claims asserted;

(5) Claims scheduled; and,

(6) claims scheduled to be discharged without payment.

(e) *UST Form 101–12–FR–S, Chapter 12 Standing Trustee's Final Report and Account and UST Form 101–13–FR–S, Chapter 13 Standing Trustee's Final Report and Account.* After the final distribution to creditors in a chapter 12 or 13 case in which a standing trustee has been appointed, a trustee must submit to the United States Trustee and file with the United States Bankruptcy Court either UST Form 101–12–FR–S for chapter 12 cases or UST Form 101–13–FR–S for chapter 13 cases, which are the trustee's final report and account. In these forms, a trustee must include a certification that the estate has been fully administered if not converted to another chapter and a request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), these forms must also include the following information:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Receipts and disbursements of the estate;

(5) Expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 12 or 13 (as applicable) of title 11;

(6) Claims asserted;

(7) Claims allowed;

(8) Distributions to claimants and claims discharged without payment, in each case by appropriate category;

(9) Date of confirmation of the plan;

(10) Date of each modification thereto; and,

(11) Defaults by the debtor in performance under the plan.

(f) *UST Form 101–12–FR–C, Chapter 12 Case Trustee's Final Report and Account, and UST Form 101–13–FR–C, Chapter 13 Case Trustee's Final Report and Account.* After the final distribution to creditors in a chapter 12 or 13 case in which a case trustee has been appointed, the trustee must submit to the United States Trustee and file with the United States Bankruptcy Court either UST Form 101–12–FR–C for chapter 12 cases, or UST Form 101–13–FR–C for chapter 13 cases, which are the trustee's final report and account. In these forms, a trustee must include a certification, submitted under penalty of perjury, that the estate has been fully administered if not converted to another chapter and the trustee's request to be discharged from further duties as trustee. Pursuant to 28 U.S.C. 589b(d), these forms must also include the following information:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Receipts and disbursements of the estate;

(5) Expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 12 or 13 (as applicable) of title 11;

(6) Claims asserted;

(7) Claims allowed;

(8) Distributions to claimants and claims discharged without payment, in each case by appropriate category;

(9) Date of confirmation of the plan;

(10) Date of each modification thereto; and,

(11) defaults by the debtor in performance under the plan.

(g) *Mandatory Usage of Uniform Forms.* The Uniform Forms associated with this rule must be utilized by trustees when completing their final reports and final accounts. All trustees serving in districts where a United States Trustee is serving must use the Uniform Forms in the administration of their cases, in the same manner, and with the same content, as set forth in this rule:

(1) All Uniform Forms may be electronically or mechanically reproduced so long as all the content and the form remain consistent with the Uniform Forms as they are posted on EOUST's Web site;

(2) The Uniform Forms shall be filed via the United States Bankruptcy Courts Case Management/Electronic Case Filing System (CM/ECF) as a ''smart form'' meaning the forms are data enabled, unless the court offers an automated process that has been approved by EOUST, such as the virtual NDR event through CM/ECF.

Dated: September 30, 2008.

Clifford J. White, III,

Director, Executive Office for United States Trustees.

[FR Doc. E8–23700 Filed 10–6–08; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2509

RIN 1210–AB22

Amendment to Interpretive Bulletin 95–1

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule that amends Interpretive Bulletin 95–1 to limit the application of the Bulletin to the selection of annuity providers for defined benefit plans. Also appearing in today's **Federal Register** is a final regulation, entitled ''Selection of Annuity Providers—Safe Harbor for Individual Account Plans'', which establishes a safe harbor for the selection of annuity providers for the purpose of benefit distributions from individual account plans covered by title I of the Employee Retirement Income Security Act (ERISA). The amendment to Interpretive Bulletin 95–1, as well as the safe harbor for annuity selections, will affect plan sponsors and fiduciaries of individual account plans, and the participants and beneficiaries covered by such plans.

DATES: This final rule is effective on December 8, 2008.

FOR FURTHER INFORMATION CONTACT: Janet A. Walters or Allison E. Wielobob, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, (202) 693–8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

In 1995, the Department issued Interpretive Bulletin 95–1 (29 CFR 2509.95–1) (the IB), providing guidance concerning the fiduciary standards under Part 4 of Title I of ERISA applicable to the selection of annuity providers for purposes of pension plan benefit distributions. In general, the IB makes clear that the selection of an annuity provider in connection with benefit distributions is a fiduciary act governed by the fiduciary standards of section 404(a)(1), including the duty to act prudently and solely in the interest of the plan's participants and beneficiaries. In this regard, the IB provides that plan fiduciaries must take steps calculated to obtain the safest annuity available, unless under the

circumstances it would be in the interest of the participants and beneficiaries to do otherwise. The IB also provides that fiduciaries must conduct an objective, thorough and analytical search for purposes of identifying providers from which to purchase annuities and sets forth six factors that should be considered by fiduciaries in evaluating a provider's claims paying ability and creditworthiness.

In Advisory Opinion 2002–14A (Dec. 18, 2002) the Department expressed the view that the general fiduciary principles set forth in the IB with regard to the selection of annuity providers apply equally to defined benefit and defined contribution plans. The opinion recognized that, the selection of annuity providers by the fiduciary of a defined contribution plan would be governed by section 404(a)(1) and, therefore, such fiduciary, in evaluating claims paying ability and creditworthiness of an annuity provider, should take into account the six factors set forth in 29 CFR 2509.95–1(c).

During 2005, the ERISA Advisory Council created the Working Group on Retirement Distributions & Options to study, in part, the nature of the distribution options available to participants of defined contribution plans. In November 2005, after public hearings and testimony, the Advisory Council issued a report, entitled Report of the Working Group on Retirement Distributions & Options,[1] concluding that many defined contribution plan distributions tend to be paid out in lump sums which ''expose retirees to a wide range of risks including the possibility of outliving assets, investment losses, and inflation risk.'' The Advisory Council recommended that the Department revise the IB to facilitate the availability of annuity options in defined contribution plans.

The Pension Protection Act of 2006 (the PPA) (Pub. L. 109–280, 120 Stat. 780) was enacted on August 17, 2006. Section 625 of the PPA directs the Secretary to issue final regulations within one year of the date of enactment, clarifying that the selection of an annuity contract as an optional form of distribution from an individual account plan is not subject to the safest available annuity standard under the IB and is subject to all otherwise applicable fiduciary standards. On September 12, 2007, the Department published an interim final regulation (72 FR 52004) limiting the scope of Interpretive Bulletin 95–1, relating to the selection of annuity providers, to defined benefit plans, as directed by section 625 of the Pension Protection Act of 2006 (the PPA) (Pub. L. 109–280, 120 Stat. 780). The Department did not receive any comments on that interim final rule and is issuing that rule in final. Set forth below is an overview of the final rule. The Department is also adopting a final regulation, published in today's **Federal Register**, which establishes a safe harbor for the selection of annuity providers for the purpose of benefit distributions from individual account plans covered by title I of ERISA.

[1] A copy of the Report can be found on the About EBSA page under the heading ERISA Advisory Council at *http://www.dol.gov/ebsa/publications/AC_1105A_report.html.*

B. Overview of Final Rule

In order to implement the Congressional mandate of section 625 of the PPA and to eliminate any confusion regarding the applicability of the fiduciary standards set forth in IB 95–1 to the selection of annuity providers for the purpose of benefit distributions from individual account plans, the Department is amending the IB to provide that it applies only to the selection of annuity providers for the purpose of benefit distributions from a defined benefit pension plan.

C. Effective Date

This final rule is effective 60 days after the date of publication in the **Federal Register**.

D. Regulatory Impact Analysis

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is not ''significant'' within the meaning of section 3(f) of the Executive Order, and, therefore, is not subject to review by OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Section 604 of the RFA requires that the agency present a final regulatory flexibility analysis in the publication of the notice of final rulemaking describing the impact of the rule on small entities. The Department has considered the likely impact of the final rule on small entities in connection with its assessment under Executive Order 12866, described above, and believes this rule will not have a significant impact on a substantial number of small entities. See notice of final rulemaking appearing in today's **Federal Register** entitled ''Selection of Annuity Providers—Safe Harbor for Individual Account Plans.''

Paperwork Reduction Act

This rulemaking is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 301 *et seq.*) because it does not contain ''collection of information'' requirements as defined in 44 U.S.C. 3502(3). Accordingly, this final rule is not being submitted to the OMB for review under the Paperwork Reduction Act.

Congressional Review Act

The final rule being issued here is subject to the provisions of the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. The final rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it does not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or impose an annual burden exceeding $100 million on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires Federal agencies to adhere to specific criteria in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2509

Employee benefit plans, Pensions.

■ For the reasons set forth in the preamble, the Department amends Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2509—INTERPRETIVE BULLETINS RELATING TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

■ 1. The authority citation for part 2509 is revised to read as follows:

Authority: 29 U.S.C. 1135. Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sections 2509.75–10 and 2509.75–2 issued under 29 U.S.C. 1052, 1053, 1054. Sec. 2509.75–5 also issued under 29 U.S.C. 1002. Sec. 2509.95–1 also issued under sec. 625, Pub. L. 109–280, 120 Stat. 780.

■ 2. Section 2509.95–1 is amended by revising the section heading and paragraph (a) to read as follows:

§ 2509.95–1 Interpretive bulletin relating to the fiduciary standards under ERISA when selecting an annuity provider for a defined benefit pension plan.

(a) Scope. This Interpretive Bulletin provides guidance concerning certain fiduciary standards under part 4 of title I of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1104–1114, applicable to the selection of an annuity provider for the purpose of benefit distributions from a defined benefit pension plan (hereafter ''pension plan'') when the pension plan intends to transfer liability for benefits to an annuity provider. For guidance applicable to the selection of an annuity provider for benefit distributions from an individual account plan see 29 CFR 2550.404a–4.

* * * * *

Signed at Washington, DC, this 29th day of September, 2008.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E8–23433 Filed 10–6–08; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB19

Selection of Annuity Providers—Safe Harbor for Individual Account Plans

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation that establishes a safe harbor for the selection of annuity providers for the purpose of benefit distributions from individual account plans covered by title I of the Employee Retirement Income Security Act (ERISA). This regulation will affect plan sponsors and fiduciaries of individual account plans and the participants and beneficiaries covered by such plans. Also appearing in today's **Federal Register** is a final rule amending Interpretive Bulletin 95–1 to limit the application of the Bulletin to the selection of annuity providers for defined benefit plans.

DATES: This final rule is effective on December 8, 2008.

FOR FURTHER INFORMATION CONTACT: Janet A. Walters or Allison E. Wielobob, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, (202) 693–8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

On September 12, 2007, the Department published an interim final regulation (72 FR 52004) limiting the scope of Interpretive Bulletin 95–1, relating to the selection of annuity providers, to defined benefit plans, as directed by section 625 of the Pension Protection Act of 2006 (the PPA) (Pub. L. 109–280, 120 Stat. 780). On the same date, the Department published a proposed rule (72 FR 52021) that would establish a safe harbor for the selection of annuity providers for individual account plans. The Department received 10 comment letters in response to its request for comments. Set forth below is an overview of the final rule and the public comments submitted on the proposed rule. A final rule amending Interpretive Bulletin 95–1 also appears in today's **Federal Register**.

B. Overview of Final Rule and Comments

As discussed below, the substance of the final rule is very similar to the Department's proposed rule. The Department, however, has made changes to the proposed rule that clarify and simplify the safe harbor conditions, consistent with the suggestions of the commenters.

Scope of the Final Rule

Although restructured to simplify and clarify the rule, paragraph (a)(1) of § 2550.404a–4 of the final rule, like the proposed rule, describes the scope of the regulation. As described in paragraph (a)(1) of the final rule, the regulation establishes a safe harbor for satisfying the fiduciary duties under section 404(a)(1)(B) of ERISA in selecting an annuity provider and contract for benefit distributions from an individual account plan. Paragraph (a)(1) also includes a reference to § 2509.95–1 for guidance concerning the selection of annuity providers for defined benefit plans.

Several commenters expressed concerns about a safe harbor structure. Some suggested that a safe harbor is inconsistent with the prudent person standard and that the prudent person standard alone would more effectively reduce impediments to annuities as a