

MEMO# 32696

August 21, 2020

DOL Proposes Registration Requirements for Providers of Pooled Employer Plans

[32696]

August 21, 2020 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: DOL Proposes Registration Requirements for Providers of Pooled Employer Plans

On August 20, 2020, the Department of Labor (DOL) released a proposed rule^[1] that would establish the requirements for registering with DOL as a “pooled plan provider” (PPP) for “pooled employer plans” (PEPs) under sections 3(43) and 3(44) of ERISA. As you know, Section 101 of the Setting Every Community Up for Retirement Enhancement Act (the SECURE Act),^[2] permits PPPs to begin offering PEPs on January 1, 2021, but requires persons to register with the Secretary of Labor before beginning operations as a PPP. The proposed rule would create a new form—EBSA Form PR (Pooled Plan Provider Registration)—as the required filing format for PPP registrations. Filing the proposed Form PR with DOL would also satisfy the SECURE Act requirement to register with the Treasury Department.

The proposal is accompanied by a news release^[3] and a fact sheet.^[4] Comments on the proposed registration requirements and Form PR are due no later than 30 days after publication of the proposal in the Federal Register. **We are interested in hearing member views on the proposed registration requirements and Form PR. Please contact us if you have input to share, whether it be positive or negative.** Depending on the feedback we hear, we may schedule a call for members to discuss the proposal and our comment letter.

Overview of the proposal

The registration process would involve an initial registration, supplemental filings regarding specific reportable events, and a final filing after the provider’s last PEP has been terminated and ceased operations, as described in more detail below.

- The initial registration would have to be filed by the registrant no earlier than 90 days before and no later than 30 days before “beginning operations as a pooled plan provider,” which would be defined as publicly marketing services as a PPP or publicly

offering a PEP.

- The initial registration would include identifying information about the provider,^[5] certain basic information about the services to be provided, the role of affiliates expected to provide services, contact information for the provider's compliance officer, name and address of agent for service of process, and information on the existence of civil, criminal, or administrative actions relevant to the provider's operation of employee benefit plans.
- More specifically, regarding services, the registration would require a description of the administrative, investment, and fiduciary services that will be offered or provided in connection with the PEP(s), including a description of the role of any affiliates in such services.^[6]
- PPPs would have to submit a supplemental filing for each new PEP before the PEP begins operation, unless the PEP was identified in the provider's initial registration statement.
- Other supplemental reportable event filings would have to be made within 30 days of any change in the information provided in the initial registration, and within 30 days of certain key events such as any significant changes in corporate structure, initiation of bankruptcy proceedings, or receiving written notice of the initiation of any administrative or enforcement action against the PPP or any officer, director, or employee of the PPP, related to the provision of services to, operation of, or investments of any PEP.
- If a PPP has ceased operating all PEPs, the provider would be required to file a final registration filing within 30 days of filing the final Form 5500 for the last PEP the provider operates.
- The proposal includes a mock-up of the EBSA Form PR and instructions. Form PR would be filed electronically through DOL's electronic filing system for Form 5500 (EFAST2).

DOL explained in the preamble to the proposal that it: "focused on information needed by the agencies to identify, contact, and engage in timely oversight of pooled plan providers, as well as on the information that the Department could post on its website that would provide employers considering participating in a pooled employer plan, participating employees, covered employees, and other interested stakeholders the ability to identify, contact, and do some due diligence on pooled plan providers."^[7]

Comments requested

DOL invites comments from interested persons on all facets of the proposed rule and specifically requests comments on questions relating to the trigger and deadlines for the initial registration requirement; other classes of information that should be required; collection of information on reportable events; other state or federal filings that DOL could rely on as alternative sources of information (such as Form ADV for advisers); and potential expansion of disclosures regarding ongoing criminal, civil, or administrative proceedings involving the provider.^[8]

We look forward to hearing your thoughts on the proposal. Please contact Elena Chism (elena.chism@ici.org), David Abbey (david.abbey@ici.org), or Shannon Salinas (shannon.salinas@ici.org) if you have comments or questions.

endnotes

[1] The proposed rule is available here:

<https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/secure-act/pooled-plan-provider-registration.pdf>.

[2] For more background on the SECURE Act, see ICI Memorandum No. 32118, dated December 20, 2019. Available here: https://www.ici.org/my_ici/memorandum/memo32118. ICI recently filed a comment letter with DOL responding to a request for information on prohibited transactions involving PEPs. See ICI Memorandum No. 32622, dated July 20, 2020. Available here: https://www.ici.org/my_ici/memorandum/memo32622. In that letter, we urged DOL to provide guidance needed to implement the SECURE Act's PEP provision and to ensure that no barriers will stand in the way of financial services firms participating in the PEP market.

[3] The news release is available here:

<https://www.dol.gov/newsroom/releases/ebsa/ebsa20200820>.

[4] The fact sheet is available here:

<https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/pooled-plan-provider-registration>.

[5] In the preamble, DOL states that “[t]he SECURE Act does not limit the class of persons who can act as pooled plan providers, but it is expected that financial services companies (such as insurance companies, banks, trust companies, consulting firms, record keepers, and third-party administrators) will be the primary sponsors of pooled employer plans.” See p. 10.

[6] In the preamble, DOL indicates that “[i]nformation regarding when various plan services will be provided by the pooled plan provider or any affiliate will assist the Department and prospective participating employers evaluate the pooled plan provider and whether there are potentials for conflicts of interest with respect to the operations or investments of any pooled employer plans to be operated by the provider.” See p. 18.

[7] See pp. 14-15.

[8] The specific questions are listed on pages 28-30 of the preamble.