

COMMENT LETTER

September 30, 2020

ICI Submits Comment Letter Regarding DOL Proposed Registration Requirements for Pooled Plan Providers (pdf)

Filed Electronically September 30, 2020 Office of Regulations and Interpretations Employee Benefits Security Administration Room N-5655 US Department of Labor 200 Constitution Ave., NW Washington, DC 20210 Attention: RIN 1210-AB94 Re: RIN 1210- AB94; Proposed Registration Requirements for Pooled Plan Providers Dear Sir or Madam: We Investment Company Institute¹ is pleased to submit comments on the Department of Labor's (the Department's) proposed requirements for registering as a "pooled plan provider" (PPP) for "pooled employer plans" (PEPs) under sections 3(43) and 3(44) of the Employee Retirement Income Security Act of 1974 (ERISA). Section 101 of the Setting Every Community Up for Retirement Enhancement Act (the SECURE Act), permits PPPs to begin offering PEPs on January 1, 2021, and requires persons to register with the Secretary of Labor before beginning operations as a PPP. We proposed rule would create a new form—EBSA Form PR (Pooled Plan Provider Registration)—as the required filing format for PPP registrations. ICI supports the Department's efforts to implement the SECURE Act's creation of PEPs. As set forth below, our letter recommends certain changes to simplify the proposed filing requirements and thereby foster a robust, competitive PEP marketplace. ICI has long supported expanding access to multiple employer plans (MEPs), particularly for small employers. Expanding access to MEPs has the potential to significantly increase retirement plan coverage and retirement savings adequacy. Congress recognized that legislative changes would greatly 1 We Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US\$26.0 trillion in the United States, serving more than 100 million US shareholders, and US\$7.9 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC. US Department of Labor September 30, 2020 Page 2 of 6 enhance the utilization of MEPs and likely would be the key to meaningful coverage gains. Section 101 of the SECURE Act creates the PEP as a new type of MEP that would be open to a wider variety of unrelated employers and a wider universe of potential MEP sponsors. We success of this idea, however, depends on the development of a robust, competitive marketplace for PEPs, which in turn depends on the

establishment of workable regulatory standards. If the regulatory burdens imposed on providers exceed a reasonable threshold, fewer providers will enter the marketplace and those that do will have higher operating costs, thus negating some of the efficiencies of the PEP structure. As explained below, while we support the framework of the proposed registration requirements, several of the specific requirements will be overly burdensome in application and are unnecessary to achieve protection for participating employers. We believe that both PEP providers and participating employers would benefit considerably if the requirements were streamlined in a way that eliminates information that is superfluous and irrelevant to the Department's oversight role, or too detailed to be effectively used by prospective employers. We recommend that the Department's registration requirements focus on more basic information and, when the need arises, the Department reserve itself the ability to seek more detailed information from PPPs. Our recommendations below are intended to pare back the proposed initial and supplemental filing requirements, in order to strike the right balance between providing the level of detail needed for oversight and enabling providers to offer cost-effective services.

I. Timing of Initial Registration and Definition of Beginning Operations We proposal would require prospective PPPs to file the initial registration 30 to 90 days before "beginning operations as a pooled plan provider," which the proposal defines as "publicly marketing services as a pooled plan provider or publicly offering a pooled employer plan." As explained below, this timeframe, combined with the definition of beginning operations, would create challenges for prospective PPPs. □

Beginning operations. First, the proposal defines "beginning operations" too broadly by including public marketing of PPP services. Public marketing may be necessary in some contexts for a firm to determine whether it will offer a product or service. We preamble clarifies that registration is not required "as a result of preliminary business activities, such as establishing the business organization, creating a business plan, obtaining necessary licenses or entering into contracts with subcontractors or partners, obtaining an federal employer identification number, or actions and communications designed to evaluate market demand in advance of publicly marketing pooled plan provider services or publicly offering one or more pooled employer plans" (emphasis added). Weere is no clear distinction, however, between evaluating the market demand for PEP services and publicly marketing such services. Firms may need to solicit interest before determining whether to enter the marketplace. Weese activities should be excluded from the scope of "beginning operations as a pooled plan provider," which should be more narrowly defined to cover activities related to actually establishing a PEP. US Department of Labor September 30, 2020 Page 3 of 6 □

Timeframe for registration. Assuming that the trigger for registration is narrowed to something closer to actual operation of a PEP, we urge the Department to expand the 30-to 90-day timeframe. It is not clear what value this narrow time period would provide to the Department in its oversight role. Instead, we suggest requiring initial registration at least 30 days and no earlier than 180 days before beginning operations. Weis longer window would give providers more leeway in getting a plan up and running a□er registration, as there could be unforeseen circumstances that delay the official establishment date of a plan.

II. Level of Detail in Initial Registration We proposal would require in the initial registration identifying information about the provider, 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 proceedings relevant to the provider's operation of employee benefit plans. Much of the detail proposed to be required is unnecessary to protect the interests of participating employers and would make the filing unreasonably burdensome. We comment on certain details of the proposed registration requirements and specific questions raised by the Department below. □

Business telephone number. We Form PR would require the contact telephone number for

the PPP, and the preamble asks whether the form should allow a call center number to be reported for this purpose. Generally speaking, our members have expressed the view that registrants should be able to determine the most appropriate contact information to provide (in order to ensure that inquiries are handled correctly and in a timely manner) and registrants should not be required to identify specific individuals as business contacts. Our members have indicated that a call center number may be inappropriate for this purpose, as call centers generally are used for the purpose of assisting plan participants or employers already participating in the plan (who would independently know the appropriate call center to contact).

□ Compliance officer contact information. We Form PR would require the name, mailing address, telephone number, and email address for the primary compliance officer of the PPP. We Department solicits comments on whether alternative or additional means of contacting the compliance officer should be included in the registration. Similar to our comments above regarding the general business contact information for the PPP, our members have expressed the view that the form should not require identification of the individual who is the primary compliance officer or that individual's phone number, as this information could become outdated and would provide no greater value than a general email address or phone number for the provider's compliance department. We specific information required by the proposal exceeds what ordinarily should be necessary for a publicly-available filing. We Department can ask for the compliance officer's individual contact information if needed and participating US Department of Labor September 30, 2020 Page 4 of 6 employers will already possess information necessary to contact the plan for purposes of compliance issues. Participants and beneficiaries will have access to this type of information through the plan's summary plan description, among other things.

□ Ongoing civil and administrative proceedings. The Form PR would require a statement disclosing any ongoing criminal, civil, or administrative proceedings related to the provision of services to, operation of, or investments of any employee benefit plan, in any court or administrative tribunal by the federal or state government or other regulatory authority against the pooled plan provider, or any officer, director, or employee of the pooled plan provider. We urge the Department to narrow this requirement, particularly with respect to ongoing civil or administrative proceedings. We requirement to provide information about administrative proceedings could be interpreted to include routine examinations, inquiries, or audits by regulators, which would be unnecessary and could be voluminous, particularly in the case of large financial institutions. Similarly, the requirement to provide information about ongoing civil proceedings could result in providers having to report meritless early-stage litigation and should be narrowed to, for example, civil judgments against the provider relevant to ERISA plans. Further to this point, settlement of a civil lawsuit does not necessarily mean there was any wrongdoing by the company, and such information would be of questionable value. We encourage the Department to take these factors into account and narrow the scope of information required. Finally, the requirement to disclose such proceedings against "any . . . employee" of the PPP should be eliminated, so that the disclosure requirement is limited to proceedings involving the provider itself or its officers or directors. Some PPPs may have thousands of employees, most of whom are in roles where there is little or no opportunity to cause harm to the PEP. Without this recommended limitation, the requirement would be unnecessarily broad and impractical for large providers.

III. Timing and Detail of Supplemental Filings We proposal would require supplemental filings within 30 days of any change to the information provided in the initial registration, and within 30 days of certain other "reportable 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, related to the provision of services to, operation of, or investments of any PEP. We have similar concerns relating to the level of detail that would

be required in the supplemental filings, and again urge the Department to narrow the required information. For example, the proposed requirement to report initiation of any administrative or enforcement action against the PPP or any officer, director, or employee of the PPP, in any court or administrative tribunal by any federal or state governmental agency or other regulatory authority, related to the provision of US Department of Labor September 30, 2020 Page 5 of 6 services to, operation of, or investments of any PEP or other employee benefit plan, is extremely broad. At a minimum, the requirement should be narrowed to cover only actions related to PEPs offered by the PPP. More broadly, the Department should consider describing with more specificity the type of actions most relevant to its oversight of registered PPPs. In addition, the Department should narrow the proposed requirement to report any significant change in corporate or business structure of the PPP (e.g., merger, acquisition, or initiation of bankruptcy, receivership, or other insolvency proceeding for the pooled plan provider or an affiliate). For large financial institutions, these events could be quite common and, in some cases, may involve entities that will have no relation to the PEP. Instead of a blanket reporting obligation, we recommend limiting this requirement to changes that will directly impact the provider's PEP offerings. In addition to narrowing the specific requirements described above, we urge the Department to consider modifying the supplemental filing requirements more broadly by: □ Limiting the disclosure to cover "material changes" to the information provided in the initial registration, and □ Requiring supplemental filings to be made on an annual basis (as needed), rather than on a rolling 30-day basis, whereby all relevant changes or reportable events happening within a 12- month period could be collected into one filing.

IV. General Scope of Information

We Department asks in the preamble whether there are any additional classes of information or types of reportable events that should be included in the registration requirement. Consistent with our specific comments above, we urge the Department to narrow, rather than expand, the information proposed to be required. We proposal as written would require a large amount of information, not all of which would provide practical value to the Department or prospective participating employers. It is crucial that the Department reevaluate its approach and carefully consider which pieces of information will be necessary to oversee providers. We Department also should keep in mind the public nature of the filing and the information's utility to employers. Too much information will obscure the details most relevant to prospective employers in selecting among different PEP options. We PEP concept offers great promise in expanding access to workplace retirement savings. Its success depends on the realization of cost-efficiencies and economies of scale. As proposed, the initial and ongoing registration requirements for PPPs could impede the realization of these advantages. As the Department moves forward to make the PEP a reality, we encourage a more streamlined approach to PPP registration.

US Department of Labor September 30, 2020 Page 6 of 6 * * * ICI appreciates the opportunity to comment on the proposal. We creation of PEPs under the SECURE Act has the potential to significantly increase coverage under workplace retirement plans and improve overall retirement savings adequacy. Our members will play a crucial role in ensuring the success of this new option. If you have any questions about our comment letter, please feel free to contact David Abbey (202-326-5920 or david.abbey@ici.org) or Elena Barone Chism (202-326-5821 or elena.chism@ici.org). Sincerely, /s/ David Abbey /s/ Elena Barone Chism

David Abbey Elena Barone Chism Deputy General Counsel Associate General Counsel Retirement Policy Retirement Policy