



**BILLING CODE 4510–29–P**

**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**29 CFR Parts 2510**

**RIN 1210–AB94**

**Registration Requirements for Pooled Plan Providers**

**AGENCY:** Employee Benefits Security Administration, Labor

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish the requirements for registering with the Department of Labor as a “pooled plan provider” for “pooled employer plans” under sections 3(43) and 3(44) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) provides that newly permitted “pooled plan providers” can begin offering “pooled employer plans” on January 1, 2021, but requires such persons to register with the Secretary of Labor before beginning operations. The proposed rule would also establish a new form – EBSA Form PR (Pooled Plan Provider Registration) – as the required filing format for pooled plan provider registrations. Filing the proposed Form PR with the Department of Labor would also satisfy the SECURE Act requirement to register with the Treasury Department. The proposed rule would affect persons wishing to serve as pooled plan providers, employee defined contribution pension

benefit plans that are operated as pooled employer plans, employers participating in such plans, and participants and beneficiaries covered by such plans.

**DATES:** Comments are due on or before [INSERT DATE THAT IS 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit written comments, identified by RIN 1210–AB94, by one of the following methods:

*Federal eRulemaking Portal:* [http:// www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments. To facilitate receipt and processing of comments, the Department of Labor encourages interested parties to submit their comments electronically.

*Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210, Attention: Proposed Registration Requirements for Pooled Plan Providers RIN 1210–AB94.

*Instructions:* All submissions must include the agency name and Regulatory Identifier Number (RIN) for this rulemaking. Any comment that is submitted will be shared with the Internal Revenue Service (IRS). If you submit comments electronically, do not submit paper copies. Comments will be available to the public, without charge, online at <http://www.regulations.gov> and [http:// www.dol.gov/agencies/ebsa](http://www.dol.gov/agencies/ebsa) and at the Public Disclosure Room, Employee Benefits Security Administration, Suite N–1513, 200 Constitution Ave., NW, Washington, DC, 20210.

*Warning:* Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records posted on the Internet as received and can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Colleen Brisport Sequeda, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693-8500 (this is not a toll-free number) for questions related to pooled plan provider reporting requirements under Title I of ERISA.

*Customer service information:* Individuals interested in obtaining general information from the Department of Labor concerning Title I of ERISA may call the EBSA Toll-Free Hotline at 1-866-444-EBSA (3272) or visit the Department's website ([www.dol.gov/agencies/ebsa](http://www.dol.gov/agencies/ebsa)).

## **SUPPLEMENTARY INFORMATION:**

### **I. Legal Framework**

Under ERISA, an employee benefit plan (whether a pension plan or a welfare plan) must be sponsored by an employer, by an employee organization, or by both. Section 3(5) of ERISA defines the term "employer" for this purpose as "any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan, and includes a group or association of employers acting for an employer in such capacity." These definitional provisions of ERISA have been interpreted as permitting a multiple employer plan (MEP) to be established or maintained by a cognizable, bona fide group or association of employers that is controlled by the employer members and that acts in the interests of its employer members to

provide benefits to their employees.<sup>1</sup> This approach is based on the premise that the person or group that maintains the plan is tied to the employers and employees that participate in the plan by some common economic or representational interest or genuine organizational relationship unrelated to the provision of benefits. The Department of Labor (Department) has taken steps, through a final rule on “association retirement plans” at 29 CFR 2510.3-55, to clarify and expand the types of arrangements that can be treated as multiple employer plans under Title I of ERISA. The final rule did not, however, extend to so-called “open MEPs.”<sup>2</sup>

A primary goal of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act),<sup>3</sup> authorizing of pooled employer plans was to remove possible barriers to the broader use of multiple employer plans. Among other things, the SECURE Act amended section 3(2) of ERISA and added section 3(43) to ERISA to authorize a new type of ERISA-covered defined contribution pension plan -- a “pooled employer plan” operated by a “pooled plan provider” -- in which multiple unrelated employers will be able to participate without the need for any commonality among the participating employers or other genuine organizational relationship unrelated to participation in the plan, thus enabling a type of open MEP. By allowing most of the administrative and fiduciary responsibilities of sponsoring a retirement plan

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<sup>1</sup> The SECURE Act did not change the conditions for plans that were already permitted under section 3(2) of ERISA to act as a single MEP. *See, e.g.*, Advisory Opinions 2008–07A, 2003– 17A, and 2001–04A. Those classes of multiple employer plans (*e.g.*, employer association retirement plans and plans sponsored by professional employer organizations) are outside of the scope of this rulemaking, as are multiple employer plans established and maintained pursuant to bona fide collective bargaining.

<sup>2</sup> See the preamble discussion in the Final Rule on the Definition of “Employer” Under Section 3(5) of ERISA— Association Retirement Plans and Other Multiple-Employer Plans, 84 FR 37508 (July 31, 2019). The Department did, however, seek comments through a Request for Information published with that proposed rule seeking comments on whether, and if so under what conditions, open MEP structures should be treated as a multiple employer plan for purposes of Title I of ERISA.

<sup>3</sup> The SECURE Act was enacted as Division O of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94) (December 20, 2019).

to be transferred to a “pooled plan provider,” the pooled employer plan can offer employers, especially small employers, a way of offering their employees a workplace retirement savings option with reduced burdens and costs compared to sponsoring their own separate retirement plan. New section 3(44) of ERISA establishes requirements for “pooled plan providers,” including a requirement to register with the Department and the Department of the Treasury (Treasury Department) before beginning operations as a pooled plan provider. The effective date for these provisions allows “pooled employer plans” to begin operating on January 1, 2021.

Under section 3(2) of ERISA, a pooled employer plan is treated for purposes of ERISA as a single plan that is a multiple employer plan. A “pooled employer plan” is defined in section 3(43) as a plan that is an individual account plan established or maintained for the purpose of providing benefits to the employees of two or more employers; that is a qualified retirement plan or a plan funded entirely with individual retirement accounts (IRA plan); and the terms of which must meet certain requirements set forth in the statute.<sup>4</sup> Specifically, the terms of the plan must satisfy the following requirements:

- designate a pooled plan provider and provide that the pooled plan provider is a named fiduciary of the plan;
- designate one or more trustees (other than an employer in the plan) to be responsible for collecting contributions to, and holding the assets of, the plan, and require the trustees to

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<sup>4</sup> 29 U.S.C. 1002(43). The term “pooled employer plan” does not include a multiemployer plan or plan maintained by employers that have a common interest other than having adopted the plan. The term also does not include a plan established before the date the SECURE Act was enacted unless the plan administrator elects to have the plan treated as a pooled employer plan and the plan meets the ERISA requirements applicable to a pooled employer plan established on or after such date.

implement written contribution collection procedures that are reasonable, diligent, and systematic;

- provide that each employer in the plan retains fiduciary responsibility for the selection and monitoring, in accordance with ERISA fiduciary requirements, of the person designated as the pooled plan provider and any other person who is designated as a named fiduciary of the plan, and the investment and management of the portion of the plan's assets attributable to the employees of that employer (or beneficiaries of such employees) in the plan to the extent not delegated to another fiduciary by the pooled plan provider and subject to the ERISA rules relating to self-directed investments;
- provide that employers in the plan, and participants and beneficiaries, are not subject to unreasonable restrictions, fees, or penalties with regard to ceasing participation, receipt of distributions, or otherwise transferring assets of the plan in accordance with applicable rules for plan mergers and transfers;
- require the pooled plan provider to provide to employers in the plan any disclosures or other information that the Secretary of Labor may require, including any disclosures or other information to facilitate the selection or monitoring of the pooled plan provider by employers in the plan;
- require each employer in the plan to take any actions that the Secretary of Labor or pooled plan provider determines are necessary to administer the plan or to allow for the plan to meet the ERISA and Internal Revenue Code (Code) requirements applicable to the plan, including providing any disclosures or other information that the Secretary of Labor may require or which the pooled plan provider otherwise determines are necessary

to administer the plan or to allow the plan to meet such ERISA and Code requirements;  
and

- provide that any disclosure or other information required to be provided to participating employers may be provided in electronic form and will be designed to ensure only reasonable costs are imposed on pooled plan providers and employers in the plan.

The fidelity bonding requirements in ERISA section 412 apply to fiduciaries and other persons handling the assets of a pooled employer plan but the maximum bond amount for each such plan official is \$1,000,000 as compared to the \$500,000 maximum that applies in the case of other ERISA-covered plans that do not hold employer securities.<sup>5</sup>

A “pooled plan provider” with respect to a pooled employer plan is defined in ERISA section 3(44) to mean a person that meets the following requirements:

- is designated by the terms of the plan as a named fiduciary under ERISA, as the plan administrator, and as the person responsible to perform all administrative duties

(including conducting proper testing with respect to the plan and the employees of each

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<sup>5</sup> The SECURE Act requires that pooled plan providers must ensure that all plan fiduciaries and other persons who handle plan assets are bonded in accordance with section 412 of ERISA. In the Department’s view, the SECURE Act confirms that application of ERISA section 412 requirements to pooled employer plans, except establishing \$1,000,000 as the maximum bond amount compared to \$500,000 for plans that do not hold employer securities, and makes clear that the pooled plan provider is subject to the provisions of ERISA section 412(b), which provides that “it shall be unlawful for any plan official of such plan or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any plan official, with respect to whom the requirements of subsection (a) [of ERISA section 412] have not been met.” Thus, in the Department’s view, the normal section 412 rules for ERISA plans govern the bonding requirements for pooled employer plans. *See* 29 C.F.R. § 2550.412-1, 29 C.F.R. Part 2580; *see also* Field Assistance Bulletin 2008-04 (providing a general description of statutory and regulatory requirements for bonding). For example, the Department does not read the SECURE Act as broadening the section 412 bonding rules to apply to persons who handle plan assets regardless of whether they handled plan funds or other property within the meaning of section 412. Similarly, the existing statutory and regulatory exemptions for certain banks, insurance companies, and registered broker-dealers continue to apply.

employer in the plan) that are reasonably necessary to ensure that the plan meets the Code requirements for tax-favored treatment and the requirements of ERISA and to ensure that each employer in the plan takes actions as the Secretary or the pooled plan provider determines necessary for the plan to meet Code and ERISA requirements, including providing to the pooled plan provider any disclosures or other information that the Secretary may require or that the pooled plan provider otherwise determines are necessary to administer the plan or to allow the plan to meet Code and ERISA requirements;

- acknowledges in writing its status as a named fiduciary under ERISA and as the plan administrator;
- is responsible for ensuring that all persons who handle plan assets or are plan fiduciaries are bonded in accordance with ERISA requirements; and
- registers as a pooled plan provider.

The SECURE Act specifies that the Secretary may perform audits, examinations, and investigations of pooled plan providers as may be necessary to enforce and carry out the purposes of the provision. The SECURE Act also directs the Department to issue such guidance as it determines appropriate to carry out the pooled employer plan and pooled plan provider provisions, including guidance (1) to identify the administrative duties and other actions required to be performed by a pooled plan provider, and (2) that provides, in appropriate cases involving a noncompliant employer, for transfer of plan assets attributable to employees of the noncompliant employer (or beneficiaries of such employees) to a plan maintained only by that employer (or its successor), to a tax-favored retirement plan for each individual whose account is transferred, or to any other arrangement that the Department determines is appropriate, and for the

noncompliant employer (and not the plan with respect to which the failure occurred or any other employer in the plan) to be liable for any plan liabilities attributable to employees of the noncompliant employer (or beneficiaries of such employees), except to the extent provided in the guidance. An employer or pooled plan provider is not treated as failing to meet a requirement of guidance issued by the Secretary if, before the issuance of such guidance, the employer or pooled plan provider complies in good faith with a reasonable interpretation of the provisions to which the guidance relates.

The SECURE Act also provides that the Form 5500 annual return/report of employee benefit plan (Form 5500) filing for a multiple employer plan subject to section 210 of ERISA, including a pooled employer plan, must include a list of the employers in the plan, a good faith estimate of the percentage of total contributions made by such employers during the plan year, the aggregate account balances attributable to each employer in the plan (determined as the sum of the account balances of the employees of each employer and the beneficiaries of such employees) and, with respect to a pooled employer plan in particular, the identifying information for the person designated under the terms of the plan as the pooled plan provider. In addition, the provision authorizes the Department to prescribe simplified reporting for pooled employer plans that cover fewer than 1,000 participants, but only if no single employer in the plan has 100 or more participants covered by the plan.

The 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. As noted above, however, section 3(44) does

require as a condition of being a pooled plan provider that the person “registers as a pooled plan provider with the Secretary, and provides to the Secretary such other information the Department may require, before operations as a pooled plan provider.”<sup>6</sup>

In the Department’s view, the statutory purpose of the registration requirement is to provide the Department with sufficient information regarding persons acting as pooled plan providers to engage in effective monitoring and oversight of this new type of ERISA retirement plan. Although the Department does not have specific details as to how pooled employer plans authorized under the SECURE Act will be structured or operated, the Department has assumed that they may be similar to other currently operating multiple employer plans. Additionally, there may be challenges associated with these new types of multiple employer plans that the Department, the Treasury Department, or IRS, as the federal agencies charged with oversight of private-sector pension plans, may need to address. The SECURE Act expressly provides that participating employers will retain certain residual fiduciary responsibilities, including for the selection and oversight of the pooled plan provider and the plan’s other named fiduciaries. This raises concerns that the potential for inadequate employer oversight of the activities of a pooled employer plan and its plan fiduciaries and other service providers may be greater than for other plans sponsored by an employer because the nature of the plan involves participating employers passing along more responsibility to the pooled plan provider than they do in other plan arrangements.

The registration process and requirements must enable the Department to identify pooled plan providers when they begin operating and effectively oversee their actions and the pooled

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<sup>6</sup> ERISA section 3(44)(a)(ii).

employer plans they operate. While pooled plan providers will be required to file Forms 5500 for the pooled employer plans they operate, Forms 5500 generally are not filed until seven to nine-and-a-half months after the end of the plan year.<sup>7</sup> In the absence of appropriate detail in the registration statement, a pooled plan provider could begin operating multiple plans with hundreds or thousands of participants and millions of dollars without the agencies having any information about the pooled employer plans for almost two years.

In determining how best to implement the statutory registration requirement, the Department considered a number of alternatives with respect to any registration statement requirement including whether it must be filed when the provider begins operations in anticipation of operating one or more pooled employer plans, when it begins operating each individual pooled employer plan, or both. The Department also does not believe that the SECURE Act provisions preclude or were intended to preclude the Department from imposing reasonable ongoing reporting requirements to enable the Department to effectively oversee pooled plan providers and the pooled employer plans they operate. Therefore, as discussed in more detail below, relying on the language in the SECURE Act requiring a registration statement as well as on its broad authority under section 505 of ERISA to prescribe regulations,<sup>8</sup> including

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<sup>7</sup> Title I and Title IV of ERISA and the Code establish annual reporting requirements for employee benefit plans. DOL, the Treasury Department (specifically the IRS), and the Pension Benefit Guaranty Corporation jointly developed the Form 5500 so employee benefit plans could use one form to satisfy annual reporting requirements under ERISA and the Code. The Form 5500 is part of ERISA's overall reporting and disclosure framework, helping to assure that employee benefit plans are operated and managed in accordance with certain prescribed standards and that participants and beneficiaries, as well as regulators, are provided or have access to sufficient information to protect the rights and benefits of plan participants and beneficiaries.

<sup>8</sup> Section 505 of ERISA provides generally that the Secretary may prescribe such regulations the Secretary "finds necessary or appropriate to carry out the provisions of this subchapter. Among other things, such regulations may define accounting, technical and trade terms used in such provisions; may prescribe forms; and may provide for the keeping of books and records, and for the inspection of such books and records (subject to section 1134(a) and (b) of this title)." 29 U.S.C. 1135.

forms, to enable the Department to carry out its statutory oversight mission, the Department has chosen the structure set out in the proposal.

The proposal would require an initial registration filing and supplemental filings to report changes in the information in the initial filing, information about each specific pooled employer plan before initiation of operations, and information on specified reportable events, time-sensitive knowledge of which are important for the Department, the Treasury Department, and the IRS to carry out oversight and for participating employers to be able to exercise their fiduciary duties of selection and monitoring. The proposal would require a final filing once the last pooled employer plan has been terminated and ceased operations.

The Department believes that the initial registration, supplemental filing, and final filing requirements, when combined with the Form 5500 annual reporting requirements, will give the Department the timely access to pooled plan provider information needed to fulfill the monitoring and oversight tasks the SECURE Act placed on the agencies and would be less burdensome and less costly for pooled plan providers and pooled employer plans than some alternatives that were considered. The Department is also proposing to establish a new EBSA form – EBSA Form PR (Pooled Plan Provider Registration) (Form PR) – as the required filing format for pooled plan provider registrations as a way to facilitate compliance with the regulatory registration requirements. Filing the proposed Form PR is intended to satisfy the respective requirements under Title I of ERISA and the Code to register with both the Department and the Treasury Department.

This proposed rule is expected to be an Executive Order (E.O.) 13771 deregulatory action. Details on the estimated effects of this proposed rule can be found in the economic analysis.

## **II. Registration Requirements for Pooled Plan Providers**

Specifically, as described above, the SECURE Act expressly provides a requirement to register as a pooled plan provider and a separate authorization for the Department to require reporting of other information. The SECURE Act did not include specific content requirements for the pooled plan provider registration. The Department is proposing that the first part of the process be an initial “registration” filing of basic identifying information about the pooled plan provider and some information, for example, about its structure, affiliated service providers, marketing activities, and pending legal or regulatory proceedings. The second part is a supplemental filing requirement intended to provide the agencies, participating employers and employees, and the public information about reportable events, which would include any change in the information filed as part of the initial registration and also significant financial and operational events related to the pooled plan provider and the pooled employer plans it sponsors.

### **A. Initial Registration**

For purposes of the initial registration, the Department proposes to define “beginning operations as a pooled plan provider” to mean publicly marketing pooled plan provider services or publicly offering a pooled employer plan. In the Department’s view, an important purpose of the requirement to register before beginning operations as a pooled plan provider is to provide the Department, the Treasury Department, the IRS, prospective employer customers, and the

public with notice and relevant information about the pooled plan provider. Accordingly, the initiation of public marketing services as a pooled plan provider or publicly offering one or more pooled employer plans are important registration triggers. The Department does not intend to require registration 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.

As noted above, the SECURE Act left it to the agencies' discretion to establish specific content requirements for the pooled plan provider registration. In developing this proposal, the Department 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. The Department also considered the content requirements of other registration requirements under federal and state securities laws for investment advisers and broker-dealers. For example, among other information, registrations require disclosures of identifying and contact information, background information about the registrant's business, information about relevant management policies, names of executives and general partners, relevant legal proceedings and previous violations, and relevant negative information, such as legal problems or other business events or trouble that would be of consequence to users of the registration information. The Department

also focused on minimizing the administrative burden and expense involved for pooled plan providers and the pooled employer plans they operate.

Based on those considerations, the Department is proposing that a prospective pooled plan provider would need to file the following information 30 to 90 days before beginning operations as a pooled plan provider:

1. Legal Business Name and any Trade Name (Doing Business As).
2. Federal Employer Identification Number (EIN). An EIN is a nine-digit employer identification number (for example, 00-1234567) that has been assigned by the IRS. Entities that do not have an EIN may apply for one on Form SS-4, Application for Employer Identification Number. The Form SS-4 is available by calling 1-800-829-4933 or going to the IRS Web site at <https://www.irs.gov/pub/irs-pdf/fss4.pdf>. EIN data is important for accurately identifying registrants and cross-referencing information reported about the registrant on other filings, such as the Form 5500 filed by the pooled employer plans operated by the registrant.
3. Business Telephone. We expect that pooled plan providers, like many or most existing 401(k) providers, will operate a call center designed to handle inquiries from employers interested in or already participating in a pooled employer plan as well as participants and beneficiaries covered by plans operated by the registrant. The separate requirement to provide contact information for the registrant's principal compliance officer gives the Department and others with compliance concerns a means of contacting a responsible person at the registrant. The business telephone number requirement is focused mainly on including in the public Form PR data that the Department will post on its website a way for interested/participating employers

and covered employees to contact the pooled plan provider for information. As such, we are soliciting comments on whether this data element should allow a call center number to be reported as the business telephone number.

4. Business Mailing Address.

5. Address of any public website or websites of the pooled plan provider or any affiliates to be used to market any such person(s) as a pooled plan provider to the public or to provide public information on the pooled employer plan operated by the pooled plan provider. The Department believes this information will be useful in the Department's oversight of pooled plan providers and will also assist employers performing due diligence in selecting and monitoring pooled employer plans. The Department also expects that most pooled plan providers will have such websites, and believes that having information on such websites provides an alternative to requiring more information to be submitted as part of the registration process.

6. The name, mailing address, telephone number, and email address for the primary compliance officer of the pooled plan provider. The Department believes it is important that it, as well as participating employers and covered employees, have an effective means of communicating with a responsible person at the pooled plan provider regarding compliance questions or concerns. The Department is proposing that the registration include an email address for the compliance officer, but solicits comments on whether alternative or additional means of contacting the compliance officer should be included in the registration.

7. The agent for service of legal process for the pooled plan provider, and the address at which process may be served on such agent, and in addition, a statement that service of legal

process may be made upon the pooled plan provider. The proposal would allow either a person or a process service company to be identified as the agent for service of legal process.

8. The approximate date when pooled plan operations are expected to commence. The SECURE Act requires that the registration must be filed before the pooled plan provider begins operations. Accordingly, this data element is important to enable the Department to ensure compliance with the SECURE Act requirement. As noted elsewhere, the Department is proposing that the registration be filed not more than 90 or less than 30 days before the pooled plan provider begins operations.

9. A description of administrative and investment services that will be offered or provided by the pooled plan provider, including identification of any affiliates expected to have a role in the provision of those administrative and investment services, and a description of the roles of such affiliates. For this purpose, the term “affiliates” includes all persons who are treated as a single employer with the person intending to be a pooled plan provider under section 414(b), (c), (m), or (o) of the Code and are expected to provide services to pooled employer plans sponsored by the pooled plan provider, and any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and any corporation or partnership of which such person is an officer, director, or partner. Information 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.

10. A statement disclosing any federal or state criminal conviction related to the provisions of services to, operation of, or investments of, any employee benefit plan against the pooled plan provider, or any officer, director, or employee of a pooled plan provider, if the conviction, or related term of imprisonment served, is within ten years of the date of the registration. In the Department's view, this data element focuses on relevant legal proceedings, previous violations, and relevant negative information that will be useful in the Department's oversight of pooled plan providers. For example, under ERISA section 411, the Department is responsible for ensuring disqualified parties do not serve in positions or capacities prohibited under the statute. Although this question is intentionally presented without all the technical provisions and specifications in section 411 of ERISA, that statutory provision prohibits individuals convicted of disqualifying crimes from serving in plan-related capacities during or for a period of 13 years after such conviction or the end of imprisonment, whichever is later, subject to some provisions allowing that period to be shortened.<sup>9</sup> This data would also assist employers performing due diligence in selecting and monitoring pooled employer plans. The Department solicits comments on whether civil judgments should be included here, and if, so whether the requirement with respect to civil judgments should be further limited to just certain types of civil judgments, e.g., those involving claims of fraud or dishonesty with fraud or dishonesty defined similarly to those terms in the fidelity bonding provisions in ERISA section 412 and the Department's implementing regulations.

11. A statement disclosing any ongoing criminal, civil, or administrative proceedings related to the provisions of services to, operation of, or investments of any employee benefit

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<sup>9</sup> See also *Beck v. Levering*, 947 F.2d 639 (2d Cir. 1991) (in a civil action, permitting lifetime injunction against an individual from providing services to ERISA plans).

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. As with the information on criminal convictions, this data element focuses on relevant legal proceedings, previous violations, and relevant negative information that will be useful in the Department’s oversight of pooled plan providers and will also assist employers performing due diligence in selecting and monitoring pooled employer plans.

## **B. Reportable Event Supplemental Filings**

Before the pooled plan provider initiates operations of a pooled employer plan, the proposal would require the pooled plan provider to submit a supplemental filing with the name, trustee identification information, and EIN for the plan. The timing of this requirement arises from Code section 413(e)(3), which provides that the requirements to be a pooled plan provider (including the requirement to register with the Secretary of the Treasury before beginning operations as a pooled plan provider) must be satisfied “with respect to any plan.”

The proposal would also require additional filings for (i) any changes in the previously reported registration information and (ii) specified events affecting either the pooled plan provider or a plan it sponsors that may signal financial problems or other circumstances that could potentially put the pensions of covered employees at risk.<sup>10</sup> These supplemental filings would provide important information to the Department, the Treasury Department, and the IRS to help them protect plan participants and beneficiaries and conduct more effective monitoring and oversight of pooled employer plans and pooled plan providers. Without this kind of timely

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<sup>10</sup> If only correcting a mistake in a previous filing, the person should indicate that on the form by checking the box for an amended filing instead. See discussion in Section II.C.

information, the agencies would typically not learn of risks to a pooled employer plan until the plan files a Form 5500, possibly many months after the event and when opportunities for protecting plan participants from financial injury have been missed. Reporting changes in the previously filed registration information also will help the Department ensure that the information regarding pooled plan providers posted on its website and available to the public is up to date. Otherwise the Department, employers, and the public would have to rely on outdated information until a Form 5500 was filed for the plan and then would need to compare the registration information with the subsequently filed information about pooled plan providers in Forms 5500 submitted by the pooled plan provider on behalf of the pooled employer plans the providers operate and have to rely on outside sources to determine which information is correct.

Therefore, pooled plan providers would need to disclose certain changes in a supplemental filing within 30 days of the occurrence of the change. These changes are:

1. Any change in the registration information previously reported by the pooled plan provider. In the Department's view, it is important that the registration information it has, and that it posts on its website, be accurate and up to date. The Department intends that the filing system for the pooled plan provider registrations will enable registrants submitting a supplemental filing to complete the basic identifying information regarding the registrant and update only those parts of the registration with a change in the required information.

2. Any one of the following changes in circumstances of the pooled plan provider:

- (i) significant change in the corporate or business structure of the pooled plan provider, e.g., merger, acquisition. As noted above, the Department considered other registration regimes

in developing this proposal, and some included data collections regarding business events or trouble that would be of consequence to users of the registration information. In the Department's view, a significant change in the pooled plan provider's corporate structure could have consequences that affect the pooled employer plans as well as participating employers and covered employees and could also give rise to possible conflicts of interest that would not have existed in the absence of the transaction.

(ii) initiation of bankruptcy, receivership, or other insolvency proceeding for the pooled plan provider or an affiliate, or ceasing all operations as a pooled plan provider. It is important for both participating employers and the agencies charged with oversight of pooled plan providers and pooled employer plans to have information about insolvency proceedings as soon as is reasonably practicable to make sure that the interests of participants and beneficiaries are protected. The Department already has a REACT project whose aim is to respond in an expedited manner to protect the rights and benefits of plan participants when the plan sponsor faces severe financial hardship or bankruptcy and the assets of the employee benefit plan are in jeopardy. Under REACT, when a company has declared bankruptcy, the Department's goal is to take immediate action to (1) ascertain whether there are plan contributions which have not been paid to the plans' trust, (2) advise all affected plans of the bankruptcy filing, and (3) provide assistance in filing proofs of claim to protect the plans, the participants, and the beneficiaries. EBSA also attempts to identify the assets of the responsible fiduciaries and evaluate whether a lawsuit should be filed against those fiduciaries to ensure that the plans are made whole and the benefits secured. The Department expects that it will either expand the REACT program or establish a similar program specifically designed for pooled plan providers and pooled employer plans, and this supplemental reportable event information would be important.

(iii) receiving written notice of the initiation of any administrative or enforcement action in any court or administrative tribunal by any federal or state governmental agency or other regulatory authority against the pooled plan provider or any officer, director, or employee of the pooled plan provider, related to the provision of services to, operation of, or investments of any pooled employer plan. Timely knowledge of such actions will help the agencies fulfill their oversight functions and also assist prospective and existing participating employers properly carry out their duties under the SECURE Act provisions with respect to selection and monitoring of pooled employer plans. For purposes of the registration, employees of the pooled plan provider would include employees of the pooled employer plan, but only those who handle assets of the plan within the meaning of section 412 of ERISA or who are responsible for the operations or investments.

(iv) receiving written notice of a finding of fraud or dishonesty by federal or state court or a federal or state governmental agency related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan against the pooled plan provider or any officer, director, or employee of the pooled plan provider. As with information regarding actions by governmental agencies or other regulatory authorities against the provider, information about court or governmental agency findings of fraud or dishonesty in connection with the provision of services to, operation of, or investments of any employee benefit plan is important for agency oversight and for participating employers with respect to their duties under the SECURE Act provisions regarding selection and monitoring of the pooled employer plans.

(v) receiving written notice of the filing of any federal or state criminal charges related to the provision of services to, operation of, or investments of any pooled employer plan or other

employee benefit plan against the pooled plan provider or any officer, director, or employee of the pooled plan provider. Such actions, too, are relevant to the selection and monitoring obligations of participating employers, and while ERISA section 411 bars serving as an ERISA fiduciary following a wide range of crimes, this information is limited to those criminal charges related to the provision of services to, operation of, or investments of any pooled employer or other employee benefit plan.

### **C. Amendment and Correction of Registration Information**

The Department intends that the filing system for registrations, similar to that for the Form 5500, will allow pooled plan providers the ability to file corrections and amendments of their registration and reportable event filings. The Department does not believe that it would be appropriate to read the SECURE Act in a way that would result in inadvertent or good faith errors in registrations resulting in a failure to register and a consequent nullification of the person's status as a person authorized to act as a pooled plan provider. Thus, under the proposal, inadvertent or good faith errors and omissions in a filing's content generally would not be treated as a failure to register, provided that a corrected or amended filing is submitted within a reasonable period of the discovery of the error or omission. If only correcting information previously reported, such as if an incorrect name was entered for an affiliate of the pooled plan provider, a person would indicate on the form that the filing is an amended filing, not a supplemental filing.

Further, the Department expects at a later date to propose new questions on the Form 5500 that would ask whether a pooled plan provider filed its registration statement with the Secretary, including any required updates, and to report the electronic confirmation number

provided to the pooled plan provider at the time that the registration was received. These would be similar to the questions currently on the Form 5500 that require reporting by multiple employer group health plans about their compliance with registration and reporting requirements on the Form M-1 (Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)). The questions would provide the Department, the Treasury Department, the IRS, participating employers, and other stakeholders with information that would allow them to connect the Form PR registration with the Form 5500 for all pooled employer plans operated by the registrant.

#### **D. Final Filing**

As proposed, if a pooled plan provider has ceased operating all pooled employer plans and has filed a supplemental reportable event filing to indicate that the last pooled employer plan for which it served as the pooled plan provider has been terminated and ceased operating, the provider would be required to file a final registration filing. For this purpose, a plan would be treated as terminated and having ceased operations when a resolution has been adopted terminating the plan, all assets under the plan (including insurance/annuity contracts) have been properly distributed to the participants and beneficiaries or legally transferred to the control of another plan, and when a final Form 5500 has been filed for the plan. The final Form PR filing would be due within 30 days of the filing of the last final Form 5500 for the last pooled employer plan the provider operates. A single combined filing may be used both to report that the last pooled employer plan operated by the provider has been terminated and ceased operating and to serve as the final Form PR filing by the pooled plan provider. The final filing is intended to assist the Department's maintenance of an accurate database of persons serving as pooled plan

providers and provision of accurate public information about pooled plan providers to employers, participants, beneficiaries, and other interested persons.

### **E. Electronic Filing**

This proposal also includes a provision to require electronic filing of all pooled plan provider registrations with the Department. The Department believes that regular mail is not the most efficient or cost-effective way to file and process these notices and statements. Because the internet is widely accessible to persons who file these notices and statements, the Department expects that persons interested in being pooled plan providers will find electronic filing easier and more cost-effective than paper filing. The submission process would also assist pooled plan providers by ensuring that all of the required information would be included in the registration before the electronic filing could be completed through the internet site. In addition, as previously mentioned, the process would provide an electronic registration confirmation receipt to the pooled plan provider. Electronic filing should also facilitate the disclosure of the information to participating employers, covered participants and beneficiaries, and other interested members of the public. Once a registration statement is filed, the data would be posted on the Department's Web site and be available to the public. Thus, the Department believes that filers and data users all stand to benefit from electronic filing in ways that are consistent with the goals of the E-Government Act of 2002.<sup>11</sup>

The Department plans to use the same system and registration process for filing the pooled plan provider registration that plan administrators currently use, and that pooled plan

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<sup>11</sup> Public Law 107-347, sec. 2 (Dec. 17, 2002).

providers will use, to file the Form 5500 for employee benefit plans, including pooled employer plans.

Under ERISA Section 505, in addition to having the authority to prescribe such regulations the Department determines may be necessary or appropriate to carry out the provisions of Title I of ERISA, the Department has the authority to prescribe forms. Pursuant to that authority, the Department is proposing a new EBSA form—Form PR. The proposed form and the accompanying instructions would be the required filing format for pooled plan provider registrations and would facilitate the regulatory registration requirements proposed in this document. The proposed form and instructions are attached as Appendix A.

The pooled plan provider registration form and instructions, like other Department forms, will undergo OMB review under the Paperwork Reduction Act of 1995 (PRA), and be assigned an OMB Control number prior to being published for use. The volume of pooled plan provider registration filings is unknown but as discussed in detail in the regulatory impact analysis, the Department assumes for purposes of this proposal that fewer than 5,000 persons will register initially as pooled plan providers.

#### **F. Coordination with the Treasury Department and the Internal Revenue Service**

As noted above, the SECURE Act requires pooled plan providers to register with the Department as well as with the Treasury Department and the IRS. The Department coordinated with those agencies to develop this proposal. They have advised that filing the registration statement with the Department, including the supplemental statement identifying a pooled employer plan for which the pooled plan provider is acting in that capacity prior to the initiation

of operations of each such plan, will also satisfy the Code requirement to register as a pooled plan provider with respect to that plan. The Department will continue to consult with the Treasury Department and the IRS in connection with their development of the pooled plan provider registration requirements and filing process.

### **G. Request for Public Comments**

The Department invites comments from interested persons on all facets of the proposed rule. Commenters are free to express their views not only on the specific provisions of the proposal as set forth in this document, but on other issues germane to the subject matter of the proposal. The Department also requests comment on the following questions:

1. Is the definition of “beginning operations as a pooled plan provider,” which determines whether initial registration is required, appropriate in scope? Should the definition exclude marketing and solicitation efforts so that the initial registration is tied solely to beginning operation of a pooled employer plan? Should the deadlines for filing an initial registration be nearer to the date of actual public marketing activities if the pooled plan provider intends only to engage in marketing and solicitation efforts, and will not enroll any employer or employee in a pooled employer plan until at least 30 days after initial registration?
2. Are there any additional classes of information or types of reportable events that should be included in the registration requirement?
3. Is there a more efficient or effective way of collecting reportable event information that would reduce administrative burdens and expenses?

4. Could the burden associated with the collection of reportable event information be reduced by better aligning the collection with other disclosure requirements for pooled plan providers?
5. Are there other federal or state filings for insurance companies, banks, and other financial institutions, such as the Form ADV (or similar Securities and Exchange Commission (SEC) or State registration forms) for financial advisors, on which the Department could rely as an alternative source of information about pooled plan providers and the plans they operate?
6. Are there particular forms or numbers (e.g., Form ADV, SEC registration number, Central Registration Depository number, or National Association of Insurance Commissioners Code) that could be referenced in the registration that would, with nominal burden, help employers find more information about pooled plan providers and compare providers across platforms of available information?
7. Should the disclosure of “ongoing criminal, civil, or administrative proceedings related to the provisions of services to, operation of, or investments of any employee benefit plan by the pooled plan provider” be expanded? For example, would disclosing settlements of fiduciary liability claims against pooled plan providers with the Department or PBGC, including settlements under ERISA § 206(d)(4)(A)(iii), assist employers performing due diligence in selecting and monitoring pooled employer plans?

Comments should be submitted in accordance with the instructions at the beginning of this document. The Department believes that 30 days will afford interested persons an adequate amount of time to analyze the proposed rule and submit comments.

## Regulatory Impact Analysis

*Summary* – The SECURE Act was enacted to expand retirement savings. Section 101 of the SECURE Act amends section 3(2) of ERISA to eliminate the commonality of interest requirement for establishing certain individual account plans, or “pooled employer plans,” that meet specific requirements. Among these requirements, such plans must designate a “pooled plan provider” to serve as a named fiduciary and as the plan administrator. Further, section 101 of the SECURE Act requires pooled plan providers to register with the Department and the Treasury Department before beginning operations. The statute expressly provides a separate authorization for the Department to require additional information.

The Department has examined the effects of this rule as required by Executive Order 12866,<sup>12</sup> Executive Order 13563,<sup>13</sup> the Congressional Review Act,<sup>14</sup> Executive Order 13771,<sup>15</sup> the Paperwork Reduction Act of 1995,<sup>16</sup> the Regulatory Flexibility Act,<sup>17</sup> section 202 of the Unfunded Mandates Reform Act of 1995,<sup>18</sup> and Executive Order 13132.<sup>19</sup>

### *1.1. Executive Orders*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety

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<sup>12</sup> Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

<sup>13</sup> Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 18, 2011).

<sup>14</sup> 5 U.S.C. 804(2) (1996).

<sup>15</sup> Reducing Regulation and Controlling Regulatory Costs, 82 FR 9339 (Jan. 30, 2017).

<sup>16</sup> 44 U.S.C. 3506(c)(2)(A) (1995).

<sup>17</sup> 5 U.S.C. 601 et seq. (1980).

<sup>18</sup> 2 U.S.C. 1501 et seq. (1995).

<sup>19</sup> Federalism, 64 FR 153 (Aug. 4, 1999).

effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, “significant” regulatory actions are subject to review by the Office of Management and Budget (OMB).<sup>20</sup> Section 3(f) of the Executive Order defines a “significant regulatory action” as an action that is likely to produce a rule that does any of the following:

- (1) has an annual effect on the economy of \$100 million or more in any one year, or adversely and materially affects 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) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency;
- (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A full regulatory impact analysis must be prepared for major rules with economically significant effects (for example, \$100 million or more in any one year), and OMB reviews “significant” regulatory actions. OMB determined that this rule is not economically significant

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<sup>20</sup> Regulatory Planning and Review, *supra* note 2.

within the meaning of section 3(f)(1) of the Executive Order but is significant under 3(f)(4). Therefore, the Department has provided an assessment of the potential costs, benefits, and transfers associated with this proposed rule. In accordance with the provisions of Executive Order 12866, OMB has reviewed this proposed rule.

### *1.2. Introduction and Need for Regulation*

As added by the SECURE Act, section 3(44) of ERISA requires a person to register as a pooled plan provider with the Secretary, and provide other information the Secretary may require, before operating a pooled employer plan. These proposed rules respond to the direction given to the Secretary in the SECURE Act and provide the requirements for registering with the Secretary.

The required information allows the Department to identify pooled plan providers so that it may monitor their actions. While the Form 5500, which pooled plan providers will also be required to file, collects such information, Form 5500 reporting is generally unavailable for more than 18 months after a plan starts. The SECURE Act's registration requirements give the Department more immediate access to pooled plan provider information, allowing it to observe how this new market develops and assess the need for further guidance.

### *1.3. Affected Entities*

The goal of the SECURE Act is to increase retirement savings, in particular by expanding the options for small employers to participate in multiple employer plans. The Department expects this expansion to produce administrative savings and new investment opportunities for many small employers. Section 101 of the SECURE Act allows commercial service providers to

serve as the plan administrator and a named fiduciary of defined contribution pension plans of more than one unrelated employer. Expanding the ways in which service providers and employers may craft and join multiple employer plans should reduce costs and administrative burdens for participating employers. Rather than sponsoring individual plans with separate Form 5500 filing and audit requirements, a single Form 5500 filing by the pooled plan provider would satisfy the annual reporting requirement for all the participating employers. Pooled plan providers would be both a named fiduciary and plan administrator for the pooled employer plan, and they would be required to register with the Department before operating any such plans.

The Department has identified certain existing entities that it believes would be most likely to serve as pooled plan providers. For example, recordkeepers that currently administer retirement plans may be well positioned to serve as pooled plan providers and some recordkeepers have affiliated entities that may seek to provide investment alternatives and services to the plan. Similarly, many Professional Employer Organizations (PEOs) have served as plan administrators and would likely have little trouble taking on the role of pooled plan provider. Further, insurance companies have expressed interest in serving as pooled plan providers and some have prior experience providing similar services. Chambers of Commerce have connections with employers, but many are small with few full-time staff. Also, few Chambers of Commerce have sponsored MEWAs. While retirement plan advisors such as broker-dealers and registered investment advisers are also plausible candidates, the Department believes that many would be reluctant to assume the named fiduciary and plan administrator roles. Entities such as registered investment advisers may likely be more comfortable serving as section 3(38) investment managers for the pooled plan providers.

Given these assumptions, the Department currently estimates that roughly 3,200 unique entities will initially register to serve as pooled plan providers. Recordkeepers and plan administrators of existing defined contribution plans are most likely to enter the market, followed by PEOs, direct annuity writers, chambers of commerce, and plan advisors.

<b>Estimated Pooled Plan Provider</b>			
	Universe	Expected Share	Estimated Number
Unique Record Keepers and Plan Administrators for existing DC Plans <sup>a</sup>	2,378	50%	1,189
Professional Employer Organization <sup>b</sup>	907	25%	227
Chambers of Commerce <sup>c</sup>	4,000	5%	200
Large Broker-Dealers <sup>d</sup>	173	5%	9
Registered Investment Adviser Firms <sup>d</sup>	30,246	5%	1,512
Direct Annuity Writers (Insurance Companies) <sup>e</sup>	386	25%	97
<b>Total</b>	<b>38,090</b>	<b>8%</b>	<b>3,233</b>

<sup>a</sup> 2017 Form 5500 Schedule C Data.

<sup>b</sup> National Association of Professional Employers, <https://www.napeo.org/what-is-a-peo/about-the-peo-industry/industry-statistics>" <https://www.napeo.org/what-is-a-peo/about-the-peo-industry/industry-statistics>.

<sup>c</sup> Association of Chamber of Commerce Executives reports that there are 4,000 Chambers with at least 1 full-time staff person.

<sup>d</sup> 2019 FINRA Industry Snapshot. FINRA reported 3,607 FINRA registered firms in 2018. There were 173 with 500 or more registered representatives.

<sup>e</sup> National Association of Insurance Commissioners.

#### *1.4. Benefits*

The SECURE Act requirement that pooled plan providers first register with the Department before beginning operations alerts regulators to the presence and intent of new entities. Registering allows potential pooled plan providers access to this newly created market. These registrations would require contact information, links to any websites containing marketing information for any pooled employer plan(s) established by the provider, the date operations are expected to commence, and a description of the provider's services and affiliates.

These registrations will be publicly available and will provide a complete list of registered pooled plan providers. In addition, the supplemental filing requirement ensures that providers update their initial filing to report material changes relevant to the pooled plan provider's and participating employers' fiduciary duties (including, for example, inception of bankruptcy and litigation, criminal, or regulatory enforcement actions against the pooled plan provider). This will help provide transparency regarding the provider's management and business practices, allowing employers to better survey the market when choosing a pooled plan provider or deciding whether to continue to rely on an existing provider and the Department and Treasury Department to carry out their statutory oversight duties.

In the Department's view, the statutory purpose of the registration requirement is to provide the Department with sufficient information regarding entities acting as pooled plan providers to engage in effective monitoring and oversight of this new type of ERISA retirement plan. As discussed above, the potential for inadequate employer oversight of the activities of a pooled employer plan and its plan fiduciaries and other service providers may be greater than for other plans sponsored by an employer because the nature of the plan involves participating employers passing along more responsibility to the pooled plan provider than they do in other plan arrangements. The proposed information collection, which has been kept limited to minimize burden, will enable the Department to fulfill its oversight responsibilities. Links to any websites containing marketing information for any pooled employer plan(s) established by the provider, the date operations are expected to commence, a description of the provider's services and affiliates, and material changes relevant to the pooled plan provider's fiduciary duties (including, for example, bankruptcy, litigation, and criminal or regulatory enforcement actions) all serve to help with monitoring and oversight.

As stated above, the SECURE Act amended ERISA to remove possible barriers to the broader use of multiple employer plans. This objective was accomplished primarily by allowing multiple unrelated employers to participate in an open MEP called a pooled employer plan that does not require commonality among participating employers or a genuine organizational relationship unrelated to participation in the plan. By allowing most of the administrative and fiduciary responsibilities of sponsoring a retirement plan to be transferred to pooled plan providers, pooled employer plans provide employers with an option to provide a workplace retirement plan to their employees with reduced burdens and costs compared to sponsoring their own separate single employer retirement plan. Consequently, more plan formation and broader availability of workplace retirement plans should occur, especially among small employers.

The Department is uncertain of the number of pooled employer plans that could be created based on the proposed rule, the number of employers that will participate in such plans, and the number of participants and beneficiaries that will be covered by them. The Department is confident, however, that some pooled employer plans will come into existence.

It is possible that each pooled plan provider that registers will offer at least one new pooled employer plan and larger pooled plan providers may offer more than one new pooled employer plan. As is the case with multiple employer plans generally, some pooled employer plans may be large or very large in terms of participating employers, others medium in size, and some may even be small, although small pooled employer plans would seem to lack the attraction and efficiency of the economies of scale that could exist for larger pooled employer plans.

The effects on coverage are somewhat uncertain because of the possibility of at least some zero-sum gain. Some new pooled employer plans will attract participating employers that currently do not offer retirement savings opportunities to their employees. The result in this situation would be a net coverage increase in this country and retirement security would be improved to some extent for the employees of these participating employers.<sup>21</sup> At the same time, however, the Department expects that some existing retirement plans, most likely those of small single employer plan sponsors, could terminate or otherwise cease to operate in their current form and merge into pooled employer plans. A dominant influence in this direction would be the administrative cost savings and other operational efficiencies that come with economies of scale. The Department has repeatedly acknowledged the potential benefits that could inure to small employers and their employees if they join together in a multiple employer plans and similar cooperative arrangements.<sup>22</sup> For different reasons, though, it also is possible that some existing multiple employer plans, such as those structured under 29 CFR 2510.3-55 (Association Retirement Plans or “ARPs”), could convert to pooled employers plans.<sup>23</sup> Conversions of this type might occur, for example, if an ARP were to conclude that restrictions under section 3(5) of ERISA, such as the geographic limitations imposed pursuant to 29 CFR 2510.3-55(b)(2) or the substantial employment function test for bona fide professional employer organization

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<sup>21</sup> Workplace retirement plans often provide a more effective way for employees to save for retirement than saving in their own IRAs. Compared with saving on their own in IRAs, workplace retirement plans provide employees with: (1) Higher contribution limits, (2) generally lower investment management fees as the size of plan assets increases, (3) a well-established uniform regulatory structure with important consumer protections, including fiduciary obligations, recordkeeping and disclosure requirements, legal accountability provisions, and spousal protections, (4) automatic enrollment, and (5) stronger protections from creditors. At the same time, workplace retirement plans provide employers with choice among plan features and the flexibility to tailor retirement plans that meet their business and employment needs. See 84 FR 37528.

<sup>22</sup> 84 FR 37508 (July 31, 2019) (Definition of “Employer” Under Section 3(5) of ERISA— Association Retirement Plans and Other Multiple-Employer Plans); see also 83 FR 28912 (June 21, 2018) (Definition of “Employer” Under Section 3(5) of ERISA—Association Health Plans).

<sup>23</sup> Section 101 of SECURE Act itself contemplates such conversions and provides a special rule for existing plans to elect pooled employer plan status (new section 3(43)(C)) of ERISA).

arrangements in 2510.3-55(c)(1), were disadvantageous or inefficient relative to the conditions for being a pooled employer plan. The total number of defined contribution plans, therefore, could decrease as a result of these mergers and conversions; however, net coverage (i.e., the number of total defined contribution plan participants) could increase, because (1) participants in plans that merge or convert into pooled employer plans would continue to be covered under a retirement plan, and (2) some employers that do not currently provide their employees with retirement plan access would join pooled employer plans and their employees would count as newly-covered participants.

Pooled employer plans generally would benefit from scale advantages that small businesses do not currently enjoy, and the Department expects that such plans will pass some of the attendant savings onto participating employers and participants. Large scale may create two distinct economic advantages for pooled employer plans. First, as scale increases, marginal costs for pooled employer plans would diminish and pooled plan providers would spread fixed costs over a larger pool of member employers and employee participants, creating direct economic efficiencies. Second, asset managers commonly offer proportionately lower prices, relative to assets invested, to larger investors, under so-called tiered pricing practices resulting in decreased expense ratios based on the aggregate amount of money invested by a single pooled employer plan.

For example, larger plans tend to have lower fees overall.<sup>24</sup> Generally, small plans with 10 participants are paying approximately 50 basis points more than plans with 1,000

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<sup>24</sup> 84 FR 37508, 37535.

participants.<sup>25</sup> Small plans with 10 participants are paying about 90 basis points more than large plans with 50,000 participants. Grouping small employers together into a pooled employer plan could facilitate savings through administrative efficiencies and sometimes through price negotiation (market power). The degree of potential savings may be different for different types of administrative functions, e.g., scale efficiencies can be very large with respect to asset management, and may be smaller, but still meaningful, with respect to functions such as marketing, distribution, asset management, recordkeeping, and transaction processing.

Other potential benefits of the expansion of MEPs through the creation of pooled employer plans could include: (1) increased economic efficiency as small businesses can more easily compete with larger companies in recruiting and retaining workers due to a competitive employee benefit package, (2) enhanced portability for employees that leave employment with an employer to work for another employer participating in the same pooled employer plan, and (3) higher quality data (more accurate and complete) reported to the Department on the Forms PR and 5500. The Department requests comments regarding such potential benefits.

### *1.5. Costs*

The costs most directly associated with this rule are those of preparing and submitting the registration statement. The PRA section of this document, below, discusses these costs in detail.

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<sup>25</sup> Deloitte Consulting and Investment Company Institute, Inside the Structure of Defined Contribution/401(k) Plan Fees, 2013: A Study Assessing the Mechanics of the “All-in” Fee (Aug. 2014). Deloitte Consulting LLP conducted a survey of 361 defined contribution plans for the Investment Company Institute. The study calculates an “all in” fee that is comparable across plans including both administrative and investment fees paid by the plan and the participant. Deloitte predicted these estimates by analyzing the survey results using a regression approach calculating basis points as a share of assets. See 84 FR 37508. 37535.

The estimated cost is \$688,000 in the first year and \$72,400 in subsequent years.<sup>26</sup> The perpetual time horizon annualized cost is \$106,100 in 2016 dollars, using a seven percent discount percent rate, discounted from 2016. Other indirect costs may ensue, depending on the extent of pooled employer plan formation, as well as the extent of conversions, mergers, and contractions among existing plans. The extent of these actions is unknown at this time; in other words, such additional costs are highly uncertain. With respect to any new pooled employer plan, these indirect costs would relate to pooled plan provider complying with the requirements of the SECURE Act that are not codified by this proposed regulation.

#### *1.6. Transfers*

Several potential transfers could occur as a result of this proposed rule. To the extent the formation of pooled employer plans leads employers that previously sponsored a retirement plans to terminate or freeze these plans, or leave another group plan like an ARP, and join a pooled employer plan, there may be a transfer if the pooled employer plan utilizes different service providers and asset types than the terminated plan. A similar transfer might occur in cases where employers who previously did not offer their employees a retirement plan join a pooled employer plan. Employees of these employers may have been saving for retirement previously in different ways, such as through an IRA, which would have different service providers. Service providers that specialize in providing services to pooled employer plans or

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<sup>26</sup> The total ten-year cost is \$1,215,000 with a three percent discount rate and \$1,084,000 with a seven percent discount rate. The annualized ten-year cost is \$142,000 using a three percent discount rate, and \$154,000 using a seven percent discount rate.

are affiliated with a pooled plan provider might benefit at the expense of other providers who specialize in providing services to small plans or IRAs. Those different service providers would experience gains or losses of income or market share.

The rule could also result in asset transfers if pooled plan providers invest in different types of assets than plans that merge or convert to pooled employer plans. For example, small plans tend to rely more on mutual funds, while larger plans have greater access to other types of investment vehicles such as bank common collective trusts and insurance company pooled separate accounts, which allow for specialization and plan specific fees. This movement of assets could see profits move from mutual funds to other types of investment managers.

Finally, the Code generally gives tax advantages to certain retirement savings over most other forms of savings.<sup>27</sup> Consequently, all else being equal, workers who are saving money in tax qualified retirement savings vehicles generally can enjoy higher lifetime consumption and wealth than those who does not. The magnitude of the relative advantage generally depends on the worker's tax bracket, the amount contributed to the plan, the timing of contributions and withdrawals, and the investment performance of the assets in the account. Workers that do not contribute to a qualified retirement savings vehicle due to lack of access to a workplace retirement plan do not reap this relative advantage. This rule would likely increase the number of American workers with access to tax-qualified workplace retirement plans, which would spread this financial advantage to some people who are not currently receiving it. If access to

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<sup>27</sup> Employer contributions to qualified pension plans and, generally, employee contributions made at the election of the employee through salary reduction are not taxed until distributed to the employee, and income earned on those amounts is not taxed until distributed. The tax expenditure for "net exclusion of pension contributions and earnings" is computed as the income taxes forgone on current tax-excluded pension contributions and earnings less the income taxes paid on current pension distributions.

retirement plans and savings increase as a result of this rule, a transfer will occur flowing from all taxpayers to those individuals receiving tax preferences as a result of new and increased retirement savings.

As is evident from the foregoing, the exact magnitude of the potential transfers is uncertain at this stage, as is the precise identities of the transferors and transferees. Much depends on the number of pooled employer plans that eventually come into existence, the extent of plan consolidation, the number of employers that begin participating anew in pooled employer plans and the savings habits of the employees of these employers (who might have heretofore been saving through an IRA). And a major influence on each of these factors will be, among other things, the nature, extent and timing of the regulatory intervention needed to implement the SECURE Act, as well as the general state of the economy. The Department specifically solicits comments and data on the potential magnitude of these transfers and the associated costs and benefits.

### *1.7. Uncertainty*

While the Department has identified types of service providers that it believes will be well positioned to act as pooled plan providers, it is unclear how many will choose to enter the market and whether they will do so in the first year of enactment or in later years. The Department has based its assumptions on discussions with stakeholders and articles on emerging markets. The Department invites comments on which and how many entities are likely to register as pooled plan providers.

Section 101 of the SECURE Act requires pooled plan providers to register with the Department and provide such other information as the Secretary may require before beginning operations as a pooled plan provider. The Department seeks to include information that would prove useful, while minimizing costs. The Department requests comments on whether (1) any required information does not satisfy this condition or (2) it should require other information to be included in the registration whose benefits would outweigh any administrative burden.

### *1.8. Alternatives*

Section 101 of the SECURE Act requires pooled plan providers to register with the Secretary and provide such other information as the Secretary may require, before beginning operations as a pooled plan provider. The Department considered several alternative forms of information to be included that are discussed below.

The Department could have required fewer data elements, such as contact information only, including address and email. While slightly less burdensome than the proposed requirements, requiring fewer data elements would provide substantially less information to the Department, which would impede its ability to fulfill its critical oversight role of protecting participants and plan assets. Employers also would receive less information to survey the market when choosing a pooled plan provider or deciding whether to continue to rely on an existing provider.

The Department considered requiring pooled plan providers to file a registration for each pooled employer plan. This would have required pooled plan providers to file multiple similar

filings. The Department did not choose this option, because it would have required pooled service providers to make multiple filings while providing minimal additional benefits.

The Department also considered not requiring pooled service providers to make supplemental filings. While this option would have been less burdensome than the chosen option, it would have provided less information to the Department and interested employers. Requiring pooled service providers to report updated information to the Department can provide key information the Department needs to fulfill its oversight role. Therefore, the Department determined that the benefits of requiring supplemental filings justified any additional cost that pooled plan providers would incur to furnish the updated information.

## *2. Paperwork Reduction Act*

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to allow the general public and federal agencies to comment on proposed and continuing collections of information in accordance with the PRA.<sup>28</sup> This helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Currently, the Department is soliciting comments concerning the proposed information collection request (ICR) included in the registration requirements for pooled plan providers. To

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<sup>28</sup> 44 U.S.C. 3506(c)(2)(A) (1995).

obtain a copy of the ICR, contact the PRA addressee shown below or go to <http://www.RegInfo.gov>.

The Department has submitted a copy of the proposed rule to the Office of Management and Budget (OMB) in accordance with 44 U.S.C.3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that address the following:

- Evaluate whether the collection of information is necessary for the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronically delivered responses).

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, D.C., 20503 and marked "Attention: Desk Officer for the Employee Benefits Security Administration." Comments can also be submitted by fax at (202) 395-5806 (this is not a toll-free number), or by email at [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). OMB requests that comments be received within 30 days of publication of the proposed rule to ensure their consideration.

PRA Addressee: Address requests for copies of the ICR to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-5718, Washington, D.C., 20210. The PRA Addressee may be reached by telephone at (202) 693-8410 or by fax at (202) 219-5333. (These are not toll-free numbers.) ICRs also are available at <http://www.RegInfo.gov> (<http://www.reginfo.gov/public/do/PRAMain>).

The SECURE Act requires a person to register as a pooled plan provider with the Secretary, and provide other information the Secretary may require, before beginning operations. This information collection contains the requirements to register with the Secretary under section 3(44) of the Act. The information collection will utilize the EFAST 2 electronic filing system that pooled plan providers will use to file the Form 5500 required to be filed on behalf of the pooled employer plan the provider operates. The proposed Form PR and Instructions that appear in Appendix A are included as part of the information collection request.

The Department has designed a two-part approach for this requirement. The first consists of a simple registration of contact information, links to marketing websites, and a description of services and the role of any affiliates. Pooled plan providers must electronically register with the Department at least 30 days, but not more than 90 days, before beginning operations. The information included should be collected by the pooled plan provider during its normal course of business, so collection should not require additional effort by the administrator. Therefore, the Department estimates that compiling and submitting the initial registration information will take about 45 minutes and impose no additional costs on the administrator. To limit costs, a pooled plan provider needs to file only one registration regardless of the number of pooled employer

plans it operates, provided that a supplemental statement is filed identifying each pooled employer plan before the initiation of operations of the plan as a pooled employer plan. Assuming roughly 3,200 pooled plan providers, the Department estimates a burden of 2,425 hours, with an equivalent cost of \$402,000, in the first year.<sup>29</sup>

If the pooled plan provider does not begin operating any new pooled employer plans, does not change its use of affiliates or other related parties to provide services or its contact information, or does not experience any material changes in condition set forth in the proposal, it may go for a period of years without needing to supplement its registration. The Department anticipates that this will be the case with many pooled plan providers.

The supplemental filing requirement is similar to, although more limited than, filers' obligations with respect to the Form M-1, which requires entities to submit additional filings to document material changes. Approximately seven percent of entities filing a Form M-1 in 2017 submitted an additional filing after undergoing a material change. Assuming pooled plan providers will behave in a similar manner, the Department expects roughly 230 pooled plan providers to submit supplemental filings documenting material changes annually, including in the first year.

The supplemental filing amends the original registration to include employer identification numbers (EINs) and contact information for pooled employer plans that begin operations, cease operations, or experience material changes relevant to the pooled plan

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<sup>29</sup> 3,223 pooled plan providers \* 0.75 hours = 2,425 hours. 2,425 hours \* \$165.63 = \$401,653. Labor rates are EBSA estimates, found at <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-eb-sa-opr-ria-and-pra-burden-calculations-june-2019.pdf>.

provider's fiduciary duties (including, for example, bankruptcy, litigation, and criminal or regulatory enforcement actions). Accordingly, the Department estimates the supplemental filing would take 30 minutes for pooled plan providers to submit. The Department does not believe, however, that the pooled plan provider would incur any additional costs beyond the labor costs necessary to collect and submit this information. The Department estimates that there will be 3,460 filings under the second part of this requirement in the first year, imposing a burden of 1,730 hours, with an equivalent cost of \$287,000.<sup>30</sup>

In subsequent years, the Department believes that the percentage of pooled plan providers reporting beginning or ceasing operations of pooled employer plans will roughly parallel the experience of Form M-1 filers. Approximately 14 percent of Form M-1 filers indicated they began operations in 2017, while six percent indicated they ceased operations.<sup>31</sup> Assuming pooled plan providers behave in a similar manner, the Department expects an additional 650 registrations related to beginning or ceasing operations annually in subsequent years.<sup>32</sup> These filings require an hour burden of 324 hours with an equivalent cost of nearly \$54,000 in subsequent years.

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<sup>30</sup> 3,460 pooled plan providers \* 0.50 hour = 1,730 hours. 1,730 hours \* \$165.63 = \$286,540. Labor rates are EBSA estimates, found at <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-eb-sa-opr-ria-and-pra-burden-calculations-june-2019.pdf>.

<sup>31</sup> Pension plans face additional burdens in terminating, and so using welfare plans termination rates as a proxy may overstate the number of incidents. The Department welcomes comments addressing this assumption.

<sup>32</sup> 3,233 \* 0.14 = 453 pooled plan providers report pooled employer plans beginning operation, 453 pooled plan providers \* 0.50 hour = 227 hours. 227 hours \* \$165.63 = \$37,598 3,233 \* 0.06 = 194 pooled plan providers report pooled employer plans ending operation, 194 pooled plan providers \* 0.50 hour = 97 hours. 97 hours \* \$165.63 = \$16,060.

The estimated total burden of this information collection is 4,155 hours, with an equivalent cost of \$688,000, in the first year and 437 hours, with an equivalent cost of \$72,400, in subsequent years.<sup>33</sup>

The Department expects a large number of pooled plan providers to file the first part of registrations in the initial year, and significantly fewer to file in subsequent years as the market stabilizes. Incidents of filing updated and amended registration statements are expected to increase after the first year, as pooled employer plans enter and exit the market, change service providers, and change pooled employer plan offerings.

A summary of paperwork burden estimates follows:

*Type of Review:* New collection

*Agency:* Employee Benefits Security Administration, U.S. Department of Labor.

*Title:* Registration requirements to serve as a pooled plan provider to pooled employer plans

*OMB Control Number:* 1210–NEW.

*Affected Public:* Businesses or other for-profits.

*Estimated Number of Respondents:* 1,660 3-year average (3,233 first year, 873 subsequent years)

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<sup>33</sup> 873 filings \* 0.5 hours = 437 hours. The 873 filings in subsequent years are 453 pooled plan providers reporting pooled employer plans beginning operations, 194 pooled plan providers reporting pooled employer plans ending operations, and 226 pooled plan providers filing other changes.

*Estimated Number of Annual Responses:* 2,813 3-year average (6,693 first year, 873 subsequent years)

*Frequency of Response:* Occasionally

*Estimated Total Annual Burden Hours:* 1,676 3-year average (4,155 first year, 437 subsequent years)

*Estimated Total Annual Burden Cost:* 0

### 3. *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA)<sup>34</sup> imposes certain requirements with respect to federal rules that are (1) subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act<sup>35</sup> and (2) likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis of the proposed rule. The Department has determined that this proposed rule, which would require prospective pooled plan providers to register with the Department prior to beginning operations, is not likely to have a significant economic impact on a substantial number of small entities. Therefore, the Department certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Department estimates that only about eight percent of the potential market will decide to be a pooled plan provider and be subject to the rule. Each of

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<sup>34</sup> 5 U.S.C. 601 et seq. (1980).

<sup>35</sup> 5 U.S.C. 551 et seq. (1946).

these entities would incur an estimated cost of \$124 to register and \$83 to update the registration if needed. Below is justification for this determination.

### *3.1. Need for and Objectives of the Rule*

Section 101 of the SECURE Act requires pooled plan providers to register with the Department, the Treasury Department, and the IRS. As noted above, the Treasury Department and the IRS have indicated that filing the registration statement with the Department will also satisfy the Code's registration requirement. The required information under the proposal would allow regulators to identify and monitor pooled plan providers. While some of the required information may be found in the Form 5500, which pooled plan providers will also be required to file on behalf of each participating employer plan they operate, this reporting is not available for more than 18 months after the pooled plan providers begin operating, and would not necessarily include some important information regarding the pooled plan providers themselves, such as bankruptcy filings, or the commencement of any criminal, civil, or administrative proceedings in any court or administrative tribunal by the federal or state government or other regulatory authority against the pooled plan provider related to the provisions of services to, operation of, or investments of, any employee benefit plan. Requiring pooled plan providers to register gives both the agencies and the public, including participating employers, more immediate access to the information for monitoring purposes, and enables the agencies to monitor how this new market develops and assess whether further guidance is needed.

### *3.2. Affected Small Entities*

The Department has identified certain existing entities that it believes would be most likely to serve as pooled plan providers. For example, recordkeepers that currently administer retirement plans are well positioned to serve as pooled plan providers. Similarly, many PEOs have served as plan administrators and would likely have little trouble taking on the role of pooled plan provider. Further, many insurers have expressed interest in serving as pooled plan providers. While retirement plan advisors such as broker-dealers and registered investment advisors are also plausible candidates, the Department believes that many would be reluctant to assume the named fiduciary and plan administrator roles. Entities such as registered investment advisors may likely be more comfortable serving as section 3(38) investment managers for the pooled plan providers.

Given these assumptions, the Department estimates that roughly 3,200 unique entities will initially register to serve as pooled plan providers. Recordkeepers and plan administrators of existing defined contribution pension plans are most likely to enter the market, followed by PEOs, chambers of commerce, and plan advisors.

While the Department does not have complete information on which of these entities meet the Small Business Administration's definition of a small entity, many of these entities likely are small. The Department estimates that about half of current recordkeepers and plan administrators currently serving DC plans would register to become pooled plan providers. Other types of providers will likely comprise a smaller share of entities that register. Overall, the Department estimates that about eight percent of the universe of entities the Department has identified as well-suited to serve as pooled plan providers are likely to register. The table below includes both large and small entities. The Department cannot estimate with specificity the

distribution by size of the providers that will choose to become pooled plan providers although most of the providers in these service categories meet the Small Business Administration definition of small entities, however if the percentages in the footnote are applied to the number of affected entities in the table below, about 2,600 businesses could be small businesses.<sup>36</sup>

<b>Estimated Pooled Plan Provider</b>	Universe	Expected Share	Estimated Number
Unique Record Keepers and Plan Administrators for existing DC Plans <sup>a</sup>	2,378	50%	1189
Professional Employer Organization <sup>b</sup>	907	25%	227
Chambers of Commerce <sup>c</sup>	4,000	5%	200
Large Broker-Dealers <sup>d</sup>	173	5%	9
Registered Investment Advisor Firms <sup>d</sup>	30,246	5%	1512
Direct Annuity Writers (Insurance Companies) <sup>e</sup>	386	25%	97
<b>Total</b>	<b>38,090</b>	<b>8%</b>	<b>3,233</b>

<sup>a</sup> 2017 Form 5500 Schedule C Data.

<sup>b</sup> National Association of Professional Employers, <https://www.napeo.org/what-is-a-peo/about-the-peo-industry/industry-statistics>.

<sup>c</sup> Association of Chamber of Commerce Executives reports that there are 4,000 Chambers with at least 1 full-time staff person.

<sup>d</sup> FINRA Industry Snapshot. FINRA reported 3,607 FINRA registered firms in 2018. There were 173 with 500 or more registered representatives.

<sup>e</sup> National Association of Insurance Commissioners.

### *3.3. Impact of the Rule*

The Department estimates that it would take the average pooled plan provider with a labor rate of \$165.63 only 45 minutes to register, at an expense of \$124.23, because the

<sup>36</sup> Some possible affected industries by NAICS code are as follows: 524292 third-party administration, more than 90 percent small business; 524113 underwriting annuities and life insurance, more than 70 percent small business, 523999 financial investment services, more than 95 percent small businesses; 523999 brokerage, financial investment services, more than 95 percent small business; 561330 professional employer organization, more than 90 percent small business.

information necessary is readily available through the normal course of business.<sup>37</sup> Pooled plan providers submit the filing only when data elements change, the administrator begins or ceases operations for any pooled employer plan, or the pooled plan provider undergoes a material change. The supplemental filing will require an estimated 30 minutes to complete, at an expense of \$82.82. As with the initial registration, the required information for the supplemental filing is readily available. The cost to file both a registration and a supplemental filing in a single year would be \$207.16, which would be less than one percent of revenues if a business had more than \$20,700 in revenues. The Department lacks complete data to determine the number of firms that do not meet this revenue threshold. Available data suggests that 15 percent of possibly affected firms have revenues less than \$100,000.<sup>38</sup>

To further show how small a \$207 burden is, note that a one-person firm consisting of an individual with a labor rate of \$165.63 would need to only work 125 hours to have revenue of \$20,700. That same individual working 2,000 hours, a standard work year, would produce revenue of \$331,260 resulting in \$207.16 being significantly less than once percent of revenue.

### *3.4. Duplicate, Overlapping, or Relevant Federal Rules*

The proposed rule would not conflict with any relevant federal rules. Section 101 of the SECURE Act requires pooled plan providers to register both with the Department and with the Treasury Department and the IRS; the proposed Form PR would satisfy the requirements under

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<sup>37</sup> To register: 0.75 hours per pooled plan provider; 0.75 hours \* \$165.63 = \$124.23. To update a registration: 0.50 hours \* \$165.63 = \$82.82. The total labor rate for a financial manager is used as a proxy for the labor rate. Labor rates are EBSA estimates found at [www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-eb-sa-opr-ria-and-pra-burden-calculations-june-2019.pdf](http://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-eb-sa-opr-ria-and-pra-burden-calculations-june-2019.pdf).

<sup>38</sup> Data set supplied by the Small Business Administration containing data on the number of firms and revenue by NAICS codes. Estimates used NAICS codes 524292, 56133, 523120, 52393, 523130, and 524113

both Title I of ERISA and the Code. The statute expressly provides a separate authorization for the Departments to require additional information.

#### *4. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 requires each federal agency to prepare a written statement assessing the effects of any federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) in any one year by state, local, and tribal governments, in the aggregate, or by the private sector.<sup>39</sup> For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875, this proposal does not include any federal mandates that the Department expects would result in such expenditures by state, local, and tribal governments, or the private sector.<sup>40</sup> This rule simply requires prospective pooled plan providers to register with the Department.

#### *5. Federalism Statement*

Executive Order 13132 outlines fundamental principles of federalism, and requires that federal agencies adhere to specific criteria when formulating and implementing policies that have “substantial direct effects” on the states, the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government.<sup>41</sup> Federal agencies promulgating regulations that have federalism implications must

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<sup>39</sup> 2 U.S.C. 501 et seq. (1995).

<sup>40</sup> Enhancing the Intergovernmental Partnership, 58 FR 58093 (Oct. 28, 1993).

<sup>41</sup> Federalism, *supra* note 7.

first consult with state and local officials, then describe in the preamble to the final rule the extent of their consultation and the nature of the officials' concerns.

In the Department's view, these proposed regulations would not have federalism implications because they 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. This proposed rule simply requires private companies that intend to offer pooled employer plans to register with the Department.

The Department welcomes input from states regarding this assessment.

#### **List of Subjects in 29 CFR Part 2510**

Employee benefit plans, Pensions.

For the reasons stated in the preamble, the Department of Labor proposes to amend 29 CFR part 2510 as follows:

#### **PART 2510—DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F, G, AND L OF THIS CHAPTER**

1. The authority citation for part 2510 is revised to read as follows:

**Authority:** 29 U.S.C. 1002(1), 1002(2), 1002(3), 1002(5), 1002(16), 1002(21), 1002(37), 1002(38), 1002(40), 1002(42), 1002(43), 1002(44), 1031, and 1135; Secretary of Labor's Order No. 1- 2011, 77 FR 1088 (Jan. 9, 2012); Sec. 2510.3-101 and 2510.3-102 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. At 237 (2012), (E.O. 12108, 44 FR

1065 (Jan. 3, 1979) and 29 U.S.C. 1135 note. Sec. 2510.3-38 is also issued under sec. 1, Pub. L. 105-72, 111 Stat. 1457 (1997).

2. Add § 2510.3-44 to read as follows:

**§ 2510.3-44 - Registration requirement to serve as a pooled plan provider to pooled employer plans.**

(a) General. Section 3(44) of the Act sets forth the criteria that a person must meet in order to be a pooled plan provider for pooled employer plans under section 3(43) of the Act.

(b) Registration requirement. Subparagraph (A)(ii) of section 3(44) requires the person to register as a pooled plan provider with the Department, and provide such other information as the Department may require, before beginning operations as a pooled plan provider. For this purpose, “beginning operations as a pooled plan provider” means publicly marketing services as a pooled plan provider or publicly offering a pooled employer plan. To meet the requirements to register with the Department under section 3(44) of the Act, a person intending to act as a pooled plan provider must:

(1) No earlier than 90 days and no later than 30 days before beginning operations as a pooled plan provider, file with the Department the following information on a complete and accurate Form PR (Pooled Plan Provider Registration) in accordance with the form’s instructions.

(i) The legal business name and any trade name (doing business as) of such person.

(ii) The business mailing address and phone number of such person.

(iii) The employer identification number (EIN) assigned to such person by the Internal Revenue Service.

(iv) The address of any public website or websites of the pooled plan provider or any affiliates to be used to market any such person as a pooled plan provider to the public or to provide public information on the pooled employer plans operated by the pooled plan provider.

(v) Name, address, contact telephone number and email address for the primary compliance officer of the pooled plan provider.

(vi) The agent for service of legal process for the pooled plan provider, and the address at which process may be served on such agent, and in addition, a statement that service of legal process may be made upon the pooled plan provider.

(vii) The approximate date when pooled plan operations are expected to commence.

(viii) A description of the administrative, investment, and fiduciary services that will be offered or provided in connection with the pooled employer plans, including a description of the role of any affiliates in such services. For purposes of this paragraph (viii), the term “affiliate” includes all persons who are treated as a single employer with the person intending to be a pooled plan provider under section 414(b), (c), (m), or (o) of the Internal Revenue Code who will provide services to pooled employer plans sponsored by the pooled plan provider and any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and any corporation or partnership of which such person is an officer, director, or partner.

(ix) A statement disclosing any federal or state criminal conviction related to the provision of services to, operation of, or investments of, any employee benefit plan, against the pooled plan provider, or any officer, director, or employee of the pooled plan provider if the conviction, or related term of imprisonment served, provider is within ten years of the date of registration.

(x) A statement disclosing any ongoing criminal, civil, or administrative proceedings related to the provisions 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.

(2) No later than the initiation of operations of a plan as a pooled employer plan, file with the Department a supplemental report using the Form PR containing the name and EIN for the pooled employer plan, and the name, address, and EIN for the trustee for the plan.

(3) Within 30 days of occurrence of the following reportable events, file with the Department a supplemental report using the Form PR:

(i) Any change in the information reported pursuant to subparagraph (b)(1) or (b)(2) of this section.

(ii) Any significant change in corporate or business structure of the pooled plan provider, e.g., merger, acquisition, or initiation of bankruptcy, receivership, or other insolvency proceeding for the pooled plan provider or an affiliate, or ceasing all operations as a pooled plan provider.

(iii) Receipt of written notice of the initiation of any administrative or enforcement action related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan, in any court or administrative tribunal by any federal or state governmental agency or other regulatory authority against the pooled plan provider or any officer, director, or employee of the pooled plan provider.

(iv) Receipt of written notice of a finding of fraud or dishonesty by a federal or state court or federal or state governmental agency related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan against the pooled plan provider or any officer, director, or employee of the pooled plan provider.

(v) Receipt of written notice of the filing of any federal or state criminal charges related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan against the pooled plan provider or any officer, director, or employee of the pooled plan provider.

(4) Only one registration must be filed for each person intending to act as a pooled plan provider, regardless of the number of pooled employer plans it operates. A pooled plan provider must file updates for each pooled employer plan described in paragraph (b)(2) of this section, any change of previously reported information, and any change in circumstances listed in paragraph (b)(3) of this section, but may file a single statement to report multiple changes, as long as the timing requirements are met with respect to each reportable change.

(5) If a pooled plan provider has terminated and ceased operating all pooled employer plans, the pooled plan provider must file a final supplemental filing in accordance with instructions for the Form PR.

(6) For purposes of this section, a pooled employer plan is treated as beginning operations when it is considered covered by Title I of ERISA within the meaning of section 4 of ERISA, and a pooled employer plan is treated as terminated and ceased operating when a resolution has been adopted terminating the plan, all assets under the plan (including insurance/annuity contracts) have been distributed to the participants and beneficiaries or legally transferred to the control of another plan, and a final Form 5500 has been filed for the plan.

(7) Registrations required under this section shall be filed with the Secretary electronically on the Form PR in accordance with the Form PR instructions published by the Department.

Signed at Washington, DC, this 18th day of August 2020.

Jeanne Klinefelter Wilson,

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

**Appendix A**  
**(Illustration Purposes Only – Official Form to be Developed)**

<p align="center"><b>Form PR</b></p> <p>Department of Labor Employee Benefits Security Administration</p> <hr/> <p>Department of the Treasury Internal Revenue Service</p>	<p align="center"><b>Registration for Pooled Plan Provider</b></p> <p>This filing is required under section 3(44) of the Employee Retirement Income Security Act of 1974 (ERISA) and Section 413 of the Internal Revenue Code</p> <p align="center">Complete all entries in accordance with the instructions</p>	<p>OMB Nos1210-XXXX 1545-XXXXX</p> <p>This Form is Open to Public Inspection</p>
<b>Part I</b>	<b>Filing Type</b>	
Check the appropriate box to indicate filing type (see instructions)		
<input type="checkbox"/> Initial filing <input type="checkbox"/> Supplemental Reportable Event filing <input type="checkbox"/> Amended filing <input type="checkbox"/> Final filing		
<b>Part II</b>	<b>Registration Information</b>	
<b>1a</b> Legal Business and any trade (d/b/a) name of pooled plan provider	<b>1b</b> Pooled plan provider contact telephone number	
	<b>1c</b> Pooled plan provider public website	
<b>1d</b> Mailing address (include room, apt., suite no. and street, or P.O. Box) City or Town, State, or U.S. territory, and Zip Code	<b>1e</b> Pooled plan provider Employer Identification Number (EIN)	
<b>1f</b> Name and mailing address for the primary compliance officer of the pooled plan provider (include room, apt., suite no. and street, or P.O. Box), city or town, state, or U.S. territory, and ZIP code)	<b>1g</b> Compliance officer email address	
	<b>1h</b> Compliance officer telephone number	
<b>1i</b> The agent for service of legal process, and the address at which process may be served on the agent		

<p><b>2</b> Enter the approximate date the pooled plan provider expects to begin operating pooled employer plan(s) (use MM/DD/YYYY format) <u>  </u>/<u>  </u>/<u>  </u></p>
<p><b>3</b> Will the pooled plan provider offer or provide any services or investment products to the pooled employer plans or plan participants and beneficiaries? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If you answer “Yes”, check each service or product that is being provided through the registrant and/or an affiliate and complete Lines 3a-f to indicate each service or investment product, with a separate entry to indicate each affiliate who provides such service or product. For elements 3a-f, if such services are being provided by the pooled plan provider, enter “registrant” as the first entry in each element.</p>
<p><b>3a (1)</b> <input type="checkbox"/> Investment management, including selecting plan investment alternatives  <b>(2)</b> Enter name, EIN, address of each affiliate providing such service.</p> <p><b>3b(1)</b> <input type="checkbox"/> Investment advice, including recommending plan investment alternatives  <b>(2)</b> Enter name, EIN, address of each affiliate providing such service.</p> <p><b>3c(1)</b> <input type="checkbox"/> Investment products (propriety funds, annuities, etc.)  <b>(2)</b> Enter name, EIN, address of each affiliate providing such service.</p> <p><b>3d(1)</b> <input type="checkbox"/> Plan administration  <b>(2)</b> Enter name, EIN, address of each affiliate providing such service.</p> <p><b>3e(1)</b> <input type="checkbox"/> Custodial or trustee services  <b>(2)</b> Enter name, EIN, address of each affiliate providing such service.</p> <p><b>3f(1)</b> <input type="checkbox"/> Other (describe) _____  <b>(2)</b> Enter name, EIN, address of each affiliate providing such service and a description of the services.</p>
<p><b>4a</b> Have there been any federal or state criminal convictions of, or terms of imprisonment served by, the pooled plan provider or any officer, director, or employee of the pooled plan provider in the 10 years preceding the registration related to the provision of services to, operation of, or investments of any employee benefit plan? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p><b>4b</b> If you answer “Yes” to 4a, you must complete elements (1)-(4) in 4b for each such conviction or imprisonment.</p> <p><b>4b(1)</b> Name of agency other regulatory authority _____  <b>(2)</b> Enter date _____  <b>(3)</b> Enter name of tribunal or court where action proceeded _____  <b>(4)</b> Enter caption and docket or other identifying number _____</p>
<p><b>5a</b> Are there any ongoing criminal, civil, or administrative proceedings 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 related to the provisions of services to, operation of, or investments of any employee benefit plan <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p><b>5b</b> If you answer “Yes” to 5a, you must complete elements (1)-(4) in 5b for each such conviction, imprisonment, or civil judgment.</p> <p><b>5b(1)</b> Name of agency other regulatory authority _____  <b>(2)</b> Enter date _____  <b>(3)</b> Enter name of tribunal or court where action is proceeding _____  <b>(4)</b> Enter caption and docket or other identifying number _____</p>
<p><b>Part III Supplemental Reportable Event Information</b></p>
<p><b>6a Type of Supplemental Information.</b> Pooled plan providers must (1) report information about each pooled employer plan before beginning operations of the plan as a pooled employer plan, and (2) must report any change in the information previously</p>

reported or a change in pooled plan provider circumstances within 30 days of the change. Check which information is being reported (See Instructions)

New pooled employer plan  Change in information previously reported  Other change in circumstances

You may report multiple changes in the same supplemental registration, as long as you meet the timing requirements for reporting each change, including beginning operations of a plan as a pooled employer plan (See instructions)

**6b** Identify the line items with changed information.

**7 Pooled Employer Plan Information.** Enter the name and EIN for each pooled employer plan that the registrant will begin operating, and the name, address, and EIN for the trustee for each such plan. Complete as many repeating entries as needed to identify all pooled employer plans. (See instructions)

**7a** Name of pooled plan \_\_\_\_\_

**7b** EIN of pooled plan \_\_\_\_\_

**7c(1)** Legal and d/b/a name of trustee for pooled plan. \_\_\_\_\_

**(2)** EIN of trustee for pooled plan \_\_\_\_\_

**(3)** Enter the date the plan will begin operating as a pooled employer plan \_\_\_\_\_

**(4)** Enter the date the plan was terminated and ceased operating as a pooled employer plan \_\_\_\_\_

**8 Change in Pooled Plan Provider Circumstances.** Check the appropriate box(es) and enter the date that there has been a material change in the information regarding the pooled plan provider. (See instructions)

**8a**  Merger *Enter date:* \_\_\_\_\_

**8b**  Acquisition *Enter date:* \_\_\_\_\_

**8c**  Initiation of bankruptcy, receivership, or other insolvency proceeding for the pooled plan provider or \_\_\_\_\_ an affiliate of the pooled plan provider

**8c(1)** Enter date of filing \_\_\_\_\_

**(2)** Enter name of court where action is proceeding \_\_\_\_\_

**(3)** Enter caption and docket number for the proceeding \_\_\_\_\_

**8d**  Cessation of operations as a pooled plan provider *Enter Date* \_\_\_\_\_

**8e**  Received written notice of the initiation of any administrative or enforcement action in any court or administrative tribunal by any federal or state governmental agency or other regulatory authority, related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan, against the pooled plan provider, or any officer, director, or employee of the pooled plan provider. (See instructions). If you check this box, you must complete lines 8e (1)-(4).

**8e(1)** Name of agency, state, other regulatory authority taking action \_\_\_\_\_

**(2)** Enter date proceeding initiated \_\_\_\_\_

**(3)** Enter name of court or other tribunal where action is proceeding \_\_\_\_\_

**(4)** Identify caption and docket or other identifying number for the proceeding \_\_\_\_\_

**8f**  Received written notice of a finding by a federal or state court or governmental agency of fraud or dishonesty related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan against the pooled plan provider, or any officer, director, or employee of the pooled plan provider. If you check this box, you must complete lines 8f (1)-(4).

**8f(1)** Name of agency, state, other regulatory authority, or other person taking action \_\_\_\_\_

**(2)** Enter date of finding \_\_\_\_\_

**(3)** Enter name of court or other tribunal where action is proceeding \_\_\_\_\_

**(4)** Identify caption and docket or other identifying number for the proceeding \_\_\_\_\_

**8g**  Received written notice of the filing of any federal or state criminal charges against the pooled plan provider or any officer, director, or employee of the pooled plan provider, related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan. If you check this box, you must complete lines 8g (1)-(4).

**8g(1)** Name of agency, state, other regulatory authority taking action \_\_\_\_\_

**(2)** Enter date proceeding initiated \_\_\_\_\_

**(3)** Enter name of court or other tribunal where action is proceeding \_\_\_\_\_

**(4)** Identify caption and docket or other identifying number for the proceeding \_\_\_\_\_

**SIGNATURE AND DATE:** I hereby acknowledge that the pooled plan provider will serve as the named fiduciary and plan administrator of its pooled employer plans. I also declare under penalties of perjury that I have examined this registration, as well as the electronic version, and to the best of my knowledge and belief, it is true, correct, and complete.

**Sign and  
Date**

**Sign**

**Here** \_\_\_\_\_

**Spell Out**

**Name** \_\_\_\_\_

**Date** \_\_\_\_\_

## **Instructions for Form PR (Registration for Pooled Plan Provider)**

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### **About the Form PR**

The Form PR is used to report information for a person or entity that intends to serve as a pooled plan administrator to pooled employer plans within the meaning of sections 3(44) and 3(43) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, and 29 CFR 2510.3-44.

You must file the Form PR electronically. You cannot file a paper Form PR by mail or other delivery service. Your Form PR will be initially screened electronically. For more information, see the instructions for Electronic Filing Requirement and the Form PR filing system at [insert correct web address/hyperlink].

If you have any questions (such as whether you are required to file this report) or if you need any assistance in completing this report, please call the EBSA Form PR help desk at 202-693-XXXX.

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#### **PAPERWORK REDUCTION ACT NOTICE**

### **SECTION 1: WHO MUST FILE**

Any person who wishes to serve as a pooled plan provider to one or more pooled employer plans must file Form PR (Registration Statement of Pooled Plan Provider) with the Department of Labor. See ERISA sections 3(43) and 3(44) enacted by the Setting Every Community Up for Retirement Enhancement Act of 2019, Division O of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94) (December 20, 2019)

**Note.** “Person” for these purposes includes corporations, partnerships, and sole proprietorships.

Section 3(44) of ERISA establishes requirements for “pooled plan providers,” including a requirement that a person wishing to so act must register with the Department of Labor and the Department of the Treasury. The effective date for these provisions allows “pooled employer plans” to begin operating on January 1, 2021.

Under section 3(2) of ERISA, a pooled employer plan is treated for purposes of ERISA as a single plan that is a multiple employer plan. A “pooled employer plan” is defined in section 3(43) as a plan: (1) that is an individual account plan established or maintained for the purpose of providing benefits to the employees of two or more employers, (2) that is a qualified retirement plan or a plan funded entirely with individual retirement accounts (IRA plan), and (3) the terms of the plan must meet certain requirements set forth in the statute.<sup>42</sup> Specifically, the terms of the plan must –

- designate a pooled plan provider and provide that the pooled plan provider is a named fiduciary of the plan;
- designate one or more trustees (other than an employer in the plan) to be responsible for collecting contributions to, and holding the assets of, the plan, and require the trustee(s) to implement written contribution collection procedures that are reasonable, diligent, and systematic;
- provide that each employer in the plan retains fiduciary responsibility for the selection and monitoring, in accordance with ERISA fiduciary requirements, of the person designated as the pooled plan provider and any other person who is also designated as a named fiduciary of the plan, and, to the extent not otherwise delegated to another fiduciary by the pooled plan provider (and subject to the ERISA rules relating to self-directed investments), the investment and management of the portion of the plan’s assets attributable to the employees of that employer (or beneficiaries of such employees) in the plan;
- provide that employers in the plan, and participants and beneficiaries, are not subject to unreasonable restrictions, fees, or penalties with regard to ceasing participation, receipt of distributions, or otherwise transferring assets of the plan in accordance with applicable rules for plan mergers and transfers;
- require the pooled plan provider to provide to employers in the plan any disclosures or other information that the Secretary of Labor may require, including any disclosures or other information to facilitate the selection or any monitoring of the pooled plan provider by employers in the plan, and require each employer in the plan to take any actions that the Secretary of Labor or pooled plan provider determines are necessary to administer the plan or to allow for the plan to meet the ERISA and Code requirements applicable to the plan, including providing any disclosures or other information that the Secretary of Labor may require or that the pooled plan provider otherwise determines are necessary to administer the plan or to allow the plan to meet such ERISA and Code requirements; and
- provide that any disclosure or other information required to be provided to participating employers may be provided in electronic form and will be designed to ensure only reasonable costs are imposed on pooled plan providers and employers in the plan.

The fidelity bonding requirements in ERISA section 412 apply to fiduciaries and other persons handling the assets of a pooled employer plan, but the maximum bond amount for each such plan official is \$1,000,000 as compared to the \$500,000 maximum that applies in the case of other

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<sup>42</sup> The term “pooled employer plan” does not include a multiemployer plan or plan maintained by employers that have a common interest other than having adopted the plan. The term also does not include a plan established before the date the SECURE Act was enacted unless the plan administrator elects to have the plan treated as a pooled employer plan and the plan meets the ERISA requirements applicable to a pooled employer plan established on or after such date.

ERISA-covered plans that do not hold employer securities. See 29 C.F.R. § 2550.412-1, 29 C.F.R. Part 2580; see also Field Assistance Bulletin 2008-04 (providing a general description of statutory and regulatory requirements for bonding).

A “pooled plan provider” with respect to a pooled employer plan is defined in ERISA section 3(44) to mean a person that:

- is designated by the terms of the plan as a named fiduciary under ERISA, as the plan administrator, and as the person responsible to perform all administrative duties (including conducting proper testing with respect to the plan and the employees of each employer in the plan) that are reasonably necessary to ensure that the plan meets the Code requirements for tax-favored treatment and the requirements of ERISA and to ensure that each employer in the plan takes actions as the Secretary or the pooled plan provider determines necessary for the plan to meet Code and ERISA requirements, including providing to the pooled plan provider any disclosures or other information that the Secretary may require or that the pooled plan provider otherwise determines are necessary to administer the plan or to allow the plan to meet Code and ERISA requirements;
- acknowledges in writing its status as a named fiduciary under ERISA and as the plan administrator;
- is responsible for ensuring that all persons who handle plan assets or are plan fiduciaries are bonded in accordance with ERISA requirements; and
- registers as a pooled plan provider.

Filing a true, complete, and correct registration statement, including any required updates, satisfies the requirement under section 3(44) of ERISA to register as a pooled plan provider with the Department of Labor. See section 3(44) of ERISA for other requirements.

## **SECTION 2: WHEN TO FILE**

You must file your initial registration statement no earlier than 90 days and no later than 30 days before beginning operations as a pooled plan provider. See 29 C.F.R. § 2510.3-44(b)(1).

For this purpose, “beginning operations as a pooled plan provider” means publicly marketing services as a pooled plan provider or offering a pooled employer plan. See 29 C.F.R. § 2510.3-44(b)(6).

Before the initiation of operations of a plan as a pooled employer plan with respect to a particular plan, you must supplement your registration statement with the name and EIN for the pooled employer plan, and the name, address, and EIN for the trustee for the plan. If an entity’s first operations as a pooled plan provider will be with respect to a particular plan, the supplemental information required regarding each plan may be combined with the entity’s initial registration.

You must also supplement your registration statement within 30 days of any changes to previously reported information or of the occurrence of the reportable events described below. See 29 C.F.R. § 2510.3-44(b)(3). You should amend your registration statement within 30 days of discovering an error on your statement, but no later than the date for filing a Form 5500 Annual Return/Report of Employee Benefit Plan (Form 5500), where identifying information about the

pooled plan provider, any pooled employer plans it administrators, or any trustees for those plans would conflict with the information required on the Form 5500.

### **SECTION 3: ELECTRONIC FILING**

The Form PR must be filed electronically with the Department of Labor by going to [insert correct title/hyperlink]. Your entries must be in the proper format in order for the electronic system to process your filing. For example, if a question requires you to enter a numerical account number, you cannot enter a word.

To reduce the possibility of correspondence and penalties:

- Complete all lines on the Form PR unless otherwise specified.
- Do not enter “N/A” or “Not Applicable” on the Form PR unless specifically permitted.
- “Yes” or “No” questions on the Form PR cannot be left blank, unless specifically permitted. Answer either “Yes” or “No,” but not both.

Do not enter social security numbers in response to questions asking for an employer identification number (EIN). Because of privacy concerns, the inclusion of a social security number on the Form PR or on an attachment that is open to public inspection may result in the rejection of the filing.

To correct errors and/or omissions on a previously filed Form PR, submit a completed Form PR indicating the filing is an amended report in Part I.

#### *FAILURE TO FILE*

You are not permitted to act as a pooled plan provider unless you electronically file and sign a registration statement in accordance with the Department’s regulation at 29 CFR 2510.3-44 and these instructions. You may be liable for breaches of fiduciary duty under ERISA and other state and federal law violations, including for misrepresentation regarding status as a pooled plan provider. The failure to file an update would not automatically result in a conclusion that, by operation of law, the pooled employer plans administered by the pooled plan provider would no longer be single plans and instead, a group of individual plans that use the same arrangement for operating their plans.

*IDENTIFYING INFORMATION AND EIN:* You must use the same identifying information for the pooled plan provider on Form PR, including name and EIN, on the Form 5500 for each plan the pooled plan provider administers.

#### *SIGNATURE AND DATE*

A person filing to satisfy the conditions of section 3(44) of ERISA and 29 CFR 2510.3-44 must sign this registration statement, indicating that the contents are true and correct to the best of the signer’s knowledge. If the pooled plan provider does not electronically sign a filing, the filing status will indicate that there is an error with the filing. With respect to the initial registration, if it is unsigned, the filing will not constitute the required registration statement for such provider to operate a pooled employer plan.

The pooled plan provider or, if the pooled plan provider is an entity, a person authorized to sign on behalf of the pooled plan provider must electronically sign the Form PR submitted to the electronic filing system.

The Form PR must be filed electronically and signed. To obtain an electronic signature, go to *[insert correct web address/hyperlink]* and register as a signer. You will be provided with a UserID and PIN. Both the UserID and PIN are needed to sign the Form PR. The system will prevent the submission of any filing that does not include all required information. A completed filing will generate an online receipt. The pooled plan provider must keep a copy of the receipt as part of the plan's records as required by section 107 of ERISA.

If you have questions about using or completing the Form PR, please contact the Form PR Help Desk at *[insert telephone number]*.

#### **SECTION 4: LINE-BY-LINE INSTRUCTIONS**

*Important:* "Yes/No" questions must be marked "Yes" or "No," but not both. "N/A" is not an acceptable response unless expressly permitted in the instructions to that line.

**Part I-Filing Type.** Check the appropriate box to indicate filing type.

*Initial filing.* This is the registration statement for a person that intends to serve as a pooled plan provider to pooled employer plans. Only one registration must be filed for each person intending to act as a pooled plan provider, regardless of the number of pooled employer plans it operates.

*Supplemental reportable event filing.* This is to report any reportable event information additional to the initial or the most recent supplemental filing. This includes identifying each plan the pooled plan provider establishes and certain changes in the pooled plan provider's status.

Check "Supplemental Filing" and on Line 6 check the box to identify whether you are reporting information about a new pooled employer plan, a change in information previously reported, e.g., a change in the pooled plan provider's address since the last filing or the identification of a new affiliate providing services to the pooled employer plans operated by the pooled plan provider, or other change in circumstances. If you are correcting a mistake in a previous filing of the Form PR, check the "Amended" filing box.

**Note.** The information reported on the Form PR regarding the pooled plan provider and any affiliates providing services to the pooled employer plans operated by the pooled plan provider and on the Forms 5500 filed by the pooled plan provider, as plan administrator on behalf of the pooled employer plans it operates, must match. A mismatch could result in Form 5500 correspondence.

*Amended filing.* Check "amended filing" only if you are correcting information previously reported on a Form PR you filed; for example, you entered an incorrect name for an affiliate of the pooled plan provider.

*Final filing.*

Once an entity has terminated operations as a pooled plan provider, including having ceased operating all pooled employer plans, the pooled plan provider must file a final supplemental filing. For purposes of the Form PR, a pooled employer plan would be treated as terminated and having ceased operations for this purpose when a resolution has been adopted terminating the plan, all assets under the plan (including insurance/annuity contracts) have been distributed to the participants and beneficiaries or legally transferred to the control of another plan, and when a final Form 5500 Return/Report has been filed for the plan. The final filing would be due within 30 days of the filing of the last final Form 5500 for the last pooled employer plan the provider operates. A single combined filing may be used to report both that the last pooled employer plan operated by the provider has been terminated and ceased operating and as the final Form PR filing for the pooled plan provider.

**CAUTION:** Each pooled employer plan operated by the pooled plan provider must have met the conditions for the filing of a final Form 5500 and such return/report must have been filed for each pooled employer plan operated by the pooled plan provider before the pooled plan provider can submit a final filing. See Instructions for the Form 5500.

**Part II-Registration Information.**

Make sure to use the same identifying information as you use for other state and federal registration and reporting requirements.

**Line 1a.** Enter the legal name of the person (person includes both individuals and entities) registering as the pooled plan provider. If the person uses a “trade” or “doing business as” name, also enter that name (both the legal and trade (d/b/a) name).

**Line 1b.** Enter a telephone number where participating employers will be able to reach the pooled plan provider. This does not preclude the pooled plan provider from also providing to participating employers a separate, dedicated telephone contact number for a particular pooled employer plan.

**Line 1c.** If the pooled plan provider and/or an affiliate uses one or more public websites to market such person as a pooled plan provider to the public or to provide participating employers (regardless of whether there is a registration requirement for full access) with information about the pooled employer plans in which they participate, enter the address(es) of such website(s) here.

**Line 1d.** Enter the business mailing address (include room, apt., suite no., and street; or P.O. Box, city or town, state, and ZIP code).

**Line 1e.** You must enter the Employer Identification Number (EIN) the pooled plan provider obtained from the Internal Revenue Service (IRS). You must use the same EIN number as the pooled plan provider uses for other federal and state filings, including with the IRS and the U.S. Securities and Exchange Commission (SEC). You must also use this EIN in the plan administrator field for all Forms 5500 filed for the pooled employer plans administered by the pooled plan provider.

Do not enter social security numbers in response to questions asking for an employer identification number (EIN). Because of privacy concerns, the inclusion of a social security number or any portion thereof on the Form PR may result in the rejection of the filing.

Persons wishing to act as pooled plan providers that are without an EIN must apply for one as soon as possible. The EBSA does not issue EINs. To apply for an EIN from the IRS:

- Mail or fax Form SS-4, Application for Employer Identification Number, obtained at <https://www.irs.gov/pub/irs-pdf/fss4.pdf>.
- See <https://www.irs.gov/forms-pubs/about-form-ss-4> for additional information. The EIN is issued immediately once the application information is validated. (The online application process is not yet available for corporations with addresses in foreign countries.)

**Lines 1f, 1g, and 1h.** Enter the name, mailing address, telephone number, and email address for the primary compliance officer of the pooled plan provider.

**Line 1i.** Enter the full name of the agent for service of legal process and the address at which process may be served on the agent.

**Line 2.** Enter the approximate date the pooled plan provider expects to begin operating pooled employer plan(s). (Use MM/DD/YYYY format.)

**CAUTION:** The date entered here must be no earlier than 90 and no later than 30 days before the date of filing this registration statement.

**Line 3.** For each plan service or investment product listed in Lines 3a through 3f, indicate whether the pooled plan provider will use itself or an affiliate to operate the plan. Complete as many entries as necessary.

For purposes of the Form PR, the term affiliate includes all persons who are treated as a single employer with the person intending to be a pooled plan provider under section 414(b), (c), (m), or (o) of the Internal Revenue Code and are expected to provide services to pooled employer plans sponsored by the pooled plan provider, and any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and any corporation or partnership of which such person is an officer, director, or partner.

**Note.** The pooled plan provider must serve as the named fiduciary and acknowledge in writing its status as such. The pooled plan provider must acknowledge that it is the plan administrator and responsible for the administration of each pooled employer plan and acknowledge in writing its status as such.

**Line 4a.** You must answer Line 4a; you may not leave it blank. Answer “Yes,” if there have been any criminal convictions, terms of imprisonment served, or civil judgments against the pooled plan provider or any officer, director, or employee of the pooled plan provider, in the 10 years preceding the registration related to the provision of services to, operation of, or investments of any employee benefit plan in any criminal, civil, or administrative enforcement

proceeding by a federal or state agency or other regulatory authority in any federal or state court or administrative tribunal. If you answer “Yes,” you must complete all the elements in Line 4b. For purposes of responding to the Form PR, employees of the pooled plan provider include employees of the pooled employer plan, but only those who handle assets of the plan within the meaning of section 412 of ERISA or who are responsible for the operations or investments.

**Line 5a.** You must answer Line 5a; you may not leave it blank. Answer “Yes,” if there any pending criminal, civil, or administrative enforcement proceeding, related to the provisions of services to, operation of, or investments of any employee benefit plan, by a federal or state agency or other regulatory authority in any federal or state court or administrative tribunal against the pooled plan provider or any officer, director, or employee of the pooled plan provider.. If you answer “Yes,” you must complete elements in Line 5b.

### **Part III- Supplemental Reportable Event Information.**

You must supplement your registration statement by reporting information about each pooled employer plan before beginning operations as a pooled employer plan. You must also supplement your registration statement by reporting any change in the information previously reported or other change in pooled plan provider circumstances within 30 days of the occurrence of the change or of the reportable events described below. You may file a single supplement to your Form PR to report multiple simultaneous changes, e.g., beginning to operate two or more pooled employer plans, or to report a change that applies to the pooled plan provider with respect to all pooled employer plans it operates.

**Line 6. Type of Supplemental Information.** Check the box to identify whether Part III includes information about a new pooled employer plan, any change in information previously reported, or a change in pooled plan provider circumstances. Make sure that all the information in the Form PR you are submitting is up to date.

To correct information in a previously filed Form PR, check the “Amended” filing box, along with correcting the information.

**Line 7. Pooled Employer Plan Information.** Complete as many repeating entries as necessary to identify each pooled employer plan that the pooled plan provider begins operating. In elements a and b, respectively, enter the name and EIN for each pooled employer plan. In elements c(1) and c(2), respectively, enter the name, address and the EIN for the trustee(s) for the pooled employer plans operated by the pooled plan provider. In element c(3) enter the date the plan began operating as a pooled employer plan. Complete as many repeating entries as needed to identify all pooled plans administered by the registrant pooled plan provider and their trustees. In element c(4) enter the date the plan terminated and ceased operating as a pooled employer plan.

**CAUTION:** You must use the same names, EINs, and other identifying information provided regarding any pooled employer plan as is provided on the Forms 5500 for such plans. Failure to use consistent identifying information on this form and the Forms 5500 for any pooled employer

plan for which you serve as the pooled plan provider could result in correspondence from the Department of Labor or the Internal Revenue Service.

**Line 8. Change in Pooled Plan Provider Circumstances.** Check the appropriate box(es) and enter all the requested information. Use as many repeating entries to enter all the required information. For example, if more than one action has been initiated, complete an entry for each action.

**Line 8a.** If there has been a merger between the pooled plan provider and another entity, enter the date of the merger and identify the parties involved in the transaction.

**Line 8b.** If there has been an acquisition by or of the pooled plan provider, enter the date of the acquisition and identify the parties to the transaction.

**Line 8c.** If the pooled plan provider (or any affiliates) involved in the operations of or providing services to the pooled employer plan files for bankruptcy or receivership of the pooled plan provider enter date of filing, enter name of court where action is proceeding, and enter caption and docket number for the proceeding.

**Line 8d.** Enter the date the pooled plan provider ceased operations.

**Line 8e.** You must complete Line 8e upon receiving written notice that there has been an initiation of any administrative enforcement action in any court or administrative tribunal by any federal or state government agency or other regulatory authority against the pooled plan provider or any officer, director, or employee of the pooled plan provider, related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan.

**Line 8f.** You must complete Line 8f upon receiving written notice of a finding by a federal or state court or governmental agency of fraud or dishonesty against the pooled plan provider or any officer, director, or employee of the pooled plan provider, related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan.

**Line 8g.** You must complete Line 8g upon learning that any criminal charges have been filed in any federal or state court against the pooled plan provider or any officer, director, or employee of the pooled plan provider, related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan.

## **PAPERWORK REDUCTION ACT NOTICE**

We ask for the information on this form to carry out the law as specified in ERISA sections 3(43) (29 U.S.C. 1002(43)) and 3(44) (29 U.S.C. 1002(44)). You are required to give us the information if you wish to operate as a pooled plan provider. We need it to determine whether the pooled plan provider is eligible to operate as such under ERISA and the Code. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books and records

relating to a form or its instructions must be retained as long as their contents may become material in the administration of the Internal Revenue Code or are required to be maintained pursuant to ERISA.

Generally, filings on Form PR (Registration Statement for Pooled Plan Providers) are open to public inspection and are subject to publication on the Internet. You are not required to respond to this collection of information unless it displays a current, valid OMB control number. The average time needed to complete and file the form is estimated below. These times will vary depending on individual circumstances.

The estimated average time to complete are as follows:

- Initial filing: 45 minutes
- Supplemental filing: 30 minutes
- Amended filing: 30 minutes
- Final filing: 30 minutes

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to: U.S. Department of Labor, Office of Policy and Research, Attention: PRA Official, 200 Constitution Avenue, N.W., Room N-5711, Washington, DC 20210 and reference Form PR (Registration Statement for Pooled Plan Providers). Do not send this form to this address. The forms and schedules must be filed electronically. See How To File—Electronic Filing Requirement.

**OMB Control Numbers**

<b>Agency</b>	<b>OMB Number</b>
<b>Employee Benefits Security Administration.....</b>	<b>1210 –</b>
<b>Internal Revenue Service .....</b>	<b>1545 –</b>

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