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DOL proposes pooled plan provider registration requirements

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In this article

[Pooled plan providers](#) | [Proposed registration requirements](#) | [Form PR](#) | [Entities serving as pooled plan providers](#) | [Request for comments](#) | [Related resources](#)

Proposed Department of Labor (DOL) [regulations](#) would establish registration requirements for “pooled plan providers” offering “pooled employer plans” (open defined contribution multiple-employer plans authorized by the Setting Every Community Up for Retirement (SECURE) Act of 2019 ([Pub. L. No. 116-94](#))). Pooled plan providers can offer the plans starting Jan. 1, 2021. Comments on the proposed registration requirements are due Oct. 1.

Pooled plan providers

The SECURE Act allows employers of all sizes to join multiple-employer plans without the need for any commonality among the employers or other genuine organizational relationship unrelated to providing benefits. These new pooled employer plans are meant to help employers — especially small employers — by reducing the burdens and costs of offering employees a workplace retirement savings option.

A pooled plan provider is the plan administrator and named fiduciary for a pooled employer plan. The provider is responsible for performing most administrative and fiduciary functions for the plan (employers retain responsibility for selecting and monitoring the pooled plan provider, any other named fiduciaries, and investment managers). The SECURE Act requires that pooled plan providers register with both DOL and the Treasury Department and provide any information required by the agencies. The statute says providers must register “before beginning operations as a pooled plan provider” but does not specify registration content requirements.

Proposed registration requirements

The proposal lays out a two-part registration process:

- An initial “registration” filing of basic identifying information about the pooled plan provider and its structure, affiliated service providers, marketing activities, and any pending legal or regulatory proceedings
- A supplemental filing to report each pooled employer plan before plan operations start

Providers would also use supplemental filings to report any changes to information provided in earlier filings and any significant financial and operational events affecting the provider or any of its plans. The proposal would also require a final filing after all of the provider’s pooled plans have been terminated and ceased operations.

Initial registration

The initial registration would be due at least 30 days and no more than 90 days before the pooled plan provider begins publicly marketing its services or offering a pooled employer plan. Preliminary business activities — such as establishing the business organization, creating a business plan, obtaining necessary licenses, applying for a federal employer identification number (EIN), or studying market demand for pooled employer plans — would not trigger the initial registration requirement.

The initial registration would include the following information:

- Legal business name, any trade name (i.e., “doing business as”) and the EIN
- Telephone number (but not a call center number) for interested/participating employers and covered employees to contact the pooled plan provider for information
- Business mailing address
- Websites that will be used to market the provider’s services or to provide information about the pooled employer plan
- Name, mailing address, telephone number, and email address for the pooled plan provider’s primary compliance officer
- Pooled plan provider’s agent for service of legal process, the address at which process may be served (the regulation also requires a statement that service of legal process may be made upon the pooled plan provider, but this is omitted from the instructions to proposed registration form discussed [below](#))

DOL proposes pooled plan provider registration requirements

- Approximate date pooled plan operations are expected to start
- Description of administrative and investment services that will be offered or provided by the pooled plan provider and any affiliates
- Statement disclosing either of the following against the pooled plan provider (or any officer, director or employee of a pooled plan provider), if related to the provision of services to, operation of, or investments of any employee benefit plan:
 - Federal or state criminal conviction within 10 years of registration
- Ongoing criminal, civil or administrative proceedings by the federal or state government or other regulatory authority

Supplemental filing

Before the pooled plan provider starts operating a pooled employer plan, the provider would have to submit a supplemental registration filing that includes the name and EIN for the plan, and the name, address and EIN for the trustee.

Providers would also need to disclose certain changes within 30 days of the occurrence of the change, including:

- Any change in the reported registration information (including termination of any of the provider's pooled employer plans)
- Significant change in the provider's corporate or business structure (for example, a merger or acquisition)
- 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
- Receiving written notice of any of the following actions against the pooled plan provider (or any officer, director or employee), if related to the provision of services to, operations of, or investments of any employee benefit plan:
 - Initiation of any administrative or enforcement action — in any court or administrative tribunal — by any federal or state governmental agency
 - Finding of fraud or dishonesty by a federal or state court or a federal or state governmental agency

DOL proposes pooled plan provider registration requirements

- Filing of any federal or state criminal charges

A single filing could be used to report multiple simultaneous changes or to report a change that applies to all of a provider's pooled employer plans.

Final filing

A pooled plan provider would have to submit a final registration filing after it has ceased operating all of its pooled employer plans. 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. The provider would also be required to file the supplemental registration statement discussed above to report the termination of each of its pooled employer plans. The proposal would allow providers to submit a single filing to report the termination of the last pooled employer plan and the cessation of all operations as a pooled plan provider.

Form PR

DOL is proposing a new Form PR (Pooled Plan Provider Registration) for all registrations and supplemental filings (the draft Form PR and instructions are included in an appendix to the proposal). Filing the Form PR would satisfy the SECURE Act's requirements to register with both DOL and Treasury. Once a registration statement is filed, the data would be posted on DOL's website and be available to the public.

Amended filings. The filing system will allow pooled plan providers to correct or amend their registration and supplemental filings. Inadvertent or good faith errors and omissions generally won't invalidate a registration, as long as a corrected or amended filing is submitted within a reasonable period after discovery of the error or omission. The draft instructions to the Form PR indicate that filings should be amended within 30 days of discovering an error, but not later than the due date for filing a Form 5500 where identifying information might differ between the two forms.

Electronic filing. All initial and supplemental registrations would need to be filed electronically. DOL plans to use the same system that plan administrators currently use to file Form 5500.

Entities serving as pooled plan providers

Earlier this year, DOL sought input about the types of entities that could serve as pooled plan providers and a host of related issues — including provider compensation, potential conflicts of interest, and whether new prohibited transaction exemptions are needed for pooled employer and other multiple employer plans. The new proposal doesn't categorically exclude any one type of business entity or model from serving as a pooled plan provider, but DOL mentions in the preamble that it believes certain entities — such as recordkeepers, professional employer organizations (PEOs) and some insurance companies — may well be positioned to offer the plans. DOL also views broker-dealers and registered investment advisors

DOL proposes pooled plan provider registration requirements

as plausible candidates, but believes many would be reluctant to take on the roles of named fiduciary and plan administrator.

Request for comments

DOL has asked for comments on seven issues identified in the proposal, but welcomes comments on all facets of the proposed rule. Comments can address the specific provisions of the proposal and other issues germane to its subject matter. Comments are due Oct. 1.

Related resources

Non-Mercer resources

- [Proposed rules](#) (Federal Register, Sept. 1, 2020)
- [Fact Sheet](#) (DOL, Aug. 20, 2020)
- [Request for information on pooled employer and other multiple employer plans](#) (Federal Register, June 18, 2020)
- [Division O of Pub. L. No. 116-94, the SECURE Act](#) (Congress, Dec. 20, 2019)

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- [DOL seeks input on pooled employer plans and open MEPs](#) (June 19, 2020)
- [SECURE Act set to become law](#) (Dec. 20, 2019)

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