

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

CHANTEL SHEAKS
EXECUTIVE DIRECTOR
EMPLOYMENT POLICY DIVISION

1615 H STREET, N.W.
WASHINGTON, D.C. 20062
202/463-5458

VIA ELECTRONIC DELIVERY

September 21, 2020

Office of Regulation and Interpretations,
Employee Benefit Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20201

Re: Registration Requirements for Pooled Plan Providers, RIN 1210-AB94

To Whom It May Concern:

On behalf of the U.S. Chamber of Commerce (Chamber), this letter responds to the Department of Labor's (DOL) September 1, 2020 request for comments on the proposed regulation entitled "Registration Requirements for Pooled Plan Providers."

Introduction

The Chamber consistently has supported increasing retirement coverage through both Association Retirement Plans as provided for under 29 C.F.R. Section 2510.3-55 and through Pooled Employer Plans as provided for under the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act). We appreciate the DOL's work in this area, and we look forward to working with the DOL on this and other pooled employer plan issues.

Comments on the proposed regulation

1. Paragraph 2510.3-44(b): Beginning of Operations

The timing for registration is based on the pooled plan provider "beginning its operations as a pooled plan provider." Paragraph (b) defines this as "publically marketing services as a pooled plan provider or publicly offering a pooled employer plan." In paragraph 2510.3-(44)(b)(4), the DOL attempts to clarify the term "beginning operations" as when a pooled employer plan is considered covered by Title I of the Employee Retirement Income Security Act of 1974 (ERISA) within the meaning of Section 4 of ERISA. Section 4 of ERISA specifically provides which plans as defined in ERISA § 3(3) are covered by ERISA, but it does not say when a plan is actually established or when a pooled plan provider is "beginning operations as a pooled plan provider" as required under the SECURE Act. As such, registration should be tied to when an entity first acts as an actual pooled plan provider, which would include marketing **with the intent of enrolling employers and employees** in the plan. For some entities, they will need to be able to market and/or solicit interest from participating employers to determine the market demand for a pooled employer plan, without the actual intent of enrolling employers/employees at that time. Such entities should not be required to register at that time.

However, a pooled plan provider should not be allowed to enroll employers or employees until at least 30 days after registration.

2. Clause 2510.3-44(b)(1)(v): Primary Compliance Officer Contact Information

This section requires that the pooled plan provider include the name, address, contact telephone number and email address for the primary compliance officer of the pooled plan provider on the Form PR and such information will be made publicly available. In the preamble to the proposed regulation, the DOL states that in developing the proposal, the DOL

Focused on the 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.¹

Furthermore, the DOL also states that with respect to the compliance officer's contact information, this requirement "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."²

We understand the need for the DOL to have the contact information for the primary compliance officer. However, we do not believe that interested employers or covered employees would have the need to contact the compliance officer directly. Furthermore, once an employer becomes a participating employer, it will be given access to the appropriate contacts at the pooled plan provider. With respect to participant concerns, a summary plan description must include the contact information for the plan administrator, which is sufficient to address any such concerns.³ As such, although the DOL may need this information at some point, we do not believe it is necessary to include on a public document.

3. Clause 2510.3-44(b)(1)(x): Statement of Ongoing Criminal, Civil or Administrative Proceedings

This provision requires that the pooled plan provider include 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." The term "administrative proceedings" is very broad, and it could include items such as routine DOL or Internal Revenue Service audits or investigations or mere inquiries from those or other state or federal agencies. We request that the DOL limit or define what types of administrative proceedings should be included, and, at the very least, exclude routine audits or investigations or mere inquiries.

In the preamble, the DOL asked if this provision should be expanded to include settlements with the DOL or PBGC. Because a settlement is not the admission of wrongdoing, such information need not be disclosed.

¹ 85 Fed. Reg. 54288, 54292 (Sept. 1, 2020)

² Id.

³ See 29 CFR § 2520.102-3

4. Subparagraph 2510.3-44(b)(2): Initiation of Operations

Under this paragraph, a pooled plan provider is required to file a supplemental report with the DOL after the initiation of operations of a plan as a pooled employer plan containing the name, EIN for the plan and the name, address, and EIN for the plan trustee. However, the proposed regulation does not define initiation of operations. For simplicity, the DOL could require this supplemental filing at the time of the enrollment of the first participant in the plan.

5. 2510.3-44(b)(3)(ii) Supplemental Filings: Significant Change in Corporate or Business Structure

Within 30 days of certain reportable events, a pooled plan provider must provide supplemental information to the DOL. One event is any significant change in corporate structure of the pooled plan provider or an affiliate. We suggest clarifying that a change to the corporate structure of an affiliate is not “significant” for purposes of this rule unless the affiliate provides services to the pooled employer plan.

6. 2510.3-44(b)(3)(iii): Receipt of Written Notice of Initiation of Any Administrative or Enforcement Action

Under this clause, a pooled plan provider must report receipt of a written notice of the initiation of any administrative or 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. Similar to our comment above with respect to administrative proceedings, we request that the DOL exclude routine audits or investigations or mere inquiries from this requirement.

Conclusion

We thank you for your consideration of these comments, and we look forward to working with you on the implementation of the pooled employer plan provisions of the SECURE Act.

Sincerely,

Chantel L Sheaks

Chantel L. Sheaks
Executive Director, Retirement Policy