

The Employee Benefits Security Administration is seeking to obtain a control number for this new information collection required by the SECURE Act.

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSION

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.***

The Setting Every Community Up for Retirement Enhancement Act of 2019 (the SECURE Act) included amendments to the Employee Retirement Income Security Act (ERISA) designed to improve retirement coverage as well as the ability of individuals to manage important retirement-related risks. Section 101 of the SECURE Act amended section 3(2) and added new sections 3(43) and 3(44) to establish a new type of ERISA retirement savings plan called a “pooled employer plan.” Among other requirements, pooled employer plans must be operated by a designated “pooled plan provider.” The SECURE Act provides that “pooled plan providers” can begin offering “pooled employer plans” on January 1, 2021, but, as noted above, also requires that such persons register with the Secretary of Labor before beginning operations. Section 101 of the SECURE Act requires a “pooled plan provider” to register with the Labor Department (the Department) and the Treasury Department (Treasury) before beginning operations as a pooled plan provider.

This proposed rule would establish the requirements for registering with the Department as a “pooled plan provider” for “pooled employer plans.” The proposed rule would also establish a new EBSA form EBSA Form PR (Pooled Plan Provider Registration) as the required filing format for pooled plan provider registrations. 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.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the collection.***

The Department anticipates that a number of financial services providers and recordkeepers who are already involved in the defined contribution retirement plan marketplace will register as pooled plan providers and will start making pooled employer plans’ available to prospective participating employers based on the requirements of this proposed regulation. The registration requirements of the

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proposed regulation will be publicly available and will provide an list of pooled plan providers. The registration process and requirements are intended to enable the Department, participating employers, and other interested parties to identify pooled plan providers when they begin operating, assist participating employers in fulfilling the fiduciary duties imposed on them by the SECURE Act when selecting and monitoring pooled employer plans, and help the Department and more effectively oversee their actions and the pooled employer plans they operate.

The proposal would require an initial registration filing and supplemental filings to report changes in the information in the initial filing changes, information about each specific pooled employer plan at its inception, and information on specified reportable events, time-sensitive knowledge of which are important for the Department and the Treasury Department 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 provider's 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 timely access to pooled plan provider information needed to fulfill the monitoring and oversight tasks the SECURE Act placed on the agencies. The registration requirements give the Department more immediate access to pooled plan provider information, allowing it to observe how this new market develops and assess whether further guidance is needed. In addition, the registration process will provide transparency regarding key aspects of the provider and its pooled employer plan practices, allowing employers to better survey the market when choosing a pooled plan provider.

3. ***Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration for using information technology to reduce burden.***

Registrations to be a pooled plan provider (PPP) required under this regulation must be filed with the Secretary of Labor electronically in accordance with the EBSA Form PR instructions and electronic filing procedures published by the Department. 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 change described in paragraphs (b) (2) and (3) of the proposed regulation, and may file a single update 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.

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Under the proposed regulation the PPP would need to file before beginning operations as a PPP the address of any public website to be used to market the 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.

- 4. Describe efforts to identify duplication. Show specifically why similar information already available cannot be used or modified for use for the purposes described in Item 2 above.***

The information on who wants to be a pooled plan provider is not available from any other source. Other requested information could be in the public domain, but not collected in one location. The preamble to the proposal includes a request for comments on other federal and state filing requirements that could be used as an alternative source of information.

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.***

The proposed regulation requirements on notification to the Secretary of Labor applies equally to small and large pooled plan providers for pension plans, and the Department did not fashion any special treatment for small pooled plan providers. Information readily available in the normal course of business is required to be submitted.

- 6. Describe the consequence to federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.***

This Department is required by the Secure Act to implement this information collection. Failure to do so would be in contravention of a stated statutory requirement. Failure to conduct this information collection activity would undermine the important policy objective of allowing many small and mid-sized employers that do not currently sponsor retirement plans or that are overwhelmed by the burdens and complexity of administering plans, to establish Pooled Employer Plans product offerings and to appoint and retain administrators, investment advisors and investment managers for their respective Pooled Employer Plans.

- 7. Explain any special circumstances that would cause an information collection to be conducted in a manner:***

- **Requiring respondents to report information to the agency more often than quarterly;**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable result that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.5.

8. ***If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.***

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

In addition to requesting public comment on the proposed regulation, the NPRM solicits public comment on the paperwork burden of the proposed regulation. The Office of Management and Budget has 60 days to review the information, but must allow at least 30 days for public comment. Therefore, the PRA section of the

proposed rule requests the public to send comments within 30 days to ensure their consideration. (5 CFR 1320.11(c); 5 CFR 1320.11(e))

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts are provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

None.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to person from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature pertaining to sexual behavior and attitudes, religious beliefs, or other matters that are commonly considered private. Therefore, this is not applicable to the requirements of this information collection.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of difference in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collection of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.**

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 be integrated into the Department's existing EFAST 2 electronic filing system for filing

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the Form 5500 annual return/report generally required for ERISA-covered employee benefit plans, including pooled employer plans operated by pooled plan providers.. 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 registration of contact information, links to marketing websites, and a description of services and the role of any affiliates. As proposed, pooled employer plans 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, although it may have to file a supplemental report for each new plan not identified in the initial registration.

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 may take on the role of pooled plan provider. Further, certain financial services providers and insurance companies have expressed interest in serving as pooled plan providers and some have prior experience providing similar services to existing multiple employer plans. Although the SECURE Act did not establish specific qualification requirements for pooled plan providers, the Department expects that some enterprises and employer groups may be reluctant to assume the named fiduciary and plan administrator roles that the SECURE Act mandates for 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.

	Universe	Expected Share	Estimated Number
Unique Recordkeepers and Plan Administrators for Existing DC Plans ^a	2,378	50%	1189
Professional Employer Organization ^b	907	25%	227

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Chambers of Commerce ^c	4,000	5%	200
Large Broker-Dealers ^d	173	5%	9
Registered Investment Advisor Firms ^d	30,246	5%	1512
Direct Annuity Writers (Insurance Companies) ^e	386	25%	97
Total	38,090	8%	3,233

^aSource: 2017 Form 5500 Schedule C Data.

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

^cSource: Association of Chamber of Commerce Executives reports that there are 4,000 chambers with at least one full-time staff person.

^dSource: 2019 FINRA Industry Snapshot. FINRA reported 3,607 FINRA registered firms in 2018, 173 of which had 500 or more registered representatives.

^eSource: National Association of Insurance Commissioners.

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 may 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 Department's current Form M-1 filed by certain multiple employer welfare arrangements and entities. 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 adds to 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 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 \$287,000.¹

¹ 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-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>.

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In subsequent years, the Department is assuming for purposes of the proposal 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.² 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.³ These filings require an hour burden of 324 hours with an equivalent cost of nearly \$54,000 in subsequent years.

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.⁴

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.

Table--Pooled Plan Providers: Three Year Averages

	First Year	Second Year	Third Year	Average
Respondents	3,233	873	873	1,660
Responses	6,693	873	873	2,813
Hours	4,155	437	437	1,676

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 or 14).

The Department does not believe that the pooled plan provider would incur any additional costs beyond the labor by the administrator to collect and submit this

² 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.

³ $3,233 * 0.14 = 453$ 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 * $\$165.63 = \$16,060$.

⁴ 873 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.

information. Thus, the total annual cost burden of this information collection is \$0.

- 14. Provide estimates of annualized cost to the federal government. Also, provide an description of the method used to estimate cost, which should include quantification of hours, operations expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items, 12, 13, and 14 in a single table.**

The costs of this information collection fits within the total processing costs, including an EBSA contractor costs, of the information collect 1210-0110, Annual Return/Report of Employee Benefit Plan (Form 5500).

- 15. Explain any reasons for any program changes or adjustments.**

This is a new information collection.

- 16. For collection of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

This is not a collection of information for statistical use and, other than making the registration information available to the public on the Department's website, there are no plans to subject the information to any complex analytical techniques.

- 17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

The collection of information will display a currently valid OMB control number.

- 18. Explain each exception to the certification statement.**

There are no exceptions to the certification statement.

B. Collection of Information Employing Statistical Methods.

Not applicable.