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## Title 29 - Labor

### Subtitle B - Regulations Relating to Labor

#### Chapter XXV - Employee Benefits Security Administration, Department of Labor

#### Subchapter B - Definitions and Coverage Under the Employee Retirement Income Security Act of 1974

#### Part 2510 - Definition of Terms Used in Subchapters C, D, E, F, G, and L of This Chapter

**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 App. (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).

#### § 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 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 the initiation of operations of the first plan that the person operates as a pooled employer plan, as described in paragraph (b)(6) of this section. 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) At least 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 responsible compliance official of the pooled plan provider. For purposes of this paragraph (b)(1)(v), the term "responsible compliance official" means the person or persons, identified by name, title, or office, responsible for addressing questions regarding the pooled plan provider's status under, or compliance with, applicable provisions of the Act and the Internal Revenue Code as pertaining to a pooled employer plan.
    - (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.

- (vii) The approximate date when pooled plan operations are expected to commence.
  - (viii) An identification of the administrative, investment, and fiduciary services that will be offered or provided in connection with the pooled employer plans by the pooled plan provider or an affiliate. For purposes of this paragraph (b)(1)(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 ongoing Federal or State criminal proceedings, or 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, provided that any criminal conviction may be omitted if the conviction, or related term of imprisonment served, is outside ten years of the date of registration.
  - (x) A statement disclosing any ongoing 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, involving a claim of fraud or dishonesty with respect to any employee benefit plan, or involving the mismanagement of plan assets.
- (2) No later than the initiation of operations of a plan as a pooled employer plan, as described in paragraph (b)(6) of this section, file with the Department a supplemental report using the Form PR containing the name and plan number that the pooled employer plan will use for annual reporting purposes, and the name, address, and EIN for the trustee for the plan.
- (3) File with the Department a supplemental report using the Form PR within the later of 30 days after the calendar quarter in which the following reportable events occurred or 45 days after a following reportable event occurred:
- (i) Any change in the information reported pursuant to paragraph (b)(1) or (2) of this section unless otherwise disclosed pursuant to paragraphs (b)(3)(iii) through (v) 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 that provides services to a pooled employer plan, or ceasing all operations as a pooled plan provider.
  - (iii) Receipt of written notice of the initiation of any administrative proceeding or civil 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 involving a claim of fraud or dishonesty with respect to any employee benefit plan, or involving the mismanagement of plan assets.
  - (iv) Receipt of written notice of a finding involving a claim of fraud or dishonesty with respect to any employee benefit plan, or involving the mismanagement of plan assets in any matter described in paragraph (b)(1)(x) or (b)(3)(iii) of this section.

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- (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. For purposes of this section, a pooled employer plan is treated as having 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.
- (6) For purposes of this section, a person is treated as initiating operations of a plan as a pooled employer plan when the first employer executes or adopts a participation, subscription, or similar agreement for the plan specifying that it is a pooled employer plan, or, if earlier, when the trustee of the plan first holds any asset in trust.
- (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.
- (8) For purposes of this section, the term “administrative proceeding” or “administrative proceedings” means a judicial-type proceeding of public record before an administrative law judge or similar decision-maker.
- (9) For purposes of this section, the term “other regulatory authority” means Federal or State authorities and self-regulatory organizations authorized by law, but does not include any foreign regulatory authorities.
- (10) For purposes of paragraphs (b)(1)(ix) and (x) and (b)(3)(iii) and (v) of this section, employees of the pooled plan provider include employees of the pooled employer plan, but only if they handle assets of the plan, within the meaning of section 412 of the Act, or if they are responsible for operations or investments of the pooled employer plan.
- (c) **Transition rule.** Notwithstanding paragraph (b)(1) of this section, a person intending to act as a pooled plan provider may file the Form PR on or before beginning operations as a pooled plan provider (dispensing with the 30-day advance filing requirement) if the filing is made before February 1, 2021.
- (d) **Acquittals and removal of information.** A pooled plan provider may file an update to remove any matter previously reported under paragraph (b)(1)(ix) or (b)(3)(v) of this section for which the defendant has received an acquittal. For this purpose, the term “acquittal” means a finding by a judge or jury that a defendant is not guilty or any other dismissal or judgment which the government may not appeal.

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