

October 1, 2020

The Honorable Jeanne Wilson
Acting Assistant Secretary
Employee Benefits Security Administration
US Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Attention: **Proposed Registration Requirements for Pooled Plan Providers,**
RIN 1210-AB94

Dear Acting Assistant Secretary Wilson:

Please accept AARP's comments in response to the Department's proposed registration requirements for pooled plan providers. AARP supports the development of pooled retirement plans and was actively involved in national efforts to encourage the Department and Congress to adopt reasonable procedures for employers and providers offering such plans and strong consumer protections for covered participants and beneficiaries. As financial service firms will be able to start offering pooled plans in early 2021, the remainder of the year is a critical time for the Department to issue the needed early guidance to ensure that pooled plans will meet the long-term retirement savings and investment needs of employees and their families.

AARP commends the Department for its timely and understandable proposed registration requirements for pooled plans. To supplement and enhance the Department's efforts, AARP would like to offer the following additional requests:

The Department thoughtfully articulated its determination that pooled provider registration needs to provide sufficient information for the Department to monitor and oversee pooled providers and plans. The Department explained its assessment that primarily smaller employers and their employees are largely unlikely to be able to thoroughly assess the operations of pooled providers and, therefore, the Department would need to undertake a substantial role in monitoring and overseeing pooled plans, requiring timely adequate information on the operation of

providers and plans. The Department noted the longstanding history of problems with multiple employer welfare arrangements (MEWAs) and its role in protecting consumers' promised benefits. AARP supports the Department's decision to maintain an active and ongoing role in overseeing pooled provider plans and determining the types and forms of information necessary for it to successfully fulfill that role. The SECURE Act also requires the Department to determine each of the administrative functions that a provider and plan must provide, and AARP urges the Department to issue clear, robust proposed guidelines in advance of operation, so that plans may fairly provide payroll deduction and investment choices to workers who need prudent, low cost retirement savings options.

Our main comment on the proposed registration requirements is that it was the intention of AARP and others involved in the development of pooled plans that employers and participants would have readily available key information to assess and monitor pooled provider plans. While we support an active Department role, employers and participants typically are responsible both legally and as a practical day-to-day matter for overseeing and understanding plan activities. Therefore, we urge the Department to ensure that the pooled provider registration documents also provide the key information that employers and participants need to understand the operations of the providers. One key issue is the distinction between a pooled provider and a pooled plan. As the Department understands, a pooled provider may offer/sell dozens of different plans in the marketplace. Even within plans -- and we do not yet know pooled plans may offer variations, i.e., differing contribution level options, vesting periods, investment options/packages, distribution forms, etc.

For participants and beneficiaries, they will need to know the legal name of their pooled plan provider, the legal name of the plan under which they are covered, the name of the key contact person for all questions and complaints, the email, mailing address and telephone number of the key participant contact person, the key terms of their plan, and where all plan information is located and can be requested and provided. If possible, participants also should know which plan functions their employer will be carrying out and which the provider or other legally responsible party will carry out. The Department's proposal requires provision of the provider's compliance officer name and contact information. If the compliance officer is not also the key official for employers and participants, we urge the Department to also require provision of the key legal contact names for employers and participants. Also, employers and participants may not typically understand the duties of a compliance officer. The Department should provide an explanation

of duties and identify the person as the “compliance and contact” officer, if applicable.

Since the pooled provider registration form will be filed for the provider, and not each plan, we recognize that it will not be possible for participants and beneficiaries to use the registration form to obtain specific information about the plan under which they are covered. Therefore, to be useful to participants, the provider form, as the Department proposes, must list each of the plans that the provider operates. The form should state where to obtain information on the specific plan under which they are covered. The Department should assume that providers will sponsor more than one plan. Therefore, it is important that the Department devise and specify a clear way that providers will name each individual plan, employers will know the name of the plan they have selected, and participants will know the name of the plan under which they are covered and where to obtain all legally required information about their specific plan. The Department should, when possible, cross-link all forms and filings, so employers and participants will clearly and easily know and be able to find all filed documents about their specific provider and plan.

We say this based on longstanding experience under ERISA practice and law. Consumers have had decades of problems knowing the legal name of the employee benefit plan under which they are covered, and where to obtain all legally required information both from their employers, financial service firms, and Government agencies. We urge the Department to devise a system under which it will be clear and easy for both employers and employees to know what documents to seek, how they are named, and where to find them.

As an example, the Department’s Annual Reporting Form 5500 system has longstanding problems in that consumers often do not know the legal (filing) name of their employer, legal (filing) name of their plan, employer identification number (EIN), etc. Also, the Department often uses several non-obvious names for retirement plan annual reports (E-FAST, 5500) and does not place them in prominent, easily apparent locations on the Department’s website. AARP strongly urges EBSA to create a registration system that uses clear names, provides information that is needed by employers and participants, and prominently displays the information on its website. For example, Form Pooled Provider would likely be clearer to employers and participants than Form PR. Another common problem is blank or meaningless responses. The Department should reject forms that do not provide clear, meaningful required information. For example, on the Form 5500, employers may not provide real person names for the plan

administrator. Employers may simply write – “Plan Administrator”, or “Company Name Committee”. The Department should develop the new system to minimize known problems and improve reporting. The Department should create an initial set-up and continue to modify and improve the system as all interested parties gain experience with reporting.

The Department’s proposal discusses coordination and placement of the new pooled provider registration with the Annual Report, Form 5500. The Department discusses one of the problems with such coordination, namely that Form 5500 is usually filed and posted approximately two years after relevance. Because there have been longstanding problems with the timeliness and understandability of the Form 5500 for consumers, AARP urges the Department to take active efforts to ensure that the pooled provider registration form and the pooled plan annual reports will be separately posted and appropriately cross-linked. Because the pooled provider form will not clearly or fully identify the key features of each provider pooled plan, the Department must develop a new pooled plan annual report that will be clear and provide needed plan information to employers, participants, and the Department. The Department likely will need to test a few proposed examples, preferably with actual employers and consumers, to determine the understandability and searchability of both forms. AARP is willing to assist in such an effort.

With respect to providers and plans, their key functions, and the use of outside contractors, the Department must consider how best to request this information to make it understandable to employers, participants, and the Department. Again, each provider may sell multiple plans, and it is our understanding that there likely will be variations within plans. Therefore, if the Department requires providers to list the name of the firm providing administrative services, trustee services, investment services, etc., the Department also needs to require providers to make clear for which plans each firm is providing specific services. We understand that the Department may not want providers to have to file separate forms for each plan, but there should be an attachment or chart that specifies which firms provide which services to each plan. This is a key aspect of each plan, and no employer can evaluate a pooled plan without clearly understanding who is providing each key service to the plan they may select. Pooled providers should not be permitted to simply provide their registration forms to employers as part of a demonstration of their compliance with ERISA and the SECURE Act.

We support the Department’s proposal to require pooled providers to submit supplemental filings after a significant plan change. We also believe provider

reporting should include any pending plan investigations and outcomes. We urge the Department to timely and prominently post all pooled provider and plan forms and updates. The Department has taken the lead in supporting electronic disclosure for retirement plans, and should demonstrate how the Department's website can provide up-to-date, adequate and understandable information for employers and employees.

We thank the Department for considering these recommendations. Please contact Michele Varnhagen, at mvarnhagen@arp.org, for further information or assistance.

Sincerely,

David Certner