

# Draft FAML I Optional Self-Employed Plan (FAML I OSEP) Regulatory Outline

## For Discussion Purposes Only

Many stakeholders submitted feedback to the FAML I Division regarding our Optional Self-Employed Plan (FAML I OSEP) Discussion Document. Below is a draft outline of the Division's current thinking which was heavily influenced by the stakeholder feedback. The Division welcomes additional comments, feedback and suggestions as we further refine our thinking.

This section focuses on participation in an OSEP.

The Division will be accepting written comments via email - [FAML I.policy@maryland.gov](mailto:FAML I.policy@maryland.gov) and asks that comments be submitted by July 27.

### Optional Self-Employed Plan

**General.** There is an Optional Self-Employed Family and Medical Leave Insurance Plan (OSEP) in which a qualified self-employed individual may elect to participate.

#### Definitions<sup>1</sup>

A. OSEP participant means a qualified self-employed individual whose election for coverage in the OSEP has been accepted by the Division.

B. Self-employment income means income reportable to the IRS upon which the federal Self-Employment Tax is payable as defined by the Self-Employment Contributions Act of 1954, as amended and incorporated into 26 U.S. Code § 1401 et seq.

C. Qualified self-employed individual means a person who earns self-employment income and is a resident of Maryland as defined in Tax-General § 10-101(k)(1)(i).

#### OSEP Coverage Election Process.

A. Registration. Any qualified self-employed individual who wishes to participate in the OSEP shall register with the Division and file an application provided by the Division for the OSEP.

B. Application requirements:

(1) Information about the individual applying for benefits as determined by the Department, which may include:

- a. First and last name;
- b. Social Security Number or Individual Taxpayer Identification Number;
- c. Race;
- d. Ethnicity;
- e. Gender; and
- f. Address and contact information.

(2) Information on the individual's business as determined by the Department, which may include:

- a. Maryland Entity Identification Number;
- b. Federal Employer Identification Number (FEIN)
- c. Business name; and

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<sup>1</sup> Please note, the FAML I Team is in the process of creating a list of numerous terms to be defined via regulation.

- d. Business address and contact information.
  - (3) The individual's total reported income from self-employment for the preceding calendar year;
  - (4) Documentation verifying:
    - a. The individual's identity,
    - b. The individual's taxable income from self-employment, including but not limited to, self-employment income reported to the Internal Revenue Service on the personal income tax return from the preceding calendar year, and
    - c. The individual's intent to earn self-employment income in the forthcoming year.
  - (5) An affirmation statement as determined by the Department, which may include an agreement to:
    - a. Pay contributions for a period of not less than three years;
    - b. Submit annual and quarterly reports;
    - c. Provide any information and documentation on the individual's taxable income from self-employment that the Division deems necessary for the administration of the elective coverage, including but not limited to, a copy of their federal personal income tax return annually; and
    - d. Provide additional information to confirm eligibility for elective coverage, if requested by the Division;
  - (6) Acknowledgement of the conditions for termination of self-employed elective coverage established in these regulations, including, but not limited to, the condition that coverage cannot be terminated until coverage has been in effect for at least three years.
- C. Coverage Effective Dates. An election becomes effective on the date the completed application is filed with the Division.

**OSEP Contributions.**

- A. Rate and base.
  - (1) OSEP participants pay the total contribution rate (the combined employer and employee portions).
  - (2) The tax base upon which the contribution rate is applied shall be equal to the Social Security wage base.
  - (3) The tax base upon which the contribution rate is applied shall be computed for total self-employment income without regard to other forms of income. (*i.e.*, all reportable self-employment income up to the Social Security tax cap is subject to the contribution rate regardless of whether the individual earned other income.)
- B. Failure to pay contributions. In the event an OSEP participant fails to timely and/or fully pay the required contributions, the Division may impose a penalty<sup>2</sup> pursuant to the Termination and Suspension section of these Regulations.

**Quarterly reporting and annual reconciliation**

- A. OSEP participants will be required to make quarterly reports and payments on the same schedule as all employers in the state.
  - a. The Division may allow OSEP participants (based on technical feasibility) to satisfy their quarterly payment and reporting requirements if they pay the annual premium upfront.
- B. The quarterly payment will be calculated to equal the amount of the SEI's expected net income (profit) subject to the self-employment tax for the calendar year, as used in the computation of

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<sup>2</sup> The Division is considering the imposition of monetary penalties for contribution payment failures.

federal estimated tax as currently entered on line 3 of worksheet 2-3 of publication 505, divided by 4.

- C. An OSEP participant will be required to reconcile net income for each tax year at the conclusion of tax time for federal income tax purposes.
- D. If the final reported amount is greater than the amount paid in estimated payments during the course of the year, the Division will issue a refund for the amount of overpaid mandatory contribution. If the final report amount is less, the OSEP participant will be required to remit make-up payments.

**Dispute Resolution.**

- A. Denial of an application to participate in the OSEP. Anyone denied participation in the OSEP, who believes, in good faith, that their application meets the requirements for the OSEP may request higher review by the Division.
- B. Denial of benefit<sup>3</sup>

**Reporting requirements for OSEP participants.**

- A. While OSEP participants may authorize a third party to report on their behalf, OSEP participants shall be responsible for the accuracy of the data and subject to any adverse actions related to inaccurate, late, or incomplete reporting.
- B. OSEP participants shall submit complete tax information showing annual income, including all Federal forms, to the Division annually. This submission shall be used by the Division in the reconciliation process, detailed in the Contributions section of these Regulations.
- C. OSEP participants shall report estimated income quarterly.

**Benefit calculation for OSEP<sup>4</sup>**

**Renewal and Annual Election.** Pursuant to Md. Code Ann., Lab. & Empl. § 8.3-201 (c), at admission to the OSEP, OSEP participants shall participate for three years. Their participation will automatically renew each year thereafter, unless they notify the Department of their intent to opt-out of re-enrollment.

**Opt-Out, Termination, Suspension.**

- A. Opt-out
  - (1) After three years of participation, an OSEP participant can opt-out of the program by providing written notice to the Department 30 days in advance of their annual renewal date.
  - (2) An OSEP participant who opts-out of renewing their participation may not reelect coverage as a self-employed individual for one year following the date of termination.
- B. Termination Due to Change in Status
  - (1) An OSEP participant may terminate elective coverage if they are no longer a qualified self-employed individual by filing a written notice online or in another method approved by the Division.
  - (2) The termination shall take effect 30 days after the notice to terminate is received by the Division, unless a later date is requested by the OSEP participant on the written notice.

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<sup>3</sup> Appeal from denial of a benefit will be discussed in the Appeals Phase of the Informal Regulatory Engagement Process.

<sup>4</sup> The Division will include a special section in the benefits section for OSEP benefits.

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- (3) The notice to terminate elective coverage under this rule must provide the following information:
    - (a) The reason for the termination; and
    - (b) Any supporting documentation.
  - (4) An OSEP participant whose elective coverage is terminated due to change in status by the Division may not reelect coverage as a self-employed individual for one year following the date of termination.
- C. Involuntary. The Division shall have the authority to involuntarily terminate or suspend an OSEP participant.
- (1) Termination or suspension may be ordered by the Division for the following reasons:
    - a. Failure to pay contributions completely and/or timely;
    - b. Falsification of documents;
    - c. Improper use of benefits;
    - d. Failure to submit reports or comply with other compliance requirements as required by Title 8.3 and/or its implementing regulations; or
    - e. Failure to otherwise comply with Title 8.3 and its implementing regulations.
  - (2) An OSEP participant whose elective coverage is involuntarily terminated by the Division may not reelect coverage as a self-employed individual for three years following the date of termination.
- D. Nothing in this section shall prevent a self-employed individual from insurance coverage under the State Plan as a covered employee who is employed by an employer participating in the State Plan.
- E. In the event an individual opts-out, terminates due to a change in status or is involuntarily terminated from the OSEP and wishes to reelect after the required waiting period has expired, they shall initially be required to participate for three years.