
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

**FORM S-8
REGISTRATION STATEMENT**
*UNDER
THE SECURITIES ACT OF 1933*

APOGEE ENTERPRISES, INC.

(Exact name of registrant as specified in its charter)

Minnesota
(State or other jurisdiction of
incorporation or organization)

41-0919654
(I.R.S. Employer
Identification No.)

**4400 West 78th Street, Suite 520
Minneapolis, Minnesota 55435**
(Address of principal executive offices, including zip code)

Apogee Enterprises, Inc. 2011 Deferred Compensation Plan
(Full title of the plan)

Meghan M. Elliott, Esq.
Vice President, General Counsel and Secretary
Apogee Enterprises, Inc.
4400 West 78th Street, Suite 520
Minneapolis, Minnesota 55435
(952) 487-7645
(Name, address and telephone number, including area code, of agent for service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per share	Proposed maximum aggregate offering price(2)	Amount of registration fee
Deferred Compensation Obligations	\$18,000,000	100%	\$18,000,000	\$1,668.60

- (1) The Deferred Compensation Obligations are unsecured obligations of Apogee Enterprises, Inc. to pay deferred compensation in the future in accordance with the terms of the Apogee Enterprises, Inc. 2011 Deferred Compensation Plan.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) under the Securities Act of 1933, as amended. The amount of deferred compensation obligations registered is based on an estimate of the amount of compensation that may be deferred under the Plan.

EXPLANATORY NOTE

This Registration Statement is filed by Apogee Enterprises, Inc. (the “Company”) relating to an additional \$18,000,000 of deferred compensation obligations which are unsecured obligations of the Company to pay deferred compensation in the future in accordance with the terms of the Apogee Enterprises, Inc. 2011 Deferred Compensation Plan (the “Plan”). Pursuant to General Instruction E to Form S-8, the contents of the Company’s Registration Statement on Form S-8 previously filed with the Securities and Exchange Commission on October 14, 2010 (File No. 333-169944), registering \$6,000,000 of deferred compensation obligations under the Plan is herein incorporated by reference to the extent not modified or superseded hereby or by any subsequently filed document that is incorporated by reference herein or therein.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which have been filed with the SEC by Apogee Enterprises, Inc. (“we,” “us” or “Apogee”) are incorporated by reference in this registration statement:

- (a) Our Annual Report on [Form 10-K](#) for the fiscal year ended February 27, 2021;
- (b) Our Quarterly Reports on Form 10-Q for the fiscal quarters ended [May 29, 2021](#) and [August 28, 2021](#);
- (c) Our Current Reports on Form 8-K filed on [March 5, 2021](#), [April 26, 2021](#), [May 27, 2021](#), [June 28, 2021](#), and [August 11, 2021](#);
- (d) The description of our common stock included as [Exhibit 4.2](#) to our Annual Report on Form 10-K for the fiscal year ended February 29, 2020.

All documents filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (other than reports (or portions thereof) on Form 8-K furnished pursuant to Item 2.02 or Item 7.01 of Form 8-K, including any exhibits included with such information, unless otherwise explicitly indicated therein) subsequent to the date hereof and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities remaining unsold, are incorporated by reference herein and are a part hereof from the respective dates of filing of such documents.

Item 4. Description of Securities.

The securities offered hereby are deferred compensation obligations, which are being offered to eligible employees of Apogee and its participating affiliates under the Apogee Enterprises, Inc. 2011 Deferred Compensation Plan (the “Plan”). The Plan allows for deferrals by participants, in accordance with the terms of the Plan, of base salary, sales commissions, bonuses and other cash or equity-based compensation approved by Apogee’s Compensation Committee (each an “Employee Deferral”). The amount of compensation to be deferred by each participant will be based on elections by each participant under the terms of the Plan. Participants’ accounts may also be credited with discretionary employer contributions as specified in the Plan.

The deferred amounts described above (including the Employee Deferrals and discretionary employer contributions) will be credited with earnings and investment gains and losses by assuming that the deferred amounts were invested in one or more hypothetical investment options selected by the participant in accordance with the terms of the Plan. The deemed investment alternatives include various investment funds with different degrees of risk. An Apogee common stock fund is not one of the investment funds available under the Plan. Participants may reallocate amounts among the various investment alternatives on a daily basis. The deferrals will not actually be invested in the investment alternatives available under the Plan. These deemed investment alternatives are merely measuring tools to determine the value of the participant’s account under the Plan. Although a “rabbi trust” has been established which will hold assets to be used solely to pay benefits to Plan participants, there is no requirement to actually purchase these investments with trust assets. Participants do not have any preferential right to any assets in the trust.

The obligations to make payments under the Plan are unsecured obligations and are subject to the claims of general creditors. These obligations will rank equally with other unsecured indebtedness from time to time outstanding. All amounts payable to participants under the Plan are denominated in U.S. dollars and will be payable on the date or dates selected by each participant in accordance with the terms of the Plan or on such other date or dates as specified in the Plan. Rights to payment under the Plan are not convertible into another security.

The Plan may be amended prospectively, retroactively or terminated at any time. No amendment will reduce a participant’s account balance as of the date of such amendment. In no event will Apogee be responsible for any decline in a participant’s account balance as a result of the selection, discontinuation, addition, substitution, crediting or debiting of one or more investment alternatives.

A participant's rights or the rights of any other person to receive payment of deferred compensation obligations may not be sold, assigned, transferred, pledged, garnished or encumbered, except by a written designation of a beneficiary under the Plan.

The foregoing summarizes the material terms and provisions of the deferred compensation obligations. It is not a complete legal description of the deferred compensation obligations and is qualified in its entirety by reference to the Plan.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 521 of the Minnesota Business Corporation Act provides that a company shall, subject to certain limitations, indemnify officers and directors made or threatened to be made a party to a proceeding by reason of that officer or director's former or present official capacity with the company. As required, we will indemnify that person against judgments, penalties, fines, settlements and reasonable expenses if the officer or director:

- Has not been indemnified by another organization;
- Acted in good faith;
- Received no improper personal benefit and Section 302A.255 of the MBCA, regarding director conflicts of interests, if applicable, has been satisfied;
- In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and
- In case of acts or omissions occurring in such person's performance in an official capacity, such person reasonably believed that the conduct was in the best interests of the Company, or, in certain limited circumstances, reasonably believed that the conduct was not opposed to the best interests of the Company.

Article VII of our Amended and Restated Bylaws, as amended, provides that we shall indemnify our officers and directors under such circumstances and to the extent permitted by Section 521 of the Minnesota Business Corporation Act described above.

We maintain directors' and officers' liability insurance which covers certain liabilities and expenses of our directors and officers and covers Apogee for reimbursement of payments to our directors and officers in respect of such liabilities and expenses.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

- 4.1 [Restated Articles of Incorporation of Apogee Enterprises, Inc. \(incorporated by reference to Exhibit 3.1 to Apogee's Annual Report on Form 10-K for the year ended February 28, 2004\).](#)
- 4.2 [Articles of Amendment to the Restated Articles of Incorporation of Apogee Enterprises, Inc., as filed with the Minnesota Secretary of State on January 15, 2020 \(incorporated by reference to Exhibit 3.1 to Apogee's Current Report on Form 8-K filed on January 16, 2020\).](#)
- 4.3 [Amended and Restated Bylaws of Apogee Enterprises, Inc. as of April 21, 2021 \(incorporated by reference to Exhibit 3.3 to Registrant's Quarterly Report on Form 10-Q for the quarterly period ended May 29, 2021\).](#)
- 4.4 [Specimen certificate for shares of common stock of Apogee Enterprises, Inc. \(incorporated by reference to Exhibit 4.1 to Registrant's Quarterly Report on Form 10-Q for the quarterly period ended May 29, 2021\).](#)

- 4.5 [Apogee Enterprises, Inc. 2011 Deferred Compensation Plan \(incorporated by reference to Exhibit 10.1 to Apogee's Current Report on Form 8-K filed on October 12, 2010\).](#)
- 4.6 [First Amendment to the Apogee Enterprises, Inc. 2011 Deferred Compensation Plan \(incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed July 1, 2014\).](#)
- 4.7 [Second Amendment to the Apogee Enterprises, Inc. 2011 Deferred Compensation Plan \(incorporated herein by reference to Exhibit 10.2 to Registrant's Current Report on Form 8-K filed on June 29, 2016\).](#)
- 4.8 [Third Amendment to the Apogee Enterprises, Inc. 2011 Deferred Compensation Plan, dated October 5, 2017 \(incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on October 10, 2017\).](#)
- 4.9 [Fourth Amendment to the Apogee Enterprises, Inc. 2011 Deferred Compensation Plan, dated June 28, 2018 \(incorporated by reference to Exhibit 10.2 to Registrant's Current Report on Form 8-K filed on July 3, 2018\).](#)
- 5.1 [Opinion of Dorsey & Whitney LLP.*](#)
- 23.1 [Consent of Dorsey & Whitney LLP \(included in Exhibit 5.1\).*](#)
- 23.2 [Consent of Independent Registered Public Accounting Firm.*](#)
- 24.1 [Power of Attorney.*](#)

* Filed herewith.

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the "Securities Act");

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement; *provided, however*, that paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Minneapolis, State of Minnesota, on October 13, 2021.

APOGEE ENTERPRISES, INC.

By: /s/ Ty R. Silberhorn
Ty R. Silberhorn
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities indicated on October 13, 2021.

Signature	Title
<u>/s/ Ty R. Silberhorn</u> Ty R. Silberhorn	President, Chief Executive Officer and Director (principal executive officer)
<u>/s/ Nisheet Gupta</u> Nisheet Gupta	Chief Financial Officer (principal financial and accounting officer)
<u>*</u> Christina M. Alvord	Director
<u>*</u> Frank G. Heard	Director
<u>*</u> Lloyd E. Johnson	Director
<u>*</u> Elizabeth M. Lilly	Director
<u>*</u> Donald A. Nolan	Chairman
<u>*</u> Herbert K. Parker	Director
<u>*</u> Mark A. Pompa	Director
<u>*</u> Patricia K. Wagner	Director

*By: /s/ Meghan M. Elliott
Meghan M. Elliott
Attorney-in-Fact



October 13, 2021

Apogee Enterprises, Inc.
4400 West 78th Street, Suite 520
Minneapolis, Minnesota 55435

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel to Apogee Enterprises, Inc., a Minnesota corporation (the “Company”), in connection with a Registration Statement on Form S-8 (the “Registration Statement”) filed by the Company with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”), relating to the registration of the offer and sale by the Company of up to \$18,000,000 of deferred compensation obligations (the “Deferred Compensation Obligations”) under the Apogee Enterprises, Inc. 2011 Deferred Compensation Plan, as amended (the “Plan”).

We have examined such documents and have reviewed such questions of law as we have considered necessary or appropriate for the purposes of our opinions set forth below. In rendering our opinions set forth below, we have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures and the conformity to authentic originals of all documents submitted to us as copies. We have also assumed the legal capacity for all purposes relevant hereto of all natural persons. As to questions of fact material to our opinions, we have relied upon certificates or comparable documents of officers and other representatives of the Company and of public officials.

Based on the foregoing, we are of the opinion that the Deferred Compensation Obligations have been duly authorized by the Company and, when created in accordance with the terms of the Plan, will be valid and binding obligations of the Company.

Our opinions expressed above are limited to the laws of the State of Minnesota. Our opinions set forth above are subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law relating to or affecting creditors’ rights generally (including, without limitation, fraudulent conveyance laws) and the effect of general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Dorsey & Whitney LLP

RAR

50 South Sixth Street | Suite 1500 | Minneapolis, MN | 55402-1498 | T 612.340.2600 | F 612.340.2868 | dorsey.com

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our reports dated April 22, 2021, relating to the financial statements of Apogee Enterprises, Inc. and the effectiveness of Apogee Enterprises, Inc.'s internal control over financial reporting, appearing in the Annual Report on Form 10-K of Apogee Enterprises, Inc. for the year ended February 27, 2021.

/s/ Deloitte & Touche LLP
Minneapolis, Minnesota
October 13, 2021

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Ty R. Silberhorn, Nisheet Gupta and Meghan M. Elliott, and each of them, the undersigned's true and lawful attorneys-in-fact and agents, each acting alone, with the powers of substitution and revocation, for the undersigned and in the undersigned's name, place and stead, in any and all capacities, to sign one or more Registration Statements on Form S-8, and any and all amendments (including post-effective amendments) thereto, relating to (i) the registration of the reoffer and resale of an aggregate of 45,662 shares of the Company's common stock, par value \$0.33 1/3 per share, issued Ty R. Silberhorn under a Restricted Stock Agreement, dated as of January 4, 2021, by and between the Company and Mr. Silberhorn as an inducement award in connection with Mr. Silberhorn's commencement of employment with the Company, (ii) the registration of \$5,000,000 of deferred compensation obligations under the Apogee Enterprises, Inc. 2021 Deferred Compensation Plan for Non-Employee Directors, and (iii) the registration of an additional \$18,000,000 of deferred compensation obligations under the Apogee Enterprises, Inc. 2011 Deferred Compensation Plan (which incorporates the contents of the Company's previous Registration Statement on Form S-8 identified as File No. 3330169944), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, and with such state commissions and other agencies as necessary, granting unto such attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as the undersigned might or could do in person, hereby ratifying and confirming all that such attorneys-in-fact and agents, or any of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, this Power of Attorney has been signed by the following persons as of the dates set forth below:

Signature	Title	Date
<u>/s/ Ty R. Silberhorn</u> Ty R. Silberhorn	President, Chief Executive Officer and Director (principal executive officer)	October 6, 2021
<u>/s/ Nisheet Gupta</u> Nisheet Gupta	Chief Financial Officer (principal financial and accounting officer)	October 11, 2021
<u>/s/ Donald A. Nolan</u> Donald A. Nolan	Chairman	October 10, 2021
<u>/s/ Christina M. Alvord</u> Christina M. Alvord	Director	October 7, 2021
<u>/s/ Frank G. Heard</u> Frank G. Heard	Director	October 7, 2021
<u>/s/ Lloyd E. Johnson</u> Lloyd E. Johnson	Director	October 7, 2021
<u>/s/ Elizabeth M. Lilly</u> Elizabeth M. Lilly	Director	October 5, 2021
<u>/s/ Herbert K. Parker</u> Herbert K. Parker	Director	October 11, 2021
<u>/s/ Mark A. Pompa</u> Mark A. Pompa	Director	October 6, 2021
<u>/s/ Patricia K. Wagner</u> Patricia K. Wagner	Director	October 11, 2021