



# Washington Pulse

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## PEP Model Evolves with DOL Proposed Registration Guidance

The DOL has issued a [proposed rule](#) on registration for pooled plan providers (PPPs), who may begin offering pooled employer plans (PEPs) on January 1, 2021. As this date quickly approaches, those who are considering offering or adopting a PEP need further guidance. But at least this proposed rule starts to answer some of the many questions that must be resolved before PEPs can become a viable alternative for employers.

### Background

Single employer plans are established by individual businesses—or groups of closely related businesses, such as controlled groups or affiliated service groups. By contrast, multiple employer plans (MEPs) have generally been the solution for certain loosely related businesses that want to adopt a common retirement plan. Historically, [the rules on who can participate in a MEP](#) have presented significant obstacles for employers: only those in the same bona fide group, association, or professional employer organization (PEO) can adopt a MEP and, until the release of the [final regulations](#) on association retirement plans (ARPs) and other MEPs in July 2019, the rules defining such groups were unclear. While the ARP regulations provided much needed clarity and provided an opportunity for expanded use of MEPs, many believed the full potential for MEPs could still not be reached.

Congress addressed this perceived gap by creating the PEP framework in the Setting Every Community Up for Retirement Enhancement (SECURE) Act, which was enacted in December 2019. PEPs offer a different way to gain access to retirement plans by allowing a MEP structure for *unrelated* businesses. By removing the commonality requirement previously associated with other MEPs, and by transferring most administrative and fiduciary duties from the employer to the PPP under a PEP arrangement, lawmakers hope to reduce employer barriers to adopting retirement plans for their employees.

While the SECURE Act provided a framework, many significant questions must be addressed before prospective providers can confidently enter the PEP marketplace. The SECURE Act directs various federal agencies to provide necessary guidance, including model plan language, that identifies the administrative duties and other actions required of PPPs. But even as we await further guidance, the SECURE Act provides important details about PEPs and PPPs.

**NOTE:** *Before guidance describing the operational aspects of PEPs is issued, employers and pooled plan providers who comply in good faith with a reasonable interpretation of the SECURE Act provisions will be treated as meeting the requirements.*

**PEP documentation.** The Treasury Department is required to issue model plan document language (as well as other guidance). The PEP plan documents must contain, among other things, the following provisions:

- Designation and acknowledgement in writing that the PPP is a named fiduciary and plan administrator under ERISA.
- Designation of one or more trustees (other than the employer) as responsible for collecting contributions, holding the assets of the plan, and implementing written contribution collection procedures.
- Prohibition on unreasonable restrictions, fees, or penalties charged by the PPP to employers, participants, and beneficiaries with regard to ceasing participation or other plan transactions, such as distributions and transfers.

**Fiduciary responsibilities.** With single employer plans, employers bear fiduciary responsibility for plan operations; with pooled employer plans, PPPs are required to be a named fiduciary. So while employers cannot fully delegate all of their fiduciary duties, they can share the burden with the PPP.

Each employer in the PEP retains fiduciary responsibility for

- Prudently selecting and monitoring the PPP,
- Prudently selecting and monitoring any other named fiduciaries of the plan, and
- Investing and managing their employees' assets within the PEP (unless the PPP delegates this duty to another fiduciary, such as an investment advisor).

The PPP takes over plan administration—such as facilitating plan amendments, testing for compliance, and filing annual information returns—but employers still have a role in monitoring the PPP. The process begins, however, with the registration of PPPs.

## Electronic Registration for Pooled Plan Providers

The SECURE Act requires each PPP to register with the DOL and the Treasury Department—and to register each PEP that it establishes. This requirement will be satisfied by completing the new *Form PR – Registration for Pooled Plan Provider*, which is included in the DOL's proposed rule. By gathering this information, the DOL and Treasury will be better prepared to oversee the PEP market and to provide regulatory agencies, prospective employer customers, and the public with relevant data about available PPPs.

Each PPP will be responsible for its own registration and for any update or supplement to past filings.

- **Initial Registration** – 30 to 90 days before beginning operations, the PPP must register with basic identifying information and a summary of its services, marketing activities, and any pending legal or regulatory actions in which they are involved. The DOL considers a PPP to begin operations when it begins publicly marketing a PEP. Under the proposed regulations, “preliminary business activities” may be undertaken before registration, but publicly marketing services as a PPP cannot.
- **Supplemental Notice** – The PPP must inform the DOL of each new PEP and make supplemental filings within 30 days of any change to the initial registration—or of other changes such as a significant change in business structure of the PPP.
- **Amendments** – Errors and omissions related to the initial registration must be corrected by amending the filing within a reasonable period following discovery.
- **Final Filing** – The PPP must complete a final filing when the last PEP it administers is terminated and all assets have been properly distributed.

Consistent with regulatory efforts to simplify procedures and become paperless, the DOL will administer the registration process online with the same “EFAST 2” electronic filing system currently used to receive the Form 5500.

## Comment Period

The proposed rule was published in the Federal Register on September 1, 2020 with a 30-day comment period, so the DOL will accept comments until October 1, 2020. Comment has been requested on various aspects of the PPP registration process to ensure that the proposed rule is not unreasonably burdensome. The DOL has specifically asked for comments on particular concerns, including whether PPPs should be required to report additional information upon registration and whether the DOL should refer to other filings to acquire information necessary for registration.

## Next Steps

In order to make the registration platform available before the start of 2021, the DOL will need to issue a final rule on registration requirements soon after the comment period ends. The DOL's proposed registration requirement alone is

not likely to dissuade those institutions who are already preparing to become pooled plan providers. But more guidance on PEPs and PPPs is still needed.

Ascensus will continue to follow any new guidance as it is released. Visit [ascensus.com](https://ascensus.com) for the latest developments.