



Washington Pulse

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DOL Releases Final Rule for Pooled Plan Provider Registration

The SECURE Act makes pooled employer plans (PEPs) a reality as of January 1, 2021. Many details need to be clarified by the Department of Labor (DOL) and IRS. But one initial hurdle has been cleared: The DOL has issued [final regulations](#) on registering as a pooled plan provider (PPP), which is one of the initial steps that such providers must take before offering PEPs. While the final rule is quite similar to the proposed rule (published on September 1, 2020), it contains several noteworthy revisions, including a provision that makes it easier to register in time for the January 1 PEP effective date.

Background

Last December, the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 was enacted. The SECURE Act revised both ERISA and the Internal Revenue Code to allow unrelated employers to participate in a pooled employer plan, which is a type of open multiple employer plan (MEP). While we expect detailed guidance on many other aspects of PEP implementation, we now have a clear picture of the registration process. This article focuses on the PPP registration requirements. For more background information on PEPs, see Ascensus's September 11, 2020 [Washington Pulse](#).

The SECURE Act added pooled plan provider language both in Internal Revenue Code Sec. 413(e) and in ERISA Sec. 3(44). These parallel provisions require that PPPs

- designate and acknowledge in writing that the PPP is a named fiduciary and plan administrator under ERISA,
- act as the person responsible to perform all administrative duties to ensure that the plan meets Internal Revenue Code and ERISA requirements,
- ensure that all those who handle plan assets or act as plan fiduciaries meet ERISA's bonding rules, and
- register as a pooled plan provider.

Participating employers delegate significant responsibility to the PPP. This is why the last requirement—that PPPs register with the DOL and IRS—is so important. Registration before beginning operations enables both of these entities to immediately monitor those who become pooled plan providers. Information about PPPs and participating employers would eventually be captured when employers filed *Form 5500, Annual Return/Report of Employee Benefit Plan*. But there would be a lengthy delay between plan establishment and the first Form 5500 return due date. Hence the rule that PPPs must file a registration statement *before* operating a PEP.

Specific Registration Requirements

The DOL's Employee Benefits Security Administration has released [Form PR – Registration for Pooled Plan Provider](#) in conjunction with publishing the final regulations. PPPs must file this form with the DOL electronically, which will ensure that the DOL and IRS receive all required information. (Filing the Form PR with the DOL satisfies the SECURE Act requirement to register with the IRS.) This electronic format will also expedite information requests made by interested stakeholders performing due diligence on PPPs.

Filing obligations. PPPs must file Form PR in several different contexts, with all filings intended to keep the DOL and IRS fully informed of any changes to a provider's PEP operations.

Initial registration – The PPP must register at least 30 days before beginning operations. Under the proposed regulations, this meant at least 30 days before publicly marketing a PEP. But some entities may initiate certain public marketing activities before they decide to commit to entering the PEP market. So the final rule defines “initiating operations” of a PEP as “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.”

Supplemental filings – The final regulations identify two types of supplemental filings: one upon actual commencement of operations and the second when any changes happen after the initial registration. In the first type of supplemental filing, the PPP may not have submitted certain information (e.g., plan number and trustee data) with the initial registration. In this case, a supplemental filing is needed. But if all the required information had already been provided with the initial registration, the PPP would not need a supplemental filing before beginning PEP operations.

PPPs must also submit a supplemental filing within the later of 30 days after the calendar quarter in which a change occurs or 45 days after the change. This deadline is later than what the proposed regulations called for. The following changes (or “reportable events”) require the PPP to submit a supplemental filing.

- Changes in information previously reported.
- Changes in corporate or business structure.
- Receipt of notice of new administrative proceedings or enforcement actions.
- Receipt of notice of finding of fraud, dishonesty, or mismanagement.
- Receipt of notice of filing of criminal charges.

Amendment and correction of registration information – Errors and omissions related to the initial registration and supplemental filings must be corrected by amending the filing within a reasonable period following discovery. The DOL expects to add a new question on the Form 5500 that would ask whether the PPP has filed its registration and any required updates. This will enhance the DOL's power to enforce the registration process.

Final Filing – The PPP must complete a final filing when it terminates the last PEP it administers and all assets have been properly distributed. This final Form PR must be filed by the later of 30 days after the calendar quarter in which the final Form 5500 was filed or 45 days after such filing.

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.

Special transition period. Because the final regulations were released so close to the commencement date for PEPs, they became effective immediately upon publication in the *Federal Register* on November 16, 2020. They also contain a special provision that allows a PPP to file an initial registration any time before February 1, 2021, provided that it is filed on or before the PPP begins operations. This

modification essentially waives the 30-day waiting period between registration and the start of plan operations—as long as the PPP files the registration by February 1, 2021.

Registration content requirements. In developing Form PR, the DOL tried to balance three overlapping considerations: 1) its own need for information to oversee PPPs, 2) employers' need for information as they perform due diligence on PPPs, and 3) the possible administrative burden and expense involved for PPPs and the plans they operate. Form PR requires specific information on PPPs.

1. Legal business name and any trade name (“doing business as”).
2. Federal employer identification number (EIN).
3. Business mailing address and phone number.
4. Address of any public website or websites.
5. Name, mailing address, telephone number, and email address for the PPP’s “responsible compliance official.”
6. The PPP’s agent for service of legal process (that is, the person or entity that is authorized to receive legal documents) and the address at which these documents may be served on the agent.
7. Approximate date when pooled plan operations are expected to commence.
8. Description of the administrative, investment, and fiduciary services that will be offered or provided in connection with the PEPs, including a description of the role of any affiliates in such services.
9. Statement disclosing any ongoing federal or state criminal proceeding (or any criminal convictions) against the PPP (or any officer, director, or employee) related to services to any employee benefit plan. (This generally applies to matters within 10 years of the registration date.)
10. Statement disclosing any ongoing civil or formal administrative proceedings against the PPP (or any officer, director, or employee) involving fraud or dishonesty with respect to any employee benefit plan, or involving mismanaging plan assets.

While the final Form PR requires largely the same information that was required in the proposed regulations, the DOL did revise a number of items. For example, it clarified that a “compliance officer” can be identified by name, title, or office and that a PPP does not have to hire or promote an individual with any particular degree or certification. The DOL also more precisely defined “administrative proceeding” to exclude routine regulatory oversight activities and to specifically limit the term to formal administrative hearings.

More to Come

The DOL and IRS will certainly release more guidance on PEPs and PPPs. For instance, we’ll need detailed direction on the “one bad apple” rule—and how to remove such a noncompliant employer from the PEP. And we will need standard IRS text for amending prototype documents in addition to broad guidance on PEP administrative concerns. But at least regarding the registration requirements, we have a clear path. The DOL and IRS have coordinated to develop the final regulation. So registration with the DOL also satisfies the requirement to register with the IRS. And we expect continued coordination as further guidance is released. Meanwhile, the DOL has reiterated in the final regulations an important safe harbor: employers and pooled plan providers who comply in good faith with a reasonable interpretation of the SECURE Act’s PEP and PPP provisions *before* guidance is issued will *not* be treated as failing to meet such guidance once it is issued.

Ascensus will continue to follow any new guidance as it is released. Visit ascensus.com for the latest developments.