

Publications

DOL Proposed Pooled Plan Provider Registration Rule

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The [Setting Every Community Up for Retirement Enhancement Act of 2019](#) (Pub. L. 116-94, Division O, the “SECURE Act”) created a new structure through which completely unrelated employers can participate in a single defined contribution plan beginning on January 1, 2021. These Pooled Employer Plans (“PEPs”) must have a Pooled Plan Provider (“PPP”), and each PPP must register with the Department of Labor (“DOL”) prior to beginning operations. On August 20, 2020, DOL released [a proposed regulation](#) (the “Proposed Rule”) detailing the PPP registration requirements. The Proposed Rule is open for comment for 30 days from the date of publication in the Federal Register.

Proposed Rule

Under section 3(44) of the Employee Retirement Income Security Act of 1974 (added by the SECURE Act), every PEP must designate in the plan a PPP who is a named fiduciary, plan administrator, and person responsible to perform all administrative duties. A PPP must, among other things, register with DOL and the Treasury Department before beginning operations. Congress included this registration requirement to ensure that DOL is able to effectively oversee PEPs but did not specify what information should be provided.

The Proposed Rule would both provide a mechanism for entities to register as a PPP and impose on PPPs an ongoing obligation to update and supplement past filings. Each of the filing requirements are summarized below.

- *Initial registration.* Under the Proposed Rule, a PPP would have to make an initial registration filing 30 days (and not more than 90 days) before “beginning operations” as a PPP. This initial filing would include basic identifying information about the PPP, including information about the PPP’s structure, affiliated service providers, marketing activities, PEP services, and pending legal or regulatory proceedings, and an identification and contact information for the PPP’s chief compliance officer. Notably, DOL takes the position in the preamble to the Proposed Rule that a

PPP begins operations when it begins public marketing of a PEP. However, a PPP is not required to make the initial filing before engaging in preliminary business activities, including entering contracts with subcontractors/partners, obtaining licenses, and communicating in order to evaluate market demand.

- *Supplemental reports.* Before a PPP initiates operations of a PEP, the Proposed Rule would require the PPP to submit a supplemental filing for each PEP with the PEP's name, trustee identification information, and plan EIN. A PPP must also make a supplemental filing within 30 days if there is (i) any change in the information included in the initial registration, (ii) any significant change to the corporate or business structure of the PPP (e.g., a merger, acquisition, or bankruptcy), (iii) receipt of written notice of any administrative enforcement action related to an employee benefit plan, (iv) a finding of fraud or dishonesty by a court or agency, or (v) notice of criminal charges related to an employee benefit plan against the PPP or any officer, director or employee.
- *Amended filings.* The Proposed Rule would allow PPPs to correct inadvertent or good faith registration errors and omissions by making an amended filing within "a reasonable period of the discovery of the error or omission."
- *Final filing.* The Proposed Rule would require a PPP to make a final filing when the PPP has ceased operating all PEPs. For example, a PPP with only a single PEP would make a final filing if the PPP terminated the PEP (g., adopted a resolution terminating the plan, distributed all assets, and filed a final Form 5500).

The Proposed Rule would require PPP registrations to be filed electronically on a new EBSA Form PR (Pooled Plan Provider Registration) through DOL's system used to file Form 5500s. Like the Form 5500, the data filed on Form PR would be publicly available on DOL's website. DOL also intends to modify Form 5500 to ask whether a PPP filed its registration statement, including any required updates, and to report the electronic confirmation number.

Comment Period

DOL has requested that stakeholders provide comments on the Proposed Rule. The agency specifically requested comments on the following issues:

- The definition of "beginning operations" as a PPP, which determines when the initial registration must be made;
- Additional classes of information or reportable events that should be included in the registration requirement;
- Whether there is a more efficient or effective way of collecting information, including reliance on other federal or state filings; and
- Whether the disclosure of certain criminal, civil, or administrative proceedings should be expanded (e.g., to include disclosures of settlements related to fiduciary liability claims).

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