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## U.S. Department of Labor Unveils Registration Requirements for Financial Services Firms That Operate as Pooled Plan Providers to a New Generation of Retirement Plans



Banks, trust companies, third-party administrators and other financial services firms seeking to act as “pooled plan providers” (PPPs) for “pooled employer plans” (PEPs) under the U.S. Employee Retirement Income Security Act of 1974, as amended (ERISA), should note a [new and necessary filing requirement](#) with the U.S. Department of Labor (DOL). PPPs may commence operations on Jan. 1, 2021, provided they [electronically](#) register with the DOL using the new Form PR. Filing [Form PR](#) with the DOL also satisfies the corresponding registration requirement with the Department of Treasury (Treasury) to operate as a PPP.

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) authorized a new type of ERISA plan, a PEP. PEPs are individual account plans that offer benefits to employees of multiple, unrelated employers that lack any commonality among the other participating employers. In this sense, these plans are characterized as open multiple employer plans. Small employers can particularly benefit from this type of plan, as most of the administrative and fiduciary responsibilities of the plan can be transferred from the employer to the PPP.

A PPP is at the heart of these new PEPs. Indeed, the plan must designate the PPP and provide that the PPP is a plan administrator and “named fiduciary” under ERISA. A PPP, for example, would be

responsible for filing the PEP's Form 5500 and for conducting proper testing of each plan reasonably necessary to ensure it meets requirements of tax-favored treatment under the U.S. Internal Revenue Code of 1986, as amended. A PPP is also responsible for ensuring that ERISA's bonding requirements are met with respect to each person handling PEP assets. As a plan administrator and named fiduciary under the plan, a PPP will be subject to ERISA's fiduciary duties and other requirements. Each participating employer remains responsible for selecting and monitoring the PPP.

We expect additional guidance from the DOL and Treasury on PEPs and the fiduciary responsibility of participating employers and PPPs in the future. However, this new DOL rule on registration requirements is helpful in facilitating the development and operation of these plans.

## Overview of Registration Requirements for Pooled Plan Providers

Various types of events trigger registration requirements as a PPP, as generally described below.

### Initial Registration

First, there is an initial registration filing of basic identifying information about the PPP. This initial registration must be provided at least 30 days prior to the initiation of operations of the first PEP by the PPP, which will occur on the earlier of either of the following events: (i) the first employer (of the initial PEP) executes or adopts a participation, subscription, or similar agreement for the PEP specifying that it is a PEP; and (ii) the trustee of the PEP first holds any asset in trust. The DOL noted that "[p]reliminary business activities of a would-be pooled plan provider, such as establishing the business organization, creating a business plan, obtaining necessary licenses, entering into contracts with subcontractors or partners, obtaining a Federal employer identification number from the IRS, or actions and communications designed to evaluate market demand, including marketing activity, do not trigger the registration requirement."

However, a PPP wanting to initiate operations of a PEP on or after Jan. 1, 2021, and before Feb. 1, 2021, will satisfy this initial registration requirement if filed anytime before Feb. 1, 2021, provided it is filed on or before the initiation of operations of a PEP.

1. Content requirements:
  - i. The legal business name and any trade name of the PPP;
  - ii. The federal employer identification number (EIN) assigned to the PPP by the IRS;

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- iii. A business phone number employers and employees to contact the PPP for information;
- iv. The business mailing address of the PPP;
- v. The URL of any public website of the PPP or its affiliates to be used to market the PPP to the public or provide public information on the PEPs operated by the PPP;
- vi. The name, mailing address, phone number, and email for the responsible compliance official of the PPP (i.e., the person(s) responsible for addressing questions regarding the PPP's status under, or compliance with, applicable provisions of ERISA and the Code as pertaining to the PEP);
- vii. The agent for service of legal process for the PPP and its address;
- viii. The approximate date when PPP operations are expected to commence;
- ix. A description of the administrative, investment, and fiduciary services to be offered or provided in connection with the PEP by the PPP, including a description of the role of any affiliate in providing such services;
- x. A statement disclosing any ongoing federal or state criminal proceedings, or any federal or state criminal conviction related to the provision of services to, operation of, or investments of, any employee benefit plan, against the PPP or any officer, director, or employee of the PPP; and
  - i. Any criminal conviction may be omitted if the conviction, or related term of imprisonment served, is outside 10 years of the date of registration.
  - ii. A PPP may file an update to remove any criminal matter previously reported for which the defendant has received an acquittal.
- xi. A statement disclosing any ongoing civil or administrative proceedings against the PPP or any officer, director or employee of the PPP involving a claim of fraud or dishonesty with respect to any employee benefit plan or involving the mismanagement of plan assets.

Only one registration must be filed for each entity intending to act as a PPP, regardless of the number of PEPs it operates.

## **Supplemental Electronic Filings for Initiation of Operations or Subsequent Reportable Events**

Second, supplemental filings are required if there is a change in the information reported in the initial registration or if there is a significant new financial and/or operational event related to the PPP. A supplemental filing is also required for each new PEP. In general:

1. **Initiation of PEP Operations:** No later than the initiation of operations of a new PEP, the PPP must file a supplemental report on Form PR containing the name and plan number that the PEP will

use for annual reporting purposes and the name, address, and EIN for the trustee for the plan. This requirement is waived if the PPP includes this information with the initial filing.

2. **Subsequent Reportable Events:** Within the later of 30 days after the calendar quarter in which the following reportable events occurred or 45 days after a following reportable event occurred, the PPP must file a supplemental report on Form PR:
  - i. Any change in the information reported in the initial registration statement;
  - ii. Any significant change in the corporate or business structure (e.g., a merger, acquisition, or initiation of bankruptcy, receivership, or other insolvency proceeding) of the PPP or an affiliate that provides services to any PEP, or the ceasing of all operations as a PPP;
  - iii. Receipt of written notice of the initiation of any administrative proceeding or enforcement action in any court or administrative tribunal by any federal or state governmental agency or other regulatory authority against the PPP or any PPP officer, director or employee involving a claim of fraud or dishonesty with respect to any employee benefit plan or involving the mismanagement of plan assets;
  - iv. Receipt of written notice of a finding involving a claim of fraud or dishonesty with respect to any employee benefit plan, or involving the mismanagement of plan assets; or
  - v. Receipt of written notice of the filing of criminal charges related to the provision of services to, operation of, or investments of any PEP or other employee benefit plan against the PPP or any of its officers, directors or employees.

A PPP may file a single statement to report multiple changes, so long as the timing requirements are met with respect to each reportable change.

## **Final Filing**

Third, a PPP must file a final supplemental filing on Form PR once it has terminated and ceased operating all PEPs. A PEP is treated as having terminated and ceased operating when (i) a resolution has been adopted terminating the PEP; (ii) all assets under the PEP have been distributed to the participants and beneficiaries or legally transferred to the control of another plan; and (iii) a final Form 5500 has been filed for the PEP. The final Form PR filing is due within the later of (a) 30 days after the calendar quarter in which the final Form 5500 for the last PEP operated by the PPP was filed or (b) 45 days after such filing.

## **Correcting an Error**

PPPs may file corrections and amendments of their initial registration and supplemental filings through the electronic filing system. Inadvertent errors in registrations should not necessarily disqualify an entity from constituting a PPP, provided that a corrected or amended filing is submitted within a reasonable period of the discovery of the error or omission. If correcting only information previously reported, a PPP would indicate on the Form PR that the filing is an amended filing, not a supplemental filing.