

SECURE ACT UPDATE: DOL PUBLISHES PROPOSED RULE ON REGISTRATION REQUIREMENTS FOR POOLED PLAN PROVIDERS

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For plan years beginning after December 31, 2020, the SECURE Act (Setting Every Community Up for Retirement Enhancement Act) removes possible barriers to the broader use of multiple employer plans (MEPs). Under rules enacted by the SECURE Act, unrelated employers will be able to more easily band together and provide retirement benefits under a pooled employer plan or PEP, which is a type of MEP. PEPs are individual account plans that will offer small employers, without the need for any commonality among the participating employers or other organizational relationship, access to qualified retirement plan benefits while potentially achieving cost and administrative efficiencies that are more easily realized by larger plans with larger participant pools and larger quantities of investible assets. A PEP is maintained and administered by a pooled plan provider (PPP) who is designated to act as the plan's named fiduciary, and is responsible for performing all administrative duties that are reasonably necessary to ensure that the plan meets relevant tax qualification requirements.

A PPP must register with the Secretary of Labor before beginning operations. In August, the Department of Labor (DOL) published a proposed rule that would establish the requirements for PPPs to register with the DOL. PPP registrations are needed to provide the DOL the information it needs to monitor and oversee PPPs and the PEPs they operate. To allow for proper oversight, the proposed rules would require –

- An initial registration filing; and
- Supplemental filings to report –
 - Changes in the information in the initial filing;
 - Information about each specific PEP before operations are initiated; and
 - Information on specified reportable events (significant financial and operational events related to the PPP and the PEPs sponsored by that PPP, the initiation of bankruptcy/receivership/other insolvency proceeding for the PPP or an affiliate, the cessation of all operations as a PPP, receipt of written notices of administrative or enforcement actions against the PPP related to PEP services and operations, receipt of a finding of fraud or dishonesty by a court or

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governmental agency against the PPP, and receipt of written notice of the filing of criminal charges against the PPP or one of its officers, directors or employees relating to PEP services and operations).

- A final filing once the last PEP has been terminated and ceased operations.

The proposed rules would require registrations to be filed electronically. The DOL intends to use the same system and registration process for filing PPP registrations that plan administrators currently use to file a Form 5500.

The DOL coordinated with the Treasury Department and the IRS to develop the proposed rules. The DOL also invited interested persons to submit comments on all aspects of the proposed rules.