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Employee Benefits Update September 18, 2020

DOL Proposes Registration Requirements for Pooled Plan Providers

Executive Summary

In order to remove possible barriers to the broader use of multiple employer plans, the Setting Every Community Up for Retirement Enhancement Act (the “SECURE Act”) of 2019 authorized the establishment of Pooled Employer Plans (“PEPs”), which are defined contribution plans that provide retirement benefits to employees of two or more unrelated employers funded entirely through individual retirement accounts. Notably, PEPs do not require any commonality of interest or organizational relationship among the participating employers, thereby potentially reducing administrative burdens and costs for employers (especially smaller employers). Pooled Plan Providers (“PPPs”) can begin offering PEPs as of January 1, 2021, but a PPP must first register with the Department of Labor (the “DOL”) before beginning operations. On August 20, the DOL released a [notice of proposed rulemaking](#) (the “Notice”) outlining the PPP registration requirements.

This newsletter discusses the role of a PPP and summarizes the PPP registration process and ongoing filing requirements.



Role of PPP

The PPP will be named as the plan sponsor, plan administrator, and plan fiduciary, and will be responsible for performing all administrative duties related to the PEP, such as testing, filing Forms 5500 for each employer, and filing the new EBSA Form PR (Pooled Plan Provider Registration) with the DOL (included as [Exhibit A](#) of the Notice), prior to commencing operations related to PPPs.

Registration Requirements

The proposed registration process includes an initial, supplemental, and final registration, all using the Form PR.

1. Initial Registration Process: Thirty to ninety days prior to beginning operations related to PEPs, the PPP must provide the following information to the DOL:

- a. General Information: The PPP's legal name (and any trade names), its federal Employer Identification Number ("EIN"), business contact information, and any public website or websites that will be used to market the PEP.
 - b. Legal Contacts: Contact information for primary compliance officers and the name and address of the agent for service of legal process for the PPP.
 - c. Start Date: The approximate start date of the PEP.
 - d. Services Offered: A description of administrative and investment services provided to employers that adopt the PEP, including identification and description of any affiliates expected to aid in the administrative and investment services.
 - e. Disclosure of Past Conduct: Disclosure of any federal or state criminal convictions related to services to, operation of, or investments of an employee benefit plan. The disclosure covers the PPP and any officer, director, or employee of the PPP, if the conviction, or related term of imprisonment served, is within ten years of the date of the registration.
 - f. Disclosure of Current Proceedings: Disclosure of any ongoing criminal, civil, or administrative proceedings related to services to, operation of, or investment of an employee benefit plan, in any court or administrative tribunal by the federal or state government or other regulatory authority against the PPP or any officer, director, or employee of the PPP.
2. Supplemental Filing Process: The PPP must disclose any of the following events in a supplemental filing within thirty days after the occurrence of the change:
 - a. Establishment of a PEP: Before initiating operations of a PEP, a supplemental filing must be submitted with the name, trustee identification information, and EIN of the PEP.
 - b. Changes in Information: Any changes or corrections to previously reported registration information.
 - c. Change in PPP Circumstances: This includes any of the following: (i) a significant change in the corporate or business structure of the PPP, such as merger or acquisition; (ii) filing for bankruptcy, receivership, insolvency or ceasing operations as a PPP; (iii) receiving written notice of any administrative or enforcement action against the PPP or any officer, director, or employee of the PPP; (iv) receiving a written notice of a finding by a court or government agency of fraud or dishonesty against the PPP or any officer, director, or employee of the PPP; or (v) learning of the filing of any criminal charges against the PPP or any officer, director, or employee of the PPP relating to the services to, operations of, or investments of any PEP or other employee benefit plan.

3. *Final Filing Process:* A final filing is required once the PPP has terminated and ceased operating all PEPs. A PPP will be treated as terminated and having ceased operations when a resolution has been adopted terminating the final PEP for which it served as PPP; all assets of the last PEP (including insurance/annuity contracts) have been properly distributed to participants and beneficiaries or legally transferred to the control of another plan; and a final Form 5500 has been filed for the PEP. Within thirty days of filing the final Form 5500, the PPP is required to file the final Form PR. A single combined filing can be used to report that the last PEP operated by the PPP has terminated and to serve as the final Form PR filed by the PEP.

Electronic Filing Requirement

All PPP Forms PR must be filed electronically using the same system and registration process that plan administrators currently use to file the Form 5500 for employee benefit plans.

Next Steps

Currently, the DOL has a 30-day comment period during which interested parties may submit comments to the proposed rule. Instructions for submitting comments can be found at www.regulations.gov.



To discuss pooled employer plans or the proposed rule addressed in this Employee Benefits Update, or any other employee benefits matters, please contact any member of our Employee Benefits and Executive Compensation Group below.

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