

Publications

The Race to Register: DOL Issues Final Rule on PPP Registration

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On November 14, 2020, the Department of Labor (“DOL”) published the final rule “[Registration Requirements for Pooled Plan Providers](#)” (the “Final Rule”). The Final Rule describes the registration requirements for those seeking to serve as “pooled plan providers” (“PPPs”) to “pooled employer plans” (“PEPs”). The DOL’s issuance of the Final Rule was critical given that the SECURE Act permits PEPs and PPPs to “begin operations” on January 1, 2021, provided that the PPP is registered with the DOL.

The Final Rule creates a new Form PR that PPPs will be required to file at least 30 days before the PPP “begins operations.” In addition to this initial filing, the DOL will require supplemental filings at the occurrence of specific reportable events. Lastly, the Final Rule requires a PPP to submit a final filing after a PPP’s last PEP is terminated and ceases operations. PPPs must submit the Form PR electronically through DOL’s electronic filing system [here](#).

As a transition rule, the DOL will waive thirty-day advance filing requirement for those PPPs that file Form PR between November 25, 2020 and January 31, 2021. PPPs filing within this window will be required to file no later than the time that the PEP begins operations.

The Final Rule represents an important milestone for those considering becoming a PPP. While much of the information required by the Form PR is routine, the Form PR will be publically available, and requires the disclosure of certain information that is both sensitive and confidential. For example, the Form PR will require the disclosure of any PPP affiliates that will provide services to the PEP.

We expect that both the DOL and plaintiffs counsel will use the Form PR database for purposes of targeting enforcement efforts and lawsuits. Moreover, the failure to file the initial Form PR or any supplement could endanger the status of the PPP, and ultimately the PEP. Thus, PPPs will want to understand the Form PR and establish a strategy for how to comply. A description of the Final Rule is provided below.

I. Timing of Filing

A. Timing of Initial Form PR

Under ERISA Section 3(43)(A)(ii), a PPP is required to register with DOL and the Department of Treasury (“Treasury”) before “beginning operations as a pooled plan provider.” In the Final Rule, DOL clarified that electronically filing Form PR satisfies these registration requirements. DOL clarified that Form PR must be submitted at least 30 days before a pooled plan begins operations. “Beginning operations” is defined as the earlier of (1) when the first employer executes or adopts a participation, subscription, or similar agreement for the plan specifying that it is a PEP, or (2) when the trustee of the plan first holds any assets in trust.

As noted above, the DOL provided a transition rule to waive the 30-day advance filing requirement for PPPs that file Form PR on or before January 31, 2021. Under this transition rule, PPPs are still required to file Form PR prior to or concurrently with the beginning of their operations

B. Timing of Supplemental Filings

A PPP is required to make two types of supplemental filings during the lifetime of a PEP. First, a PPP must file a supplemental report whenever a new PEP begins operations. This filing is due no later than the date the new PEP begins operations. Second, the Final Rule requires that the PPP file a supplemental report within the later of (1) 30 days after the calendar quarter in which a reportable event occurs (more details on reportable events can be found in Section 2.B below), or (2) 45 days after a reportable event occurs.

C. Timing of Final Filing

After a PPP terminates all plans and ceases operations, a PPP is required to make a final filing. The PPP is required to make the terminal filing within the later of (1) 30 days after the calendar quarter in which the final Form 5500 for the last PEP operated by the PPP was filed, or (2) 45 days after the final Form 5500 is filed. A PPP is deemed to have ceased operations when it has (1) adopted resolutions terminating all of the PEPs that it operates, (2) all assets under the PEPs (including insurance/annuity contracts) have been distributed to the participants and beneficiaries or legally transferred to another plan, and (3) a final Form 5500 has been filed for each PEP.

II. Content of Filings

A. Content of Initial Filing

The DOL explained that the purpose of Form PR is “to provide the Department with sufficient information about persons acting as pooled plan providers to engage in effective monitoring and oversight of this new type of ERISA-covered retirement plan” and to “assist employers performing due diligence in selecting and monitoring pooled employer plans.” While these are the primary constituencies, all PPP registrations will be publicly available. This means that the Form PR will be available not only to the DOL, but also to employers and plaintiffs’ counsel who we would expect to make use of this database.

The Form PR requires that PPPs provide ten pieces of information when making its initial filing. Those include:

- The legal business name and any trade name of the PPP
- The business mailing address and phone number of the PPP
- The PPP’s EIN
- The address of any public website or websites of the PPP or any affiliates to be used to market the PPP or to provide information on PEPs operated by the PPP
- Name, address, contact telephone number, and email address for the person or persons (identified by name, title, or office) responsible for addressing questions regarding the PPPs status under or compliance with ERISA and the Code related to the PEPs it operates

- The PPP's agent for service of legal process and the agent's address
- The approximate date when the PPP's first PEP is expected to begin operations
- Identification of the administrative, investment, and fiduciary services that will be offered or provided by the PPP or the PPP's affiliates to the PEP
- 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, provided that any criminal conviction may be omitted if the conviction, or related term of imprisonment, is outside ten years of the date of registration
- A statement disclosing any ongoing civil or administrative proceedings 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, involving a claim of fraud or dishonesty with respect to any employee benefit plan, or involving the mismanagement of plan assets.

B. Content of Supplemental Filing

PPPs must disclose the creation of a new PEP in a supplemental filing. Those supplemental filings must include the name and plan number that the PEP will use for annual reporting purposes as well as the name, address, and EIN for the PEP's trustee.

PPPs must also submit a supplemental filing if a "reportable event" has occurred. The supplemental filing would disclose the event and must be submitted within "the later of 30 days after the calendar quarter in which the reportable event occurred or 45 days after a reportable event." Reportable events are:

- Any change in the information required in an initial filing
- Any significant change in corporate or business structure (e.g., merger, acquisition, or initiation of bankruptcy, or ceasing operations as a PPP) of the PPP or an affiliate of the PPP that provides services to a PEP
- Receipt of written notice of the initiation of any administrative proceeding or civil enforcement action in any court or administrative tribunal by any federal or State governmental agency or other regulatory authority 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.
- 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.
- Receipt of written notice of the filing of any Federal or State 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 officer, director, or employee of the PPP.

C. Content of Final Filing

After ceasing operations, a PPP must file a final amended Form PR to assist DOL in maintaining an accurate database of persons serving as PPPs. The final Form PR is due within 30 days after the calendar quarter that the Form 5500 of the last PEP operated by the PPP is filed, or 45 days after that filing.

III. Conclusion

This is the first significant piece of PEP guidance the Department has issued. We expect to assist PPPs with registration after DOL's new portal goes live on November 25, 2020. We anticipate that the DOL will issue additional guidance in the near future and we will continue to provide updates for this new and highly evolving marketplace as they arise.

[The-Race-to-Register-DOL-Issues-Final-Rule-on-PPP-Registration](#)