

MEMO# 32921

November 18, 2020

DOL Finalizes Registration Requirements for Pooled Plan Providers

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November 18, 2020 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: DOL Finalizes Registration Requirements for Pooled Plan Providers

On November 12, the Department of Labor (DOL) released a final rule that establishes the requirements for registering with DOL as a “pooled plan provider” (PPP) for “pooled employer plans” (PEPs) under sections 3(43) and 3(44) of ERISA.[\[1\]](#) Section 101 of the Setting Every Community Up for Retirement Enhancement Act (the SECURE Act),[\[2\]](#) permits PPPs to begin offering PEPs on January 1, 2021, but requires persons to register with the Secretary of Labor before beginning operations as a PPP. The rule creates a new form – EBSA Form PR (Pooled Plan Provider Registration) – as the required filing format for PPP registrations. Filing the Form PR with DOL would also satisfy the SECURE Act requirement to register with the Treasury Department.

DOL made several changes to the proposed registration requirements in response to comments from ICI and others.[\[3\]](#) Overall, the final registration requirements include the same categories of information as the proposal, but the final rule clarifies many aspects of the required information in ways that should be helpful to filers.

Overview of the Final Rule

- **Framework of registration process.** Like the proposal, the registration process involves an initial registration, supplemental filings regarding specific reportable events, and a final filing after the provider’s last PEP has been terminated and ceased operations.
- **Timing of registration.** The initial registration must be filed by the registrant at least 30 days before “beginning operations as a pooled plan provider,” which is defined as the “initiation of operations of the first plan that the person operates as a [PEP].” A PEP is treated as initiating operations “when the first employer executes or adopts a participation, subscription, or similar agreement for the plan specifying that it is a [PEP], or, if earlier, when the trustee of the plan first holds any asset in trust.” *This is a welcome change from the proposal, which would have required filing the initial registration no earlier than 90 days before and no later than 30 days before*

publicly marketing services as a PPP or publicly offering a PEP. DOL agreed with our comments that the proposed trigger for initial registration (“publicly marketing”) was unnecessarily broad and that the “no-earlier-than-90 day” component of the time period for initial filing was unnecessary.[\[4\]](#)

- **Transition rule.** A new transition rule permits a person intending to act as a PPP to file the Form PR on or before beginning operations as a PPP (dispensing with the 30-day advance filing requirement) if the filing is made before February 1, 2021. This transition rule would accommodate PPPs that want to initiate operations of a PEP on or after January 1, 2021 and before February 1, 2021.
- **Information required in initial filing.** The initial registration must include identifying information about the provider, certain basic information about the services to be provided, contact information for the provider’s responsible compliance official, name and address of agent for service of process, and information on the existence of civil, criminal, or administrative proceedings. DOL made several clarifying changes to the initial filing requirements, including:
 - Specifying that the contact information for compliance purposes should be that of the PPP’s “responsible compliance official,” who is defined as “the person or persons, identified by name, title, or office, responsible for addressing questions regarding the [PPP]’s status under, or compliance with, applicable provisions of [ERISA] and the Internal Revenue Code as pertaining to a [PEP].” *The preamble explains that this standard simply requires an identification of, and basic contact information for, the person, unit, or element designated by the PPP as the point-person responsible for fielding and addressing questions about the PPP’s status under ERISA and the Code.*[\[5\]](#)
 - Clarifying that the registration form must “identify” rather than “describe” the administrative, investment, and fiduciary services that will be offered or provided in connection with PEPs by the PPP or an affiliate.[\[6\]](#)
 - Clarifying that the filing requires disclosure of ongoing Federal or State criminal proceedings, or Federal or State criminal convictions, 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[\[7\]](#) of the PPP, provided that any criminal conviction may be omitted if the conviction, or related term of imprisonment served, is outside ten years of the date of registration.
 - Narrowing the scope of disclosure of any ongoing civil or administrative proceedings to those in any court or administrative tribunal brought by the Federal or State government or other regulatory authority against the PPP, or any officer, director, or employee[\[8\]](#) of the PPP, involving a claim of fraud or dishonesty with respect to any employee benefit plan, or involving the mismanagement of plan assets. The term “administrative proceedings” means a judicial-type proceeding of public record before an administrative law judge or similar decision-maker. *This is another welcome change from the proposal, which would have required disclosure of a broader range of administrative proceedings, including any proceedings “related to the provision of services to, operation of, or investments of any employee benefit plan” and which (without the new limitation to formal proceedings) could have been interpreted to include routine examinations, inquiries, or audits by regulators.*
- **Registration of additional PEPs.** Like the proposal, PPPs must submit a supplemental filing for each new PEP before the PEP begins operation, unless the PEP was identified in the provider’s initial registration statement. Under the final rule, the

supplemental filing must identify the plan number self-designated by the PPP for annual reporting purposes.

- **Supplemental reportable event filings.** The final rule requires a supplemental report filing (using the Form PR) within the later of 30 days after the calendar quarter in which a reportable event occurred or 45 days after a reportable event occurred. *This is an improvement from the proposal, which would have required a supplemental reportable event filing within 30 days of any reportable event. DOL declined to adopt the annual supplemental report framework that ICI recommended, but explained that it believes the “quarterly” rule in the final regulation strikes a fair balance between the proposal and our request.*[\[9\]](#)

Reportable events include:

- any change in the information provided in the initial registration
 - any significant changes in corporate/business structure of the PPP or affiliate that provides services to a PEP;
 - receiving written notice of the initiation of any administrative proceeding or civil enforcement action 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;
 - receiving 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; and
 - receiving 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.
- **Final filing.** If a PPP has ceased operating all PEPs, the provider must file a final supplemental filing 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.
 - **Electronic filing system.** Form PR must be filed electronically through DOL’s electronic filing system for Form 5500 (EFAST2).[\[10\]](#)

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endnotes

[\[1\]](#) The final rule is available here: <https://www.govinfo.gov/content/pkg/FR-2020-11-16/pdf/2020-25170.pdf> and a news release is available here: <https://www.dol.gov/newsroom/releases/ebsa/ebsa20201112>.

[\[2\]](#) For a description of the SECURE Act, see ICI Memorandum No. 32118, dated December 20, 2019. Available here: https://www.ici.org/my_ici/memorandum/memo32118.

[\[3\]](#) For our description of the proposal, see ICI Memorandum No. 32696, dated August 21,

2020. Available here: https://www.ici.org/my_ici/memorandum/memo32696. For our comment letter on the proposal, see ICI Memorandum No. 32793, dated September 30, 2020. Available here: https://www.ici.org/my_ici/memorandum/memo32793.

[4] 85 Fed. Reg. 72934, 72939 (November 16, 2020).

[5] 85 Fed. Reg. 72941.

[6] The preamble explains: “In response to specific commenters’ concerns about the vagueness of the proposal’s requirement to explain the role of affiliates in connection with providing services, the final rule has been simplified to require merely an identification, by name and EIN, of any affiliate that is expected to provide services to the pooled employer plan. This will allow the Department to follow up as necessary.” 85 Fed. Reg. 72942.

[7] Employees of the PPP include employees of the PEP, but only if they handle assets of the plan, within the meaning of section 412 of ERISA, or if they are responsible for operations or investments of the PEP.

[8] See footnote 6 *supra*.

[9] 85 Fed. Reg. 72945.

[10] The news release indicates that the new electronic filing system will be available on Nov. 25, 2020 at <https://www.efast.dol.gov/>. While filers may begin using the system on Nov. 25, an informational version of the new Form PR and instructions will be made available at <https://www.dol.gov/agencies/ebsa> in the coming days.