
LEGAL UPDATE

PEPs Will be Up and Running by January 1, 2021

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On November 16, 2020, the U.S. Department of Labor (DOL) issued a final rule at 85 Federal Register 72934, providing an electronic filing procedure for interested entities to meet the requirements for registering as a “pooled plan provider” for “pooled employer plans” under the Employee Retirement Income Security Act

of 1974, as amended (ERISA) as amended by the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act). As discussed in our Client Alert of August 25, 2020, the SECURE Act established a new type of multiple employer plan (MEP) for unrelated employers called a “pooled employer plan” (PEP) which must designate

a “pooled plan provider” to serve as named fiduciary and plan administrator. The SECURE Act allows pooled plan providers to begin operating pooled employer plans on January 1, 2021, but requires as a condition that these providers first register 30 days in advance with the Secretary of Labor and the Secretary of the Treasury. To meet this requirement, the DOL issued a proposed registration rule on September 1, 2020.

The final rule, just issued, enables pooled plan providers to register electronically with the DOL, starting on November 25, 2020 at <https://www.efast.dol.gov/>. The rule also finalizes a new form—EBSA Form PR (Pooled Plan Provider Registration)—as the required filing format for pooled plan provider registrations. Filing the Form PR with the Department of Labor also satisfies the SECURE Act requirement to register with the Department of the Treasury. 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. The Department also offers a short grace period—a person intending to act as a pooled plan provider may file the Form PR on or before beginning operations as a pooled plan provider (dispensing with the 30-day advance filing requirement) if the filing is made before February 1, 2021.

In general, the final registration rule is in line with DOL’s proposed registration rule, the details of which we described in our August Client Alert, with one major exception. In response to numerous comments from prospective pooled plan

providers, the final rule clarifies the point at which the pooled plan provider is considered to have “began operations,” the event that requires the registration at least 30 days in advance. The proposed rule defined “beginning operations” as “publicly marketing services as a pooled plan provider or publicly offering a pooled employer plan.” The commenters found this definition too vague, and perhaps prematurely triggering the registration requirement at an exploratory stage of the process. In response, the final rule offers a more concrete, realistic triggering event, defining “beginning operations as a pooled plan provider” as “the initiation of operations of the first plan that the person operates as a pooled employer plan.” Under the rule, a person is treated as initiating operations of a plan as a pooled employer plan “. . .when the first employer executes or adopts a participation, subscription, or similar agreement for the plan specifying that it is a pooled employer plan, or, if earlier, when the trustee of the plan first holds any asset in trust.”

If you have any questions about the SECURE Act, or the terms applicable to a pooled employer plan or pooled plan provider, or the specific registration requirements, please do not hesitate to contact The Wagner Law Group (www.wagnerlawgroup.com).

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