



DOL Issues Guidance on PEPs

Beginning in 2021, Pooled Employer Plans (PEPs) will enable unrelated employers to participate in a single retirement plan program. A Pooled Plan Provider (PPP) is required to operate a PEP. Under a PEP, the role of the named fiduciary, ERISA named plan administrator and the party responsible for all plan administrative duties, are transferred from the participating employers to the PPP. Alternatively, the PPP can partner with other firms to outsource some of these roles. The responsibility for investment management remains with the participating employers unless this role is delegated to another investment fiduciary. The participating employers are also responsible for the selection and oversight of the PPP and other named service providers. A PPP is also required to have a trustee with policies to monitor contributions. **Pentegra can serve as the PPP or as the ERISA 3(16) fiduciary administrator appointed by the PPP.**

The SECURE Act does not limit who can serve as a PPP. The Department of Labor (“DOL”) estimates that approximately 3,200 unique entities will initially register to serve as PPPs. It is anticipated that financial service companies (such as insurance companies, banks and recordkeepers) as well as professional employer organizations and chambers of commerce will be sponsors of PEPs.

The DOL recently issued guidance for entities to register as a PPP. The PPP is required to initially register and has an ongoing obligation to update and supplement past filings. The following is a summary of the filing requirements under the DOL proposal.

- **Initial registration.** A PPP would have to make an initial registration filing at least 30 days (but not more than 90 days) before “beginning operations” as a PPP. It should be noted that the DOL takes the position that a PPP begins operations when it begins public marketing of a PEP. However, a PPP is not required to make the initial filing before engaging in preliminary business activities, including entering into contracts with subcontractors/partners, obtaining licenses, and communicating in order to evaluate market demand. This initial filing would include basic identifying information about the PPP, including information about the PPP’s structure, affiliated service providers, marketing activities, PEP services, and pending legal or regulatory proceedings, and an identification and contact information for the PPP’s chief compliance officer.

The following specific information would be required to be provided in the initial registration filing of the PPP.

- Legal business name and any trade name
- Business Employer Identification Number (“EIN”)
- Business telephone number
 - The DOL expects a PPP to have a call center to handle inquiries from employers interested in or already participating in a PEP as well as for participants covered by the PEP operated by the PPP
- Mailing Address
 - A Website address is required for a PPP to market to the public or to provide public information on a PEP. The DOL believes this will assist employers performing due diligence in selecting and monitoring PPPs.
- Name, mailing address, telephone number, and email address for the primary compliance officer of the PPP
- Agent for service of legal process for the PPP and the address along with a statement that service of legal process may be made on the PPP
- The approximate date when PEP operations are expected to begin.
- A description of administrative and investment services that will be offered or provided by the PPP, including identification of any affiliates expected to have a role in the provision of those administrative and investment services, and a description of the roles of such affiliates.
- Disclosure of any federal or state criminal convictions and ongoing criminal, civil, or administrative proceedings.
- **Supplemental reports.** Before a PPP initiates operations of a PEP, the PPP would be required to submit a supplemental filing for each PEP with the PEP’s name, trustee identification information, and plan EIN. A PPP must also make a supplemental filing within 30 days if there is any of the following:
 - Change in the information included in the initial registration
 - Significant change to the corporate or business structure of the PPP (e.g., a merger, acquisition, or bankruptcy)
 - Receipt of written notice of any administrative enforcement action related to an employee benefit plan
 - Finding of fraud or dishonesty by a court or agency
 - Notice or criminal charges related to an employee benefit plan against the PPP or any officer, director or employee
- **Amended Filings.** The PPP would be allowed to correct inadvertent or good faith registration errors and omissions by making an amended filing within “a reasonable period of the discovery of the error or omission.”
- **Final Filing.** A PPP would be required to make a final filing when the PPP has ceased operating all PEPs.

PPP registrations would be required to be filed electronically and would be publicly available on the DOL’s website. The DOL is seeking public comments on the recently issued guidance.

The proposed detailed registration process reflects the DOL’s concerns about potential inadequate oversight of the PPP (and any other fiduciaries and service providers) due to the significant control the PPP has over the operations of a PEP. **As one of America’s oldest independent fiduciaries and most experienced MEP providers, Pentegra is ideally suited to provide PEPs and serve as a PPP or 3(16) fiduciary for PEPs.**

Contact the Pentegra Solutions Center at solutions@pentegra.com
or 855-549-6689 for expert guidance on how to make the most of the new rules.

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