

116TH CONGRESS
1ST SESSION

S. 1927

To amend the Employee Retirement Income Security Act of 1974 with respect to association retirement plans and other multiple employer pension benefit plans.

IN THE SENATE OF THE UNITED STATES

JUNE 20, 2019

Mr. KENNEDY introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974 with respect to association retirement plans and other multiple employer pension benefit plans.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Expanding Access to
5 Retirement Act of 2019”.

1 **SEC. 2. DEFINITION OF “EMPLOYER” FOR PURPOSES OF AS-**
2 **SOCIATION RETIREMENT PLANS AND OTHER**
3 **MULTIPLE EMPLOYER PENSION BENEFIT**
4 **PLANS.**

5 (a) DEFINITION OF EMPLOYER.—Section 3(5) of the
6 Employee Retirement Income Security Act of 1974 (29
7 U.S.C. 1002(5)) is amended by striking the period and
8 inserting “(which, with respect to a defined contribution
9 pension plan, includes only a bona fide group or associa-
10 tion of employers or a bona fide professional employer or-
11 ganization, as defined in paragraphs (43) and (44), re-
12 spectively).”.

13 (b) BONA FIDE GROUP OR ASSOCIATION OF EM-
14 PLOYERS.—Section 3 of the Employee Retirement Income
15 Security Act of 1974 (29 U.S.C. 1002) is amended by
16 adding at the end the following:

17 “(43)(A) The term ‘bona fide group or associa-
18 tion of employers’ means a group or association of
19 employers that meets all of the following require-
20 ments:

21 “(i) The primary purpose of the group or
22 association may be to offer and provide multiple
23 employer pension plan coverage to employer
24 members and their employees, provided that the
25 group or association has at least one substantial
26 business purpose unrelated to offering and pro-

1 viding multiple employer pension plan coverage
2 or other employee benefits.

3 “(ii) Each employer member of the group
4 or association participating in the plan is a per-
5 son acting directly as an employer of at least
6 one employee who is a participant covered
7 under the plan.

8 “(iii) The group or association has a for-
9 mal organizational structure with a governing
10 body and has by-laws or other similar indica-
11 tions of formality.

12 “(iv) The functions and activities of the
13 group or association are controlled, in form and
14 in substance, by its employer members and the
15 group’s or association’s employer members that
16 participate in the pension plan.

17 “(v) The employer members have a com-
18 monality of interest as described in subpara-
19 graph (C).

20 “(vi) The group or association does not
21 make plan participation through the association
22 available other than to employees and former
23 employees of employer members, and their
24 beneficiaries.

1 “(vii) The group or association is not a
2 bank or trust company, insurance issuer,
3 broker-dealer, or other similar financial services
4 firm (including pension record keepers and
5 third-party administrators), or owned or con-
6 trolled by such an entity or any subsidiary or
7 affiliate of such an entity, other than to the ex-
8 tent such an entity, subsidiary, or affiliate par-
9 ticipates in the group or association in its ca-
10 pacity as an employer member of the group or
11 association.

12 “(B) For purposes of subparagraph
13 (A)(i)—

14 “(i) a ‘substantial business purpose’ is
15 considered to exist if the group or associa-
16 tion would be a viable entity in the absence
17 of sponsoring an employee benefit plan;
18 and

19 “(ii) a ‘business purpose’ includes pro-
20 moting common business interests of the
21 group’s or association’s members or the
22 common economic interests in a given
23 trade or employer community and is not
24 required to be a for-profit activity.

1 “(C)(i) For purposes of subparagraph
2 (A)(5)—

3 “(I) Employer members of a group or
4 association shall be considered to have a
5 commonality of interest if—

6 “(aa) the employers are in the
7 same trade, industry, line of business,
8 or profession; or

9 “(bb) each employer has a prin-
10 cipal place of business in the same re-
11 gion that does not exceed the bound-
12 aries of a single State or a metropoli-
13 tan area (even if the metropolitan
14 area includes more than one State).

15 “(ii) In the case of a group or associa-
16 tion that is sponsoring a multiple employer
17 plan and that is an employer member of
18 the group or association, the group or as-
19 sociation will be deemed for purposes of
20 paragraph (b)(2)(i)(A) to be in the same
21 trade, industry, line of business, or profes-
22 sion, as applicable, as the other employer
23 members of the group or association.

24 “(D)(i) For purposes of subparagraph (A),
25 a working owner of a trade or business without

1 common law employees may qualify as both an
2 employer and as an employee of the trade or
3 business.

4 “(ii) For purposes of clause (i), the term
5 ‘working owner’ means any person who a re-
6 sponsible plan fiduciary reasonably determines
7 is an individual—

8 “(I) who has an ownership right of
9 any nature in a trade or business, whether
10 incorporated or unincorporated, including
11 a partner or other self-employed individual;

12 “(II) who is earning wages or self-em-
13 ployment income from the trade or busi-
14 ness for providing personal services to the
15 trade or business; and

16 “(III) who—

17 “(aa) works on average at least
18 20 hours per week or at least 80
19 hours per month providing personal
20 services to the working owner’s trade
21 or business; or

22 “(bb) has wages or self-employ-
23 ment income from such trade or busi-
24 ness that at least equals the working
25 owner’s cost of coverage for participa-

1 tion by the working owner and any
2 covered beneficiaries in any group
3 health plan sponsored by the group or
4 association in which the individual is
5 participating or is eligible to partici-
6 pate.

7 “(iii) The determination of whether
8 an individual qualifies as a working owner
9 shall be made when the individual first be-
10 comes eligible for participation in the de-
11 fined contribution multiple employer pen-
12 sion plan and continued eligibility pursuant
13 to this subparagraph shall be periodically
14 confirmed pursuant to reasonable moni-
15 toring procedures.”.

16 (c) BONA FIDE PROFESSIONAL EMPLOYER ORGANI-
17 ZATION.—Section 3 of the Employee Retirement Income
18 Security Act of 1974 (29 U.S.C. 1002), as amended by
19 subsection (b), is further amended by adding at the end
20 the following:

21 “(44)(A) The term ‘bona fide professional em-
22 ployer organization’ means a human resource com-
23 pany that contractually assumes certain employer re-
24 sponsibilities of employers who are clients of the or-
25 ganization (referred to in this paragraph as ‘client

1 employers’) and that meets all of the following re-
2 quirements:

3 “(i) The organization performs substantial
4 employment functions, as described in subpara-
5 graph (B), on behalf of client employers, and
6 maintains adequate records relating to such
7 functions.

8 “(ii) The organization has substantial con-
9 trol over the functions and activities of the mul-
10 tiple employer plan, as the plan sponsor (within
11 the meaning of section 3(16)(B)), the plan ad-
12 ministrator (within the meaning of section
13 3(16)(A)), and a named fiduciary (within the
14 meaning of section 402).

15 “(iii) The organization ensures that each
16 client employer that adopts the multiple em-
17 ployer pension plan acts directly as an employer
18 of at least one employee who is a participant
19 covered under the defined contribution multiple
20 employer plan.

21 “(iv) The organization ensures that partici-
22 pation in the multiple employer pension plan is
23 available only to employees and former employ-
24 ees of the organization and client employers,
25 and their beneficiaries.

1 “(v) The organization establishes a mul-
2 tiple employer pension plan.

3 “(B)(i) The Secretary shall determine
4 whether an organization is considered to per-
5 form substantial employment functions on be-
6 half of client employers, within the meaning of
7 subparagraph (A)(i), based on the criteria
8 under clause (ii).

9 “(ii) An organization performs substantial
10 employment functions if either of the following
11 applies:

12 “(I) The organization is a certified
13 professional employer organization (as de-
14 fined in section 7705(a) of the Internal
15 Revenue Code of 1986), has entered into a
16 service contract (within the meaning of
17 section 7705(e)(2) of such Code) with re-
18 spect to its clients that adopt the defined
19 contribution multiple employer pension
20 plan.

21 “(II) The organization meets 5 or
22 more of the following criteria with respect
23 to employees of client employers partici-
24 pating in the multiple employer pension
25 plan:

1 “(aa) The organization is respon-
2 sible for payment of wages to employ-
3 ees of its client employers that adopt
4 the plan without regard to the receipt
5 or adequacy of payment from such cli-
6 ent employers.

7 “(bb) The organization is respon-
8 sible for reporting, withholding, and
9 paying any applicable Federal employ-
10 ment taxes for its client employers
11 that adopt the plan, without regard to
12 the receipt or adequacy of payment
13 from those client employers.

14 “(cc) The organization is respon-
15 sible for recruiting, hiring, and firing
16 workers of its client employers that
17 adopt the plan in addition to the cli-
18 ent employer’s responsibility for re-
19 cruiting, hiring, and firing workers.

20 “(dd) The organization is respon-
21 sible for establishing employment poli-
22 cies, establishing conditions of em-
23 ployment, and supervising employees
24 of its client employers that adopt the
25 plan in addition to the client employ-

1 er's responsibility to perform such
2 functions.

3 “(ee) The organization is respon-
4 sible for determining employee com-
5 pensation, including method and
6 amount, of employees of its client em-
7 ployers that adopt the plan in addi-
8 tion to the client employers' responsi-
9 bility to determine employee com-
10 pensation.

11 “(ff) The organization is respon-
12 sible for providing workers' compensa-
13 tion coverage in satisfaction of appli-
14 cable State law to employees of its cli-
15 ent employers that adopt the plan,
16 without regard to the receipt or ade-
17 quacy of payment from those client
18 employers.

19 “(gg) The organization is respon-
20 sible for integral human-resource
21 functions of its client employers that
22 adopt the plan, such as job-description
23 development, background screening,
24 drug testing, employee-handbook
25 preparation, performance review, paid

1 time-off tracking, employee griev-
2 ances, or exit interviews, in addition
3 to the client employer's responsibility
4 to perform such functions.

5 “(hh) The organization is respon-
6 sible for regulatory compliance of its
7 client employers participating in the
8 plan in the areas of workplace dis-
9 crimination, family and medical leave,
10 citizenship or immigration status,
11 workplace safety and health, or Pro-
12 gram Electronic Review Management
13 labor certification, in addition to the
14 client employer's responsibility for
15 regulatory compliance.

16 “(ii) The organization continues
17 to have employee-benefit-plan obliga-
18 tions to multiple employer pension
19 plan participants after the client em-
20 ployer no longer contracts with the or-
21 ganization.

22 “(iii) The Secretary may determine
23 that an organization performs substantial
24 employment functions based upon finding
25 that such organization meets as few as a

- 1 single criterion under subclause (I) or (II)
- 2 of clause (ii).”.

○