

114TH CONGRESS
2D SESSION

H. R. 6396

To amend the Internal Revenue Code of 1986 to modify the qualification requirements with respect to certain multiple employer plans with pooled plan providers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 29, 2016

Mr. BUCHANAN (for himself, Mr. RENACCI, Mr. KIND, and Mr. NEAL) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to modify the qualification requirements with respect to certain multiple employer plans with pooled plan providers, and for other purposes.

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 “Retirement Security
5 for American Workers Act”.

1 **SEC. 2. MULTIPLE EMPLOYER PLANS WITH POOLED PLAN**
2 **PROVIDERS.**

3 (a) QUALIFICATION REQUIREMENTS.—Section 413
4 of the Internal Revenue Code of 1986 is amended by add-
5 ing at the end the following new subsection:

6 “(e) APPLICATION OF QUALIFICATION REQUIRE-
7 MENTS FOR CERTAIN MULTIPLE EMPLOYER PLANS WITH
8 POOLED PLAN PROVIDERS.—

9 “(1) IN GENERAL.—Except as provided in para-
10 graph (2), if a defined contribution plan to which
11 subsection (c) applies—

12 “(A) is sponsored by employers that both
13 have a common interest other than having
14 adopted the plan and control the plan, or

15 “(B) in the case of a plan not described in
16 subparagraph (A), has a pooled plan provider,
17 then the plan shall not be treated as failing to meet
18 the requirements under this title applicable to a plan
19 described in section 401(a) or to a plan that consists
20 of individual retirement accounts described in sec-
21 tion 408 of such Code (including by reason of sub-
22 section (c) thereof), whichever is applicable, merely
23 because one or more employers of employees covered
24 by the plan fail to take such actions as are required
25 of such employers for the plan to meet such require-
26 ments.

1 “(2) LIMITATIONS.—

2 “(A) IN GENERAL.—Paragraph (1) shall
3 not apply to any plan unless the terms of the
4 plan provide that in cases of employers failing
5 to take the actions described in paragraph
6 (1)—

7 “(i) the assets of the plan attributable
8 to employees of the employer will be trans-
9 ferred to a plan maintained only by the
10 employer (or its successor), to an eligible
11 retirement plan as defined in section
12 402(c)(8)(B) for each individual whose ac-
13 count is transferred, or to any other ar-
14 rangement that the Secretary determines is
15 appropriate, unless the Secretary deter-
16 mines it is in the best interests of such em-
17 ployees to retain the assets in the plan,
18 and

19 “(ii) the employer described in clause
20 (i) (and not the plan with respect to which
21 the failure occurred or any other partici-
22 pating employer in such plan) shall, except
23 to the extent provided by the Secretary, be
24 liable for any liabilities with respect to

1 such plan attributable to employees of the
2 employer.

3 “(B) FAILURES BY POOLED PLAN PRO-
4 VIDERS.—If the pooled plan provider of a plan
5 described in paragraph (1)(B) does not perform
6 substantially all of the administrative duties
7 which are required of the provider under para-
8 graph (3)(A)(i) for any plan year, the Sec-
9 retary, in the Secretary’s own discretion, may
10 provide that the determination as to whether
11 the plan meets the requirements under this title
12 applicable to a plan described in section 401(a)
13 or to a plan that consists of individual retire-
14 ment accounts described in section 408 of such
15 Code (including by reason of subsection (c)
16 thereof), whichever is applicable, shall be made
17 in the same manner as would be made without
18 regard to paragraph (1).

19 “(3) POOLED PLAN PROVIDER.—For purposes
20 of this subsection—

21 “(A) IN GENERAL.—The term ‘pooled plan
22 provider’ means, with respect to any plan, a
23 person who—

24 “(i) is designated by the terms of the
25 plan as a named fiduciary (as defined in

1 section 402(a)(2) of the Employee Retirement
2 Income Security Act of 1974), as the
3 plan administrator, and as the person re-
4 sponsible to perform all administrative du-
5 ties (including conducting proper testing
6 with respect to the plan and employees of
7 each participating employer) which are
8 reasonably necessary to ensure that—

9 “(I) the plan meets the require-
10 ments of the Employee Retirement In-
11 come Security Act of 1974 and any
12 requirement applicable under this title
13 to a plan described in section 401(a)
14 or to a plan that consists of individual
15 retirement accounts described in sec-
16 tion 408 of such Code (including by
17 reason of subsection (c) thereof),
18 whichever is applicable, and

19 “(II) each participating employer
20 takes such actions as the Secretary or
21 such person determines necessary for
22 the plan to meet the requirements de-
23 scribed in subclause (I), including pro-
24 viding to such person any disclosures
25 or other information which the Sec-

1 retary may require or which such per-
2 son otherwise determines is necessary
3 to administer the plan or to allow the
4 plan to meet such requirements,

5 “(ii) registers as a pooled plan pro-
6 vider with the Secretary, and provides such
7 other information to the Secretary as the
8 Secretary may require, before beginning
9 operations as a pooled plan provider,

10 “(iii) acknowledges in writing that
11 such person is a named fiduciary (within
12 the meaning of section 402(a)(2) of the
13 Employee Retirement Income Security Act
14 of 1974), and the plan administrator, with
15 respect to the plan, and

16 “(iv) is responsible for ensuring that
17 all persons who handle assets of, or who
18 are fiduciaries of, the plan are bonded in
19 accordance with section 412 of the Em-
20 ployee Retirement Income Security Act of
21 1974.

22 “(B) AUDITS, EXAMINATIONS AND INVES-
23 TIGATIONS.—The Secretary may perform au-
24 dits, examinations, and investigations of pooled

1 plan providers as may be necessary to enforce
2 and carry out the purposes of this subsection.

3 “(4) GUIDANCE.—

4 “(A) IN GENERAL.—The Secretary shall
5 issue such guidance as the Secretary determines
6 appropriate to carry out this subsection, includ-
7 ing guidance—

8 “(i) to identify the administrative du-
9 ties and other actions required to be per-
10 formed by a pooled plan provider under
11 this subsection,

12 “(ii) which describes the procedures to
13 be taken to terminate a plan which fails to
14 meet the requirements to be a plan de-
15 scribed in paragraph (1), including the
16 proper treatment of, and actions needed to
17 be taken by, any participating employer of
18 the plan and the assets and liabilities of
19 the plan with respect to employees of that
20 employer, and

21 “(iii) identifying appropriate cases to
22 which the rules of paragraph (2)(A) will
23 apply to employers failing to take the ac-
24 tions described in paragraph (1).

1 The Secretary shall take into account under
2 subparagraph (C) whether the failure of an em-
3 ployer or pooled plan provider to provide any
4 disclosures or other information, or to take any
5 other action, necessary to administer a plan or
6 to allow a plan to meet requirements applicable
7 to the plan under section 401(a) has continued
8 over a period of time that clearly demonstrates
9 a lack of commitment to compliance.

10 “(B) PROSPECTIVE APPLICATION.—Any
11 guidance issued by the Secretary under this
12 paragraph shall not apply to any action or fail-
13 ure occurring before the issuance of such guid-
14 ance.

15 “(5) MODEL PLAN.—The Secretary shall, in
16 consultation with the Secretary of Labor when ap-
17 propriate, publish model plan language which meets
18 the requirements of this subsection and of para-
19 graphs (43) and (44) of section 3 of the Employee
20 Retirement Income Security Act of 1974 and which
21 may be adopted to be treated as a pooled employer
22 plan.”.

23 (b) NO COMMON INTEREST REQUIRED FOR POOLED
24 EMPLOYER PLANS.—Section 3(2) of the Employee Retire-

1 ment Income Security Act of 1974 (29 U.S.C. 1002(2))
2 is amended by adding at the end the following:

3 “(C) A pooled employer plan shall be treat-
4 ed as—

5 “(i) a single employee pension benefit
6 plan or single pension plan; and

7 “(ii) a plan to which section 210(a)
8 applies.”.

9 (c) POOLED EMPLOYER PLAN AND PROVIDER DE-
10 FINED.—

11 (1) IN GENERAL.—Section 3 of the Employee
12 Retirement Income Security Act of 1974 (29 U.S.C.
13 1002) is amended by adding at the end the fol-
14 lowing:

15 “(43) POOLED EMPLOYER PLAN.—

16 “(A) IN GENERAL.—The term ‘pooled em-
17 ployer plan’ means a plan—

18 “(i) which is an individual account
19 plan established or maintained for the pur-
20 pose of providing benefits to the employees
21 of two or more employers;

22 “(ii) which is a plan described in sec-
23 tion 401(a) of the Internal Revenue Code
24 of 1986 which includes a trust exempt
25 from tax under section 501(a) of such

1 Code or a plan that consists of individual
2 retirement accounts described in section
3 408 of such Code (including by reason of
4 subsection (c) thereof); and

5 “(iii) the terms of which meet the re-
6 quirements of subparagraph (B).

7 Such term shall not include a plan with respect
8 to which the participating employers both share
9 a common interest other than participation in
10 the plan and control the plan.

11 “(B) REQUIREMENTS FOR PLAN TERMS.—

12 The requirements of this subparagraph are met
13 with respect to any plan if the terms of the
14 plan—

15 “(i) designate a pooled plan provider
16 and provide that the pooled plan provider
17 is a named fiduciary of the plan;

18 “(ii) designate one or more trustees
19 meeting the requirements of section
20 408(a)(2) of the Internal Revenue Code of
21 1986 (other than a participating employer)
22 to be responsible for collecting contribu-
23 tions to, and holding the assets of, the
24 plan and require such trustees to imple-
25 ment written contribution collection proce-

1 dures that are reasonable, diligent, and
2 systematic;

3 “(iii) provide that each participating
4 employer retains fiduciary responsibility
5 for—

6 “(I) the selection and monitoring
7 in accordance with section 404(a) of
8 the person designated as the pooled
9 plan provider and any other person
10 who, in addition to the pooled plan
11 provider, is designated as a named fi-
12 diciary of the plan; and

13 “(II) to the extent not otherwise
14 delegated to another fiduciary by the
15 pooled plan provider and subject to
16 the provisions of section 404(c), the
17 investment and management of that
18 portion of the plan’s assets attrib-
19 utable to the employees of that par-
20 ticipating employer;

21 “(iv) provide that a participating em-
22 ployer, or a participant or beneficiary, is
23 not subject to unreasonable restrictions,
24 fees, or penalties with regard to ceasing
25 participation, receipt of distributions, or

1 otherwise transferring assets of the plan in
2 accordance with section 208;

3 “(v) require—

4 “(I) the pooled plan provider to
5 provide to participating employers any
6 disclosures or other information which
7 the Secretary may require, including
8 any disclosures or other information
9 to facilitate the selection or any moni-
10 toring of the pooled plan provider by
11 participating employers; and

12 “(II) each participating employer
13 to take such actions as the Secretary
14 or the pooled plan provider determines
15 necessary to administer the plan or
16 for the plan to meet the requirements
17 of this Act or any requirement appli-
18 cable under the Internal Revenue
19 Code of 1986 to a plan described in
20 section 401(a) of such Code or to a
21 plan that consists of individual retire-
22 ment accounts described in section
23 408 of such Code (including by reason
24 of subsection (c) thereof), whichever is
25 applicable, including providing any

1 disclosures or other information which
2 the Secretary may require or which
3 the pooled plan provider otherwise de-
4 termines is necessary to administer
5 the plan or to allow the plan to meet
6 such requirements; and

7 “(vi) provide that any disclosure or
8 other information required to be provided
9 under clause (v) may be provided in elec-
10 tronic form and will be designed to ensure
11 only reasonable costs are imposed on
12 pooled plan providers and participating
13 employers.

14 “(C) EXCEPTIONS.—The term ‘pooled em-
15 ployer plan’ does not include—

16 “(i) a multiemployer plan; or

17 “(ii) a plan established before Janu-
18 ary 1, 2016, unless the plan administrator
19 elects that the plan will be treated as a
20 pooled employer plan and the plan meets
21 the requirements of this title applicable to
22 a pooled employer plan established on or
23 after such date.

24 “(44) POOLED PLAN PROVIDER.—

1 “(A) IN GENERAL.—The term ‘pooled plan
2 provider’ means a person who—

3 “(i) is designated by the terms of a
4 pooled employer plan as the plan adminis-
5 trator and as the person responsible for
6 the performance of all administrative du-
7 ties (including conducting proper testing
8 with respect to the plan and employees of
9 each participating employer) which are
10 reasonably necessary to ensure that—

11 “(I) the plan meets the require-
12 ments of this Act and any require-
13 ment applicable under the Internal
14 Revenue Code of 1986 to a plan de-
15 scribed in section 401(a) of such Code
16 or to a plan that consists of individual
17 retirement accounts described in sec-
18 tion 408 of such Code (including by
19 reason of subsection (c) thereof),
20 whichever is applicable; and

21 “(II) each participating employer
22 takes such actions as the Secretary or
23 pooled plan provider determines nec-
24 essary for the plan to meet the re-
25 quirements described in subclause (I),

1 including providing the disclosures
2 and information described in para-
3 graph (43)(B)(v)(II);

4 “(ii) registers as a pooled plan pro-
5 vider with the Secretary, and provides to
6 the Secretary such other information as
7 the Secretary may require, before begin-
8 ning operations as a pooled plan provider;

9 “(iii) acknowledges in writing that
10 such person is a named fiduciary, and the
11 plan administrator, with respect to the
12 pooled employer plan; and

13 “(iv) is responsible for ensuring that
14 all persons who handle assets of, or who
15 are fiduciaries of, the pooled employer plan
16 are bonded in accordance with section 412.

17 “(B) AUDITS, EXAMINATIONS AND INVES-
18 TIGATIONS.—The Secretary may perform au-
19 dits, examinations, and investigations of pooled
20 plan providers as may be necessary to enforce
21 and carry out the purposes of this paragraph
22 and paragraph (43).

23 “(C) GUIDANCE.—The Secretary shall
24 issue such guidance as the Secretary determines

1 appropriate to carry out this paragraph and
2 paragraph (43), including guidance—

3 “(i) to identify the administrative du-
4 ties and other actions required to be per-
5 formed by a pooled plan provider under ei-
6 ther such paragraph; and

7 “(ii) which requires in appropriate
8 cases that if a participating employer fails
9 to take the actions required under sub-
10 paragraph (A)(i)(II)—

11 “(I) the assets of the plan attrib-
12 utable to employees of the partici-
13 pating employer are transferred to a
14 plan maintained only by the partici-
15 pating employer (or its successor), to
16 an eligible retirement plan as defined
17 in section 402(c)(8)(B) of the Internal
18 Revenue Code of 1986 for each indi-
19 vidual whose account is transferred,
20 or to any other arrangement that the
21 Secretary determines is appropriate in
22 such guidance; and

23 “(II) the participating employer
24 described in subclause (I) (and not
25 the plan with respect to which the

1 failure occurred or any other partici-
2 pating employer in such plan) shall,
3 except to the extent provided in such
4 guidance, be liable for any liabilities
5 with respect to such plan attributable
6 to employees of the participating em-
7 ployer.

8 The Secretary shall take into account under
9 clause (ii) whether the failure of an employer or
10 pooled plan provider to provide any disclosures
11 or other information, or to take any other ac-
12 tion, necessary to administer a plan or to allow
13 a plan to meet requirements described in sub-
14 paragraph (A)(i)(II) has continued over a pe-
15 riod of time that clearly demonstrates a lack of
16 commitment to compliance. The Secretary may
17 waive the requirements of clause (ii)(I) in ap-
18 propriate circumstances if the Secretary deter-
19 mines it is in the best interests of the employ-
20 ees of the participating employer described in
21 such clause to retain the assets in the plan with
22 respect to which the employer's failure oc-
23 curred.

24 “(D) AGGREGATION RULES.—For purposes
25 of this paragraph—

1 “(i) IN GENERAL.—In determining
2 whether a person meets the requirements
3 of this paragraph to be a pooled plan pro-
4 vider with respect to any plan, all persons
5 who are members of the same controlled
6 group and who perform services for the
7 plan shall be treated as one person.

8 “(ii) MEMBERS OF COMMON GROUP.—
9 Persons shall be treated as members of the
10 same controlled group if such persons are
11 treated as a single employer under sub-
12 section (c) or (d) of section 210.”.

13 (2) EMPLOYEE TREATED AS EXERCISING CON-
14 TROL OVER ASSETS.—Section 404(c) of the Em-
15 ployee Retirement Income Security Act of 1974 (29
16 U.S.C. 1104(c)) is amended by adding at the end
17 the following new paragraph:

18 “(6) In the case of a pooled employer plan that
19 consists of individual retirement accounts described
20 in section 408 of the Internal Revenue Code of 1986
21 (including by reason of subsection (c) thereof) and
22 that includes an automatic contribution arrangement
23 meeting the requirements of section 514(e) (deter-
24 mined without regard to paragraph (2)(C) thereof),
25 a participant or beneficiary shall, for purposes of

paragraph (1), be treated as exercising control over the assets in the account upon the earliest of—

“(A) an affirmative election among investment options with respect to the initial investment of any contribution,

“(B) a rollover to any other individual retirement account, or

“(C) one year after the individual retirement account is established.”.

(3) BONDING REQUIREMENTS FOR POOLED EMPLOYER PLANS.—The last sentence of section 412(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1112(a)) is amended by inserting “or in the case of a pooled employer plan” after “section 407(d)(1))”.

(4) CONFORMING AND TECHNICAL AMENDMENTS.—Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) is amended—

(A) in paragraph (16)(B)—

(i) by striking “or” at the end of clause (ii), and

(ii) by striking the period at the end and inserting “, or (iv) in the case of a

1 pooled employer plan, the pooled plan pro-
2 vider.”; and

3 (B) by striking the second paragraph (41).

4 (d) EFFECTIVE DATE.—

5 (1) IN GENERAL.—The amendments made by
6 this section shall apply to years beginning after De-
7 cember 31, 2016.

8 (2) RULE OF CONSTRUCTION.—Nothing in the
9 amendment made by subsection (c) shall be con-
10 strued as limiting the authority of the Secretary of
11 the Treasury or the Secretary’s delegate (determined
12 without regard to such amendment) to provide for
13 the proper treatment of a failure to meet any re-
14 quirement applicable under the Internal Revenue
15 Code of 1986 with respect to one employer (and its
16 employees) in a multiple employer plan.

17 **SEC. 3. POOLED EMPLOYER AND MULTIPLE EMPLOYER**
18 **PLAN REPORTING.**

19 (a) ADDITIONAL INFORMATION.—Section 103 of the
20 Employee Retirement Income Security Act of 1974 (29
21 U.S.C. 1023) is amended—

22 (1) in subsection (a)(1)(B), by striking “appli-
23 cable subsections (d), (e), and (f)” and inserting
24 “applicable subsections (d), (e), (f), and (g)”; and

1 (2) by amending subsection (g) to read as fol-
2 lows:

3 “(g) ADDITIONAL INFORMATION WITH RESPECT TO
4 POOLED EMPLOYER AND MULTIPLE EMPLOYER
5 PLANS.—An annual report under this section for a plan
6 year shall include—

7 “(1) with respect to any plan to which section
8 210(a) applies (including a pooled employer plan), a
9 list of participating employers and a good faith esti-
10 mate of the percentage of total contributions made
11 by such participating employers during the plan
12 year; and

13 “(2) with respect to a pooled employer plan, the
14 identifying information for the person designated
15 under the terms of the plan as the pooled plan pro-
16 vider.”.

17 (b) SIMPLIFIED ANNUAL REPORTS.—Section 104(a)
18 of the Employee Retirement Income Security Act of 1974
19 (29 U.S.C. 1024(a)) is amended by striking paragraph
20 (2)(A) and inserting the following:

21 “(2)(A) With respect to annual reports required
22 to be filed with the Secretary under this part, the
23 Secretary may by regulation prescribe simplified an-
24 nual reports for any pension plan that—

25 “(i) covers fewer than 100 participants; or

1 “(ii) is a plan described in section 210(a)
2 that covers fewer than 1,000 participants, but
3 only if no single participating employer has
4 more than 100 participants covered by the
5 plan.”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to annual reports for plan years
8 beginning after December 31, 2016.

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