H. R. 854

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

FEBRUARY 3, 2017

Mr. BUCHANAN (for himself, Mr. NEAL, Mr. RENACCI, and Mr. KIND) 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 Representatives of the United States of America in Congress assembled,

2. SECTION 1. SHORT TITLE.

3. This Act may be cited as the “Retirement Security for American Workers Act”.
SEC. 2. MULTIPLE EMPLOYER PLANS WITH POOLED PLAN PROVIDERS.

(a) Qualification Requirements.—Section 413 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(e) Application of Qualification Requirements for Certain Multiple Employer Plans With Pooled Plan Providers.—

“(1) In general.—Except as provided in paragraph (2), if a defined contribution plan to which subsection (c) applies—

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

“(B) in the case of a plan not described in subparagraph (A), has a pooled plan provider, then the plan shall not be treated as failing to meet the requirements under this title applicable to a plan described in section 401(a) or to a plan that consists of individual retirement accounts described in section 408 of such Code (including by reason of subsection (c) thereof), whichever is applicable, merely because one or more employers of employees covered by the plan fail to take such actions as are required of such employers for the plan to meet such requirements.
“(2) Limitations.—

“(A) In General.—Paragraph (1) shall not apply to any plan unless the terms of the plan provide that in cases of employers failing to take the actions described in paragraph (1)—

“(i) the assets of the plan attributable to employees of the employer will be transferred to a plan maintained only by the employer (or its successor), to an eligible retirement plan as defined in section 402(c)(8)(B) for each individual whose account is transferred, or to any other arrangement that the Secretary determines is appropriate, unless the Secretary determines it is in the best interests of such employees to retain the assets in the plan, and

“(ii) the employer described in clause (i) (and not the plan with respect to which the failure occurred or any other participating employer in such plan) shall, except to the extent provided by the Secretary, be liable for any liabilities with respect to
such plan attributable to employees of the employer.

“(B) Failures by pooled plan providers.—If the pooled plan provider of a plan described in paragraph (1)(B) does not perform substantially all of the administrative duties which are required of the provider under paragraph (3)(A)(i) for any plan year, the Secretary, in the Secretary’s own discretion, may provide that the determination as to whether the plan meets the requirements under this title applicable to a plan described in section 401(a) or to a plan that consists of individual retirement accounts described in section 408 of such Code (including by reason of subsection (c) thereof), whichever is applicable, shall be made in the same manner as would be made without regard to paragraph (1).

“(3) Pooled plan provider.—For purposes of this subsection—

“(A) In general.—The term ‘pooled plan provider’ means, with respect to any plan, a person who—

“(i) is designated by the terms of the plan as a named fiduciary (as defined in
section 402(a)(2) of the Employee Retirement Income Security Act of 1974), as the plan administrator, and as the person responsible to perform all administrative duties (including conducting proper testing with respect to the plan and employees of each participating employer) which are reasonably necessary to ensure that—

“(I) the plan meets the requirements of the Employee Retirement Income Security Act of 1974 and any requirement applicable under this title to a plan described in section 401(a) or to a plan that consists of individual retirement accounts described in section 408 of such Code (including by reason of subsection (c) thereof), whichever is applicable, and

“(II) each participating employer takes such actions as the Secretary or such person determines necessary for the plan to meet the requirements described in subclause (I), including providing to such person any disclosures or other information which the Sec-
retary may require or which such person otherwise determines is necessary to administer the plan or to allow the plan to meet such requirements,

“(ii) registers as a pooled plan provider with the Secretary, and provides such other information to the Secretary as the Secretary may require, before beginning operations as a pooled plan provider,

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

“(iv) is responsible for ensuring that all persons who handle assets of, or who are fiduciaries of, the plan are bonded in accordance with section 412 of the Employee Retirement Income Security Act of 1974.

“(B) AUDITS, EXAMINATIONS AND INVESTIGATIONS.—The Secretary may perform audits, examinations, and investigations of pooled
plan providers as may be necessary to enforce
and carry out the purposes of this subsection.

“(4) GUIDANCE.—

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

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

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

“(iii) identifying appropriate cases to
which the rules of paragraph (2)(A) will
apply to employers failing to take the ac-
tions described in paragraph (1).
The Secretary shall take into account under subparagraph (C) whether the failure of an employer or pooled plan provider to provide any disclosures or other information, or to take any other action, necessary to administer a plan or to allow a plan to meet requirements applicable to the plan under section 401(a) has continued over a period of time that clearly demonstrates a lack of commitment to compliance.

“(B) Prospective Application.—Any guidance issued by the Secretary under this paragraph shall not apply to any action or failure occurring before the issuance of such guidance.

“(5) Model Plan.—The Secretary shall, in consultation with the Secretary of Labor when appropriate, publish model plan language which meets the requirements of this subsection and of paragraphs (43) and (44) of section 3 of the Employee Retirement Income Security Act of 1974 and which may be adopted to be treated as a pooled employer plan.”.

(b) No Common Interest Required for Pooled Employer Plans.—Section 3(2) of the Employee Retire-
ment Income Security Act of 1974 (29 U.S.C. 1002(2)) is amended by adding at the end the following:

“(C) A pooled employer plan shall be treated as—

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

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

(e) POOLED EMPLOYER PLAN AND PROVIDER DEFINED.—

(1) IN GENERAL.—Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) is amended by adding at the end the following:

“(43) POOLED EMPLOYER PLAN.—

“(A) IN GENERAL.—The term ‘pooled employer plan’ means a plan—

“(i) which is an individual account plan established or maintained for the purpose of providing benefits to the employees of two or more employers;

“(ii) which is a plan described in section 401(a) of the Internal Revenue Code of 1986 which includes a trust exempt from tax under section 501(a) of such
Code or a plan that consists of individual retirement accounts described in section 408 of such Code (including by reason of subsection (e) thereof); and "(iii) the terms of which meet the requirements of subparagraph (B).

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

"(B) REQUIREMENTS FOR PLAN TERMS.— The requirements of this subparagraph are met with respect to any plan if the terms of the plan—

"(i) designate a pooled plan provider and provide that the pooled plan provider is a named fiduciary of the plan;

"(ii) designate one or more trustees meeting the requirements of section 408(a)(2) of the Internal Revenue Code of 1986 (other than a participating employer) to be responsible for collecting contributions to, and holding the assets of, the plan and require such trustees to implement written contribution collection proce-
dures that are reasonable, diligent, and systematic;

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

“(I) the selection and monitoring in accordance with section 404(a) of the person designated as the pooled plan provider and any other person who, in addition to the pooled plan provider, is designated as a named fiduciary of the plan; and

“(II) to the extent not otherwise delegated to another fiduciary by the pooled plan provider and subject to the provisions of section 404(e), the investment and management of that portion of the plan’s assets attributable to the employees of that participating employer;

“(iv) provide that a participating employer, or a participant or beneficiary, is not subject to unreasonable restrictions, fees, or penalties with regard to ceasing participation, receipt of distributions, or
otherwise transferring assets of the plan in accordance with section 208;

“(v) require—

“(I) the pooled plan provider to provide to participating employers any disclosures or other information which the Secretary may require, including any disclosures or other information to facilitate the selection or any monitoring of the pooled plan provider by participating employers; and

“(II) each participating employer to take such actions as the Secretary or the pooled plan provider determines necessary to administer the plan or for the plan to meet the requirements of this Act or any requirement applicable under the Internal Revenue Code of 1986 to a plan described in section 401(a) of such Code or to a plan that consists of individual retirement accounts described in section 408 of such Code (including by reason of subsection (c) thereof), whichever is applicable, including providing any
disclosures or other information which the Secretary may require or which the pooled plan provider otherwise determines is necessary to administer the plan or to allow the plan to meet such requirements; and

“(vi) provide that any disclosure or other information required to be provided under clause (v) may be provided in electronic form and will be designed to ensure only reasonable costs are imposed on pooled plan providers and participating employers.

“(C) EXCEPTIONS.—The term ‘pooled employer plan’ does not include—

“(i) a multiemployer plan; or

“(ii) a plan established before January 1, 2016, unless the plan administrator elects that the plan will be treated as a pooled employer plan and the plan meets the requirements of this title applicable to a pooled employer plan established on or after such date.

“(44) POOLED PLAN PROVIDER.—
“(A) IN GENERAL.—The term ‘pooled plan provider’ means a person who—

“(i) is designated by the terms of a pooled employer plan as the plan administrator and as the person responsible for the performance of all administrative duties (including conducting proper testing with respect to the plan and employees of each participating employer) which are reasonably necessary to ensure that—

“(I) the plan meets the requirements of this Act and any requirement applicable under the Internal Revenue Code of 1986 to a plan described in section 401(a) of such Code or to a plan that consists of individual retirement accounts described in section 408 of such Code (including by reason of subsection (c) thereof), whichever is applicable; and

“(II) each participating employer takes such actions as the Secretary or pooled plan provider determines necessary for the plan to meet the requirements described in subclause (I),
including providing the disclosures
and information described in para-
graph (43)(B)(v)(II);

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

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

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

“(B) AUDITS, EXAMINATIONS AND INVEST-
IGATIONS.—The Secretary may perform au-
dits, examinations, and investigations of pooled
plan providers as may be necessary to enforce
and carry out the purposes of this paragraph
and paragraph (43).

“(C) GUIDANCE.—The Secretary shall
issue such guidance as the Secretary determines
appropriate to carry out this paragraph and
paragraph (43), including guidance—

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

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

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

“(II) the participating employer
described in subclause (I) (and not
the plan with respect to which the
failure occurred or any other participating employer in such plan) shall, except to the extent provided in such guidance, be liable for any liabilities with respect to such plan attributable to employees of the participating employer.

The Secretary shall take into account under clause (ii) whether the failure of an employer or pooled plan provider to provide any disclosures or other information, or to take any other action, necessary to administer a plan or to allow a plan to meet requirements described in subparagraph (A)(i)(II) has continued over a period of time that clearly demonstrates a lack of commitment to compliance. The Secretary may waive the requirements of clause (ii)(I) in appropriate circumstances if the Secretary determines it is in the best interests of the employees of the participating employer described in such clause to retain the assets in the plan with respect to which the employer’s failure occurred.

“(D) AGGREGATION RULES.—For purposes of this paragraph—
“(i) IN GENERAL.—In determining whether a person meets the requirements of this paragraph to be a pooled plan provider with respect to any plan, all persons who are members of the same controlled group and who perform services for the plan shall be treated as one person.

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

(2) EMPLOYEE TREATED AS EXERCISING CONTROL OVER ASSETS.—Section 404(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)) is amended by adding at the end the following new paragraph:

“(6) In the case of a pooled employer plan that consists of individual retirement accounts described in section 408 of the Internal Revenue Code of 1986 (including by reason of subsection (c) thereof) and that includes an automatic contribution arrangement meeting the requirements of section 514(e) (determined without regard to paragraph (2)(C) thereof), 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
pooled employer plan, the pooled plan pro-
vider.”; and

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

(d) EFFECTIVE DATE.—

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

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

SEC. 3. POOLED EMPLOYER AND MULTIPLE EMPLOYER

PLAN REPORTING.

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

(1) in subsection (a)(1)(B), by striking “appli-
cable subsections (d), (e), and (f)” and inserting
“applicable subsections (d), (e), (f), and (g)”; and
(2) by amending subsection (g) to read as follows:

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

“(1) with respect to any plan to which section 210(a) applies (including a pooled employer plan), a list of participating employers and a good faith estimate of the percentage of total contributions made by such participating employers during the plan year; and

“(2) with respect to a pooled employer plan, the identifying information for the person designated under the terms of the plan as the pooled plan provider.”.

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

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

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

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