116TH CONGRESS
1ST SESSION

H. R. _____

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to modify the rules relating to multiple employer plans and pooled employer plans and to modify PBGC premiums for CSEC plans.

IN THE HOUSE OF REPRESENTATIVES

Mr. Kind introduced the following bill; which was referred to the Committee on ________________

A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to modify the rules relating to multiple employer plans and pooled employer plans and to modify PBGC premiums for CSEC 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 “Providing Retirement

5 Security to Workers in Small Businesses, Cooperatives,

6 and Service Organizations Act of 2019”.

SEC. 2. MULTIPLE EMPLOYER PLANS; POOLED EMPLOYER PLANS.

(a) Qualification Requirements.—

(1) In general.—Section 413 of the Internal 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 maintained by employers which have a common interest other than having adopted 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 (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 the case of any employer in the plan failing to take the actions described in paragraph (1)—

“(i) the assets of the plan attributable to employees of such employer (or beneficiaries of such employees) will be transferred to a plan maintained only by such 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 the employees of such employer (and the beneficiaries of such employees) to retain the assets in the plan, and

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

“(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 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 (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.—

“(A) In general.—For purposes of this subsection, 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 (within the
meaning of 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 the employees of each employer in the plan) which are reasonably necessary to ensure that—

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

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

“(C) AGGREGATION RULES.—For purposes
of this paragraph, in determining whether a
person meets the requirements of this para-
graph to be a pooled plan provider with respect
to any plan, all persons who perform services
for the plan and who are treated as a single
employer under subsection (b), (c), (m), or (o)
of section 414 shall be treated as one person.

“(D) TREATMENT OF EMPLOYERS AS PLAN
SPONSORS.—Except with respect to the admin-
istrative duties of the pooled plan provider de-
scribed in subparagraph (A)(i), each employer
in a plan which has a pooled plan provider shall
be treated as the plan sponsor with respect to
the portion of the plan attributable to employ-
ees of such employer (or beneficiaries of such
employees).

“(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 duties and other actions required to be performed 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 described in paragraph (1), including the proper treatment of, and actions needed to be taken by, any employer in the plan and the assets and liabilities of the plan attributable to employees of such employer (or beneficiaries of such employees), and

“(iii) identifying appropriate cases to which the rules of paragraph (2)(A) will apply to employers in the plan failing to take the actions described in paragraph (1).

The Secretary shall take into account under clause (iii) 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) or 408, whichever
is applicable, has continued over a period of
time that demonstrates a lack of commitment
to compliance.

“(B) GOOD FAITH COMPLIANCE WITH LAW
BEFORE GUIDANCE.—An employer or pooled
plan provider shall not be treated as failing to
meet a requirement of guidance issued by the
Secretary under this paragraph if, before the
issuance of such guidance, the employer or
pooled plan provider complies in good faith with
a reasonable interpretation of the provisions of
this subsection to which such guidance relates.

“(5) MODEL PLAN.—The Secretary shall pub-
lish model plan language which meets the require-
ments of this subsection and of paragraphs (43) and
(44) of section 3 of the Employee Retirement In-
come Security Act of 1974 and which may be adopt-
ed in order for a plan to be treated as a plan de-
described in paragraph (1)(B).”.

(2) CONFORMING AMENDMENT.—Section
413(c)(2) of such Code is amended by striking “sec-
tion 401(a)” and inserting “sections 401(a) and
408(e)”. 
(3) TECHNICAL AMENDMENT.—Section 408(c) of such Code is amended by inserting after paragraph (2) the following new paragraph:

“(3) There is a separate accounting for any interest of an employee or member (or spouse of an employee or member) in a Roth IRA.”.

(b) NO COMMON INTEREST REQUIRED FOR POOLED EMPLOYER PLANS.—Section 3(2) of the Employee Retirement 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.”.

(c) 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 2 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 (c) thereof); and

“(iii) the terms of which meet the requirements of subparagraph (B). Such term shall not include a plan maintained by employers which have a common interest other than having adopted 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 an employer in the plan) to be responsible for collecting contributions to, and holding the assets of, the plan and require such trustees to implement written contribution collection procedures that are reasonable, diligent, and systematic;

“(iii) provide that each employer in the plan 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(c), the investment and management of the
portion of the plan’s assets attributable to the employees of the employer (or beneficiaries of such employees);

“(iv) provide that employers in the plan, and participants and beneficiaries, are 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 or paragraph (44)(C)(i)(II);

“(v) require—

“(I) the pooled plan provider to provide to employers in the plan 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 employers in the plan; and

“(II) each employer in the plan to take such actions as the Secretary or the pooled plan provider determines are necessary to administer the plan
or for the plan to meet any requirement applicable under this Act or 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 are 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 employers in the plan.

“(C) EXCEPTIONS.—The term ‘pooled employer plan’ does not include—
“(i) a multiemployer plan; or

“(ii) a plan established before the date of the enactment of the Setting Every Community Up for Retirement Enhancement Act of 2019 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.

“(D) TREATMENT OF EMPLOYERS AS PLAN SPONSORS.—Except with respect to the administrative duties of the pooled plan provider described in paragraph (44)(A)(i), each employer in a pooled employer plan shall be treated as the plan sponsor with respect to the portion of the plan attributable to employees of such employer (or beneficiaries of such employees).

“(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 a named fiduciary, 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 the employees of each employer in the plan) which are reasonably necessary to ensure that—

“(I) the plan meets any requirement applicable under this Act or 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 employer in the plan takes such actions as the Secretary or pooled plan provider determines are necessary for the plan to meet the requirements described in subclause (I), including providing the disclosures and information described in paragraph (43)(B)(v)(II);

“(ii) registers as a pooled plan provider with the Secretary, and provides to the Secretary such other information as
the Secretary may require, before begin-
ing 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 INVE-
STITIGATIONS.—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 an employer in the plan fails to take the actions required under sub-
paragraph (A)(i)(II)—

“(I) the assets of the plan attributable to employees of such employer (or beneficiaries of such employees) are transferred to a plan maintained only by such employer (or its suc-
cessor), to an eligible retirement plan as defined in section 402(c)(8)(B) of the Internal Revenue Code of 1986 for each individual whose account is transferred, or to any other arrange-
ment that the Secretary determines is appropriate in such guidance; and

“(II) such employer (and not the plan with respect to which the failure occurred or any other 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 such employer (or beneficiaries of such em-
ployees).
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 demonstrates a lack of commitment to compliance. The Secretary may waive the requirements of subclause (ii)(I) in appropriate circumstances if the Secretary determines it is in the best interests of the employees of the employer referred to in such clause (and the beneficiaries of such employees) to retain the assets in the plan with respect to which the employer’s failure occurred.

“(D) GOOD FAITH COMPLIANCE WITH LAW BEFORE GUIDANCE.—An employer or pooled plan provider shall not be treated as failing to meet a requirement of guidance issued by the Secretary under subparagraph (C) if, before the issuance of such guidance, the employer or pooled plan provider complies in good faith with
a reasonable interpretation of the provisions of 
this paragraph, or paragraph (43), to which 
such guidance relates.

“(E) AGGREGATION RULES.—For purposes 
of this paragraph, in determining whether a 
person meets the requirements of this para-
graph to be a pooled plan provider with respect 
to any plan, all persons who perform services 
for the plan and who are treated as a single 
employer under subsection (b), (c), (m), or (o) 
of section 414 of the Internal Revenue Code of 
1986 shall be treated as one person.”.

(2) BONDING REQUIREMENTS FOR POOLED EM-
PLOYER 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 (as defined 
in section 3(43))” after “section 407(d)(1))”.

(3) CONFORMING AND TECHNICAL AMEND-
MENTS.—Section 3 of the Employee Retirement In-
come 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 provider.”; and

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

(d) POOLED EMPLOYER AND MULTIPLE EMPLOYER PLAN REPORTING.—

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

(A) in subsection (a)(1)(B), by striking “applicable subsections (d), (e), and (f)” and inserting “applicable subsections (d), (e), (f), and (g)” ; and

(B) 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 employers in the plan and a good faith estimate of the percentage of total contributions made by such employers during the plan year and the ag-
aggregate account balances attributable to each employer in the plan (determined as the sum of the account balances of the employees of such employer (and the beneficiaries of such employees)); 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.”.

(2) 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 employer in the plan has 100 or more participants covered by the plan.”.

(e) EFFECTIVE DATE.—
(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 2020.

(2) RULE OF CONSTRUCTION.—Nothing in the amendments made by subsection (a) shall be construed 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 requirement applicable under the Internal Revenue Code of 1986 with respect to one employer (and its employees) in a multiple employer plan.

SEC. 3. MODIFICATION OF PBGC PREMIUMS FOR CSEC PLANS.

(a) FLAT RATE PREMIUM.—Subparagraph (A) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended—

(1) in clause (i), by striking “plan,” and inserting “plan other than a CSEC plan (as defined in section 210(f)(1))”; 

(2) in clause (v), by striking “or” at the end; 

(3) in clause (vi), by striking the period at the end and inserting “, or”; and
(4) by adding at the end the following new clause:

“(vii) in the case of a CSEC plan (as defined in section 210(f)(1)), for plan years beginning after December 31, 2018, for each individual who is a participant in such plan during the plan year an amount equal to the sum of—

“(I) the additional premium (if any) determined under subparagraph (E), and

“(II) $19.”.

(b) VARIABLE RATE PREMIUM.—

(1) UNFUNDED VESTED BENEFITS.—

(A) IN GENERAL.—Subparagraph (E) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended by adding at the end the following new clause:

“(v) For purposes of clause (ii), in the case of a CSEC plan (as defined in section 210(f)(1)), the term ‘unfunded vested benefits’ means, for plan years beginning after December 31, 2018, the excess (if any) of—
“(I) the funding liability of the plan as determined under section 306(j)(5)(C) for the plan year by only taking into account vested benefits, over

“(II) the fair market value of plan assets for the plan year which are held by the plan on the valuation date.”.

(B) CONFORMING AMENDMENT.—Clause (iii) of section 4006(a)(3)(E) of such Act (29 U.S.C. 1306(a)(3)(E)) is amended by striking “For purposes” and inserting “Except as provided in clause (v), for purposes”.

(2) APPLICABLE DOLLAR AMOUNT.—

(A) IN GENERAL.—Paragraph (8) of section 4006(a) of such Act (29 U.S.C. 1306(a)) is amended by adding at the end the following new subparagraph:

“(E) CSEC PLANS.—In the case of a CSEC plan (as defined in section 210(f)(1)), the applicable dollar amount shall be $9.”.

(B) CONFORMING AMENDMENT.—Subparagraph (A) of section 4006(a)(8) of such Act (29
U.S.C. 1306(a)(8)) is amended by striking “(B) and (C)” and inserting “(B), (C), and (E)”. 