

Plain Language Version of SECURE's MEP, PEP, and "Group of Plans" Provisions

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To understand a new law, you need to read the actual law—especially since, in the case of SECURE, we will probably be waiting on IRS and DOL regulations for much of 2020. The following summary and plain language version of SECURE's multiple employer provisions should simplify the task of understanding the Act.

SECURE¹, and RESA² before it, have been widely expected to become law any minute now for three years. It might actually happen this week, as has been widely reported. This is therefore a good time to review what SECURE actually says. What follows is a version of the actual text of the Bill with minor edits for readability, with respect to the provisions related to multiple employer plans (MEPs), pooled employer plans (PEPs), and "groups of plans." Preceding the full text is a summary that includes notes on what the Bill actually means for the retirement plan community.

High Level Summary

- The Internal Revenue Code (IRC or "Code") is amended to allow for pooled employer plans (PEPs) and mitigate the "one bad apple" rule³.
- ERISA⁴ is also amended for PEPs, using nearly identical language as in the Code.
- A PEP is a MEP sponsored and governed by a pooled plan provider (PPP), who is a named fiduciary of the plan and its 3(16) plan administrator, and can be a service provider (e.g., recordkeeper, TPA, bank, broker-dealer, RIA).
- Not all MEPs will be PEPs—there are still Association Retirement Plans and other pooled plans that qualify as single plans. The "bad apple" relief applies to such plans as well as PEPs.
- "Groups of plans" that have the same fiduciaries, plan years, and investments can file a single, combined Form 5500 with (presumably) one audit.

Provisions Related to MEPs, PEPs, and Groups of Plans

Sec. 101. Multiple employer plans; pooled employer plans...

Sec. 202. Combined annual report for group of plans...

Sec. 601. Provisions relating to plan amendments

¹ Setting Every Community Up for Retirement Enhancement Act of 2019

² SECURE's predecessor, the Retirement Enhancement and Savings Act of 2016

³ Treas. Reg. §1.413-2(a)(4)(iv), which says a disqualifying defect by a single adopting employer in a MEP can disqualify the whole MEP if the defect is not corrected.

⁴ The Employee Income Security Act of 1974, as amended

Annotated Summary

The summary below follows the actual numbering of the Bill but the text is condensed, with explanatory notes. The full text comes later.

Sec. 101: MEPs and PEPs

(a) Changes to the Internal Revenue Code (“Code”) to allow PEPs and mitigate the “one bad apple” rule—

(1)(e) Amend Section 413 (the Code section having to do with MEPs) by adding a **new Section 413(e) (we can call it “the PEP section”)**:

(1) **A fix for the “one bad apple” rule.** If a Section 413(c) plan (a MEP) that is a defined contribution (DC) plan—

(A) has sufficient nexus (i.e., it's a MEP without having to be a PEP), or

(B) has a pooled plan provider (“PPP”),

then the MEP/PEP will not be disqualified just because one adopting employer has a compliance failure (i.e., the “one bad apple” rule is eliminated, subject to the following limitations).

(2) Limitations on “bad apple” relief—

(A) The “bad apple” relief only applies if the MEP or PEP plan documents specify that

(i) an offending employer who does not make appropriate corrections will be spun out into their own single employer or “successor” plan, and

(ii) the offending employer (and not the MEP/PEP or its other participating employers, and not the employees) bears the liability for the defects.

(B) **FAILURES BY POOLED PLAN PROVIDERS—If the pooled plan provider does not perform substantially all of the administrative duties** which are required of the provider for any plan year, the Secretary of the Treasury can still potentially disqualify a plan under the “one bad apple” rule.

(3) POOLED PLAN PROVIDER—

(A) **Definition.** The term “pooled plan provider” (PPP) means 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 ERISA), 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 compliance requirement applicable under ERISA or the Code⁵, and

(II) each employer in the plan fulfills its own portion of the compliance obligations,

[Note: it is unclear how much delegation or allocation of duties to other fiduciaries will be permitted under eventual DOL guidance, but ordinary notions of ERISA allocation/delegation will presumably apply as long as the PPP is clearly at the top of the pyramid. This is a critical point for anyone interested in becoming a PPP.]

(ii) **registers** as a PPP with the Secretary of the Treasury, 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 ERISA), **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 ERISA.

(B) AUDITS, EXAMINATIONS AND INVESTIGATIONS—The Secretary may perform audits, examinations, and investigations of pooled plan providers.

(C) AGGREGATION RULES—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 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. (e.g., members of controlled groups or affiliated service groups. This means a PPP can have a separate subsidiary fill the named fiduciary and 3(16) roles.)

(D) TREATMENT OF EMPLOYERS AS PLAN SPONSORS—Except with respect to the administrative duties of the pooled plan provider described 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 employees of such employer (or beneficiaries of such employees).

⁵ The actual language is much longer and more legally nuanced, but this is close enough for understanding.

[NOTE: **this language appears to conflict** somewhat with Section 101(c)(3)(A), which amends ERISA to state that the PPP is the plan sponsor of a PEP. We therefore have this section 101(a)(1)(e)(3)(D) saying that each employer is a co-sponsor and the new ERISA Section 3(16)(B) which says that the PPP is the sponsor of a PEP. This will doubtless end up meaning something in eventual DOL/IRS guidance—at a minimum it will affect how document drafters create PEP documents. For now it would appear to be the case that the PPP is the PEP sponsor, but the PEP is simultaneously viewed as being co-sponsored by all adopting employers.]

(4) GUIDANCE—

(A) IN GENERAL—The Secretary of the **Treasury shall issue guidance—**

(i) to **identify the administrative duties and other actions required to be performed by a PPP,**

(ii) which describes the procedures to be taken to terminate a plan which fails to qualify for “bad apple” relief, and

(iii) identify how “bad apple” situations will be handled, including whether the failure of an employer or PPP to provide any disclosures or other information, or to take any other action, necessary to administer a plan has continued over a period of time and **demonstrates a lack of commitment to compliance.**

(B) GOOD FAITH COMPLIANCE WITH LAW BEFORE GUIDANCE—Before any regulations or other guidance are written, good faith compliance is enough, and won’t get an employer or PPP in trouble retroactively after the guidance is published.

(5) MODEL PLAN—The Secretary shall publish model plan document language.

(b) **No common interest required for PEPs**—Section 3(2) of ERISA (the definition of “employee pension benefit plan” and “pension plan”) is amended by adding:

(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. [Section 210(a) is the Section of ERISA that mentions MEPs.]

[This section is necessary because the DOL’s belief in the need for “nexus” or “commonality” or “common interest” is at the heart of why open MEPs have not been allowed under pre-2020 law. PEPs are Congress’ way of allowing “open” MEPs.]

(c) **PEP and PPP defined in ERISA**— [PEP and PPP are defined in both ERISA and the Code, with very similar wording.]

(1) IN GENERAL—Section 3 of ERISA (the definitions section) 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 an IRC section 401 (a) qualified plan or section 408 IRA trust; and

[Note that Section 403(b) is not included, so there is no provision for a 403(b) PEP; also no provision for a Section 457(b) PEP. Such plans exist today as MEPs, but they can't be PEPs.] [Also note the reference to a multiple employer IRA trust under IRC Section 408(c), which is an odd duck and a discussion for another day.]

(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. [In other words, a MEP that qualifies as a single plan without needing to be a PEP is not a PEP.]

(B) REQUIREMENTS FOR PLAN TERMS—The plan document must—

(i) designate a PPP and provide that the PPP is a named fiduciary of the plan;

(ii) designate one or more trustees meeting the requirements of IRC section 408(a)(2) (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**; [The reference to Code section 408 has to do with financial institutions and others eligible to serve as IRA or qualified plan custodians.]

[Note: the need for a special trustee who accepts responsibility for chasing down contributions is a significant operational hurdle for PEPs.]

(iii) **provide that each employer in the plan retains fiduciary responsibility for—**

(l) the **prudent selection and monitoring of the PPP and other named fiduciaries**; and

[Note: what will this actually end up meaning under DOL regulations? The history of DOL and ERISA jurisprudence would suggest that there must be a mechanism of affirmative control for oversight (such as a member board), not simply a “joining/staying = selecting/monitoring” approach, but the whole point of the legislation, to a degree, is to overcome DOL’s past reticence with respect to MEPs. This will be one of the key points to watch in future guidance.]

(II) to the extent not otherwise delegated to another fiduciary [such as an ERISA section 3(38) investment manager] 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);

[This is important. This provision was added to previous versions of the bill at the request of various service providers and groups who wanted a structure in which individual employers or their investment managers could still have the option to choose their own investments—contrary to how MEPs have traditionally been structured.]

(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;

(v) require—

(I) the PPP 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 fulfill its own portion of compliance obligations, including providing any disclosures or other information which the Secretary or PPP requires; 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 [i.e., a Taft-Hartley union plan]; or

(ii) a plan established before the date of the enactment of SECURE unless the plan administrator elects that the plan will be treated as a PEP and the plan meets all PEP requirements going forward. [In other words, **existing MEPs can elect to become PEPs.**]

(D) TREATMENT OF EMPLOYERS AS PLAN SPONSORS—Except with respect to the administrative duties of the PPP 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).

[Again, note the possible conflict with section 101(c)(3)(A) below, which amends the definition of “plan sponsor” under ERISA to say that **the PPP is the sponsor of a PEP**. But this section makes clear that the employer is treated as the sponsor only with respect to obligations not placed on the PPP. It will fall to DOL and IRS guidance to clarify what this means. It could mean, for example, that service providers who become PPPs will be able to ensure certain duties continue to be the responsibility of the employer. Where that line is drawn will be very important in how actual PEP products evolve.]

(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 compliance requirements under ERISA and the Code; 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 compliance requirements, including providing the disclosures and information described in paragraph (43)(B)(v)(II);

(ii) registers as a pooled plan provider with the Secretary of Labor, and provides to the Secretary such other information as the Secretary may require, before beginning operations as a pooled plan provider; [So there is registration with both IRS and DOL]

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

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

(B) AUDITS, EXAMINATIONS AND INVESTIGATIONS—The Secretary may perform audits, examinations, and investigations of PPPs. [Both IRS and DOL can audit.]

(C) GUIDANCE—The Secretary shall issue such guidance as the Secretary determines appropriate, including guidance—

(i) to identify the administrative duties and other actions required to be performed by a PPP; and

(ii) which requires of offending employers for “bad apple” purposes that—

(I) the assets of the offending employer's portion of the plan will be spun off; and

(II) the offending employer is liable, not the other employers or the employees.

The Secretary shall take into account under clause (ii) whether the compliance failure of an employer or PPP has continued over a period of time and 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.

[This section is interesting in that it creates a DOL version of the “bad apple” relief.]

(D) GOOD FAITH COMPLIANCE WITH LAW BEFORE GUIDANCE—Same as above under IRC amendments.

(E) AGGREGATION RULES— Same as above under IRC amendments.

(2) BONDING REQUIREMENTS FOR POOLED EMPLOYER PLANS—amends ERISA section 412 to update for PEP bonding, with a \$1 million limit for PEPs instead of \$500,000, applicable to the PEP as a whole and not to individual adopting employers.

(3) CONFORMING AND TECHNICAL AMENDMENTS—Section 3 [the definitions section] of ERISA is amended to update section 3(16)(B), the definition of “plan sponsor.” In a PEP the plan sponsor is:

...“(iv) in the case of a pooled employer plan, the pooled plan provider.”

(d) PEP and MEP reporting—

(1) ADDITIONAL INFORMATION—Section 103 of ERISA [regarding the Form 5500 annual report requirement] is amended to require the following additional information on a PEP or MEP—

(1) a list of employers in the plan and a good faith estimate of the percentage of total contributions made by each and the aggregate account balances attributable to each; and

(2) with respect to a PEP, the identifying information for the PPP.

(2) SIMPLIFIED ANNUAL REPORTS—Section 104(a) of ERISA is amended to clarify that:

(2) (A) The Secretary of Labor may allow simplified annual reports [which do not require an audit] if the plan—

(i) covers fewer than 100 participants; or

(ii) is a **MEP or PEP 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. [Very helpful for startup MEPs and PEPs targeting small employers]

(e) Effective date—

(1) IN GENERAL—The amendments made by this section [the MEP/PEP section] shall apply to plan years beginning after December 31, 2020.

(2) RULE OF CONSTRUCTION—Nothing in the amendments made by subsection (a) [bad apple relief] 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. [So the “bad apple” can't spoil the bunch, but it's still going to have to correct or suffer the consequences of plan defects.]

SEC. 202. Combined annual report for group of plans.

(a) In general—The Secretary of the Treasury and the Secretary of Labor shall, in cooperation, modify the Form 5500 annual report so that **all members of a group of plans described in subsection (c) may file a single aggregated annual return or report.**

(b) Administrative requirements—In developing the consolidated report, the Secretaries may require information on individual adopting employers as needed for compliance purposes, and the result must enable a participant in a plan to identify the applicable report.

(c) Group of plans defined. All plans in the group—

(1) are individual account plans/defined contribution plans;

(2) have—

(A) the same trustee;

(B) the same one or more named fiduciaries;

(C) the same administrator; and

(D) plan years beginning on the same date; and

(3) provide the same investments or investment options to participants and beneficiaries.

[It is possible for certain plans not subject to ERISA to be included in a “group.” See full text of the Bill. E.g., a plan covering only owners is not subject to ERISA.]

[The importance of this section is that it allows certain MEP-like arrangements to file a single Form 5500 and, presumably, apply the audit requirement to the group as a whole—though the audit part will require DOL clarification. This legislative solution was one of many that were proposed over the past decade as part of the MEP debate—in this case, the “group of plans” approach was proposed as an alternative to open MEPs.]

(e) Effective date—Implemented not later than January 1, 2022, and shall apply to returns and reports for plan years beginning after December 31, 2021.

Sec. 601. Provisions relating to plan amendments.

Plan sponsors have until the last day of the first plan year beginning on or after January 1, 2022, or such later date as the Secretary of the Treasury may prescribe, to make conforming amendments to plan documents. The deadline is pushed back to 2024 for governmental or collectively bargained plans. [So remedial amendments are not required until the end of 2022 at soonest.]

Plain Language Version of the Actual Text of the Bill

What follows is the exact text of the Bill—the only changes are in spacing and indentation, to make it easier to follow.

SECTION 1. Short title and table of contents

(a) Short title.—This Act may be cited as the “Setting Every Community Up for Retirement Enhancement Act of 2019”.

(b) Table of contents.—The table of contents of this Act is as follows: [only the MEP, PEP, and “group of plans” provisions]...

Sec. 101. Multiple employer plans; pooled employer plans...

Sec. 202. Combined annual report for group of plans...

Sec. 601. Provisions relating to plan amendments

TITLE I—Expanding and preserving retirement savings

SEC. 101. Multiple employer plans; pooled employer plans.

(a) Qualification requirements.—

(1) IN GENERAL.—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 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 respect 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 paragraph 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 administrative duties of the pooled plan provider described 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 employees 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, including 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 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 in order for a plan to be treated as a plan described in paragraph (1)(B).”.

(2) CONFORMING AMENDMENT.—Section 413(c)(2) of such Code is amended by striking “section 401(a)” and inserting “sections 401(a) and 408(c)”.

(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 beginning 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 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 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 duties and other actions required to be performed by a pooled plan provider under either such paragraph; and

“(ii) which requires in appropriate cases that if an employer in the plan fails to take the actions required under subparagraph (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 successor), 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 arrangement 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 employees).

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 paragraph 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 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 (as defined in section 3(43))” after “section 407(d)(1)”.

(3) 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 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)”;

(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 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...

TITLE II: Administrative Improvements

...SEC. 202. Combined annual report for group of plans.

(a) In general.—The Secretary of the Treasury and the Secretary of Labor shall, in cooperation, modify the returns required under section 6058 of the Internal Revenue Code of 1986 and the reports required by section 104 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024) so that all members of a group of plans described in subsection (c) may file a single aggregated annual return or report satisfying the requirements of both such sections.

(b) Administrative requirements.—In developing the consolidated return or report under subsection (a), the Secretary of the Treasury and the Secretary of Labor may require such return or report to include any information regarding each plan in the group as such Secretaries determine is necessary or appropriate for the enforcement and administration of the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 and shall require such information as will enable a participant in a plan to identify any aggregated return or report filed with respect to the plan.

(c) Plans described.—A group of plans is described in this subsection if all plans in the group—

(1) are individual account plans or defined contribution plans (as defined in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)) or in section 414(i) of the Internal Revenue Code of 1986);

(2) have—

(A) the same trustee (as described in section 403(a) of such Act (29 U.S.C. 1103(a)));

(B) the same one or more named fiduciaries (as described in section 402(a) of such Act (29 U.S.C. 1102(a)));

(C) the same administrator (as defined in section 3(16)(A) of such Act (29 U.S.C. 1002(16)(A))) and plan administrator (as defined in section 414(g) of the Internal Revenue Code of 1986); and

(D) plan years beginning on the same date; and

(3) provide the same investments or investment options to participants and beneficiaries.

A plan not subject to title I of the Employee Retirement Income Security Act of 1974 shall be treated as meeting the requirements of paragraph (2) as part of a group of plans if the same person that performs each of the functions described in such paragraph, as applicable, for all other plans in such group performs each of such functions for such plan.

(d) Clarification relating to electronic filing of returns for deferred compensation plans.—

(1) IN GENERAL.—Section 6011(e) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(6) APPLICATION OF NUMERICAL LIMITATION TO RETURNS RELATING TO DEFERRED COMPENSATION PLANS.—For purposes of applying the numerical limitation under paragraph (2)(A) to any return required under section 6058, information regarding each plan for which information is provided on such return shall be treated as a separate return.”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to returns required to be filed with respect to plan years beginning after December 31, 2019.

(e) Effective date.—The modification required by subsection (a) shall be implemented not later than January 1, 2022, and shall apply to returns and reports for plan years beginning after December 31, 2021...

TITLE VI: Administrative Provisions

Sec. 601. Provisions relating to plan amendments.

(a) IN GENERAL.—If this section applies to any retirement plan or contract amendment—

(1) such retirement plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A); and

(2) except as provided by the Secretary of the Treasury (or the Secretary's delegate), such retirement plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—This section shall apply to any amendment to any retirement plan or annuity contract which is made—

(A) pursuant to any amendment made by this Act or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor (or a delegate of either such Secretary) under this Act; and

(B) on or before the last day of the first plan year beginning on or after January 1, 2022, or such later date as the Secretary of the Treasury may prescribe. In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), or an applicable collectively bargained plan in the case of section 401 (and the amendments made thereby), this paragraph shall be applied by substituting "2024" for "2022". For purposes of the preceding sentence, the term "applicable collectively bargained plan" means a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act.

(2) CONDITIONS.—This section shall not apply to any amendment unless—

(A) during the period—

(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan); and

(ii) ending on the date described in paragraph (1)(B) (as modified by the second sentence of paragraph (1)) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and (B) such plan or contract amendment applies retroactively for such period.

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