

115TH CONGRESS  
2D SESSION

# S. 3219

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to modify the requirements for multiple employer plans, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

JULY 17, 2018

Mr. COTTON (for himself, Mr. YOUNG, Ms. HEITKAMP, and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on Finance

---

## A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to modify the requirements for multiple employer plans, and for other purposes.

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

3 **SECTION 1. MULTIPLE EMPLOYER PLANS.**

4 (a) **QUALIFICATION REQUIREMENTS.**—

5 (1) **IN GENERAL.**—Section 413 of the Internal  
6 Revenue Code of 1986 is amended by adding at the  
7 end the following new subsection:

1       “(e) APPLICATION OF QUALIFICATION REQUIRE-  
2       MENTS FOR CERTAIN MULTIPLE EMPLOYER PLANS WITH  
3       POOLED PLAN PROVIDERS.—

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

7                       “(A) is sponsored by employers all of  
8                       which have both a common interest other than  
9                       having adopted the plan and control of the  
10                      plan, or

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

22               “(2) LIMITATIONS.—

23                      “(A) IN GENERAL.—Paragraph (1) shall  
24                      not apply to any plan unless the terms of the  
25                      plan provide that in cases of employers failing

1 to take the actions described in paragraph  
2 (1)—

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

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

23 “(B) FAILURES BY POOLED PLAN PRO-  
24 VIDERS.—If the pooled plan provider of a plan  
25 described in paragraph (1)(B) does not perform

1 substantially all of the administrative duties  
2 which are required of the provider under para-  
3 graph (3)(A)(i) for any plan year, the Sec-  
4 retary, in the Secretary's own discretion, may  
5 provide that the determination as to whether  
6 the plan meets the requirements under this title  
7 applicable to a plan described in section 401(a)  
8 or to a plan that consists of individual retire-  
9 ment accounts described in section 408 (includ-  
10 ing by reason of subsection (c) thereof), which-  
11 ever is applicable, shall be made in the same  
12 manner as would be made without regard to  
13 paragraph (1).

14 “(3) POOLED PLAN PROVIDER.—For purposes  
15 of this subsection—

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

19 “(i) is designated by the terms of the  
20 plan as a named fiduciary (within the  
21 meaning of section 402(a)(2) of the Em-  
22 ployee Retirement Income Security Act of  
23 1974), as the plan administrator, and as  
24 the person responsible to perform all ad-  
25 ministrative duties (including conducting

1 proper testing with respect to the plan and  
2 employees of each participating employer)  
3 which are reasonably necessary to ensure  
4 that—

5 “(I) the plan meets any require-  
6 ment applicable under the Employee  
7 Retirement Income Security Act of  
8 1974 or this title to a plan described  
9 in section 401(a) or to a plan that  
10 consists of individual retirement ac-  
11 counts described in section 408 (in-  
12 cluding by reason of subsection (c)  
13 thereof), whichever is applicable, and

14 “(II) each participating employer  
15 takes such actions as the Secretary or  
16 such person determines are necessary  
17 for the plan to meet the requirements  
18 described in subclause (I), including  
19 providing to such person any disclo-  
20 sures or other information which the  
21 Secretary may require or which such  
22 person otherwise determines is nec-  
23 essary to administer the plan or to  
24 allow the plan to meet such require-  
25 ments,

1           “(ii) registers as a pooled plan pro-  
2           vider with the Secretary, and provides such  
3           other information to the Secretary as the  
4           Secretary may require, before beginning  
5           operations as a pooled plan provider,

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

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

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

23          “(4) GUIDANCE.—

24          “(A) IN GENERAL.—The Secretary shall  
25          issue such guidance as the Secretary determines

1 appropriate to carry out this subsection, includ-  
2 ing guidance—

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

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

16 “(iii) identifying appropriate cases to  
17 which the rules of paragraph (2)(A) will  
18 apply to employers failing to take the ac-  
19 tions described in paragraph (1).

20 The Secretary shall take into account under  
21 clause (iii) whether the failure of an employer  
22 or pooled plan provider to provide any disclo-  
23 sures or other information, or to take any other  
24 action, necessary to administer a plan or to  
25 allow a plan to meet requirements applicable to

1 the plan under section 401(a) or 408, whichever  
2 is applicable, has continued over a period of  
3 time that clearly demonstrates a lack of com-  
4 mitment to compliance.

5 “(B) PROSPECTIVE APPLICATION.—Any  
6 guidance issued by the Secretary under this  
7 paragraph shall not apply to any action or fail-  
8 ure occurring before the issuance of such guid-  
9 ance.

10 “(5) MODEL PLAN.—Not later than June 30,  
11 2019, the Secretary shall, in consultation with the  
12 Secretary of Labor when appropriate, publish—

13 “(A) model plan language which may be  
14 adopted by a plan to which subsection (c) ap-  
15 plies and which is not described in paragraph  
16 (1)(B), in order for the plan to qualify for the  
17 application of this subsection, and

18 “(B) model plan language which meets the  
19 requirements of this subsection and of para-  
20 graphs (43) and (44) of section 3 of the Em-  
21 ployee Retirement Income Security Act of 1974  
22 and which may be adopted in order for a plan  
23 to be treated as a plan described in paragraph  
24 (1)(B).”.

1           (2) CONFORMING AMENDMENT.—Paragraph (3)  
2 of section 413(b) of such Code is amended by strik-  
3 ing “section 401(a)” and inserting “sections 401(a)  
4 and 408(c)”.

5           (3) TECHNICAL AMENDMENT.—Subsection (c)  
6 of section 408 of such Code is amended by inserting  
7 after paragraph (2) the following new paragraph:

8           “(3) There is a separate accounting for any in-  
9 terest of an employee or member (or spouse of an  
10 employee or member) in a Roth IRA.”.

11          (b) NO COMMON INTEREST REQUIRED FOR POOLED  
12 EMPLOYER PLANS.—Section 3(2) of the Employee Retire-  
13 ment Income Security Act of 1974 (29 U.S.C. 1002(2))  
14 is amended by adding at the end the following:

15                   “(C) A pooled employer plan shall be treat-  
16 ed as—

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

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

21          (c) POOLED EMPLOYER PLAN AND PROVIDER DE-  
22 FINED.—

23           (1) IN GENERAL.—Section 3 of the Employee  
24 Retirement Income Security Act of 1974 (29 U.S.C.

1 1002) is amended by adding at the end the fol-  
2 lowing:

3 “(43) POOLED EMPLOYER PLAN.—

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

6 “(i) which is an individual account  
7 plan established or maintained for the pur-  
8 pose of providing benefits to the employees  
9 of two or more employers;

10 “(ii) which is a plan described in sec-  
11 tion 401(a) of the Internal Revenue Code  
12 of 1986 which includes a trust exempt  
13 from tax under section 501(a) of such  
14 Code or a plan that consists of individual  
15 retirement accounts described in section  
16 408 of such Code (including by reason of  
17 subsection (c) thereof); and

18 “(iii) the terms of which meet the re-  
19 quirements of subparagraph (B).

20 Such term shall not include a plan with respect  
21 to which all of the participating employers have  
22 both a common interest other than having  
23 adopted the plan and control of the plan.

24 “(B) REQUIREMENTS FOR PLAN TERMS.—

25 The requirements of this subparagraph are met

1 with respect to any plan if the terms of the  
2 plan—

3 “(i) designate a pooled plan provider  
4 and provide that the pooled plan provider  
5 is a named fiduciary of the plan;

6 “(ii) designate one or more trustees  
7 meeting the requirements of section  
8 408(a)(2) of the Internal Revenue Code of  
9 1986 (other than a participating employer)  
10 to be responsible for collecting contribu-  
11 tions to, and holding the assets of, the  
12 plan and require such trustees to imple-  
13 ment written contribution collection proce-  
14 dures that are reasonable, diligent, and  
15 systematic;

16 “(iii) except as provided in section  
17 404(e), provide that each participating em-  
18 ployer retains fiduciary responsibility for—

19 “(I) the selection and monitoring  
20 in accordance with section 404(a) of  
21 the person designated as the pooled  
22 plan provider and any other person  
23 who, in addition to the pooled plan  
24 provider, is designated as a named fi-  
25 duciary of the plan; and

1                   “(II) to the extent not otherwise  
2                   delegated to another fiduciary by the  
3                   pooled plan provider and subject to  
4                   the provisions of section 404(c), the  
5                   investment and management of that  
6                   portion of the plan’s assets attrib-  
7                   utable to the employees of that par-  
8                   ticipating employer;

9                   “(iv) provide that a participating em-  
10                  ployer, or a participant or beneficiary, is  
11                  not subject to unreasonable restrictions,  
12                  fees, or penalties with regard to ceasing  
13                  participation, receipt of distributions, or  
14                  otherwise transferring assets of the plan in  
15                  accordance with section 208 or paragraph  
16                  (44)(C)(i)(II);

17                  “(v) require—

18                  “(I) the pooled plan provider to  
19                  provide to participating employers any  
20                  disclosures or other information which  
21                  the Secretary may require, including  
22                  any disclosures or other information  
23                  to facilitate the selection or any moni-  
24                  toring of the pooled plan provider by  
25                  participating employers; and

1           “(II) each participating employer  
2           to take such actions as the Secretary  
3           or the pooled plan provider determines  
4           are necessary to administer the plan  
5           or for the plan to meet any require-  
6           ment applicable under this Act or the  
7           Internal Revenue Code of 1986 to a  
8           plan described in section 401(a) of  
9           such Code or to a plan that consists  
10          of individual retirement accounts de-  
11          scribed in section 408 of such Code  
12          (including by reason of subsection (c)  
13          thereof), whichever is applicable, in-  
14          cluding providing any disclosures or  
15          other information which the Secretary  
16          may require or which the pooled plan  
17          provider otherwise determines is nec-  
18          essary to administer the plan or to  
19          allow the plan to meet such require-  
20          ments; and

21          “(vi) provide that any disclosure or  
22          other information required to be provided  
23          under clause (v) may be provided in elec-  
24          tronic form and will be designed to ensure  
25          only reasonable costs are imposed on

1 pooled plan providers and participating  
2 employers.

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

5 “(i) a multiemployer plan;

6 “(ii) a plan established before Janu-  
7 ary 1, 2016, unless the plan administrator  
8 elects that the plan will be treated as a  
9 pooled employer plan and the plan meets  
10 the requirements of this title applicable to  
11 a pooled employer plan established on or  
12 after such date; and

13 “(iii) a plan with respect to which all  
14 of the participating employers have both a  
15 common interest other than having adopt-  
16 ed the plan and control of the plan.

17 “(44) POOLED PLAN PROVIDER.—

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

20 “(i) is designated by the terms of a  
21 pooled employer plan as a named fiduciary,  
22 as the plan administrator, and as the per-  
23 son responsible for the performance of all  
24 administrative duties (including conducting  
25 proper testing with respect to the plan and

1 employees of each participating employer)  
2 which are reasonably necessary to ensure  
3 that—

4 “(I) the plan meets any require-  
5 ment applicable under this Act or the  
6 Internal Revenue Code of 1986 to a  
7 plan described in section 401(a) of  
8 such Code or to a plan that consists  
9 of individual retirement accounts de-  
10 scribed in section 408 of such Code  
11 (including by reason of subsection (c)  
12 thereof), whichever is applicable; and

13 “(II) each participating employer  
14 takes such actions as the Secretary or  
15 pooled plan provider determines are  
16 necessary for the plan to meet the re-  
17 quirements described in subclause (I),  
18 including providing the disclosures  
19 and information described in para-  
20 graph (43)(B)(v)(II);

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

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

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

9           “(B) AUDITS, EXAMINATIONS, AND INVESTIGATIONS.—The Secretary may perform au-  
10          dits, examinations, and investigations of pooled  
11          plan providers as may be necessary to enforce  
12          and carry out the purposes of this paragraph  
13          and paragraph (43).  
14

15          “(C) GUIDANCE.—

16          “(i) IN GENERAL.—The Secretary  
17          shall issue such guidance as the Secretary  
18          determines appropriate to carry out this  
19          paragraph and paragraph (43), including  
20          guidance—

21                  “(I) to identify the administra-  
22                  tive duties and other actions required  
23                  to be performed by a pooled plan pro-  
24                  vider under either such paragraph;  
25                  and

1 “(II) which requires in appro-  
2 priate cases that if a participating  
3 employer fails to take the actions re-  
4 quired under subparagraph  
5 (A)(i)(II)—

6 “(aa) the assets of the plan  
7 attributable to employees of the  
8 participating employer are trans-  
9 ferred to a plan maintained only  
10 by the participating employer (or  
11 its successor), to an eligible re-  
12 tirement plan as defined in sec-  
13 tion 402(c)(8)(B) of the Internal  
14 Revenue Code of 1986 for each  
15 individual whose account is  
16 transferred, or to any other ar-  
17 rangement that the Secretary de-  
18 termines is appropriate in such  
19 guidance; and

20 “(bb) the participating em-  
21 ployer described in item (aa)  
22 (and not the plan with respect to  
23 which the failure occurred or any  
24 other participating employer in  
25 such plan) shall, except to the ex-

1                   tent provided in such guidance,  
2                   be liable for any liabilities with  
3                   respect to such plan attributable  
4                   to employees of the participating  
5                   employer.

6                   The Secretary shall take into account  
7                   under subclause (II) whether the fail-  
8                   ure of an employer or pooled plan pro-  
9                   vider to provide any disclosures or  
10                  other information, or to take any  
11                  other action, necessary to administer  
12                  a plan or to allow a plan to meet re-  
13                  quirements described in subparagraph  
14                  (A)(i)(II) has continued over a period  
15                  of time that clearly demonstrates a  
16                  lack of commitment to compliance.  
17                  The Secretary may waive the require-  
18                  ments of subclause (II)(aa) in appro-  
19                  priate circumstances if the Secretary  
20                  determines it is in the best interests  
21                  of the employees of the participating  
22                  employer described in such clause to  
23                  retain the assets in the plan with re-  
24                  spect to which the employer's failure  
25                  occurred.

1           “(ii) PROSPECTIVE APPLICATION.—  
2           Any guidance issued by the Secretary  
3           under this subparagraph shall not apply to  
4           any action or failure occurring before the  
5           issuance of such guidance.

6           “(D) AGGREGATION RULES.—For purposes  
7           of this paragraph—

8           “(i) IN GENERAL.—In determining  
9           whether a person meets the requirements  
10          of this paragraph to be a pooled plan pro-  
11          vider with respect to any plan, all persons  
12          who are members of the same controlled  
13          group and who perform services for the  
14          plan shall be treated as one person.

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

20          (2) BONDING REQUIREMENTS FOR POOLED EM-  
21          PLOYER PLANS.—The last sentence of section 412(a)  
22          of the Employee Retirement Income Security Act of  
23          1974 (29 U.S.C. 1112(a)) is amended by inserting  
24          “or in the case of a pooled employer plan (as defined  
25          in section 3(43))” after “section 407(d)(1))”.

1           (3) CONFORMING AND TECHNICAL AMEND-  
2           MENTS.—Section 3 of the Employee Retirement In-  
3           come Security Act of 1974 (29 U.S.C. 1002) is  
4           amended—

5                   (A) in paragraph (16)(B)—

6                           (i) by striking “or” at the end of  
7                           clause (ii); and

8                           (ii) by striking the period at the end  
9                           and inserting “, or (iv) in the case of a  
10                           pooled employer plan, the pooled plan pro-  
11                           vider.”; and

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

13           (d) EFFECTIVE DATE.—

14                   (1) IN GENERAL.—The amendments made by  
15                   this section shall apply to years beginning after De-  
16                   cember 31, 2019.

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

1 **SEC. 2. LIMITATION ON EMPLOYER LIABILITY.**

2 Section 404 of the Employee Retirement Income Se-  
3 curity Act of 1974 (29 U.S.C. 1104) is amended by adding  
4 at the end the following new subsection:

5 “(e)(1) Except as provided in paragraph (2), an eligi-  
6 ble employer (as defined in section 408(p)(2)(C)(i) of the  
7 Internal Revenue Code of 1986) participating in a reg-  
8 istered pooled employer plan shall not be treated as a fidu-  
9 ciary with respect to such plan, including with respect to  
10 the selection or monitoring of any plan service provider  
11 or any investment under the plan, if—

12 “(A) the employer selected the registered pooled  
13 employer plan from the Department of Labor Inter-  
14 net website established under paragraph (6);

15 “(B) the pooled plan provider of such plan re-  
16 ceives no more than reasonable compensation for its  
17 services; and

18 “(C) the employer is not the pooled plan pro-  
19 vider or a plan service provider for the plan.

20 “(2) Notwithstanding paragraph (1), eligible employ-  
21 ers participating in such a registered pooled employer plan  
22 shall be responsible for—

23 “(A) ensuring, at the time of entering into the  
24 participation agreement and periodically thereafter  
25 (not less frequently than annually and upon any  
26 agreed-to change in the compensation of the pooled

1 plan provider), that the compensation received by  
2 the pooled plan provider pursuant to the participa-  
3 tion agreement is reasonable;

4 “(B) meeting the enrollment requirements ap-  
5 plicable to such employer under the plan;

6 “(C) transmitting contributions to the plan in a  
7 timely manner in accordance with the terms of the  
8 plan;

9 “(D) providing such information and assistance  
10 as is within the sole control of the eligible employer  
11 and is needed by the plan to operate in accordance  
12 with the plan document; and

13 “(E) providing such other information or assist-  
14 ance as may be required in regulations prescribed by  
15 the Secretary.

16 “(3) For purposes of this subsection, the term ‘reg-  
17 istered pooled employer plan’ means a pooled employer  
18 plan if the pooled plan provider—

19 “(A) agrees in the plan document to—

20 “(i) comply with all requirements applica-  
21 ble to a pooled plan provider under this title  
22 and the Internal Revenue Code of 1986;

23 “(ii) assume all fiduciary responsibility for  
24 the plan (except as retained by the eligible em-  
25 ployer under paragraph (2)) with respect to

1 such eligible employer, including for the pru-  
2 dent selection and monitoring of investments  
3 and negotiation of reasonable fees;

4 “(iii) serve as the plan sponsor for pur-  
5 poses of this title; and

6 “(iv) notify the eligible employer reason-  
7 ably in advance of the obligations of both the  
8 employer and the pooled plan provider under  
9 the pooled employer plan;

10 “(B) submits all key plan information requested  
11 by the Secretary under paragraph (5);

12 “(C) would not be precluded for any other rea-  
13 son from acting as a fiduciary of the plan under this  
14 title; and

15 “(D) either—

16 “(i) has fiduciary liability insurance with a  
17 per-claim limit which is at least—

18 “(I) the greater of 5 percent of plan  
19 assets or \$1,000,000; or

20 “(II) such other amount as is deter-  
21 mined by the Secretary by regulation; or

22 “(ii) is—

23 “(I) a bank, as defined in section  
24 202(a)(2) of the Investment Advisers Act  
25 of 1940, that has the power to manage, ac-

1           quire, or dispose of assets of a plan, and  
2           that has, as of the last day of its most re-  
3           cent fiscal year, equity capital in excess of  
4           \$1,000,000;

5           “(II) a savings and loan association,  
6           the accounts of which are insured by the  
7           Federal Savings and Loan Insurance Cor-  
8           poration, that has made application for  
9           and been granted trust powers to manage,  
10          acquire, or dispose of assets of any plan by  
11          a State or Federal authority having super-  
12          vision over savings and loan associations,  
13          and that has, as of the last day of its most  
14          recent fiscal year, equity capital or net  
15          worth in excess of \$1,000,000;

16          “(III) an insurance company subject  
17          to supervision and examination by a State  
18          authority having supervision over insur-  
19          ance companies that is qualified under the  
20          laws of more than 1 State to manage, ac-  
21          quire, or dispose of assets of a plan, and  
22          that has, as of the last day of its most re-  
23          cent fiscal year, net worth in excess of  
24          \$1,000,000; or

1                   “(IV) an investment adviser registered  
2                   under the Investment Advisers Act of 1940  
3                   that, as of the last day of its most recent  
4                   fiscal year, has total client assets under its  
5                   management and control in excess of  
6                   \$85,000,000, and shareholders’ or part-  
7                   ners’ equity in excess of \$1,000,000.

8                   “(4)(A) In the case of a registered pooled employer  
9                   plan that substantially fails to comply with the require-  
10                  ments of paragraph (3), the Secretary shall provide notifi-  
11                  cation to the pooled plan provider with an explanation of  
12                  the noncompliance and actions needed to return to compli-  
13                  ance.

14                  “(B) If the plan fails to return to compliance with  
15                  paragraph (3) within 90 days of receiving the notification  
16                  under subparagraph (A), the Secretary shall remove the  
17                  plan from the website established under paragraph (6) and  
18                  provide notification to all participating employers that the  
19                  plan no longer qualifies them to be relieved of fiduciary  
20                  duty under paragraph (1), and if they desire such relief  
21                  they must select another registered pooled employer plan  
22                  listed on such website.

23                  “(C) The Secretary shall promulgate regulations as  
24                  necessary to ensure that timely notification is provided to  
25                  eligible employers pursuant to subparagraph (B) and in

1 the case of a registered pooled employer plan that termi-  
2 nates registration.

3 “(5)(A) The Secretary, in consultation with the Sec-  
4 retary of the Treasury, shall determine the information  
5 that a pooled employer plan must submit in order to be  
6 included on the website established under paragraph (6),  
7 including sufficient information for employers and partici-  
8 pants to evaluate and compare plans.

9 “(B) The information required under subparagraph  
10 (A) may be provided in any reasonable manner or pursu-  
11 ant to regulations issued by the Secretary. The Secretary  
12 shall take reasonable efforts to ensure the collection of  
13 such information is not unduly burdensome for pooled  
14 plan providers while balancing the needs of employers and  
15 participants, and to ensure that the information requested  
16 does not discriminate in favor of certain providers with  
17 respect to the type of investments or investment strategies  
18 offered.

19 “(6)(A) Not later than the date that is 1 year after  
20 the date of the enactment of this Act, the Secretary, in  
21 consultation with the Secretary of the Treasury, shall  
22 make publicly available an Internet website to provide key  
23 plan information for plans that qualify as pooled employer  
24 plans (including contact information) to employers search-  
25 ing for a plan in which to participate.

1       “(B) The website established under this paragraph  
2 shall include, in a timely manner, all plans that qualify  
3 as pooled employer plans and that have submitted in full,  
4 on an annual basis and at the time of any material change,  
5 the information described in paragraph (5). Such website  
6 shall enable users to search pooled employer plans based  
7 on the information submitted under paragraph (5), includ-  
8 ing whether the pooled plan provider of the plan has ac-  
9 cepted the additional fiduciary responsibilities described in  
10 paragraph (3)(A). The Secretary shall take reasonable ef-  
11 forts to ensure that the information on the website is writ-  
12 ten in a manner calculated to be understood by the aver-  
13 age plan participant, and is sufficiently accurate and com-  
14 prehensive to reasonably apprise participants and bene-  
15 ficiaries of their rights and obligations under each plan.

16       “(C) The submission of information for inclusion on  
17 such website by a plan shall be voluntary, except in the  
18 case of a plan seeking treatment as a registered pooled  
19 employer plan.”.

○