

1 **DIVISION O—SETTING EVERY**
2 **COMMUNITY UP FOR RETIRE-**
3 **MENT ENHANCEMENT**

4 **SEC. 1. SHORT TITLE, ETC.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Setting Every Community Up for Retirement Enhance-
7 ment Act of 2019”.

8 (b) TABLE OF CONTENTS.—The table of contents of
9 this Act is as follows:

Sec. 1. Short title, etc.

TITLE I—EXPANDING AND PRESERVING RETIREMENT SAVINGS

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

Sec. 102. Increase in 10 percent cap for automatic enrollment safe harbor after
1st plan year.

Sec. 103. Rules relating to election of safe harbor 401(k) status.

Sec. 104. Increase in credit limitation for small employer pension plan startup
costs.

Sec. 105. Small employer automatic enrollment credit.

Sec. 106. Certain taxable non-tuition fellowship and stipend payments treated
as compensation for IRA purposes.

Sec. 107. Repeal of maximum age for traditional IRA contributions.

Sec. 108. Qualified employer plans prohibited from making loans through credit
cards and other similar arrangements.

Sec. 109. Portability of lifetime income options.

Sec. 110. Treatment of custodial accounts on termination of section 403(b)
plans.

Sec. 111. Clarification of retirement income account rules relating to church-
controlled organizations.

Sec. 112. Qualified cash or deferred arrangements must allow long-term em-
ployees working more than 500 but less than 1,000 hours per
year to participate.

Sec. 113. Penalty-free withdrawals from retirement plans for individuals in case
of birth of child or adoption.

Sec. 114. Increase in age for required beginning date for mandatory distribu-
tions.

Sec. 115. Special rules for minimum funding standards for community news-
paper plans.

Sec. 116. Treating excluded difficulty of care payments as compensation for de-
termining retirement contribution limitations.

TITLE II—ADMINISTRATIVE IMPROVEMENTS

- Sec. 201. Plan adopted by filing due date for year may be treated as in effect as of close of year.
- Sec. 202. Combined annual report for group of plans.
- Sec. 203. Disclosure regarding lifetime income.
- Sec. 204. Fiduciary safe harbor for selection of lifetime income provider.
- Sec. 205. Modification of nondiscrimination rules to protect older, longer service participants.
- Sec. 206. Modification of PBGC premiums for CSEC plans.

TITLE III—OTHER BENEFITS

- Sec. 301. Benefits provided to volunteer firefighters and emergency medical responders.
- Sec. 302. Expansion of section 529 plans.

TITLE IV—REVENUE PROVISIONS

- Sec. 401. Modification of required distribution rules for designated beneficiaries.
- Sec. 402. Increase in penalty for failure to file.
- Sec. 403. Increased penalties for failure to file retirement plan returns.
- Sec. 404. Increase information sharing to administer excise taxes.

TITLE V—TAX RELIEF FOR CERTAIN CHILDREN

- Sec. 501. Modification of rules relating to the taxation of unearned income of certain children.

TITLE VI—ADMINISTRATIVE PROVISIONS

- Sec. 601. Provisions relating to plan amendments.

1 TITLE I—EXPANDING AND PRE- 2 SERVING RETIREMENT SAV- 3 INGS

4 SEC. 101. MULTIPLE EMPLOYER PLANS; POOLED EM- 5 PLOYER PLANS.

6 (a) QUALIFICATION REQUIREMENTS.—

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

**10 “(e) APPLICATION OF QUALIFICATION REQUIRE-
11 MENTS FOR CERTAIN MULTIPLE EMPLOYER PLANS WITH
12 POOLED PLAN PROVIDERS.—**

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

4 “(A) is maintained by employers which
5 have a common interest other than having
6 adopted the plan, or

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

18 “(2) LIMITATIONS.—

19 “(A) IN GENERAL.—Paragraph (1) shall
20 not apply to any plan unless the terms of the
21 plan provide that in the case of any employer
22 in the plan failing to take the actions described
23 in paragraph (1)—

24 “(i) the assets of the plan attributable
25 to employees of such employer (or bene-

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

13 “(ii) such employer (and not the plan
14 with respect to which the failure occurred
15 or any other employer in such plan) shall,
16 except to the extent provided by the Sec-
17 retary, be liable for any liabilities with re-
18 spect to such plan attributable to employ-
19 ees of such employer (or beneficiaries of
20 such employees).

21 “(B) FAILURES BY POOLED PLAN PRO-
22 VIDERS.—If the pooled plan provider of a plan
23 described in paragraph (1)(B) does not perform
24 substantially all of the administrative duties
25 which are required of the provider under para-

1 graph (3)(A)(i) for any plan year, the Secretary
2 may provide that the determination as to
3 whether the plan meets the requirements under
4 this title applicable to a plan described in sec-
5 tion 401(a) or to a plan that consists of indi-
6 vidual retirement accounts described in section
7 408 (including by reason of subsection (c)
8 thereof), whichever is applicable, shall be made
9 in the same manner as would be made without
10 regard to paragraph (1).

11 “(3) POOLED PLAN PROVIDER.—

12 “(A) IN GENERAL.—For purposes of this
13 subsection, the term ‘pooled plan provider’
14 means, with respect to any plan, a person
15 who—

16 “(i) is designated by the terms of the
17 plan as a named fiduciary (within the
18 meaning of section 402(a)(2) of the Em-
19 ployee Retirement Income Security Act of
20 1974), as the plan administrator, and as
21 the person responsible to perform all ad-
22 ministrative duties (including conducting
23 proper testing with respect to the plan and
24 the employees of each employer in the

1 plan) which are reasonably necessary to
2 ensure that—

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

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

24 “(ii) registers as a pooled plan pro-
25 vider with the Secretary, and provides such

1 other information to the Secretary as the
2 Secretary may require, before beginning
3 operations as a pooled plan provider,

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

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

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

21 “(C) AGGREGATION RULES.—For purposes
22 of this paragraph, in determining whether a
23 person meets the requirements of this para-
24 graph to be a pooled plan provider with respect
25 to any plan, all persons who perform services

1 for the plan and who are treated as a single
2 employer under subsection (b), (c), (m), or (o)
3 of section 414 shall be treated as one person.

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

13 “(4) GUIDANCE.—

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

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

22 “(ii) which describes the procedures to
23 be taken to terminate a plan which fails to
24 meet the requirements to be a plan de-
25 scribed in paragraph (1), including the

1 proper treatment of, and actions needed to
2 be taken by, any employer in the plan and
3 the assets and liabilities of the plan attrib-
4 utable to employees of such employer (or
5 beneficiaries of such employees), and

6 “(iii) identifying appropriate cases to
7 which the rules of paragraph (2)(A) will
8 apply to employers in the plan failing to
9 take the actions described in paragraph
10 (1).

11 The Secretary shall take into account under
12 clause (iii) whether the failure of an employer
13 or pooled plan provider to provide any disclo-
14 sures or other information, or to take any other
15 action, necessary to administer a plan or to
16 allow a plan to meet requirements applicable to
17 the plan under section 401(a) or 408, whichever
18 is applicable, has continued over a period of
19 time that demonstrates a lack of commitment
20 to compliance.

21 “(B) GOOD FAITH COMPLIANCE WITH LAW
22 BEFORE GUIDANCE.—An employer or pooled
23 plan provider shall not be treated as failing to
24 meet a requirement of guidance issued by the
25 Secretary under this paragraph if, before the

1 issuance of such guidance, the employer or
2 pooled plan provider complies in good faith with
3 a reasonable interpretation of the provisions of
4 this subsection to which such guidance relates.

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

12 (2) CONFORMING AMENDMENT.—Section
13 413(c)(2) of such Code is amended by striking “sec-
14 tion 401(a)” and inserting “sections 401(a) and
15 408(c)”.

16 (3) TECHNICAL AMENDMENT.—Section 408(c)
17 of such Code is amended by inserting after para-
18 graph (2) the following new paragraph:

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

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

1 “(C) A pooled employer plan shall be treat-
2 ed as—

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

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

7 (c) POOLED EMPLOYER PLAN AND PROVIDER DE-
8 FINED.—

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

13 “(43) POOLED EMPLOYER PLAN.—

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

16 “(i) which is an individual account
17 plan established or maintained for the pur-
18 pose of providing benefits to the employees
19 of 2 or more employers;

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

1 408 of such Code (including by reason of
2 subsection (c) thereof); and

3 “(iii) the terms of which meet the re-
4 quirements of subparagraph (B).

5 Such term shall not include a plan maintained
6 by employers which have a common interest
7 other than having adopted the plan.

8 “(B) REQUIREMENTS FOR PLAN TERMS.—

9 The requirements of this subparagraph are met
10 with respect to any plan if the terms of the
11 plan—

12 “(i) designate a pooled plan provider
13 and provide that the pooled plan provider
14 is a named fiduciary of the plan;

15 “(ii) designate one or more trustees
16 meeting the requirements of section
17 408(a)(2) of the Internal Revenue Code of
18 1986 (other than an employer in the plan)
19 to be responsible for collecting contribu-
20 tions to, and holding the assets of, the
21 plan and require such trustees to imple-
22 ment written contribution collection proce-
23 dures that are reasonable, diligent, and
24 systematic;

1 “(iii) provide that each employer in
2 the plan retains fiduciary responsibility
3 for—

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

11 “(II) to the extent not otherwise
12 delegated to another fiduciary by the
13 pooled plan provider and subject to
14 the provisions of section 404(c), the
15 investment and management of the
16 portion of the plan’s assets attrib-
17 utable to the employees of the em-
18 ployer (or beneficiaries of such em-
19 ployees);

20 “(iv) provide that employers in the
21 plan, and participants and beneficiaries,
22 are not subject to unreasonable restric-
23 tions, fees, or penalties with regard to
24 ceasing participation, receipt of distribu-
25 tions, or otherwise transferring assets of

1 the plan in accordance with section 208 or
2 paragraph (44)(C)(i)(II);

3 “(v) require—

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

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

1 other information which the Secretary
2 may require or which the pooled plan
3 provider otherwise determines are nec-
4 essary to administer the plan or to
5 allow the plan to meet such require-
6 ments; and

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

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

16 “(i) a multiemployer plan; or

17 “(ii) a plan established before the
18 date of the enactment of the Setting Every
19 Community Up for Retirement Enhance-
20 ment Act of 2019 unless the plan adminis-
21 trator elects that the plan will be treated
22 as a pooled employer plan and the plan
23 meets the requirements of this title appli-
24 cable to a pooled employer plan established
25 on or after such date.

1 “(D) TREATMENT OF EMPLOYERS AS PLAN
2 SPONSORS.—Except with respect to the admin-
3 istrative duties of the pooled plan provider de-
4 scribed in paragraph (44)(A)(i), each employer
5 in a pooled employer plan shall be treated as
6 the plan sponsor with respect to the portion of
7 the plan attributable to employees of such em-
8 ployer (or beneficiaries of such employees).

9 “(44) POOLED PLAN PROVIDER.—

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

12 “(i) is designated by the terms of a
13 pooled employer plan as a named fiduciary,
14 as the plan administrator, and as the per-
15 son responsible for the performance of all
16 administrative duties (including conducting
17 proper testing with respect to the plan and
18 the employees of each employer in the
19 plan) which are reasonably necessary to
20 ensure that—

21 “(I) the plan meets any require-
22 ment applicable under this Act or the
23 Internal Revenue Code of 1986 to a
24 plan described in section 401(a) of
25 such Code or to a plan that consists

1 of individual retirement accounts de-
2 scribed in section 408 of such Code
3 (including by reason of subsection (c)
4 thereof), whichever is applicable; and

5 “(II) each employer in the plan
6 takes such actions as the Secretary or
7 pooled plan provider determines are
8 necessary for the plan to meet the re-
9 quirements described in subclause (I),
10 including providing the disclosures
11 and information described in para-
12 graph (43)(B)(v)(II);

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

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

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

1 “(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).

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

3 “(i) to identify the administrative duties and other actions required to be performed by a pooled plan provider under either such paragraph; and

4 “(ii) which requires in appropriate cases that if an employer in the plan fails to take the actions required under subparagraph (A)(i)(II)—

5 “(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

1 the Internal Revenue Code of 1986
2 for each individual whose account is
3 transferred, or to any other arrange-
4 ment that the Secretary determines is
5 appropriate in such guidance; and

6 “(II) such employer (and not the
7 plan with respect to which the failure
8 occurred or any other employer in
9 such plan) shall, except to the extent
10 provided in such guidance, be liable
11 for any liabilities with respect to such
12 plan attributable to employees of such
13 employer (or beneficiaries of such em-
14 ployees).

15 The Secretary shall take into account
16 under clause (ii) whether the failure of an
17 employer or pooled plan provider to provide
18 any disclosures or other information, or to
19 take any other action, necessary to admin-
20 ister a plan or to allow a plan to meet re-
21 quirements described in subparagraph
22 (A)(i)(II) has continued over a period of
23 time that demonstrates a lack of commit-
24 ment to compliance. The Secretary may
25 waive the requirements of subclause (ii)(I)

1 in appropriate circumstances if the Sec-
2 retary determines it is in the best interests
3 of the employees of the employer referred
4 to in such clause (and the beneficiaries of
5 such employees) to retain the assets in the
6 plan with respect to which the employer's
7 failure occurred.

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

18 “(E) AGGREGATION RULES.—For purposes
19 of this paragraph, in determining whether a
20 person meets the requirements of this para-
21 graph to be a pooled plan provider with respect
22 to any plan, all persons who perform services
23 for the plan and who are treated as a single
24 employer under subsection (b), (c), (m), or (o)

1 of section 414 of the Internal Revenue Code of
2 1986 shall be treated as one person.”.

3 (2) BONDING REQUIREMENTS FOR POOLED EM-
4 PLOYER PLANS.—The last sentence of section 412(a)
5 of the Employee Retirement Income Security Act of
6 1974 (29 U.S.C. 1112(a)) is amended by inserting
7 “or in the case of a pooled employer plan (as defined
8 in section 3(43))” after “section 407(d)(1)”.

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

13 (A) in paragraph (16)(B)—

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

16 (ii) by striking the period at the end
17 and inserting “, or (iv) in the case of a
18 pooled employer plan, the pooled plan pro-
19 vider.”; and

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

21 (d) POOLED EMPLOYER AND MULTIPLE EMPLOYER

22 PLAN REPORTING.—

23 (1) ADDITIONAL INFORMATION.—Section 103
24 of the Employee Retirement Income Security Act of
25 1974 (29 U.S.C. 1023) is amended—

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

5 (B) by amending subsection (g) to read as
6 follows:

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

11 “(1) with respect to any plan to which section
12 210(a) applies (including a pooled employer plan), a
13 list of employers in the plan and a good faith esti-
14 mate of the percentage of total contributions made
15 by such employers during the plan year and the ag-
16 gregate account balances attributable to each em-
17 ployer in the plan (determined as the sum of the ac-
18 count balances of the employees of such employer
19 (and the beneficiaries of such employees)); and

20 “(2) with respect to a pooled employer plan, the
21 identifying information for the person designated
22 under the terms of the plan as the pooled plan pro-
23 vider.”.

24 (2) SIMPLIFIED ANNUAL REPORTS.—Section
25 104(a) of the Employee Retirement Income Security

1 Act of 1974 (29 U.S.C. 1024(a)) is amended by
2 striking paragraph (2)(A) and inserting the fol-
3 lowing:

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

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

9 “(ii) is a plan described in section 210(a) that
10 covers fewer than 1,000 participants, but only if no
11 single employer in the plan has 100 or more partici-
12 pants covered by the plan.”.

13 (e) EFFECTIVE DATE.—

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

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.