

115TH CONGRESS
1ST SESSION

S. 1076

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to modify certain provisions relating to multiemployer pensions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 9, 2017

Mr. SANDERS (for himself, Ms. BALDWIN, Mr. BROWN, Mr. FRANKEN, Ms. KLOBUCHAR, Mrs. MCCASKILL, Mr. PETERS, Mr. REED, Ms. STABENOW, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to modify certain provisions relating to multiemployer pensions, 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. SHORT TITLE.**

4 This Act may be cited as the “Keep Our Pension
5 Promises Act”.

1 **SEC. 2. RESTORING ANTI-CUTBACK PROVISIONS.**

2 Section 201 of the Multiemployer Pension Reform
3 Act of 2014 (division O of Public Law 113–235) and the
4 amendments made by such section are repealed, and the
5 Employee Retirement Income Security Act of 1974 and
6 the Internal Revenue Code of 1986 shall be applied as if
7 such section and amendments had never been enacted.

8 **SEC. 3. PARTITIONS OF ELIGIBLE MULTIEMPLOYER PLANS.**

9 (a) IN GENERAL.—Section 4233 of the Employee Re-
10 tirement Income Security Act of 1974 (29 U.S.C. 1413),
11 as amended by section 122 of the Multiemployer Pension
12 Reform Act of 2014 (division O of Public Law 113–235),
13 is amended to read as follows:

14 **“SEC. 4233. PARTITIONS OF ELIGIBLE MULTIEMPLOYER**
15 **PLANS.**

16 “(a)(1) Upon the application by the plan sponsor of
17 an eligible multiemployer plan for a partition of the plan,
18 the corporation may order a partition of the plan in ac-
19 cordance with this section. The corporation shall make a
20 determination regarding the application, in accordance
21 with regulations promulgated by the corporation, not later
22 than 270 days after—

23 “(A) the date such application was filed; or

24 “(B) if later, the date such application was
25 completed.

1 “(2) At least 14 days before submitting an applica-
2 tion for partition of a plan under paragraph (1), the plan
3 sponsor of the plan shall notify all participants and bene-
4 ficiaries of such application, in the form and manner pre-
5 scribed by regulations issued by the corporation.

6 “(b) For purposes of this section, a multiemployer
7 plan is an eligible multiemployer plan if—

8 “(1) the plan is in critical status and is pro-
9 jected to become insolvent within the meaning of
10 section 4245—

11 “(A) during the current plan year or any
12 of the 14 succeeding plan years; or

13 “(B) during the current plan year or any
14 of the 19 succeeding plan years, if the plan has
15 a ratio of inactive participants to active partici-
16 pants that exceeds 2 to 1 and the funded per-
17 centage of the plan is less than 80 percent;

18 “(2) the corporation determines, after consulta-
19 tion with the Participant and Plan Sponsor Advo-
20 cate selected under section 4004, that the plan spon-
21 sor has taken (or is taking concurrently with an ap-
22 plication for partition) all reasonable measures de-
23 scribed in section 432(e)(3)(A) of the Internal Rev-
24 enue Code of 1986, and has made (or is making)

1 benefit adjustments under section 432(e)(8) of such
2 Code to reduce the risk of insolvency;

3 “(3) 20 percent or more of the amount by
4 which the liabilities of the plan exceed the value of
5 plan assets is attributable to the service of partici-
6 pants whose employers—

7 “(A) withdrew from the plan prior to the
8 date of enactment of the Keep Our Pension
9 Promises Act; and

10 “(B) failed to pay (or are delinquent with
11 respect to paying) the full amount of the em-
12 ployer’s withdrawal liability under section
13 4201(b)(1) or as otherwise determined under
14 an agreement with the plan;

15 “(4) the corporation reasonably expects that—

16 “(A) a partition of the plan will reduce the
17 corporation’s expected long-term loss with re-
18 spect to the plan; and

19 “(B) a partition of the plan is necessary
20 for the plan to remain or become solvent; and

21 “(5) the corporation certifies to Congress that
22 after partition the corporation will continue to have
23 the ability to meet existing financial assistance obli-
24 gations to other plans (including any liabilities asso-
25 ciated with multiemployer plans that are insolvent or

1 that are projected to become insolvent within 10
2 years).

3 “(c)(1) A partition under this section shall consist of
4 a transfer to the plan created by the partition order of
5 benefits to which eligible participants and beneficiaries
6 were entitled under the plan that was partitioned, in an
7 amount not to exceed the amount that would be guaran-
8 teed under section 4022A if the plan were insolvent as
9 of the date of the partition order.

10 “(2) The corporation’s partition order shall provide
11 for an annual transfer by the corporation to the plan cre-
12 ated by the partition order of an amount equal to the year-
13 ly benefits that would be guaranteed under section 4022A
14 to the eligible participants and beneficiaries if the plan
15 were insolvent as of the date of the partition order.

16 “(3)(A) Where practicable, the initial transfer in ac-
17 cordance with paragraph (2) shall be completed at least
18 60 days prior to the plan year that immediately follows
19 the partition start date. The partition order shall require
20 that the initial transfer be sufficient to satisfy the guaran-
21 teed benefits in the first plan year of the partitioned plan.

22 “(B) Subsequent transfers in accordance with para-
23 graph (2) shall be completed at least 60 days prior to the
24 first day of each succeeding plan year.

1 “(d)(1)(A) The plan created by the partition order
2 is a successor plan to which section 4022A applies.

3 “(B) At the discretion of the plan sponsor, the plan
4 created by the partition order may remain a part of the
5 plan that was partitioned or be maintained as a separate
6 plan.

7 “(2)(A) The plan sponsor and the administrator of
8 an eligible multiemployer plan prior to the partition shall
9 be the plan sponsor and the administrator, respectively,
10 of the plan created by the partition order, and shall adopt
11 reasonable procedures to reduce administrative expenses
12 and to coordinate benefit payments and communications
13 with the participants and beneficiaries in the plan created
14 by the partition order.

15 “(B) Benefit payments equal to the amount of an eli-
16 gible participant or beneficiary’s guaranteed benefits shall
17 be paid to such participant or beneficiary and may be—

18 “(i) paid separately by the plan created by the
19 partition order; or

20 “(ii) paid in a single, monthly payment by the
21 plan that was partitioned.

22 “(3) In the event an employer withdraws from the
23 plan that was partitioned, withdrawal liability shall be
24 computed under section 4201 with respect to both the plan

1 that was partitioned and the plan created by the partition
2 order.

3 “(e) In addition to the payment of guaranteed bene-
4 fits under subsection (d)(2)(B), each eligible participant
5 or beneficiary of the plan created by the partition order
6 shall receive a monthly benefit for each month the benefit
7 is in pay status in an amount that—

8 “(1) the corporation, in consultation with the
9 Participant and Plan Sponsor Advocate, determines
10 to be fair to the plan, the participant or beneficiary,
11 the employers, and the corporation; and

12 “(2) when aggregated with the payment under
13 subsection (d)(2)(B), results in a monthly benefit
14 that is at least equal to the lesser of—

15 “(A) the monthly nonforfeitable benefit for
16 such participant or beneficiary payable under
17 the plan that was partitioned; or

18 “(B) 80 percent of the maximum benefit
19 commencing at age 65 guaranteed under sec-
20 tion 4022(a) for participants and beneficiaries
21 in terminated single employer plans, unreduced
22 for early retirement.

23 Such monthly benefit may be combined with the monthly
24 payment under subsection (d)(2)(B)(ii).

1 “(f)(1) The corporation shall establish a legacy fund
2 for the purposes of funding the administrative and benefit
3 costs to the corporation arising from partitions under this
4 section, as described in paragraph (2).

5 “(2) Any administrative and benefit costs to the cor-
6 poration arising from a partition ordered under this sec-
7 tion in excess of amounts available in such legacy fund
8 shall be paid from the fund for basic benefits guaranteed
9 for multiemployer plans.

10 “(g) Only one partition order shall be issued with re-
11 spect to each eligible multiemployer plan.

12 “(h) For purposes of this subsection, the term ‘eligi-
13 ble participant or beneficiary’ means a participant or ben-
14 eficiary of an eligible multiemployer plan that is parti-
15 tioned in accordance with a petition order under this sec-
16 tion, and who is an employee or beneficiary of an employee
17 of an employer that is described in subsection (b)(3).

18 “(i) Not later than 14 days after the issuance of a
19 partition order under this section, the corporation shall
20 provide notice of such order to the Committee on Finance
21 of the Senate, the Committee on Health, Education,
22 Labor, and Pensions of the Senate, the Committee on
23 Education and the Workforce of the House of Representa-
24 tives, the Committee on Ways and Means of the House
25 of Representatives, and to all eligible participants or bene-

1 ficiaries whose guaranteed benefits will be paid directly or
2 indirectly by the plan created by the partition order.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 subsection (a) shall apply with respect to plan years begin-
5 ning after the date of enactment of this Act.

6 (c) TRANSFERS TO LEGACY FUND.—The Secretary
7 of the Treasury shall from time to time transfer from the
8 general fund of the Treasury to the legacy fund estab-
9 lished under section 4233(f)(1) of the Employee Retire-
10 ment Income Security Act of 1974 (29 U.S.C. 1413(f)(1))
11 (as amended by subsection (a)) amounts equal to the in-
12 crease in revenues to the Treasury by reason of the
13 amendments made by sections 6 and 7 of this Act.

14 (d) TRANSFERS BETWEEN FUNDS OF THE PBGC.—
15 Section 4005 of the Employee Retirement Income Security
16 Act of 1974 (29 U.S.C. 1305) is amended by adding at
17 the end the following:

18 “(i)(1) An eighth fund is established under section
19 4233(f) and credited with the amounts described in sec-
20 tion 3(e) of the Keep Our Pension Promises Act.

21 “(2) Notwithstanding subsection (g), the corporation
22 may transfer amounts into the legacy fund established
23 under section 4233(f)(1) from other funds established
24 under this section, as the corporation determines appro-
25 priate.”.

1 **SEC. 4. EMPLOYER WITHDRAWALS RELATING TO MULTIEM-**
 2 **PLOYER PLANS.**

3 The matter preceding paragraph (1) of section
 4 4225(b) of the Employee Retirement Income Security Act
 5 of 1974 (29 U.S.C. 1405(b)) is amended by inserting “,
 6 including an employer undergoing liquidation under chap-
 7 ter 7 of title 11, United States Code, or similar provisions
 8 of State law,” after “dissolution,”.

9 **SEC. 5. PRIORITIES OF CLAIMS IN BANKRUPTCY.**

10 (a) IN GENERAL.—Section 507(a) of title 11, United
 11 States Code, is amended—

12 (1) by redesignating paragraphs (1) through 10
 13 as paragraphs (2) through (11), respectively;

14 (2) by inserting before paragraph (2) (as redes-
 15 ignated) the following:

16 “(1) First, withdrawal liability determined
 17 under part 1 of subtitle E of title IV of the Em-
 18 ployee Retirement Income Security Act of 1974 (29
 19 U.S.C. 1381 et seq.).”;

20 (3) in the matter preceding subparagraph (A)
 21 of paragraph (2) (as redesignated), by striking
 22 “First:” and inserting “Second:”;

23 (4) in paragraph (3) (as redesignated), by strik-
 24 ing “Second,” and inserting “Third,”;

25 (5) in paragraph (4) (as redesignated), by strik-
 26 ing “Third,” and inserting “Fourth,”;

1 (6) in the matter preceding subparagraph (A)
 2 of paragraph (5) (as redesignated), by striking
 3 “Fourth,” and inserting “Fifth,”;

4 (7) in the matter preceding subparagraph (A)
 5 of paragraph (6) (as redesignated), by striking
 6 “Fifth,” and inserting “Sixth,”;

7 (8) in the matter preceding subparagraph (A)
 8 of paragraph (7) (as redesignated), by striking
 9 “Sixth,” and inserting “Seventh,”;

10 (9) in paragraph (8) (as redesignated), by strik-
 11 ing “Seventh,” and inserting “Eighth,”;

12 (10) in the matter preceding subparagraph (A)
 13 of paragraph (9) (as redesignated), by striking
 14 “Eighth,” and inserting “Ninth,”;

15 (11) in paragraph (10) (as redesignated), by
 16 striking “Ninth,” and inserting “Tenth,”; and

17 (12) in paragraph (11) (as redesignated), by
 18 striking “Tenth,” and inserting “Eleventh,”.

19 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

20 (1) Section 502(i) of title 11, United States
 21 Code, is amended by striking “section 507(a)(8)”
 22 and inserting “section 507(a)(9)”.

23 (2) Section 503(b)(1)(B)(i) of title 11, United
 24 States Code, is amended by striking “section
 25 507(a)(8)” and inserting “section 507(a)(9)”.

1 (3) Section 507(d) of title 11, United States
 2 Code, is amended by striking “(a)(1), (a)(4), (a)(5),
 3 (a)(6), (a)(7), (a)(8), or (a)(9)” and inserting
 4 “(a)(2), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9), or
 5 (a)(10)”.

6 (4) Section 523(A) of title 11, United States
 7 Code, is amended by striking “section 507(a)(3) or
 8 507(a)(8)” and inserting “section 507(a)(4) or
 9 507(a)(9)”.

10 (5) Section 724 of title 11, United States Code,
 11 is amended—

12 (A) in subsection (b)(2), by striking “sec-
 13 tion 507(a)(1)(C) or 507(a)(2)” and inserting
 14 “section 507(a)(2)(C) or 507(a)(3)”; and

15 (B) in subsection (f)—

16 (i) in paragraph (1), by striking “sec-
 17 tion 507(a)(4)” and inserting “section
 18 507(a)(5)”; and

19 (ii) in paragraph (2), by striking “sec-
 20 tion 507(a)(5)” and inserting “section
 21 507(a)(6)”.

22 (6) Section 726(b) of title 11, United States
 23 Code, is amended by striking “paragraph (1), (2),
 24 (3), (4), (5), (6), (7), (8), (9), or (10) of section

1 507(a)” and inserting “paragraphs (2) through (11)
2 of section 507(a)”.

3 (7) Section 752(a) of title 11, United States
4 Code, is amended by striking “section 507(a)(2)”
5 and inserting “section 507(a)(3)”.

6 (8) Section 766 of title 11, United States Code,
7 is amended—

8 (A) in subsection (h), by striking “section
9 507(a)(2)” and inserting “section 507(a)(3)”;
10 and

11 (B) in subsection (i)—

12 (i) in paragraph (1), by striking “sec-
13 tion 507(a)(2)” and inserting “section
14 507(a)(3)”;

15 (ii) in paragraph (2), by striking “sec-
16 tion 507(a)(2)” and inserting “section
17 507(a)(3)”.

18 (9) Section 901 of title 11, United States Code,
19 is amended by striking “507(a)(2)” and inserting
20 “507(a)(3)”.

21 (10) Section 943(b)(5) of title 11, United
22 States Code, is amended by striking “section
23 507(a)(2)” and inserting “section 507(a)(3)”.

24 (11) Section 1123(a)(1) of title 11, United
25 States Code, is amended by striking “section

1 507(a)(2), 507(a)(3), or 507(a)(8)” and inserting
2 “section 507(a)(3), 507(a)(4), or 507(a)(9)”.

3 (12) Section 1129(a)(9) of title 11, United
4 States Code, is amended—

5 (A) in subparagraph (A), by striking “sec-
6 tion 507(a)(3) or 507(a)(4)” and inserting
7 “section 507(a)(4) or 507(a)(5)”;

8 (B) in the matter preceding clause (i) of
9 subparagraph (B), by striking “section
10 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or
11 507(a)(7)” and inserting “section 507(a)(2),
12 507(a)(5), 507(a)(6), 507(a)(7), or 507(a)(8)”;

13 (C) in the matter preceding clause (i) of
14 subparagraph (C), by striking “section
15 507(a)(8)” and inserting “section 507(a)(9)”;
16 and

17 (D) in subparagraph (D), by striking “sec-
18 tion 507(a)(8)” and inserting “section
19 507(a)(9)”.

20 (13) Section 1222(a)(4) of title 11, United
21 States Code, is amended by striking “section
22 507(a)(1)(B)” and inserting “507(a)(2)(B)”.

23 (14) Section 1226(b)(1) of title 11, United
24 States Code, is amended by striking “section
25 507(a)(2)” and inserting “section 507(a)(3)”.

1 (15) Section 1322(a)(4) of title 11, United
 2 States Code, is amended by striking “section
 3 507(a)(1)(B)” and inserting “section 507(a)(2)(B)”.

4 (16) Section 1326(b)(1) of title 11, United
 5 States Code, is amended by striking “section
 6 507(a)(2)” and inserting “section 507(a)(3)”.

7 (17) Section 1328(a)(2) of title 11, United
 8 States Code, is amended by striking “section
 9 507(a)(8)(C)” and inserting “section 507(a)(9)(C)”.

10 **SEC. 6. LIMITATION OF NONRECOGNITION OF LIKE-KIND**
 11 **EXCHANGES.**

12 (a) IN GENERAL.—Paragraph (2) of section 1031(a)
 13 of the Internal Revenue Code of 1986 is amended—

14 (1) by redesignating subparagraphs (A), (B),
 15 (C), (D), (E), and (F) as clauses (i), (ii), (iii), (iv),
 16 (v), and (vi), and by moving such clauses 2 ems to
 17 the right,

18 (2) by moving the flush language after the first
 19 sentence 2 ems to the right,

20 (3) by striking “(2) EXCEPTION.—This sub-
 21 section” and inserting “(2) EXCEPTIONS.—

22 “(A) EXCLUDED PROPERTY.—This sub-
 23 section”, and

24 (4) by adding at the end the following new sub-
 25 paragraph:

1 “(B) DOLLAR LIMITATION FOR EX-
2 CHANGES OF REAL PROPERTY.—

3 “(i) IN GENERAL.—Paragraph (1)
4 shall not apply so much of the gain which,
5 but for such paragraph, would be recog-
6 nized by the taxpayer with respect to real
7 property exchanged during the taxable year
8 as exceeds \$1,000,000.

9 “(ii) SPECIAL RULES FOR PARTNER-
10 SHIPS AND S-CORPORATIONS.—In the case
11 of a pass-through entity, clause (i) shall be
12 applied at both the entity and at the part-
13 ner or owner level.

14 “(iii) AGGREGATION RULES.—For
15 purposes of this subparagraph—

16 “(I) FAMILY MEMBERS.—Individ-
17 uals who are spouses or who bear any
18 of the relationships described in sec-
19 tion 152(d)(2) to each other shall be
20 treated as 1 taxpayer (without regard
21 to whether spouses file a joint return).

22 “(II) CORPORATIONS AND OTHER
23 ENTITIES.—All persons treated as a
24 single employer under subsection (a)
25 or (b) of section 52 or subsection (m)

1 or (o) of section 414 shall be treated
2 as 1 person.

3 “(iv) ADJUSTMENT FOR INFLATION.—

4 In the case of exchanges completed in a
5 taxable year beginning after December 31,
6 2017, the \$1,000,000 amount in clause (i)
7 shall be increased by an amount equal to—

8 “(I) such dollar amount, multi-
9 plied by

10 “(II) the cost-of-living adjust-
11 ment determined under section 1(f)(3)
12 for the calendar year in which the tax-
13 able year begins, determined by sub-
14 stituting ‘calendar year 2016’ for ‘cal-
15 endar year 1992’ in subparagraph (B)
16 thereof.

17 If any amount as adjusted under the pre-
18 ceding sentence is not a multiple of
19 \$1,000, such amount shall be rounded to
20 the nearest multiple of \$1,000.”.

21 (b) EXCLUSION OF ART AND COLLECTIBLES.—Sub-
22 paragraph (A) of section 1031(a)(2) of the Internal Rev-
23 enue Code of 1986, as amended by subsection (a), is
24 amended—

25 (1) by striking “or” at the end of clause (v),

1 (2) by striking the period at the end of clause
2 (vi) and inserting “, or”, and

3 (3) by inserting after clause (vi) the following
4 new clause:

5 “(vii) any collectible (within the mean-
6 ing of section 408(m), without regard to
7 paragraph (3) thereof).”.

8 (c) REGULATORY AUTHORITY.—Subsection (f) of
9 section 1031 of the Internal Revenue Code of 1986 is
10 amended by adding at the end the following new para-
11 graph:

12 “(5) RULES RELATING TO DOLLAR LIMITA-
13 TION.—The Secretary shall prescribe such guidance
14 as is necessary for applying subsection (a)(2)(B)(i)
15 in the case of the exchange of multiple pieces of real
16 property by related persons.”.

17 (d) CONFORMING AMENDMENTS.—

18 (1) Subsection (b) of section 1031 of the Inter-
19 nal Revenue Code of 1986 is amended—

20 (A) by striking “IN KIND.—If an ex-
21 change” and inserting “IN KIND.—

22 “(1) IN GENERAL.—If an exchange”, and

23 (B) by adding at the end the following new
24 paragraph:

1 “(2) COORDINATION WITH SUBSECTION
2 (a)(2)(B).—In the case of an exchange to which
3 paragraph (1) applies—

4 “(A) paragraph (1) shall be applied before
5 the application of subsection (a)(2)(B), and

6 “(B) subsection (a)(2)(B) shall be ap-
7 plied—

8 “(i) as if such exchange were within
9 the provisions of subsection (a), and

10 “(ii) by increasing the basis of the
11 property disposed of by the taxpayer in
12 such exchange by the amount of any gain
13 determined under paragraph (1).”.

14 (2) Subsection (d) of section 1031 of such Code
15 is amended by striking “in the amount of gain” and
16 inserting “in the amount of gain (including any gain
17 recognized by reason of subsection (a)(2)(B)(i))”.

18 (3) Subsection (i) of section 1031 of such Code
19 is amended by striking “(a)(2)(B)” and inserting
20 “(a)(2)(A)(ii)”.

21 (e) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to exchanges completed in taxable
23 years beginning after December 31, 2016.

1 **SEC. 7. CONTRIBUTION LIMIT AND INCREASED MINIMUM**
 2 **DISTRIBUTIONS FOR CERTAIN RETIREMENT**
 3 **PLANS WITH LARGE ACCOUNT BALANCES.**

4 (a) CONTRIBUTION LIMIT.—

5 (1) IN GENERAL.—Subpart A of part I of sub-
 6 chapter D of chapter 1 of the Internal Revenue Code
 7 of 1986 is amended by adding at the end the fol-
 8 lowing:

9 **“SEC. 409B. CONTRIBUTION LIMIT ON CERTAIN RETIRE-**
 10 **MENT PLANS WITH LARGE ACCOUNT BAL-**
 11 **ANCES.**

12 “(a) GENERAL RULE.—Notwithstanding any other
 13 provision of this title, no applicable annual additions shall
 14 be made by, or on behalf of, an individual for the taxable
 15 year to any applicable retirement plan to the extent such
 16 applicable annual additions exceed the excess (if any) of—

17 “(1) the applicable dollar amount for the tax-
 18 able year, over

19 “(2) the aggregate balances to the credit of the
 20 individual (whether as a participant, owner, or bene-
 21 ficiary) in all applicable retirement plans (deter-
 22 mined as of the close of the calendar year preceding
 23 the calendar year in which the taxable year begins).

24 “(b) RULES RELATING TO CONTRIBUTION LIMITA-
 25 TIONS.—

26 “(1) PLANS OTHER THAN CERTAIN IRAS.—

“(A) IN GENERAL.—Except as provided in paragraph (2), applicable annual additions in excess of the limitation under subsection (a) shall be treated for purposes of this title in the same manner as excess deferrals are treated under section 402(g).

“(B) SPECIAL RULE FOR AFTER TAX CONTRIBUTIONS.—If, without regard to this paragraph, any portion of an applicable annual addition to which subparagraph (A) applies with respect to an individual is not excludable from gross income of the individual (or no deduction is allowable to the individual with respect to such portion), such portion shall not be—

“(i) includible in gross income by reason of the application of subparagraph (A),
or

“(ii) taken into account in computing the investment in the contract for purposes of section 72.

“(2) SPECIAL RULE FOR IRAS.—

“(A) IN GENERAL.—In the case of an applicable retirement plan which is an individual retirement plan (other than a simplified employee pension under section 408(k) or a simple

retirement account under section 408(p)), any applicable annual addition to such plan in excess of the limitation under subsection (a) shall be treated for purposes of sections 408 and 408A as a contribution for the taxable year in excess of the maximum amount allowable as a deduction under section 219 for the taxable year.

“(B) AFTER TAX CONTRIBUTIONS.—In the case of applicable annual additions in excess of the limitation under subsection (a)—

“(i) which are treated as designated nondeductible contributions under section 408(o), rules similar to the rules of paragraph (1)(B) shall apply, and

“(ii) to a Roth IRA, section 408A(d)(2)(C) shall apply to such additions and to any net income allocable to such additions.

For purposes of clause (ii), distributions from a Roth IRA shall be treated as first made from amounts described in clause (ii) and section 408A(d)(2)(C) shall be applied in the same manner as if there were a distribution of a contribution described in section 408(d)(4) (with-

1 out regard to whether such distribution is time-
 2 ly made).

3 “(3) ALLOCATION OF EXCESS APPLICABLE AN-
 4 NUAL ADDITIONS.—If the applicable dollar amount
 5 for a taxable year exceeds the amount described in
 6 subsection (a)(2), the taxpayer may, in such form
 7 and manner as the Secretary may prescribe, allocate
 8 such excess to applicable annual additions to each
 9 applicable retirement plan in such manner as the
 10 taxpayer chooses.

11 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
 12 poses of this section—

13 “(1) APPLICABLE ANNUAL ADDITION.—

14 “(A) IN GENERAL.—The term ‘applicable
 15 annual addition’ means any of the following
 16 made to or on behalf of an individual:

17 “(i) An annual addition (within the
 18 meaning of section 415(c)(2)).

19 “(ii) Any contribution to an individual
 20 retirement plan, including any employer or
 21 employee contribution to a simplified em-
 22 ployee pension under section 408(k) or a
 23 simple retirement account under section
 24 408(p).

1 “(iii) Any deferral under an eligible
 2 deferred compensation plan described in
 3 section 457(b) which is maintained by an
 4 eligible employer described in section
 5 457(e)(1)(A).

6 “(B) ROLLOVER CONTRIBUTIONS DIS-
 7 REGARDED.—A rollover contribution under sec-
 8 tion 402(c), 403(b)(8), 408(d)(3)(A)(ii), or
 9 457(e)(16) shall not be treated as an annual
 10 addition.

11 “(2) APPLICABLE DOLLAR AMOUNT.—

12 “(A) IN GENERAL.—The term ‘applicable
 13 dollar amount’ means \$5,000,000.

14 “(B) ADJUSTMENT FOR INFLATION.—In
 15 the case of any taxable year beginning after
 16 2017, the \$5,000,000 amount under subpara-
 17 graph (A) shall be increased by an amount
 18 equal to the product of—

19 “(i) such amount, and

20 “(ii) the cost-of-living adjustment
 21 under section 1(f)(3) for the calendar year
 22 in which such taxable year begins, deter-
 23 mined by substituting ‘calendar year 2016’
 24 for ‘calendar year 1992’ in subparagraph
 25 (B) thereof.

1 “(C) ROUNDING.—If any amount as ad-
 2 justed under subparagraph (B) is not a mul-
 3 tiple of \$1,000, such amount shall be rounded
 4 to the next lowest multiple of \$1,000.

5 “(3) APPLICABLE RETIREMENT PLAN.—The
 6 term ‘applicable retirement plan’ means—

7 “(A) a defined contribution plan to which
 8 section 401(a) or 403(a) applies,

9 “(B) an annuity contract under section
 10 403(b),

11 “(C) an eligible deferred compensation
 12 plan described in section 457(b) which is main-
 13 tained by an eligible employer described in sec-
 14 tion 457(e)(1)(A), or

15 “(D) an individual retirement plan.

16 “(d) REGULATIONS.—The Secretary shall prescribe
 17 such regulations and guidance as are necessary or appro-
 18 priate to carry out the purposes of this section, including
 19 regulations or guidance that provide for the application
 20 of this section and section 4974(e) in the case of plans
 21 with a valuation date other than the last day of a calendar
 22 year.”.

23 (2) CONFORMING AMENDMENTS.—

24 (A) The table of contents for subpart A of
 25 part I of subchapter D of chapter 1 of such

1 Code is amended by adding after the item relat-
 2 ing to section 409A the following new item:

“Sec. 409B. Contribution limit on certain retirement plans with large account
 balances.”.

3 (B) Section 402(g) of such Code is amend-
 4 ed by adding at the end the following new para-
 5 graph:

6 “(9) AGGREGATE LIMITATION.—For additional
 7 limitation on contributions to certain plans with
 8 large account balances, see section 409B.”.

9 (C) Section 403(b)(1) of such Code is
 10 amended by adding at the end the following
 11 new sentence: “For additional limitation on
 12 contributions to certain plans with large ac-
 13 count balances, see section 409B.”.

14 (D) Section 408(r) of such Code is amend-
 15 ed by adding at the end the following new para-
 16 graph:

17 “(3) For additional limitation on contributions
 18 to certain plans with large account balances, see sec-
 19 tion 409B.”.

20 (E) Section 457(c) of such Code is amend-
 21 ed by adding at the end the following new sen-
 22 tence: “For additional limitation on contribu-
 23 tions to certain plans with large account bal-
 24 ances, see section 409B.”.

1 (b) EXCISE TAX ON EXCESS ANNUAL ADDITIONS.—

2 (1) IN GENERAL.—Subsection (a) of section
3 4973 of the Internal Revenue Code of 1986 is
4 amended—

5 (A) by striking “or” at the end of para-
6 graph (5),

7 (B) by inserting “or” after the comma at
8 the end of paragraph (6), and

9 (C) by inserting after paragraph (6) the
10 following new paragraph:

11 “(7) an applicable retirement plan (within the
12 meaning of section 409B(c)(3)),”.

13 (2) EXCESS CONTRIBUTIONS TO APPLICABLE
14 RETIREMENT PLANS.—Section 4973 of such Code is
15 amended by adding at the end the following new
16 subsection:

17 “(i) EXCESS CONTRIBUTIONS TO APPLICABLE RE-
18 TIREMENT PLANS.—For purposes of this section, in the
19 case of applicable retirement plans (within the meaning
20 of section 409B(c)(3)), the term ‘excess contributions’
21 with respect to any taxable year means the sum of—

22 “(1) the excess of the applicable annual addi-
23 tions (within the meaning of section 409B(c)(1)) to
24 such plans over the limitation under section 409B(a)
25 for such taxable year, and

1 “(2) the lesser of—

2 “(A) the amount determined under this
3 subsection for the preceding taxable year, re-
4 duced by the aggregate distributions from such
5 plans for the taxable year (including distribu-
6 tions required under section 4974(e)) to the ex-
7 tent not contributed in a rollover contribution
8 to another eligible retirement plan in accord-
9 ance with section 402(c), 403(b)(8), 457(e)(16),
10 408(d)(3), or 408A(d)(3), or

11 “(B) the amount (if any) by which the
12 amount determined under section 409B(a)(2)
13 for the taxable year exceeds the applicable dol-
14 lar amount under section 409B(c)(2) for the
15 taxable year.”.

16 (3) CONFORMING AMENDMENTS.—Subsection
17 (a) of section 4973 of such Code is amended—

18 (A) by striking “accounts or annuities”
19 and inserting “accounts, annuities, or plans”,
20 and

21 (B) by striking “account or annuity” and
22 inserting “account, annuity, or plan”.

23 (c) INCREASE IN MINIMUM REQUIRED DISTRIBU-
24 TIONS.—

1 (1) IN GENERAL.—Section 4974 of the Internal
 2 Revenue Code of 1986 is amended by adding at the
 3 end the following:

4 “(e) INCREASE IN MINIMUM REQUIRED DISTRIBUTIONS FOR PAYEES WITH LARGE AGGREGATE ACCOUNT
 5 BALANCES.—

7 “(1) IN GENERAL.—If this subsection applies to
 8 a payee for any taxable year—

9 “(A) all qualified retirement plans and eli-
 10 gible deferred compensation plans of the payee
 11 which are applicable retirement plans taken into
 12 account in computing the excess described in
 13 paragraph (2)(A) shall be treated as 1 plan
 14 solely for purposes of applying this section to
 15 the increase in minimum required distributions
 16 for the taxable year described in subparagraph
 17 (B), and

18 “(B) the minimum required distributions
 19 under this section for all plans treated as 1
 20 plan under subparagraph (A) with respect to
 21 such payee for the taxable year shall be in-
 22 creased by the excess (if any) of—

23 “(i) the excess described in paragraph
 24 (2)(A), over

1 “(ii) the sum of the minimum re-
 2 quired distributions (determined without
 3 regard to this subsection) for all such
 4 plans.

5 “(2) APPLICATION.—This subsection shall
 6 apply to a payee for a taxable year—

7 “(A) if the aggregate balances to the credit
 8 of the payee (whether as a participant, owner,
 9 or beneficiary) in all applicable retirement plans
 10 (determined as of the close of the calendar year
 11 preceding the calendar year in which the tax-
 12 able year begins) exceed the applicable dollar
 13 amount for the calendar year in which the tax-
 14 able year begins, and

15 “(B) without regard to whether amounts
 16 with respect to the payee are otherwise required
 17 to be distributed under section 401(a)(9),
 18 403(b)(10), 408(a)(6), 408(b)(3), or 457(d)(2).

19 “(3) COORDINATION AND ALLOCATION.—

20 “(A) MINIMUM DISTRIBUTION REQUIRE-
 21 MENTS.—If this subsection applies to a payee
 22 for any taxable year—

23 “(i) this section shall apply first to
 24 minimum required distributions deter-
 25 mined without regard to this subsection

1 and then to any increase in minimum re-
 2 quired distributions by reason of this sub-
 3 section, and

4 “(ii) nothing in this subsection shall
 5 be construed to affect the amount of any
 6 minimum required distribution determined
 7 without regard to this subsection or the
 8 plan or plans from which it is required to
 9 be distributed from.

10 “(B) ALLOCATION OF INCREASE IN MIN-
 11 IMUM REQUIRED DISTRIBUTIONS.—The tax-
 12 payer may, in such form and manner as the
 13 Secretary may prescribe, allocate any increase
 14 in minimum required distributions by reason of
 15 this subsection to applicable retirement plans
 16 treated as 1 plan under subparagraph (A) in
 17 such manner as the taxpayer chooses.

18 “(4) TREATMENT OF ROTH IRAS.—

19 “(A) IN GENERAL.—Notwithstanding sec-
 20 tion 408A(c)(5)—

21 “(i) the aggregate balance to the cred-
 22 it of a payee of any Roth IRA shall be
 23 taken into account for purposes of this
 24 subsection, and

1 “(ii) distributions from a Roth IRA
2 may be taken into account in determining
3 whether the required increase in minimum
4 required distributions by reason of this
5 subsection has been satisfied.

6 “(B) INCLUSION IN INCOME OF DISTRIB-
7 UTED EARNINGS.—If any distribution from a
8 Roth IRA is taken into account under subpara-
9 graph (A)(ii), then, notwithstanding section
10 408A(d)(5), the portion of such distribution
11 which is properly allocable to net income on
12 contributions to the Roth IRA shall not be
13 treated as a qualified distribution and shall be
14 included in gross income of the payee.

15 “(5) RATABLE INCLUSION FOR FIRST YEAR OF
16 INCREASE.—If the first taxable year of a taxpayer
17 for which there is a required increase in minimum
18 required distributions by reason of this subsection
19 begins before January 1, 2019, any amount required
20 to be included in gross income by reason of such in-
21 crease shall be included in income ratably over the
22 6-taxable-year period (or such shorter period as the
23 taxpayer may elect) beginning with such first taxable
24 year.

1 “(6) DEFINITIONS.—For purposes of this sub-
 2 section, any term used in this subsection which is
 3 also used in section 409B shall have the same mean-
 4 ing as when such term is used in such section.”.

5 (2) EXCEPTION FROM 10 PERCENT ADDITIONAL
 6 TAX ON EARLY DISTRIBUTIONS.—Section 72(t)(2) of
 7 such Code is amended by adding at the end the fol-
 8 lowing new subparagraph:

9 “(H) DISTRIBUTIONS OF EXCESS BAL-
 10 ANCES.—Distributions from applicable retire-
 11 ment plans (within the meaning of section
 12 409B) to the extent such distributions during
 13 the taxable year do not exceed the amount (if
 14 any) by which—

15 “(i) the amount determined under
 16 section 409B(a)(2) for the taxable year,
 17 exceeds

18 “(ii) the applicable dollar amount
 19 under section 409B(c)(2) for the preceding
 20 taxable year.”.

21 (d) REPORTING REQUIREMENTS.—Section 6047 of
 22 the Internal Revenue Code of 1986 is amended by redesign-
 23 nating subsection (g) as subsection (h) and by inserting
 24 after subsection (f) the following:

1 “(g) REPORTING RELATING TO AGGREGATE CON-
 2 TRIBUTION AND BALANCE LIMITS ON CERTAIN RETIRE-
 3 MENT PLANS.—The Secretary shall require the plan ad-
 4 ministrators or trustees of an applicable retirement plan (as
 5 defined in section 409B) to make such returns and reports
 6 to the Secretary and participants and beneficiaries as are
 7 necessary to apply the aggregate limits on contributions
 8 imposed by section 409B and the increases in minimum
 9 required distributions required by section 4974(e). If the
 10 account balance of a plan as of the close of a calendar
 11 year is not otherwise required under this title to be re-
 12 ported to a participant, a beneficiary, or the Secretary,
 13 such requirements shall include a requirement that the
 14 plan administrator or trustee shall notify the participant,
 15 the beneficiary, or the Secretary of such account balance
 16 at such time and in such manner as the Secretary may
 17 prescribe.”.

18 (e) EFFECTIVE DATES.—

19 (1) IN GENERAL.—The amendments made by
 20 this section shall apply to taxable years beginning
 21 after the date of the enactment of this Act.

22 (2) PLAN REQUIREMENTS.—The amendments
 23 made by subsection (d) shall apply to years begin-
 24 ning after the date of the enactment of this Act.

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