To amend the Internal Revenue Code of 1986 to restrict the tax benefits of executive deferred compensation and increase disclosure, and for other purposes.

IN THE SENATE OF THE UNITED STATES

S.______

introduced the following bill; which was read twice and referred to the Committee on _________

A BILL

To amend the Internal Revenue Code of 1986 to restrict the tax benefits of executive deferred compensation and increase disclosure, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “CEO and Worker Pen-
sion Fairness Act”.

SEC. 2. NONQUALIFIED DEFERRED COMPENSATION.

(a) In General.—Section 409A of the Internal Rev-

venue Code of 1986 is amended to read as follows:
“SEC. 409A. NONQUALIFIED DEFERRED COMPENSATION.

“(a) IN GENERAL.—Except as otherwise provided in subsection (c), any compensation which is deferred under a nonqualified deferred compensation plan shall be includible in the gross income of the person who performed the services to which such compensation relates in the calendar year when there is no substantial risk of forfeiture of the rights of such person to such compensation.

“(b) DEFINITIONS.—For purposes of this section—

“(1) SUBSTANTIAL RISK OF FORFEITURE.—The rights of a person to compensation shall be treated as subject to a substantial risk of forfeiture only if such person’s rights to such compensation are conditioned upon the future performance of substantial services by any person. Such rights shall not be treated as subject to a substantial risk of forfeiture solely by reason of a covenant not to compete or the occurrence of a condition related to a purpose of the compensation other than the future performance of services.

“(2) NONQUALIFIED DEFERRED COMPENSATION PLAN.—The term ‘nonqualified deferred compensation plan’ means any plan which provides for the deferral of compensation, other than—

“(A) a qualified employer plan,
“(B) any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan, and

“(C) any other plan or arrangement designated by the Secretary consistent with the purposes of this section.

“(3) QUALIFIED EMPLOYER PLAN.—The term ‘qualified employer plan’ means any plan, contract, pension, account, or trust described in section 408(p)(2)(D)(ii) or a simple retirement account (within the meaning of section 408(p)).

“(4) PLAN INCLUDES ARRANGEMENTS, ETC.—The term ‘plan’ includes any agreement or arrangement, including an agreement or arrangement which includes only 1 person.

“(5) EXCEPTION.—Compensation shall not be treated as deferred if the service provider receives payment of such compensation not later than 2 1/2 months after the end of the taxable year of the service recipient during which the right to the payment of such compensation is no longer subject to a substantial risk of forfeiture.

“(6) TREATMENT OF EARNINGS.—References to deferred compensation shall be treated as including
references to income (whether actual or notional) attributable to such compensation or such income.

“(7) Treatment of Qualified Stock.—An arrangement under which an employee may receive qualified stock (as defined in section 83(i)(2)) shall not be treated as a nonqualified deferred compensation plan with respect to such employee solely because of such employee’s election, or ability to make an election, to defer recognition of income under section 83(i).

“(8) Aggregation Rules.—Except as provided by the Secretary, rules similar to the rules of subsections (b) and (c) of section 414 shall apply.

“(c) Treatment of Equity-Based Compensation.—

“(1) In General.—Except as provided in paragraph (7), subsection (a) shall not apply to any equity-based compensation, and such equity-based compensation shall be includible in income as provided in paragraphs (2) through (6).

“(2) Plan Failures.—

“(A) Gross Income Inclusion.—

“(i) In General.—If at any time during a taxable year a nonqualified deferred compensation plan—
“(I) fails to meet the requirements of paragraphs (3), (4), and (5), or

“(II) is not operated in accordance with such requirements,

all equity-based compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income.

“(ii) Application only to affected participants.—Clause (i) shall only apply with respect to all compensation deferred under the plan for participants with respect to whom the failure relates.

“(B) Interest and additional tax payable with respect to previously deferred equity-based compensation.—

“(i) In general.—If equity-based compensation is required to be included in gross income under subparagraph (A) for a taxable year, the tax imposed by this
chapter for the taxable year shall be increased by the sum of—

“(I) the amount of interest determined under clause (ii), and

“(II) an amount equal to 20 percent of the equity-based compensation which is required to be included in gross income.

“(ii) INTEREST.—For purposes of clause (i), the interest determined under this clause for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the deferred equity-based compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such compensation is not subject to a substantial risk of forfeiture.

“(3) DISTRIBUTIONS.—

“(A) IN GENERAL.—The requirements of this paragraph are met if the plan provides that equity-based compensation deferred under the plan may not be distributed earlier than—
“(i) separation from service as determined by the Secretary (except as provided in subparagraph (B)(i)),

“(ii) the date the participant becomes disabled (within the meaning of subparagraph (C)),

“(iii) death,

“(iv) a specified time (or pursuant to a fixed schedule) specified under the plan at the date of the deferral of such compensation,

“(v) to the extent provided by the Secretary, a change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation, or

“(vi) the occurrence of an unforeseeable emergency.

“(B) SPECIAL RULES.—

“(i) SPECIFIED EMPLOYEES.—In the case of any specified employee, the requirement of subparagraph (A)(i) is met only if distributions may not be made before the date which is 6 months after the date of separation from service (or, if earlier, the
date of death of the employee). For purposes of the preceding sentence, a specified employee is a key employee (as defined in section 416(i) without regard to paragraph (5) thereof) of a corporation any stock in which is publicly traded on an established securities market or otherwise.

“(ii) UNFORESEEABLE EMERGENCY.—For purposes of subparagraph (A)(vi)—

“(I) IN GENERAL.—The term ‘unforeseeable emergency’ means a severe financial hardship to the participant resulting from an illness or accident of the participant, the participant’s spouse, or a dependent (as defined in section 152(a)) of the participant, loss of the participant’s property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

“(II) LIMITATION ON DISTRIBUTIONS.—The requirement of subpara-
graph (A)(vi) is met only if, as determined under regulations of the Secretary, the amounts distributed with respect to an emergency do not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the participant’s assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).

“(C) DISABLED.—For purposes of subparagraph (A)(ii), a participant shall be considered disabled if the participant—

“(i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a
continuous period of not less than 12
months, or

“(ii) is, by reason of any medically de-
terminable physical or mental impairment
which can be expected to result in death or
can be expected to last for a continuous
period of not less than 12 months, receiv-
ing income replacement benefits for a pe-
period of not less than 3 months under an
accident and health plan covering employ-
ees of the participant’s employer.

“(4) ACCELERATION OF BENEFITS.—

“(A) IN GENERAL.—The requirements of
this paragraph are met if the plan does not per-
mit the acceleration of the time or schedule of
any payment of equity-based compensation
under the plan, except as provided in regula-
tions by the Secretary.

“(B) EXCEPTION.—A plan shall not be
treated as failing to meet the requirement of
subparagraph (A) solely because the plan terms
permit the removal of participants who are or
become ineligible to participate in the plan, and
to distribute the benefits of such participants to
another qualified retirement plan (as defined in
section 4974(c) of the participants, if such re-
moval is necessary to maintain the plan’s ex-
emption from the provisions of the Employee

“(5) Elections.—

“(A) In general.—The requirements of
this paragraph are met if the requirements of
subparagraphs (B) and (C) are met.

“(B) Initial deferral decision.—

“(i) In general.—The requirements
of this subparagraph are met if the plan
provides that equity-based compensation
for services performed during a taxable
year may be deferred at the participant’s
election only if the election to defer such
compensation is made not later than the
close of the preceding taxable year or at
such other time as provided in regulations.

“(ii) First year of eligibility.—
In the case of the first year in which a
participant becomes eligible to participate
in the plan, such election may be made
with respect to services to be performed
subsequent to the election within 30 days
after the date the participant becomes eligible to participate in such plan.

“(iii) PERFORMANCE-BASED COMPENSATION.—In the case of any equity-based compensation which is performance-based and is based on services performed over a period of at least 12 months, such election may be made no later than 6 months before the end of the period.

“(C) CHANGES IN TIME AND FORM OF DISTRIBUTION.—The requirements of this subparagraph are met if, in the case of a plan which permits under a subsequent election a delay in a payment or a change in the form of payment of equity-based compensation—

“(i) the plan requires that such election may not take effect until at least 12 months after the date on which the election is made,

“(ii) in the case of an election related to a payment not described in clause (ii), (iii), or (vi) of paragraph (2)(A), the plan requires that the payment with respect to which such election is made be deferred for a period of not less than 5 years from the
date such payment would otherwise have been made, and

“(iii) the plan requires that any election related to a payment described in paragraph (2)(A)(iv) may not be made less than 12 months prior to the date of the first scheduled payment under such paragraph.

“(6) RULES RELATING TO FUNDING.—For purposes of this subsection—

“(A) OFFSHORE PROPERTY IN A TRUST.—

In the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred equity-based compensation under a nonqualified deferred compensation plan, for purposes of section 83 such assets shall be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors—

“(i) at the time set aside if such assets (or such trust or other arrangement) are located outside of the United States, or
“(ii) at the time transferred if such
assets (or such trust or other arrange-
ment) are subsequently transferred outside
of the United States.

This subparagraph shall not apply to assets lo-
cated in a foreign jurisdiction if substantially
all of the services to which the nonqualified de-
ferred equity-based compensation relates are
performed in such jurisdiction.

“(B) Employer’s financial health.—

In the case of equity-based compensation de-
ferred under a nonqualified deferred compensa-
tion plan, there is a transfer of property within
the meaning of section 83 with respect to such
compensation as of the earlier of—

“(i) the date on which the plan first
provides that assets will become restricted
to the provision of benefits under the plan
in connection with a change in the employer’s financial health, or

“(ii) the date on which assets are so
restricted,

whether or not such assets are available to sat-
ify claims of general creditors.
“(C) Treatment of employer’s defined benefit plan during restricted period.—

“(i) In general.—If—

“(I) during any restricted period with respect to a single-employer defined benefit plan, assets are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary) or transferred to such a trust or other arrangement for purposes of paying deferred equity-based compensation of an applicable covered employee under a nonqualified deferred compensation plan of the plan sponsor or member of a controlled group which includes the plan sponsor, or

“(II) a nonqualified deferred compensation plan of the plan sponsor or member of a controlled group which includes the plan sponsor provides that assets will become restricted to the provision of benefits under the plan to an applicable cov-
ered employee in connection with such
restricted period (or other similar fi-
nancial measure determined by the
Secretary) with respect to the defined
benefit plan, or assets are so re-
stricted,
such assets shall, for purposes of section
83, be treated as property transferred in
connection with the performance of serv-
ices whether or not such assets are avail-
able to satisfy claims of general creditors.
Subclause (I) shall not apply with respect
to any assets which are so set aside before
the restricted period with respect to the de-
fined benefit plan.

“(ii) RESTRICTED PERIOD.—For pur-
poses of this subsection, the term ‘re-
stricted period’ means, with respect to any
plan described in clause (i)—

“(I) any period during which the
plan is in at-risk status (as defined in
section 430(i)),

“(II) any period the plan sponsor
is a debtor in a case under title 11,
United States Code, or similar Federal or State law, and

“(III) the 12-month period beginning on the date which is 6 months before the termination date of the plan if, as of the termination date, the plan is not sufficient for benefit liabilities (within the meaning of section 4041 of the Employee Retirement Income Security Act of 1974).

“(iii) Special rule for payment of taxes on deferred equity-based compensation included in income.—If an employer provides directly or indirectly for the payment of any Federal, State, or local income taxes with respect to any equity-based compensation required to be included in gross income by reason of this subparagraph—

“(I) interest shall be imposed under paragraph (1)(B)(i)(I) on the amount of such payment in the same manner as if such payment was part of the deferred equity-based compensation to which it relates,
‘‘(II) such payment shall be taken into account in determining the amount of the additional tax under paragraph (1)(B)(i)(II) in the same manner as if such payment was part of the deferred equity-based compensation to which it relates, and

‘‘(III) no deduction shall be allowed under this title with respect to such payment.

‘‘(iv) Other definitions.—For purposes of this subsection—

‘‘(I) Applicable covered employee.—The term ‘applicable covered employee’ means any covered employee of a plan sponsor or a member of a controlled group which includes the plan sponsor, and any former employee who was a covered employee at the time of termination of employment with the plan sponsor or a member of a controlled group which includes the plan sponsor.

‘‘(II) Covered employee.—The term ‘covered employee’ means an in-
dividual described in section 162(m)(3) or an individual subject to the requirements of section 16(a) of the Securities Exchange Act of 1934.

“(v) INTERNAL REVENUE SERVICE INTERNAL GUIDANCE.—The Secretary shall develop instructions and training materials for employees of the Internal Revenue Service to assist such employees in obtaining and evaluating information and determining whether there exists a restricted period with respect to a company with a single-employer defined benefit plan, and whether such a company has, during a restricted period, set aside assets for the purpose of paying deferred compensation under a nonqualified deferred compensation plan.

“(D) INCOME INCLUSION FOR OFFSHORE TRUSTS AND EMPLOYER’S FINANCIAL HEALTH.—For each taxable year that assets treated as transferred under this paragraph remain set aside in a trust or other arrangement subject to subparagraph (A), (B), or (C), any increase in value in, or earnings with respect to,
such assets shall be treated as an additional transfer of property under this paragraph (to the extent not previously included in income).

“(E) INTEREST ON TAX LIABILITY PAYABLE WITH RESPECT TO TRANSFERRED PROPERTY.—

“(i) IN GENERAL.—If amounts are required to be included in gross income by reason of subparagraph (A), (B), or (C) for a taxable year, the tax imposed by this chapter for such taxable year shall be increased by the sum of—

“(I) the amount of interest determined under clause (ii), and

“(II) an amount equal to 20 percent of the amounts required to be included in gross income.

“(ii) INTEREST.—For purposes of clause (i), the interest determined under this clause for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the amounts so required to be included in gross income by subparagraph (A), (B), or
(C) been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such amounts are not subject to a substantial risk of forfeiture.

“(7) Exception for highly compensated recipients.—In the case of any highly compensated employee (as defined in section 414(q)), or any person who would be such a highly compensated employee if such person were an employee of the service recipient (determined as of the date of the grant of the equity-based compensation)—

“(A) paragraphs (1) through (6) shall not apply, and

“(B) equity-based compensation shall be treated under subsection (a) in the same manner as other compensation which is deferred under a nonqualified deferred compensation plan.

“(8) Equity-based compensation.—The term ‘equity-based compensation’ means—

“(A) a right to compensation based on the value of, or appreciation in value of, a specified number of equity units of the service recipient, whether paid in cash or equity, or
“(B) stock appreciation rights or stock options.

Such term shall not include a transfer of property described in section 83 (other than stock options) or compensation provided under that portion of any plan which consists of a trust to which section 402(b) applies.

“(d) No Inference on Earlier Income Inclusion or Requirement of Later Inclusion.—Nothing in this section shall be construed to prevent the inclusion of amounts in gross income under any other provision of this chapter or any other rule of law earlier than the time provided in this section. Any amount included in gross income under this section shall not be treated as required to be included in gross income under any other provision of this chapter or any other rule of law later than the time provided in this section.

“(e) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

“(1) providing for the determination of amounts of deferral in the case of a nonqualified deferred compensation plan which is a defined benefit plan,
“(2) relating to changes in the ownership and control of a corporation or assets of a corporation for purposes of subsection (c)(2)(A)(v),

“(3) exempting arrangements from the application of subsection (c)(5) if such arrangements will not result in an improper deferral of United States tax and will not result in assets being effectively beyond the reach of creditors,

“(4) defining financial health for purposes of subsection (c)(5)(B), and

“(5) disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.”.

(b) WITHHOLDING OF TAX ON NONRESIDENT ALIENS.—Section 1441(c)(4) of the Internal Revenue Code of 1986 is amended by inserting “(other than under a nonqualified deferred compensation plan (within the meaning of section 409A(b)(2))” after “compensation for personal services”.

(c) TERMINATION OF CERTAIN OTHER NONQUALIFIED DEFERRED COMPENSATION RULES.—

(1) 457(b) PLANS OF TAX EXEMPT ORGANIZATIONS.—Section 457 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:
“(h) TERMINATION OF CERTAIN PLANS.—

“(1) TAX-EXEMPT ORGANIZATION PLANS.—
This section shall not apply to amounts deferred which are attributable to services performed after December 31, 2020, under a plan maintained by an employer described in subsection (e)(1)(B).

“(2) INELIGIBLE DEFERRED COMPENSATION PLANS.—Subsection (f) shall not apply to amounts deferred which are attributable to services performed after December 31, 2020.”.

(2) NONQUALIFIED DEFERRED COMPENSATION FROM CERTAIN TAX INDIFFERENT PARTIES.—

(A) IN GENERAL.—Subpart B of part II of subchapter E of chapter 1 of such Code is amended by striking section 457A (and by striking the item relating to such section in the table of sections for such subpart).

(B) CONFORMING AMENDMENT.—Section 26(b)(2) of such Code is amended by striking subparagraph (X).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to amounts which are attrib-
utable to services performed after December 31, 2020.

(2) ACCELERATED PAYMENTS.—No later than 120 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance providing a limited period of time during which a nonqualified deferred compensation arrangement attributable to services performed on or before December 31, 2020, may, without violating the requirements of section 409A of the Internal Revenue Code of 1986, be amended to conform the date of distribution to the date the amounts are required to be included in income.

(3) CERTAIN BACK-TO-BACK ARRANGEMENTS.—If the taxpayer is also a service recipient and maintains 1 or more nonqualified deferred compensation arrangements for its service providers under which any amount is attributable to services performed on or before December 31, 2020, the guidance issued under paragraph (2) shall permit such arrangements to be amended to conform the dates of distribution under such arrangement to the date amounts are required to be included in the income of such taxpayer under this subsection.
(4) Accelerated payment not treated as material modification.—Any amendment to a nonqualified deferred compensation arrangement made pursuant to paragraph (2) or (3) shall not be treated as a material modification of the arrangement for purposes of section 409A of the Internal Revenue Code of 1986.

(5) Application to existing deferrals.—In the case of any amount deferred to which this section does not otherwise apply solely by reason of the fact that the amount is attributable to services performed before January 1, 2021, to the extent such amount is not includible in gross income in a taxable year beginning before 2029, such amounts shall be includible in gross income in the later of—

(A) the last taxable year beginning before 2029, or

(B) the taxable year in which there is no substantial risk of forfeiture of the rights to such compensation.

(e) Transfer of amounts collected.—

(1) In general.—The Secretary of the Treasury shall transfer annually an amount equal to the increase in revenue attributable to the enactment of subsections (a), (b), and (c) of this section to the...
first and the second Pension Benefit Guaranty funds
described in section 4005(a) of the Employee Retire-
ment Income Security Act of 1974 (29 U.S.C. 1305(a)), and such amount shall be allocated—

(A) to the fund used with respect to basic
benefits guaranteed under section 4022A of
such Act (29 U.S.C. 1322a), until such time
that the Pension Benefit Guaranty Corpora-
tion’s annual projections report indicates that
such fund and the fund used with respect to
basic benefits guaranteed under section 4022 of
such Act (29 U.S.C. 1322) have substantially
similar future financial conditions and substan-
tially similar risks of insolvency; and

(B) thereafter, to each of the funds de-
scribed in subparagraph (A) in equal amounts,
subject to paragraph (2).

(2) ADJUSTMENTS TO ALLOCATIONS.—If, after
amounts transferred under paragraph (1) have been
allocated in accordance with paragraph (1)(B), the
Director of the Pension Benefit Guaranty Corpora-
tion (referred to in this section as the “Director”)
determines that the future financial conditions or
risks of insolvency of the funds used with respect to
basic benefits guaranteed under each of sections
4022A and 4022 of the Employee Retirement Income Security Act of 1974 are no longer substantially similar as described in paragraph (1)(A), the Director, in consultation with the board of directors of the Pension Benefit Guaranty Corporation, shall determine an appropriate allocation of such amounts between such funds.

SEC. 3. DEPARTMENT OF LABOR OVERSIGHT OF TOP HAT PLANS.

(a) GUIDANCE.—Not later than December 31, 2020, the Secretary of Labor shall issue guidance defining the term “select group of management or highly compensated employees” for purposes of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.). Such guidance shall address the participation rate and plan language with respect to a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees, and the compensation and description of job duties of employees eligible to participate in such plans.

(b) REGULATIONS.—Not later than December 31, 2020, the Secretary of Labor shall issue final regulations requiring the sponsors of plans that are unfunded and maintained by employers primarily for the purpose of pro-
providing deferred compensation for a select group of management or highly compensated employees to align eligibility requirements for participation in such plans with the guidance issued under subsection (a).

(c) DISCLOSURE REQUIREMENT.—Part 1 of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021 et seq.) is amended by adding at the end the following:

“SEC. 112. PLANS FOR A SELECT GROUP OF MANAGEMENT OR HIGHLY COMPENSATED EMPLOYEES.

“Beginning January 1, 2021, the plan sponsor of a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees shall report to the Secretary annually on, with respect to the previous plan year—

“(1) the job title and salary of each employee participating in the plan;

“(2) the percentage of the employer’s workforce that is eligible to participate in such plan;

“(3) the percentage of employees who actually participated in the plan;

“(4) a comparison of the annual compensation of employees eligible to participate in such plan with
the annual compensation of employees not eligible to participate in the plan; and

“(5) any other information, as the Secretary determines appropriate.”.

(d) Treasury Regulations and Guidance.—The Secretary of the Treasury, in consultation with the Secretary of Labor, shall issue such regulations or guidance as are necessary—

(1) to assist plans in taking appropriate corrective actions when employees that are not part of a select group of management or highly compensated employees (as defined in the guidance issued pursuant to section 3(a)) are found to be participating in such plans, and

(2) to clarify the treatment of the consequences for purposes of the Internal Revenue Code of 1986 of the Secretary of Labor’s guidance on plan corrective actions so that employees who are not part of the select group described in paragraph (1) are not adversely affected, including guidance on actions which plan sponsors should take with respect to participants in such plans who have already made the maximum permissible contributions under qualified plans.
SEC. 4. DISCLOSURE OF NONQUALIFIED DEFERRED COMPENSATION ON FORM W-2.

Not later than 6 months after the date of the enactment of this Act and effective for taxable year 2020, the Secretary of the Treasury (or the Secretary’s delegate) shall—

(1) revise the Form W-2 to require reporting of amounts deferred under a nonqualified deferred compensation plan in box 12; and

(2) amend the regulations under sections 6051(a)(13) and 6041(g) of the Internal Revenue Code of 1986 to make the reporting of such deferrals under such sections mandatory.

For purposes of the preceding sentence, the term “nonqualified deferred compensation plan” has the meaning given such term in section 409A(b)(2) of the Internal Revenue Code of 1986.