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.

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

SECTION 1. SHORT TITLE.

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

1

2

3

4

5
SEC. 2. RESTORING ANTI-CUTBACK PROVISIONS.

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Multiemployer Pension Reform Act of 2014 (division O of Public Law 113–235) and the amendments made by such section are repealed, and the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 shall be applied as if such section and amendments had never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

SEC. 3. PARTITIONS OF ELIGIBLE MULTIEMPLOYER PLANS.

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

"SEC. 4233. PARTITIONS OF ELIGIBLE MULTIEMPLOYER PLANS.

"(a)(1) Upon the application by the plan sponsor of an eligible multiemployer plan for a partition of the plan, the corporation may order a partition of the plan in accordance with this section. The corporation shall make a determination regarding the application, in accordance with regulations promulgated by the corporation, not later than 270 days after—

"(A) the date such application was filed; or

"(B) if later, the date such application was completed."
“(2) At least 14 days before submitting an application for partition of a plan under paragraph (1), the plan sponsor of the plan shall notify all participants and beneficiaries of such application, in the form and manner prescribed by regulations issued by the corporation.

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

“(1) the plan is in critical status and is projected to become insolvent within the meaning of section 4245—

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

“(B) during the current plan year or any of the 19 succeeding plan years, if the plan has a ratio of inactive participants to active participants that exceeds 2 to 1 and the funded percentage of the plan is less than 80 percent;

“(2) the corporation determines, after consultation with the Participant and Plan Sponsor Advocate selected under section 4004, that the plan sponsor has taken (or is taking concurrently with an application for partition) all reasonable measures described in section 432(e)(3)(A) of the Internal Revenue Code of 1986, and has made (or is making)
benefit adjustments under section 432(e)(8) of such Code to reduce the risk of insolvency;

“(3) 20 percent or more of the amount by which the liabilities of the plan exceed the value of plan assets is attributable to the service of participants whose employers—

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

“(B) failed to pay (or are delinquent with respect to paying) the full amount of the employer’s withdrawal liability under section 4201(b)(1) or as otherwise determined under an agreement with the plan;

“(4) the corporation reasonably expects that—

“(A) a partition of the plan will reduce the corporation’s expected long-term loss with respect to the plan; and

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

“(5) the corporation certifies to Congress that after partition the corporation will continue to have the ability to meet existing financial assistance obligations to other plans (including any liabilities associated with multiemployer plans that are insolvent or
that are projected to become insolvent within 10 years).

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

“(2) The corporation’s partition order shall provide for an annual transfer by the corporation to the plan created by the partition order of an amount equal to the yearly benefits that would be guaranteed under section 4022A to the eligible participants and beneficiaries if the plan were insolvent as of the date of the partition order.

“(3)(A) Where practicable, the initial transfer in accordance with paragraph (2) shall be completed at least 60 days prior to the plan year that immediately follows the partition start date. The partition order shall require that the initial transfer be sufficient to satisfy the guaranteed benefits in the first plan year of the partitioned plan.

“(B) Subsequent transfers in accordance with paragraph (2) shall be completed at least 60 days prior to the first day of each succeeding plan year.
“(d)(1)(A) The plan created by the partition order is a successor plan to which section 4022A applies. “(B) At the discretion of the plan sponsor, the plan created by the partition order may remain a part of the plan that was partitioned or be maintained as a separate plan.

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

“(B) Benefit payments equal to the amount of an eligible participant or beneficiary’s guaranteed benefits shall be paid to such participant or beneficiary and may be—

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

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

“(3) In the event an employer withdraws from the plan that was partitioned, withdrawal liability shall be computed under section 4201 with respect to both the plan
that was partitioned and the plan created by the partition order.

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

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

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

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

“(B) 80 percent of the maximum benefit commencing at age 65 guaranteed under section 4022(a) for participants and beneficiaries in terminated single employer plans, unreduced for early retirement.

Such monthly benefit may be combined with the monthly payment under subsection (d)(2)(B)(ii).
“(f)(1) The corporation shall establish a legacy fund for the purposes of funding the administrative and benefit costs to the corporation arising from partitions under this section, as described in paragraph (2).

“(2) Any administrative and benefit costs to the corporation arising from a partition ordered under this section in excess of amounts available in such legacy fund shall be paid from the fund for basic benefits guaranteed for multiemployer plans.

“(g) Only one partition order shall be issued with respect to each eligible multiemployer plan.

“(h) For purposes of this subsection, the term ‘eligible participant or beneficiary’ means a participant or beneficiary of an eligible multiemployer plan that is partitioned in accordance with a petition order under this section, and who is an employee or beneficiary of an employee of an employer that is described in subsection (b)(3).

“(i) Not later than 14 days after the issuance of a partition order under this section, the corporation shall provide notice of such order to the Committee on Finance of the Senate, the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Education and the Workforce of the House of Representatives, the Committee on Ways and Means of the House of Representatives, and to all eligible participants or bene-
ficiaries whose guaranteed benefits will be paid directly or indirectly by the plan created by the partition order.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to plan years beginning after the date of enactment of this Act.

(c) TRANSFERS TO LEGACY FUND.—The Secretary of the Treasury shall from time to time transfer from the general fund of the Treasury to the legacy fund established under section 4233(f)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1413(f)(1)) (as amended by subsection (a)) amounts equal to the increase in revenues to the Treasury by reason of the amendments made by sections 6 and 7 of this Act.

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

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

“(2) Notwithstanding subsection (g), the corporation may transfer amounts into the legacy fund established under section 4233(f)(1) from other funds established under this section, as the corporation determines appropriate.”.
SEC. 4. EMPLOYER WITHDRAWALS RELATING TO MULTIEMPLOYER PLANS.

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

SEC. 5. PRIORITIES OF CLAIMS IN BANKRUPTCY.

(a) In General.—Section 507(a) of title 11, United States Code, is amended—

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

(2) by inserting before paragraph (2) (as redesignated) the following:

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

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

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

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

(9) in paragraph (8) (as redesignated), by striking “Seventh,” and inserting “Eighth,”;

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

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

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

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

(2) Section 503(b)(1)(B)(i) of title 11, United States Code, is amended by striking “section 507(a)(8)” and inserting “section 507(a)(9)”.
(3) Section 507(d) of title 11, United States Code, is amended by striking “(a)(1), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(9)” and inserting “(a)(2), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9), or (a)(10)”.

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

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

(A) in subsection (b)(2), by striking “section 507(a)(1)(C) or 507(a)(2)” and inserting “section 507(a)(2)(C) or 507(a)(3)”;

(B) in subsection (f)—

(i) in paragraph (1), by striking “section 507(a)(4)” and inserting “section 507(a)(5)”; and

(ii) in paragraph (2), by striking “section 507(a)(5)” and inserting “section 507(a)(6)”.

(6) Section 726(b) of title 11, United States Code, is amended by striking “paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), or (10) of section
507(a)” and inserting “paragraphs (2) through (11) of section 507(a)”.

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

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

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

and

(B) in subsection (i)—

(i) in paragraph (1), by striking “section 507(a)(2)” and inserting “section 507(a)(3)”;

and

(ii) in paragraph (2), by striking “section 507(a)(2)” and inserting “section 507(a)(3)”.

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

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

(11) Section 1123(a)(1) of title 11, United States Code, is amended by striking “section
507(a)(2), 507(a)(3), or 507(a)(8)” and inserting “section 507(a)(3), 507(a)(4), or 507(a)(9)”.

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

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

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

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

and

(D) in subparagraph (D), by striking “section 507(a)(8)” and inserting “section 507(a)(9)”.

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

(14) Section 1226(b)(1) of title 11, United States Code, is amended by striking “section 507(a)(2)” and inserting “section 507(a)(3)”. 
(15) Section 1322(a)(4) of title 11, United States Code, is amended by striking “section 507(a)(1)(B)” and inserting “section 507(a)(2)(B)”.

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

(17) Section 1328(a)(2) of title 11, United States Code, is amended by striking “section 507(a)(8)(C)” and inserting “section 507(a)(9)(C)”. SEC. 6. LIMITATION OF NONRECOGNITION OF LIKE-KIND EXCHANGES.

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

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

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

(3) by striking “(2) EXCEPTION.—This subsection” and inserting “(2) EXCEPTIONS.—

“(A) EXCLUDED PROPERTY.—This subsection”, and

(4) by adding at the end the following new sub-paragraph:
“(B) Dollar limitation for exchanges of real property.—

“(i) In general.—Paragraph (1) shall not apply so much of the gain which, but for such paragraph, would be recognized by the taxpayer with respect to real property exchanged during the taxable year as exceeds $1,000,000.

“(ii) Special rules for partnerships and S-corporations.—In the case of a pass-through entity, clause (i) shall be applied at both the entity and at the partner or owner level.

“(iii) Aggregation rules.—For purposes of this subparagraph—

“(I) Family members.—Individuals who are spouses or who bear any of the relationships described in section 152(d)(2) to each other shall be treated as 1 taxpayer (without regard to whether spouses file a joint return).

“(II) Corporations and other entities.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m)
or (o) of section 414 shall be treated as 1 person.

“(iv) ADJUSTMENT FOR INFLATION.—

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

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2016’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.”.

(b) EXCLUSION OF ART AND COLLECTIBLES.—Subparagraph (A) of section 1031(a)(2) of the Internal Revenue Code of 1986, as amended by subsection (a), is amended—

(1) by striking “or” at the end of clause (v),
(2) by striking the period at the end of clause (vi) and inserting “, or”, and
(3) by inserting after clause (vi) the following new clause:
“(vii) any collectible (within the meaning of section 408(m), without regard to paragraph (3) thereof).”.

(c) **Regulatory Authority.**—Subsection (f) of section 1031 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(5) **Rules relating to dollar limitation.**—The Secretary shall prescribe such guidance as is necessary for applying subsection (a)(2)(B)(i) in the case of the exchange of multiple pieces of real property by related persons.”.

(d) **Conforming Amendments.**—

(1) Subsection (b) of section 1031 of the Internal Revenue Code of 1986 is amended—

(A) by striking “IN KIND.—If an exchange” and inserting “IN KIND.—“(1) IN GENERAL.—If an exchange”, and

(B) by adding at the end the following new paragraph:
“(2) Coordination with subsection (a)(2)(B).—In the case of an exchange to which paragraph (1) applies—

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

“(B) subsection (a)(2)(B) shall be applied—

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

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

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

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

(e) Effective Date.—The amendments made by this section shall apply to exchanges completed in taxable years beginning after December 31, 2016.
SEC. 7. CONTRIBUTION LIMIT AND INCREASED MINIMUM DISTRIBUTIONS FOR CERTAIN RETIREMENT PLANS WITH LARGE ACCOUNT BALANCES.

(a) Contribution Limit.—

(1) In general.—Subpart A of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

```
SEC. 409B. CONTRIBUTION LIMIT ON CERTAIN RETIREMENT PLANS WITH LARGE ACCOUNT BALANCES.

(a) General Rule.—Notwithstanding any other provision of this title, no applicable annual additions shall be made by, or on behalf of, an individual for the taxable year to any applicable retirement plan to the extent such applicable annual additions exceed the excess (if any) of—

(1) the applicable dollar amount for the taxable year, over

(2) the aggregate balances to the credit of the individual (whether as a participant, owner, or beneficiary) in all applicable retirement plans (determined as of the close of the calendar year preceding the calendar year in which the taxable year begins).

(b) Rules Relating to Contribution Limitations.—

(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 ex-
cess 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 para-
graph (1)(B) shall apply, and

“(ii) to a Roth IRA, section
408A(d)(2)(C) shall apply to such addi-
tions 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 con-
tribution described in section 408(d)(4) (with-
out regard to whether such distribution is timely made).

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

“(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) APPLICABLE ANNUAL ADDITION.—

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

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

“(ii) Any contribution to an individual retirement plan, including any employer or employee contribution to a simplified employee pension under section 408(k) or a simple retirement account under section 408(p).
“(iii) Any deferral under an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A).

“(B) Rollover contributions disregarded.—A rollover contribution under section 402(c), 403(b)(8), 408(d)(3)(A)(ii), or 457(e)(16) shall not be treated as an annual addition.

“(2) Applicable dollar amount.—

“(A) In general.—The term ‘applicable dollar amount’ means $5,000,000.

“(B) Adjustment for inflation.—In the case of any taxable year beginning after 2017, the $5,000,000 amount under subparagraph (A) shall be increased by an amount equal to the product of—

“(i) such amount, and

“(ii) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which such taxable year begins, determined by substituting ‘calendar year 2016’ for ‘calendar year 1992’ in subparagraph (B) thereof.
“(C) Rounding.—If any amount as adjusted under subparagraph (B) is not a multiple of $1,000, such amount shall be rounded to the next lowest multiple of $1,000.

“(3) Applicable retirement plan.—The term ‘applicable retirement plan’ means—

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

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

“(C) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), or

“(D) an individual retirement plan.

“(d) Regulations.—The Secretary shall prescribe such regulations and guidance as are necessary or appropriate to carry out the purposes of this section, including regulations or guidance that provide for the application of this section and section 4974(e) in the case of plans with a valuation date other than the last day of a calendar year.”.

(2) Conforming amendments.—

(A) The table of contents for subpart A of part I of subchapter D of chapter 1 of such
Code is amended by adding after the item relating to section 409A the following new item:

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

(B) Section 402(g) of such Code is amended by adding at the end the following new paragraph:

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

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

(D) Section 408(r) of such Code is amended by adding at the end the following new paragraph:

“(3) For additional limitation on contributions to certain plans with large account balances, see section 409B.”.

(E) Section 457(c) of such Code is amended by adding at the end the following new sentence: “For additional limitation on contributions to certain plans with large account balances, see section 409B.”.
(b) Excise Tax on Excess Annual Additions.—

(1) In General.—Subsection (a) of section 4973 of the Internal Revenue Code of 1986 is amended—

(A) by striking “or” at the end of paragraph (5),

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

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

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

(2) Excess Contributions to Applicable Retirement Plans.—Section 4973 of such Code is amended by adding at the end the following new subsection:

“(i) Excess Contributions to Applicable Retirement Plans.—For purposes of this section, in the case of applicable retirement plans (within the meaning of section 409B(c)(3)), the term ‘excess contributions’ with respect to any taxable year means the sum of—

“(1) the excess of the applicable annual additions (within the meaning of section 409B(c)(1)) to such plans over the limitation under section 409B(a) for such taxable year, and
“(2) the lesser of—

“(A) the amount determined under this subsection for the preceding taxable year, reduced by the aggregate distributions from such plans for the taxable year (including distributions required under section 4974(e)) to the extent not contributed in a rollover contribution to another eligible retirement plan in accordance with section 402(e), 403(b)(8), 457(e)(16), 408(d)(3), or 408A(d)(3), or

“(B) the amount (if any) by which the amount determined under section 409B(a)(2) for the taxable year exceeds the applicable dollar amount under section 409B(c)(2) for the taxable year.”.

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

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

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

(e) INCREASE IN MINIMUM REQUIRED DISTRIBUTIONS.—
Section 4974 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“(e) Increase in Minimum Required Distributions for Payees With Large Aggregate Account Balances.—

“(1) In general.—If this subsection applies to a payee for any taxable year—

“(A) all qualified retirement plans and eligible deferred compensation plans of the payee which are applicable retirement plans taken into account in computing the excess described in paragraph (2)(A) shall be treated as 1 plan solely for purposes of applying this section to the increase in minimum required distributions for the taxable year described in subparagraph (B), and

“(B) the minimum required distributions under this section for all plans treated as 1 plan under subparagraph (A) with respect to such payee for the taxable year shall be increased by the excess (if any) of—

“(i) the excess described in paragraph (2)(A), over
“(ii) the sum of the minimum required distributions (determined without regard to this subsection) for all such plans.

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

“(A) if the aggregate balances to the credit of the payee (whether as a participant, owner, or beneficiary) in all applicable retirement plans (determined as of the close of the calendar year preceding the calendar year in which the taxable year begins) exceed the applicable dollar amount for the calendar year in which the taxable year begins, and

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

“(3) COORDINATION AND ALLOCATION.—

“(A) MINIMUM DISTRIBUTION REQUIREMENTS.—If this subsection applies to a payee for any taxable year—

“(i) this section shall apply first to minimum required distributions determined without regard to this subsection
and then to any increase in minimum required distributions by reason of this subsection, and

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

“(B) Allocation of Increase in Minimum Required Distributions.—The taxpayer may, in such form and manner as the Secretary may prescribe, allocate any increase in minimum required distributions by reason of this subsection to applicable retirement plans treated as 1 plan under subparagraph (A) in such manner as the taxpayer chooses.

“(4) Treatment of Roth IRAs.—

“(A) In general.—Notwithstanding section 408A(c)(5)—

“(i) the aggregate balance to the credit of a payee of any Roth IRA shall be taken into account for purposes of this subsection, and
“(ii) distributions from a Roth IRA may be taken into account in determining whether the required increase in minimum required distributions by reason of this subsection has been satisfied.

“(B) Inclusion in income of distributed earnings.—If any distribution from a Roth IRA is taken into account under subparagraph (A)(ii), then, notwithstanding section 408A(d)(5), the portion of such distribution which is properly allocable to net income on contributions to the Roth IRA shall not be treated as a qualified distribution and shall be included in gross income of the payee.

“(5) Ratable inclusion for first year of increase.—If the first taxable year of a taxpayer for which there is a required increase in minimum required distributions by reason of this subsection begins before January 1, 2019, any amount required to be included in gross income by reason of such increase shall be included in income ratably over the 6-taxable-year period (or such shorter period as the taxpayer may elect) beginning with such first taxable year.
“(6) DEFINITIONS.—For purposes of this subsection, any term used in this subsection which is also used in section 409B shall have the same meaning as when such term is used in such section.”.

(2) EXCEPTION FROM 10 PERCENT ADDITIONAL TAX ON EARLY DISTRIBUTIONS.—Section 72(t)(2) of such Code is amended by adding at the end the following new subparagraph:

“(H) DISTRIBUTIONS OF EXCESS BALANCES.—Distributions from applicable retirement plans (within the meaning of section 409B) to the extent such distributions during the taxable year do not exceed the amount (if any) by which—

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

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

(d) REPORTING REQUIREMENTS.—Section 6047 of the Internal Revenue Code of 1986 is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following:
“(g) Reporting Relating to Aggregate Contribution and Balance Limits on Certain Retirement Plans.—The Secretary shall require the plan administrator or trustee of an applicable retirement plan (as defined in section 409B) to make such returns and reports to the Secretary and participants and beneficiaries as are necessary to apply the aggregate limits on contributions imposed by section 409B and the increases in minimum required distributions required by section 4974(e). If the account balance of a plan as of the close of a calendar year is not otherwise required under this title to be reported to a participant, a beneficiary, or the Secretary, such requirements shall include a requirement that the plan administrator or trustee shall notify the participant, the beneficiary, or the Secretary of such account balance at such time and in such manner as the Secretary may prescribe.”.

(e) Effective Dates.—

(1) In General.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(2) Plan Requirements.—The amendments made by subsection (d) shall apply to years beginning after the date of the enactment of this Act.

● S 1076 IS