To amend the Employee Retirement Income Security Act of 1974 to clarify the definition of substantial cessation of operations.

IN THE SENATE OF THE UNITED STATES
JUNE 19, 2014

Mr. HARKIN (for himself and Mr. ALEXANDER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL
To amend the Employee Retirement Income Security Act of 1974 to clarify the definition of substantial cessation of operations.

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

SECTION 1. SUBSTANTIAL CESSATION OF OPERATIONS.
(a) IN GENERAL.—Subsection (e) of section 4062 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1362) is amended—

(1) by striking “OPERATIONS.—If an employer” and inserting “OPERATIONS.—

“(1) IN GENERAL.—If an employer”; and
(2) by adding at the end the following:

“(2) Substantial cessation of operations.—An employer shall not be treated as having a cessation described in paragraph (1) unless—

“(A) all operations at a facility in a location are ceased, and—

“(i) such cessation is reasonably expected to be permanent;

“(ii) no portion of such operations is moved to another facility at a different location;

“(iii) no portion of such operations is assumed by or otherwise transferred to another employer; and

“(iv) no other operations are reasonably expected to be maintained at such facility; and

“(B) as a result of the cessation described in subparagraph (A), more than 20 percent of the employees of the employer have a termination of employment that is reasonably expected to be permanent.

For purposes of subparagraph (B), all employees treated as employed by a single employer under sec-
tions 210 (c) and (d) shall be treated as employees of the employer.”.

(b) **Direction to the Corporation.**—The Pension Benefit Guaranty Corporation shall not take any enforcement, administrative, or other action pursuant to section 4062(e) of the Employee Retirement Income Security Act of 1974 that is inconsistent with subparagraph (A) of section 4062(e)(2) of such Act, as added by subsection (a), without regard to whether the action relates to a cessation or other event that occurs before or after the date of enactment of this Act, unless such action is in connection with a settlement agreement in place before June 1, 2014.