

115TH CONGRESS  
1ST SESSION

# H. R. 2412

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.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 11, 2017

Ms. KAPTUR (for herself, Mr. RYAN of Ohio, Ms. DELAURO, Mrs. DINGELL, Ms. SLAUGHTER, Mr. CLAY, Ms. SCHAKOWSKY, Ms. NORTON, Mr. GARAMENDI, Mr. NOLAN, Mr. TONKO, Mr. WALZ, Ms. JAYAPAL, Mr. YARMUTH, Ms. MOORE, Mr. GENE GREEN of Texas, Mr. RASKIN, Mr. VEASEY, Mr. JEFFRIES, Ms. MCCOLLUM, Mr. COHEN, Ms. JACKSON LEE, Ms. LEE, Mr. VISCLOSKY, Mr. JOHNSON of Georgia, Mrs. BEATTY, and Ms. HANABUSA) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on the Judiciary, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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,*

1 **SECTION 1. SHORT TITLE.**

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

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

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7 amendments made by such section are repealed, and the  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

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

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

17 **“SEC. 4233. PARTITIONS OF ELIGIBLE MULTIEMPLOYER**  
18 **PLANS.**

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

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

1           “(B) if later, the date such application was  
2           completed.

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

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

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

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

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

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

1        enue Code of 1986, and has made (or is making)  
2        benefit adjustments under section 432(e)(8) of such  
3        Code to reduce the risk of insolvency;

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

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

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

16        “(4) the corporation reasonably expects that—

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

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

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

1       ciated with multiemployer plans that are insolvent or  
2       that are projected to become insolvent within 10  
3       years).

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

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

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

23      “(B) Subsequent transfers in accordance with para-  
24      graph (2) shall be completed at least 60 days prior to the  
25      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

1 retirement account under section 408(p)), any  
2 applicable annual addition to such plan in ex-  
3 cess of the limitation under subsection (a) shall  
4 be treated for purposes of sections 408 and  
5 408A as a contribution for the taxable year in  
6 excess of the maximum amount allowable as a  
7 deduction under section 219 for the taxable  
8 year.

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

12 “(i) which are treated as designated  
13 nondeductible contributions under section  
14 408(o), rules similar to the rules of para-  
15 graph (1)(B) shall apply, and

16 “(ii) to a Roth IRA, section  
17 408A(d)(2)(C) shall apply to such addi-  
18 tions and to any net income allocable to  
19 such additions.

20 For purposes of clause (ii), distributions from a  
21 Roth IRA shall be treated as first made from  
22 amounts described in clause (ii) and section  
23 408A(d)(2)(C) shall be applied in the same  
24 manner as if there were a distribution of a con-  
25 tribution 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.

○