

115TH CONGRESS
1ST SESSION

H. R. 2384

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 HOUSE OF REPRESENTATIVES

MAY 4, 2017

Mr. NOLAN introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Ways and Means, and the Judiciary, 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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Keeping America’s
5 Pension Promises Act”.

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

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4 amendments made by such section are repealed, and the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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 “(A) withdrew from the plan prior to the
8 date of enactment of the Keeping America’s
9 Pension Promises Act; and

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

15 “(4) the corporation reasonably expects that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 “(2) is at least equal to the lesser of—

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

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

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

23 “(f)(1) The corporation shall establish a legacy fund
24 for the purposes of funding the administrative and benefit

1 costs to the corporation arising from partitions under this
2 section, as described in paragraph (2).

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

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

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

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

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

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

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

16 “(i)(1) An eighth fund is established under section
17 4233(f) and credited with the amounts described in sec-
18 tion 3(c) of the Keeping America’s Pension Promises Act.

19 “(2) Notwithstanding subsection (g), the corporation
20 may transfer amounts into the legacy fund established
21 under section 4233(f)(1) from other funds established
22 under this section, as the corporation determines appro-
23 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 “paragraph (2), (3), (4), (5),
2 (6), (7), (8), (9), (10), or (11) 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. TRANSACTION TAX.**

11 (a) IN GENERAL.—Chapter 36 of the Internal Rev-
 12 enue Code of 1986 is amended by inserting after sub-
 13 chapter B the following new subchapter:

14 **“Subchapter C—Tax on Trading Transactions**

“Sec. 4475. Tax on trading transactions.

15 **“SEC. 4475. TAX ON TRADING TRANSACTIONS.**

16 “(a) IMPOSITION OF TAX.—There is hereby imposed
 17 a tax on each covered transaction with respect to any secu-
 18 rity.

19 “(b) RATE OF TAX.—The tax imposed under sub-
 20 section (a) with respect to any covered transaction shall
 21 be 0.03 percent of the specified base amount with respect
 22 to such covered transaction.

23 “(c) SPECIFIED BASE AMOUNT.—For purposes of
 24 this section, the term ‘specified base amount’ means—

1 “(1) except as provided in paragraph (2), the
2 fair market value of the security (determined as of
3 the time of the covered transaction), and

4 “(2) in the case of any payment described in
5 subsection (h), the amount of such payment.

6 “(d) COVERED TRANSACTION.—For purposes of this
7 section, the term ‘covered transaction’ means—

8 “(1) except as provided in paragraph (2), any
9 purchase if—

10 “(A) such purchase occurs or is cleared on
11 a facility located in the United States, or

12 “(B) the purchaser or seller is a United
13 States person, and

14 “(2) any transaction with respect to a security
15 described in subparagraph (D), (E), or (F) of sub-
16 section (e)(1), if—

17 “(A) such security is traded or cleared on
18 a facility located in the United States, or

19 “(B) any party with rights under such se-
20 curity is a United States person.

21 “(e) SECURITY AND OTHER DEFINITIONS.—For pur-
22 poses of this section—

23 “(1) IN GENERAL.—The term ‘security’
24 means—

25 “(A) any share of stock in a corporation,

1 “(B) any partnership or beneficial owner-
2 ship interest in a partnership or trust,

3 “(C) any note, bond, debenture, or other
4 evidence of indebtedness,

5 “(D) any evidence of an interest in, or a
6 derivative financial instrument with respect to,
7 any security or securities described in subpara-
8 graph (A), (B), or (C),

9 “(E) any derivative financial instrument
10 with respect to any currency or commodity, and

11 “(F) any other derivative financial instru-
12 ment any payment with respect to which is cal-
13 culated by reference to any specified index.

14 “(2) DERIVATIVE FINANCIAL INSTRUMENT.—
15 The term ‘derivative financial instrument’ includes
16 any option, forward contract, futures contract, no-
17 tional principal contract, or any similar financial in-
18 strument.

19 “(3) SPECIFIED INDEX.—The term ‘specified
20 index’ means any one or more of any combination
21 of—

22 “(A) a fixed rate, price, or amount, or

23 “(B) a variable rate, price, or amount,

24 which is based on any current objectively deter-
25 minable information which is not within the control

1 of any of the parties to the contract or instrument
2 and is not unique to any of the parties' cir-
3 cumstances.

4 “(4) TREATMENT OF EXCHANGES.—

5 “(A) IN GENERAL.—An exchange shall be
6 treated as the sale of the property transferred
7 and a purchase of the property received by each
8 party to the exchange.

9 “(B) CERTAIN DEEMED EXCHANGES.—In
10 the case of a distribution treated as an ex-
11 change for stock under section 302 or 331, the
12 corporation making such distribution shall be
13 treated as having purchased such stock for pur-
14 poses of this section.

15 “(f) EXCEPTIONS.—

16 “(1) EXCEPTION FOR INITIAL ISSUES.—No tax
17 shall be imposed under subsection (a) on any cov-
18 ered transaction with respect to the initial issuance
19 of any security described in subparagraph (A), (B),
20 or (C) of subsection (e)(1).

21 “(2) EXCEPTION FOR CERTAIN TRADED SHORT-
22 TERM INDEBTEDNESS.—A note, bond, debenture, or
23 other evidence of indebtedness which—

24 “(A) is traded on a trading facility located
25 in the United States, and

1 “(B) has a fixed maturity of not more
2 than 100 days,
3 shall not be treated as described in subsection
4 (e)(1)(C).

5 “(3) EXCEPTION FOR SECURITIES LENDING AR-
6 RANGEMENTS.—No tax shall be imposed under sub-
7 section (a) on any covered transaction with respect
8 to which gain or loss is not recognized by reason of
9 section 1058.

10 “(g) BY WHOM PAID.—

11 “(1) IN GENERAL.—The tax imposed by this
12 section shall be paid by—

13 “(A) in the case of a transaction which oc-
14 curs or is cleared on a facility located in the
15 United States, such facility, and

16 “(B) in the case of a purchase not de-
17 scribed in subparagraph (A) which is executed
18 by a broker (as defined in section 6045(c)(1))
19 which is a United States person, such broker.

20 “(2) SPECIAL RULES FOR DIRECT, ETC.,
21 TRANSACTIONS.—In the case of any transaction to
22 which paragraph (1) does not apply, the tax imposed
23 by this section shall be paid by—

24 “(A) in the case of a transaction described
25 in subsection (d)(1)—

1 “(i) the purchaser if the purchaser is
2 a United States person, and

3 “(ii) the seller if the purchaser is not
4 a United States person, and

5 “(B) in the case of a transaction described
6 in subsection (d)(2)—

7 “(i) the payor if the payor is a United
8 States person, and

9 “(ii) the payee if the payor is not a
10 United States person.

11 “(h) CERTAIN PAYMENTS TREATED AS SEPARATE
12 TRANSACTIONS.—Except as otherwise provided by the
13 Secretary, any payment with respect to a security de-
14 scribed in subparagraph (D), (E), or (F) of subsection
15 (e)(1) shall be treated as a separate transaction for pur-
16 poses of this section, including—

17 “(1) any net initial payment, net final or termi-
18 nating payment, or net periodical payment with re-
19 spect to a notional principal contract (or similar fi-
20 nancial instrument),

21 “(2) any payment with respect to any forward
22 contract (or similar financial instrument), and

23 “(3) any premium paid with respect to any op-
24 tion (or similar financial instrument).

1 “(i) ADMINISTRATION.—The Secretary shall carry
2 out this section in consultation with the Securities and Ex-
3 change Commission and the Commodity Futures Trading
4 Commission.

5 “(j) GUIDANCE; REGULATIONS.—The Secretary
6 shall—

7 “(1) provide guidance regarding such informa-
8 tion reporting concerning covered transactions as the
9 Secretary deems appropriate, and

10 “(2) prescribe such regulations as are necessary
11 or appropriate to prevent avoidance of the purposes
12 of this section, including the use of non-United
13 States persons in such transactions.”.

14 (b) CLERICAL AMENDMENT.—The table of sub-
15 chapters for chapter 36 of the Internal Revenue Code of
16 1986 is amended by inserting after the item relating to
17 subchapter B the following new item:

“SUBCHAPTER C. TAX ON TRADING TRANSACTIONS”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to transactions made after Decem-
20 ber 31, 2017.

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