

115TH CONGRESS  
2D SESSION

# S. 3772

To amend the Internal Revenue Code of 1986 to provide a contribution limit and increased minimum distributions for certain retirement plans with large account balances.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 18, 2018

Mr. MERKLEY introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide a contribution limit and increased minimum distributions for certain retirement plans with large account balances.

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 “Retirement Fairness  
5 Act”.

6 **SEC. 2. CONTRIBUTION LIMIT AND INCREASED MINIMUM**  
7 **DISTRIBUTIONS FOR CERTAIN RETIREMENT**  
8 **PLANS WITH LARGE ACCOUNT BALANCES.**

9 (a) CONTRIBUTION LIMIT.—

1           (1) IN GENERAL.—Subpart A of part I of sub-  
2           chapter D of chapter 1 of the Internal Revenue Code  
3           of 1986 is amended by adding at the end the fol-  
4           lowing:

5   **“SEC. 409B. CONTRIBUTION LIMIT ON CERTAIN RETIRE-**  
6                   **MENT PLANS WITH LARGE ACCOUNT BAL-**  
7                   **ANCES.**

8           “(a) GENERAL RULE.—Notwithstanding any other  
9           provision of this title, no applicable annual additions shall  
10          be made by, or on behalf of, an individual for the taxable  
11          year to any applicable retirement plan to the extent such  
12          applicable annual additions exceed the excess (if any) of—

13               “(1) the applicable dollar amount for the tax-  
14               able year, over

15               “(2) the aggregate balances to the credit of the  
16               individual (whether as a participant, owner, or bene-  
17               ficiary) in all applicable retirement plans (deter-  
18               mined as of the close of the calendar year preceding  
19               the calendar year in which the taxable year begins).

20          “(b) RULES RELATING TO CONTRIBUTION LIMITA-  
21          TIONS.—

22               “(1) PLANS OTHER THAN CERTAIN IRAS.—

23                   “(A) IN GENERAL.—Except as provided in  
24                   paragraph (2), applicable annual additions in  
25                   excess of the limitation under subsection (a)

1 shall be treated for purposes of this title in the  
2 same manner as excess deferrals are treated  
3 under section 402(g).

4 “(B) SPECIAL RULE FOR AFTER TAX CON-  
5 TRIBUTIONS.—If, without regard to this para-  
6 graph, any portion of an applicable annual ad-  
7 dition to which subparagraph (A) applies with  
8 respect to an individual is not excludable from  
9 gross income of the individual (or no deduction  
10 is allowable to the individual with respect to  
11 such portion), such portion shall not be—

12 “(i) includible in gross income by rea-  
13 son of the application of subparagraph (A),  
14 or

15 “(ii) taken into account in computing  
16 the investment in the contract for purposes  
17 of section 72.

18 “(2) SPECIAL RULE FOR IRAS.—

19 “(A) IN GENERAL.—In the case of an ap-  
20 plicable retirement plan which is an individual  
21 retirement plan (other than a simplified em-  
22 ployee pension under section 408(k) or a simple  
23 retirement account under section 408(p)), any  
24 applicable annual addition to such plan in ex-  
25 cess of the limitation under subsection (a) shall

1 be treated for purposes of sections 408 and  
2 408A as a contribution for the taxable year in  
3 excess of the maximum amount allowable as a  
4 deduction under section 219 for the taxable  
5 year.

6 “(B) AFTER TAX CONTRIBUTIONS.—In the  
7 case of applicable annual additions in excess of  
8 the limitation under subsection (a)—

9 “(i) rules similar to the rules of para-  
10 graph (1)(B) shall apply to any such addi-  
11 tions which are treated as designated non-  
12 deductible contributions under section  
13 408(o), and

14 “(ii) section 408A(d)(2)(C) shall  
15 apply to any such additions which are to a  
16 Roth IRA (and to any net income allocable  
17 to such additions).

18 For purposes of clause (ii), distributions from a  
19 Roth IRA shall be treated as first made from  
20 amounts described in clause (ii) and section  
21 408A(d)(2)(C) shall be applied in the same  
22 manner as if there were a distribution of a con-  
23 tribution described in section 408(d)(4) (with-  
24 out regard to whether such distribution is time-  
25 ly made).

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

9           “(c) DEFINITIONS AND SPECIAL RULES.—For pur-  
10          poses of this section—

11           “(1) APPLICABLE ANNUAL ADDITION.—

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

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

17           “(ii) Any contribution to an individual  
18           retirement plan, including any employer or  
19           employee contribution to a simplified em-  
20           ployee pension under section 408(k) or a  
21           simple retirement account under section  
22           408(p).

23           “(iii) Any deferral under an eligible  
24           deferred compensation plan described in  
25           section 457(b) which is maintained by an

1 eligible employer described in section  
2 457(e)(1)(A).

3 “(B) ROLLOVER CONTRIBUTIONS DIS-  
4 REGARDED.—A rollover contribution under sec-  
5 tion 402(c), 403(b)(8), 408(d)(3)(A)(ii), or  
6 457(e)(16) shall not be treated as an annual  
7 addition.

8 “(2) APPLICABLE DOLLAR AMOUNT.—

9 “(A) IN GENERAL.—The term ‘applicable  
10 dollar amount’ means \$4,000,000.

11 “(B) ADJUSTMENT FOR INFLATION.—In  
12 the case of any taxable year beginning after  
13 2019, the \$4,000,000 amount under subpara-  
14 graph (A) shall be increased by an amount  
15 equal to the product of—

16 “(i) such amount, and

17 “(ii) the cost-of-living adjustment  
18 under section 1(f)(3) for the calendar year  
19 in which such taxable year begins, deter-  
20 mined by substituting ‘calendar year 2019’  
21 for ‘calendar year 2016’ in subparagraph  
22 (A)(ii) thereof.

23 “(C) ROUNDING.—If any amount as ad-  
24 justed under subparagraph (B) is not a mul-

1           tiple of \$1,000, such amount shall be rounded  
2           to the next lowest multiple of \$1,000.

3           “(3) APPLICABLE RETIREMENT PLAN.—The  
4           term ‘applicable retirement plan’ means—

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

7                   “(B) an annuity contract under section  
8                   403(b),

9                   “(C) an eligible deferred compensation  
10                  plan described in section 457(b) which is main-  
11                  tained by an eligible employer described in sec-  
12                  tion 457(e)(1)(A), or

13                  “(D) an individual retirement plan.

14           “(d) REGULATIONS.—The Secretary shall prescribe  
15           such regulations and guidance as are necessary or appro-  
16           priate to carry out the purposes of this section, including  
17           regulations or guidance that provide for the application  
18           of this section and section 4974(e) in the case of plans  
19           with a valuation date other than the last day of a calendar  
20           year.”.

21           (2) CONFORMING AMENDMENTS.—

22                   (A) The table of contents for subpart A of  
23                   part I of subchapter D of chapter 1 of such  
24                   Code is amended by adding after the item relat-  
25                   ing to section 409A the following new item:

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

1 (B) Section 402(g) of such Code is amend-  
2 ed by adding at the end the following new para-  
3 graph:

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

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

12 (D) Section 408(r) of such Code is amend-  
13 ed by adding at the end the following new para-  
14 graph:

15 “(3) For additional limitation on contributions  
16 to certain plans with large account balances, see sec-  
17 tion 409B.”.

18 (E) Section 457(c) of such Code is amend-  
19 ed by adding at the end the following new sen-  
20 tence: “For additional limitation on contribu-  
21 tions to certain plans with large account bal-  
22 ances, see section 409B.”.

23 (b) EXCISE TAX ON EXCESS ANNUAL ADDITIONS.—



1           (1) IN GENERAL.—Subsection (a) of section  
2           4973 of the Internal Revenue Code of 1986 is  
3           amended—

4                   (A) by striking “or” at the end of para-  
5                   graph (5),

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

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

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

12           (2) EXCESS CONTRIBUTIONS TO APPLICABLE  
13           RETIREMENT PLANS.—Section 4973 of such Code is  
14           amended by adding at the end the following new  
15           subsection:

16                   “(i) EXCESS CONTRIBUTIONS TO APPLICABLE RE-  
17           TIREMENT PLANS.—For purposes of this section, in the  
18           case of applicable retirement plans (within the meaning  
19           of section 409B(c)(3)), the term ‘excess contributions’  
20           means, with respect to any taxable year, the sum of—

21                           “(1) the excess of the applicable annual addi-  
22                           tions (within the meaning of section 409B(c)(1)) to  
23                           such plans over the limitation under section 409B(a)  
24                           for such taxable year, and

25                           “(2) the lesser of—

1           “(A) the amount determined under this  
 2 subsection for the preceding taxable year, re-  
 3 duced by the aggregate distributions from such  
 4 plans for the taxable year (including distribu-  
 5 tions required under section 4974(e)) to the ex-  
 6 tent not contributed in a rollover contribution  
 7 to another eligible retirement plan in accord-  
 8 ance with section 402(c), 403(b)(8), 457(e)(16),  
 9 408(d)(3), or 408A(d)(3), or

10           “(B) the amount (if any) by which the  
 11 amount determined under section 409B(a)(2)  
 12 for the taxable year exceeds the applicable dol-  
 13 lar amount under section 409B(c)(2) for the  
 14 taxable year.”.

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

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

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

22           (c) INCREASE IN MINIMUM REQUIRED DISTRIBU-  
 23 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 eligible deferred compensation plans of the payee  
10 which are applicable retirement plans taken into  
11 account in computing the excess described in  
12 paragraph (2)(A) shall be treated as 1 plan  
13 solely for purposes of applying this section to  
14 the increase in minimum required distributions  
15 for the taxable year described in subparagraph  
16 (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) PHASE-IN FOR TAXPAYERS WITH EXCESS  
16          BALANCES FOR TAXABLE YEAR BEGINNING IN  
17          2019.—

18               “(A) IN GENERAL.—If there is an excess  
19               described in paragraph (2)(A) for the first tax-  
20               able year of a taxpayer beginning during 2019  
21               (in this paragraph referred to as the ‘historic  
22               excess’), then the amount taken into account  
23               under paragraph (1)(B)(i) for such first taxable  
24               year and each subsequent taxable year to which  
25               this paragraph applies shall, in lieu of the ex-

1           cess described in paragraph (2)(A) for each  
2           such taxable year, be equal to—

3                   “(i) in the case of such first taxable  
4                   year, 10 percent of the historic excess, and

5                   “(ii) in the case of each subsequent  
6                   taxable year to which this paragraph ap-  
7                   plies, the sum of—

8                           “(I) 100 percent of amount (if  
9                           any) by which the excess described in  
10                          paragraph (2)(A) for such taxable  
11                          year exceeds the adjusted historic ex-  
12                          cess for such taxable year, plus

13                           “(II) 10 percent of the adjusted  
14                          historic excess for such taxable year  
15                          (100 percent of such adjusted historic  
16                          excess for any taxable year if it is less  
17                          than \$1,000).

18                   “(B) ADJUSTED HISTORIC EXCESS.—For  
19                   purposes of this paragraph, the term ‘adjusted  
20                   historic excess’ means, with respect to any tax-  
21                   able year, the lesser of—

22                           “(i) the excess (if any) of the—

23                                   “(I) the historic excess, over

24                                   “(II) the aggregate amount of  
25                                   the historic excess taken into account

1 under clauses (i) and (ii)(II) of sub-  
2 paragraph (A) for all preceding tax-  
3 able years, or

4 “(ii) the aggregate balances to the  
5 credit of the payee (whether as a partici-  
6 pant, owner, or beneficiary) in all applica-  
7 ble retirement plans (determined as of the  
8 close of the calendar year preceding the  
9 calendar year in which such taxable year  
10 begins) in excess of \$4,000,000.

11 “(C) TAXABLE YEARS TO WHICH PARA-  
12 GRAPH APPLIES.—This paragraph shall not  
13 apply to—

14 “(i) any taxable year if the aggregate  
15 amount of the historic excess taken into  
16 account under clauses (i) and (ii)(II) of  
17 subparagraph (A) for all preceding taxable  
18 years equals such historic excess, or

19 “(ii) the first taxable year in which  
20 the aggregate balances to the credit of the  
21 payee (whether as a participant, owner, or  
22 beneficiary) in all applicable retirement  
23 plans (determined as of the close of the  
24 calendar year preceding the calendar year  
25 in which such taxable year begins) are



1           \$4,000,000 or less and any subsequent  
2           taxable year.

3           “(6) DEFINITIONS.—For purposes of this sub-  
4           section, any term used in this subsection which is  
5           also used in section 409B shall have the same mean-  
6           ing as when such term is used in such section.”.

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

11           “(H) DISTRIBUTIONS OF EXCESS BAL-  
12          ANCES.—Distributions from applicable retire-  
13          ment plans (within the meaning of section  
14          409B) to the extent such distributions during  
15          the taxable year do not exceed the amount (if  
16          any) by which—

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

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

23          (d) REPORTING REQUIREMENTS.—Section 6047 of  
24          the Internal Revenue Code of 1986 is amended by redesi-

1 nating subsection (h) as subsection (i) and by inserting  
2 after subsection (g) the following:

3       “(h) REPORTING RELATING TO AGGREGATE CON-  
4 TRIBUTION AND BALANCE LIMITS ON CERTAIN RETIRE-  
5 MENT PLANS.—The Secretary shall require the plan ad-  
6 ministrator or trustee of an applicable retirement plan (as  
7 defined in section 409B) to make such returns and reports  
8 to the Secretary and participants and beneficiaries as are  
9 necessary to apply the aggregate limits on contributions  
10 imposed by section 409B and the increases in minimum  
11 required distributions required by section 4974(e). If the  
12 account balance of a plan as of the close of a calendar  
13 year is not otherwise required under this title to be re-  
14 ported to a participant, a beneficiary, or the Secretary,  
15 such requirements shall include a requirement that the  
16 plan administrator or trustee shall notify the participant,  
17 the beneficiary, or the Secretary of such account balance  
18 at such time and in such manner as the Secretary may  
19 prescribe.”.

20       (e) EFFECTIVE DATES.—

21           (1) IN GENERAL.—The amendments made by  
22 this section shall apply to taxable years beginning  
23 after December 31, 2018.

1           (2) PLAN REQUIREMENTS.—The amendments  
2           made by subsection (d) shall apply to years begin-  
3           ning after December 31, 2018.

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