

113TH CONGRESS
2D SESSION

H. R. 5381

To amend the nondiscrimination provisions of the Internal Revenue Code of 1986 to protect older, longer service participants.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2014

Mr. TIBERI (for himself and Mr. NEAL) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the nondiscrimination provisions of the Internal Revenue Code of 1986 to protect older, longer service participants.

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. PROTECTING OLDER, LONGER SERVICE PAR-**
4 **TICIPANTS.**

5 (a) IN GENERAL.—Paragraph (4) of section 401(a)
6 of the Internal Revenue Code of 1986 is amended to read
7 as follows:

8 “(4) NONDISCRIMINATION.—

9 “(A) IN GENERAL.—A trust shall not con-
10 stitute a qualified trust under this section un-

1 less the contributions or benefits provided under
2 the plan do not discriminate in favor of highly
3 compensated employees (within the meaning of
4 section 414(q)). For purposes of this para-
5 graph, there shall be excluded from consider-
6 ation employees described in section 410(b)(3)
7 (A) and (C).

8 “(B) PROTECTION OF OLDER, LONGER
9 SERVICE PARTICIPANTS.—

10 “(i)(I) A defined benefit plan de-
11 scribed in subclause (II) shall not fail to
12 satisfy this paragraph with respect to plan
13 benefits, rights, or features by reason of—

14 “(aa) the composition of the
15 closed class of participants described
16 in subclause (II), or

17 “(bb) the benefits, rights, or fea-
18 tures provided to such closed class.

19 “(II) A plan is described in this sub-
20 clause if—

21 “(aa) the plan provides benefits,
22 rights, or features to a closed class of
23 participants,

24 “(bb) such closed class and such
25 benefits, rights, and features satisfy

1 the requirements of subparagraph (A)
2 (without regard to this clause) as of
3 the date that the class was closed, and
4 “(cc) after the date as of which
5 the class was closed, any plan amend-
6 ments that modify the closed class or
7 the benefits, rights, and features pro-
8 vided to such closed class satisfy sub-
9 paragraph (A) (without regard to this
10 clause).

11 If a plan amendment causes a plan to
12 cease to be described in this subclause (II)
13 by reason of subclause (II)(cc), the plan is
14 nevertheless described in this subclause
15 (II) if such plan satisfies this subclause
16 (II) (without regard to subclause (II)(cc))
17 as of the effective date of such amend-
18 ment. In such cases, subclause (II)(bb)
19 and (cc) shall subsequently be applied by
20 reference to the effective date of the plan
21 amendment, rather than by reference to
22 the original date that the class was closed.

23 “(ii)(I) A defined contribution plan
24 described in subclause (II) shall be per-
25 mitted to be tested on a benefits basis.

1 “(II) A defined contribution plan is
2 described in this subclause if—

3 “(aa) the plan provides make-
4 whole contributions to a closed class
5 of participants whose defined benefit
6 plan accruals have been reduced or
7 eliminated,

8 “(bb) such closed class of partici-
9 pants satisfies section 410(b)(2)(A)(i)
10 as of the date that the class of partici-
11 pants was closed, and

12 “(cc) after the date as of which
13 the class was closed, any plan amend-
14 ments that modify the closed class or
15 the allocations, benefits, rights, and
16 features provided to such closed class
17 satisfy subparagraph (A) (without re-
18 gard to this clause).

19 If a plan amendment causes a plan to
20 cease to be described in this subclause (II)
21 by reason of subclause (II)(cc), the plan is
22 nevertheless described in this subclause
23 (II) if such plan satisfies this subclause
24 (II) (without regard to subclause (II)(cc))
25 as of the effective date of such amend-

1 ment. In such cases, subclause (II)(bb)
2 and (cc) shall subsequently be applied by
3 reference to the effective date of the plan
4 amendment, rather than by reference to
5 the original date that the class was closed.

6 “(III) In addition to other testing
7 methodologies otherwise applicable, for
8 purposes of determining compliance with
9 this paragraph and with section 410(b) of
10 the portion of one or more defined con-
11 tribution plans described in subclause (II)
12 that provide make-whole contributions,
13 such portion of such plans may be aggre-
14 gated and tested on a benefits basis with
15 the portion of one or more defined con-
16 tribution plans that—

17 “(aa) provides matching con-
18 tributions (as defined in subsection
19 (m)(4)(A)), or

20 “(bb) consists of an employee
21 stock ownership plan within the mean-
22 ing of section 4975(e)(7) or a tax
23 credit employee stock ownership plan
24 within the meaning of section 409(a).

1 For such purposes, matching contributions
2 shall be treated in the same manner as em-
3 ployer contributions that are made without
4 regard to whether an employee makes an
5 elective contribution or employee contribu-
6 tion, including for purposes of applying the
7 rules of subsection (l).

8 “(C) DEFINITIONS.—For purposes of this
9 paragraph—

10 “(i) MAKE-WHOLE CONTRIBUTIONS.—
11 The term ‘make-whole contributions’
12 means allocations for each employee in the
13 class that are reasonably calculated, in a
14 consistent manner, to replace some or all
15 of the retirement benefits that the em-
16 ployee would have received under the de-
17 fined benefit plan and any other plan or
18 arrangement if the employee had continued
19 to benefit at the same level under such de-
20 fined benefit plan and such other plan or
21 arrangement.

22 “(ii) REFERENCES TO CLOSED CLASS
23 OF PARTICIPANTS.—References to a closed
24 class of participants and similar references
25 to a closed class shall include arrange-

1 ments under which one or more classes of
2 participants are closed.

3 “(D) PROTECTING GRANDFATHERED PAR-
4 TICIPANTS IN DEFINED BENEFIT PLANS.—

5 “(i) One or more defined benefit plans
6 described in clause (ii) shall be permitted
7 to be tested on a benefits basis with one or
8 more defined contribution plans.

9 “(ii) A defined benefit plan is de-
10 scribed in this clause if—

11 “(I) the plan provides benefits to
12 a closed class of participants,

13 “(II) the plan and such benefits
14 satisfy the requirements of subpara-
15 graph (A) (without regard to this sub-
16 paragraph) as of the date the class
17 was closed, and

18 “(III) after the date as of which
19 the class was closed, any plan amend-
20 ments that modify the closed class or
21 the benefits provided to such closed
22 class satisfy subparagraph (A) (with-
23 out regard to this subparagraph).

24 If a plan amendment causes a plan to
25 cease to be described in this clause (ii) by

1 reason of subclause (III), the plan is never-
2 theless described in this clause (ii) if such
3 plan satisfies this clause (ii) (without re-
4 gard to subclause (III)) as of the effective
5 date of such amendment. In such cases,
6 subclauses (II) and (III) shall subsequently
7 be applied by reference to the effective
8 date of the plan amendment, rather than
9 by reference to the original date that the
10 class was closed.

11 “(iii) In addition to other testing
12 methodologies otherwise applicable, for
13 purposes of determining compliance with
14 this paragraph and with section 410(b) of
15 one or more defined benefit plans described
16 in clause (ii), such plans may be aggre-
17 gated and tested on a benefits basis with
18 the portion of one or more defined con-
19 tribution plans that—

20 “(I) provides matching contribu-
21 tions (as defined in subsection
22 (m)(4)(A)), or

23 “(II) consists of an employee
24 stock ownership plan within the mean-
25 ing of section 4975(e)(7) or a tax

1 credit employee stock ownership plan
2 within the meaning of section 409(a).
3 For such purposes, matching contributions
4 shall be treated in the same manner as em-
5 ployer contributions that are made without
6 regard to whether an employee makes an
7 elective contribution or employee contribu-
8 tion, including for purposes of applying the
9 rules of subsection (l).

10 “(E) RULES.—The Secretary may pre-
11 scribe rules designed to prevent abuse of the
12 plan designs otherwise permitted by reason of
13 subparagraphs (B) and (D). Such rules shall be
14 directed towards abuses under which the de-
15 fined benefit plan was established within a spec-
16 ified period prior to the date that—

17 “(i) the class of participants described
18 in subparagraphs (B)(i)(II)(aa),
19 (B)(ii)(II)(aa), and (D)(ii)(I) is closed, or
20 “(ii) the defined benefit plan accruals
21 have been reduced or eliminated, in the
22 case of the make-whole contributions de-
23 scribed in subparagraph (C).

24 “(F) TRANSITION RULES.—Within one
25 year after the date of enactment of the Retire-

1 ment Plan Simplification and Enhancement Act
2 of 2013, the Secretary shall prescribe rules that
3 facilitate the use of the provisions of subpara-
4 graphs (B) and (D) without regard to—

5 “(i) whether the closing of the class of
6 participants referred to in such subpara-
7 graphs occurred before or after such date
8 of enactment, or

9 “(ii) plan amendments that were
10 adopted or effective before such date of en-
11 actment and that would not have been nec-
12 essary if subparagraphs (B) and (D) had
13 been in effect.”.

14 (b) PARTICIPATION REQUIREMENTS.—Paragraph
15 (26) of section 401(a) of the Internal Revenue Code of
16 1986 is amended by adding at the end the following new
17 subparagraph:

18 “(I) PROTECTED PARTICIPANTS.—A plan
19 described in this subparagraph shall be deemed
20 to satisfy the requirements of subparagraph
21 (A). A plan is described in this paragraph if—

22 “(i) the plan is amended to—

23 “(I) cease all benefit accruals, or

1 “(II) provide future benefit ac-
2 cruals only to a closed class of partici-
3 pants, and

4 “(ii) the plan satisfies subparagraph
5 (A) (without regard to this subparagraph)
6 as of the effective date of the amendment.

7 The Secretary may prescribe such rules as are
8 necessary or appropriate to fulfill the purposes
9 of this subparagraph, including prevention of
10 abuse of this subparagraph in the case of plans
11 established within a specific period prior to the
12 effective date of the amendment.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect on the date of the enactment
15 of this Act, without regard to whether any plan modifica-
16 tions referenced in such amendments are adopted or effec-
17 tive before, on, or after such date of enactment.

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