

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.

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## 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

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## 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 (I).

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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