

113TH CONGRESS
2D SESSION

S. 2855

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 2014

Mr. CARDIN (for himself and Mr. PORTMAN) introduced the following bill;
which was read twice and referred to the Committee on Finance

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. SHORT TITLE.**

4 This Act may be cited as the “Retirement Security
5 Preservation Act of 2014”.

6 **SEC. 2. PROTECTING OLDER, LONGER SERVICE PARTICI-**
7 **PANTS.**

8 (a) IN GENERAL.—Subsection (a) of section 401 of
9 the Internal Revenue Code of 1986 is amended—

1 (1) by striking the semicolon at the end of
2 paragraph (2) and inserting “; and”,

3 (2) by striking “; and” at the end of paragraph
4 (3) and inserting a period, and

5 (3) by striking paragraph (4) and inserting the
6 following:

7 “(4) NONDISCRIMINATION.—

8 “(A) IN GENERAL.—A trust shall not con-
9 stitute a qualified trust under this section un-
10 less the contributions or benefits provided under
11 the plan do not discriminate in favor of highly
12 compensated employees (within the meaning of
13 section 414(q)). For purposes of this para-
14 graph, there shall be excluded from consider-
15 ation employees described in section 410(b)(3)
16 (A) and (C).

17 “(B) PROTECTION OF OLDER, LONGER
18 SERVICE PARTICIPANTS.—

19 “(i) A defined benefit plan that pro-
20 vides benefits, rights, or features to a
21 closed class of participants shall not fail to
22 satisfy the requirements of this paragraph
23 by reason of the composition of such closed
24 class or the benefits, rights, or features
25 provided to such closed class, if—

1 “(I) such closed class and such
2 benefits, rights, and features satisfied
3 the requirements of subparagraph (A)
4 (without regard to this clause) as of
5 the date that the class was closed, and

6 “(II) after the date as of which
7 the class was closed, any plan amend-
8 ments that modify the closed class or
9 the benefits, rights, and features pro-
10 vided to such closed class satisfy sub-
11 paragraph (A) (without regard to this
12 clause).

13 If a plan amendment is adopted that does
14 not meet the requirements of subclause
15 (II), the plan shall be treated as meeting
16 the requirements of this paragraph if such
17 plan satisfied such requirements (without
18 regard to subclause (II)) as of the effective
19 date of such amendment. In such cases,
20 subclauses (I) and (II) shall subsequently
21 be applied by reference to the effective
22 date of the plan amendment, rather than
23 by reference to the date that the class was
24 closed.

1 “(ii) A defined contribution plan shall
2 be permitted to be tested on a benefits
3 basis if—

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

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

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

20 If a plan amendment is adopted that does
21 not meet the requirements of subclause
22 (III), the plan shall be treated as meeting
23 the requirements of this paragraph if such
24 plan satisfied such requirements (without
25 regard to subclause (III)) as of the effec-

1 tive date of such amendment. In such
2 cases, subclauses (II) and (III) shall subse-
3 quently be applied by reference to the ef-
4 fective date of the plan amendment, rather
5 than by reference to the date that the class
6 was closed.

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

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

21 “(II) consists of an employee
22 stock ownership plan within the mean-
23 ing of section 4975(e)(7) or a tax
24 credit employee stock ownership plan
25 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 no change had been made
19 to such defined benefit plan and such other
20 plan or arrangement.

21 “(ii) REFERENCES TO CLOSED CLASS
22 OF PARTICIPANTS.—References to a closed
23 class of participants and similar references
24 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) A defined benefit shall be per-
6 mitted to be tested on a benefits basis with
7 one or more defined contribution plans if—

8 “(I) the plan provides benefits to
9 a closed class of participants,

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

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

21 If a plan amendment is adopted that does
22 not meet the requirements of subclause
23 (III), the plan shall be treated as meeting
24 the requirements of this paragraph if such
25 plan satisfied such requirements (without

1 regard to subclause (III)) as of the effec-
2 tive date of such amendment. In such
3 cases, subclauses (II) and (III) shall subse-
4 quently be applied by reference to the ef-
5 fective date of the plan amendment, rather
6 than by reference to the date that the class
7 was closed.

8 “(ii) In addition to other testing
9 methodologies otherwise applicable, for
10 purposes of determining compliance with
11 this paragraph and with section 410(b) of
12 one or more defined benefit plans that
13 meet the requirements of subclauses (I),
14 (II), and (III) of clause (i), such plans may
15 be aggregated and tested on a benefits
16 basis with the portion of one or more de-
17 fined contribution plans that—

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

21 “(II) consists of an employee
22 stock ownership plan within the mean-
23 ing of section 4975(e)(7) or a tax
24 credit employee stock ownership plan
25 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 “(E) RULES.—The Secretary may pre-
9 scribe rules to prevent abuse of the plan designs
10 otherwise permitted by reason of subparagraphs
11 (B) and (D). Such rules shall be directed to-
12 ward abuses under which the defined benefit
13 plan was established within a specified period
14 prior to the date that—

15 “(i) the closed class of participants re-
16 ferred to in subparagraph (B)(i), (B)(ii),
17 or (D)(i) is closed, or

18 “(ii) the defined benefit plan accruals
19 have been reduced or eliminated, in the
20 case of the make-whole contributions de-
21 scribed in subparagraph (C).

22 “(F) TRANSITION RULES.—Within 1 year
23 after the date of enactment of the Retirement
24 Security Preservation Act of 2014, the Sec-
25 retary shall prescribe rules that facilitate the

1 use of the provisions of subparagraphs (B) and
 2 (D) without regard to—

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

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

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

16 “(I) PROTECTED PARTICIPANTS.—A plan
 17 shall be deemed to satisfy the requirements of
 18 subparagraph (A) if—

19 “(i) the plan is amended—

20 “(I) to cease all benefit accruals,

21 or

22 “(II) to provide future benefit ac-
 23 cruals only to a closed class of partici-
 24 pants, and

1 “(ii) the plan satisfies subparagraph
2 (A) (without regard to this subparagraph)
3 as of the effective date of the amendment.

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

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

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