To amend the Internal Revenue Code of 1986 to prevent the overstatement of benefits payable to non-highly compensated employees under qualified plans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2009

Mr. DOGGETT (for himself, Mr. STARK, Mr. McDermott, Mr. LEWIS of Georgia, Mr. PASCRELL, Ms. LINDA T. SANCHEZ of California, Mr. BRALEY of Iowa, Mr. HINCHEY, Mr. MASSA, Ms. SCHAKOWSKY, Mr. WELCH, Mr. GENE GREEN of Texas, Mr. DEFAZIO, Mr. MCGOVERN, Mr. TIERNEY, Mr. YARMUTH, and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to prevent the overstatement of benefits payable to non-highly compensated employees under qualified plans, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Retirement Fairness Act of 2009”.
SEC. 2. TREATMENT OF PART TIME EMPLOYEES IN DETERMINING MINIMUM COVERAGE REQUIREMENTS.

(a) In General.—Paragraph (6) of section 410(b) of the Internal Revenue Code of 1986 is amended by redesignating subparagraph (G) as subparagraph (H) and by inserting after subparagraph (F) the following new subparagraph:

"(G) Part time and less than full year employees.—For purposes of determining a number of employees under this subsection, in the case of an employee who has not completed 2,080 hours of service for the year and is not a highly compensated employee, such employee shall be counted as a fraction—

"(i) the numerator of which is an amount equal to the number of hours of service of the employee during the year, over

"(ii) 2,080."

(b) Effective Date.—The amendments made by this section shall apply to plan years beginning after the date of the enactment of this Act.

SEC. 3. MODIFICATION OF RULES RELATING TO NON-DISCRIMINATION REQUIREMENTS.

(a) In General.—
(1) Only vested contributions or benefits taken into account.—Paragraph (5) of section 401(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

“(H) Benefits and contributions taken into account.—Subparagraph (B) and paragraph (4) shall be applied by taking into account—

“(i) all contributions and benefits of highly compensated employees under the plan, and

“(ii) all nonforfeitable contributions and benefits of employees who are not highly compensated employees under the plan.”.

(2) Elimination of cross-testing.—Paragraph (5) of section 401(a) of such Code, as amended by this Act, is amended by adding at the following new subparagraphs:

“(I) Elimination of cross testing.—

For purposes of this paragraph and paragraph (4)—
“(i) IN GENERAL.—The nondiscrimination requirements of paragraph (4)—

“(I) in the case of a defined contribution plan, may only be satisfied based on contributions to such plan, and

“(II) in the case of a defined benefit plan, may only be satisfied based on benefits provided under the plan.

“(ii) SPECIAL RULE FOR CASH BALANCE PLANS.—Notwithstanding clause (i)(II), accrued benefits calculated as the balance of a hypothetical account (or substantially similar accruals) under an applicable defined benefit plan (as defined in section 411(a)(13)(C)) shall be treated as contributions.

“(J) REGULATIONS.—The Secretary may prescribe regulations that allow, in such circumstances as the Secretary determines appropriate, a defined contribution plan, or an applicable defined benefit plan (as defined in section 411(a)(13)(C)), to satisfy the nondiscrimination
requirements of paragraph (4) based on benefits, rather than only based on contributions. Any such regulations shall provide that, in all such circumstances, the allocation formula under the defined contribution plan (or the benefit formula in the case of an applicable defined benefit plan) must be reasonably designed to fund or provide an accumulated benefit for each participant, when expressed as an annual benefit commencing at normal retirement age, that as of any date would not be less than the accumulated benefit of any similarly situated younger participant when so expressed.”

(b) Effective Date.—The amendments made by this section shall apply to plan years beginning after the date of the enactment of this Act.