

111TH CONGRESS
1ST SESSION

H. R. 4126

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. PASCARELL, Ms. LINDA T. SÁNCHEZ 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.

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 of 2009”.

1 **SEC. 2. TREATMENT OF PART TIME EMPLOYEES IN DETER-**
2 **MINING MINIMUM COVERAGE REQUIRE-**
3 **MENTS.**

4 (a) IN GENERAL.—Paragraph (6) of section 410(b)
5 of the Internal Revenue Code of 1986 is amended by re-
6 designating subparagraph (G) as subparagraph (H) and
7 by inserting after subparagraph (F) the following new
8 subparagraph:

9 “(G) PART TIME AND LESS THAN FULL
10 YEAR EMPLOYEES.—For purposes of deter-
11 mining a number of employees under this sub-
12 section, in the case of an employee who has not
13 completed 2,080 hours of service for the year
14 and is not a highly compensated employee, such
15 employee shall be counted as a fraction—

16 “(i) the numerator of which is an
17 amount equal to the number of hours of
18 service of the employee during the year,
19 over

20 “(ii) 2,080.”

21 (b) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to plan years beginning after the
23 date of the enactment of this Act.

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

26 (a) IN GENERAL.—

1 (1) ONLY VESTED CONTRIBUTIONS OR BENE-
2 FITS TAKEN INTO ACCOUNT.—Paragraph (5) of sec-
3 tion 401(a) of the Internal Revenue Code of 1986 is
4 amended by adding at the end the following new
5 subparagraph:

6 “(H) BENEFITS AND CONTRIBUTIONS
7 TAKEN INTO ACCOUNT.—Subparagraph (B) and
8 paragraph (4) shall be applied by taking into
9 account—

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

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

17 (2) ELIMINATION OF CROSS-TESTING.—Para-
18 graph (5) of section 401(a) of such Code, as amend-
19 ed by this Act, is amended by adding at the fol-
20 lowing new subparagraphs:

21 “(I) ELIMINATION OF CROSS TESTING.—

22 For purposes of this paragraph and paragraph
23 (4)—

1 “(i) IN GENERAL.—The non-
2 discrimination requirements of paragraph
3 (4)—

4 “(I) in the case of a defined con-
5 tribution plan, may only be satisfied
6 based on contributions to such plan,
7 and

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

12 “(ii) SPECIAL RULE FOR CASH BAL-
13 ANCE PLANS.—Notwithstanding clause
14 (i)(II), accrued benefits calculated as the
15 balance of a hypothetical account (or sub-
16 stantially similar accruals) under an appli-
17 cable defined benefit plan (as defined in
18 section 411(a)(13)(C)) shall be treated as
19 contributions.

20 “(J) REGULATIONS.—The Secretary may
21 prescribe regulations that allow, in such cir-
22 cumstances as the Secretary determines appro-
23 priate, a defined contribution plan, or an appli-
24 cable defined benefit plan (as defined in section
25 411(a)(13)(C)), to satisfy the nondiscrimination

1 requirements of paragraph (4) based on bene-
2 fits, rather than only based on contributions.
3 Any such regulations shall provide that, in all
4 such circumstances, the allocation formula
5 under the defined contribution plan (or the ben-
6 efit formula in the case of an applicable defined
7 benefit plan) must be reasonably designed to
8 fund or provide an accumulated benefit for each
9 participant, when expressed as an annual ben-
10 efit commencing at normal retirement age, that
11 as of any date would not be less than the accu-
12 mulated benefit of any similarly situated young-
13 er participant when so expressed.”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to plan years beginning after the
16 date of the enactment of this Act.

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