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

IN THE HOUSE OF REPRESENTATIVES

Mr. TIBERI introduced the following bill; which was referred to the Committee on

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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. PROTECTING OLDER, LONGER SERVICE PARTICIPANTS.

3 (a) In general.—Paragraph (4) of section 401(a) of the Internal Revenue Code of 1986 is amended to read as follows:

4 “(4) Nondiscrimination.—
“(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C).

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

“(i)(I) A defined benefit plan described in subclause (II) shall not fail to satisfy this paragraph with respect to plan benefits, rights, or features by reason of—

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

“(bb) the benefits, rights, or features provided to such closed class.

“(II) A plan is described in this subclause if—

“(aa) the plan provides benefits, rights, or features to a closed class of participants,
“(bb) such closed class and such
benefits, rights, and features satisfy
the requirements of subparagraph (A)
(without regard to this clause) as of
the date that the class was closed, and
“(cc) after the date as of which
the class was closed, any plan amend-
ments that modify the closed class or
the benefits, rights, and features pro-
vided to such closed class satisfy sub-
paragraph (A) (without regard to this
clause).

If a plan amendment causes a plan to
cease to be described in this subclause (II)
by reason of subclause (II)(cc), the plan is
nevertheless described in this subclause
(II) if such plan satisfies this subclause
(II) (without regard to subclause (II)(cc))
as of the effective date of such amend-
ment. In such cases, subclauses (II)(bb)
and (cc) shall subsequently be applied by
reference to the effective date of the plan
amendment, rather than by reference to
the original date that the class was closed.
‘(ii)(I) A defined contribution plan described in subclause (II) shall permitted to be tested on a benefits basis.

‘(II) A defined contribution plan is described in this subclause if—

‘(aa) the plan provides make-whole contributions to a closed class of participants whose defined benefit plan accruals have been reduced or eliminated,

‘(bb) such closed class of participants satisfies section 410(b)(2)(A)(i) as of the date that the class of participants was closed, and

‘(cc) after the date as of which the class was closed, any plan amendments that modify the closed class or the allocations, benefits, rights, and features provided to such closed class satisfy subparagraph (A) (without regard to this clause).

If a plan amendment causes a plan to cease to be described in this subclause (II) by reason of subclause (II)(cc), the plan is nevertheless described in this subclause
(II) if such plan satisfies this subclause

(II) (without regard to subclause (II)(ee))
as of the effective date of such amend-
ment. In such cases, subclause (II)(bb)
and (ee) shall subsequently be applied by
reference to the effective date of the plan
amendment, rather than by reference to
the original date that the class was closed.

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

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

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

For such purposes, matching contributions shall be treated in the same manner as employer contributions that are made without regard to whether an employee makes an elective contribution or employee contribution, including for purposes of applying the rules of subsection (l).

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

“(i) MAKE-WHOLE CONTRIBUTIONS.—
The term ‘make-whole contributions’ means allocations for each employee in the class that are reasonably calculated, in a consistent manner, to replace some or all of the retirement benefits that the employee would have received under the defined benefit plan and any other plan or arrangement if the employee had continued to benefit at the same level under such defined benefit plan and such other plan or arrangement.

“(ii) REFERENCES TO CLOSED CLASS OF PARTICIPANTS.—References to a closed
class of participants and similar references to a closed class shall include arrange-
ments under which one or more classes of participants are closed.

“(D) Protecting Grandfathered Participants in Defined Benefit Plans.—

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

“(ii) A defined benefit plan is described in this clause if—

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

“(II) the plan and such benefits satisfy the requirements of subparagraph (A) (without regard to this subparagraph) as of the date the class was closed, and

“(III) after the date as of which the class was closed, any plan amendments that modify the closed class or the benefits provided to such closed class satisfy subparagraph (A) (without regard to this subparagraph).
If a plan amendment causes a plan to cease to be described in this clause (ii) by reason of subclause (III), the plan is nevertheless described in this clause (ii) if such plan satisfies this clause (ii) (without regard to subclause (III)) as of the effective date of such amendment. In such cases, subclauses (II) and (III) shall subsequently be applied by reference to the effective date of the plan amendment, rather than by reference to the original date that the class was closed.

“(iii) In addition to other testing methodologies otherwise applicable, for purposes of determining compliance with this paragraph and with section 410(b) of one or more defined benefit plans described in clause (ii), such plans may be aggregated and tested on a benefits basis with the portion of one or more defined contribution plans that—

“(I) provides matching contributions (as defined in subsection (m)(4)(A)), or
“(II) consists of an employee stock ownership plan within the meaning of section 4975(e)(7) or a tax credit employee stock ownership plan within the meaning of section 409(a).

For such purposes, matching contributions shall be treated in the same manner as employer contributions that are made without regard to whether an employee makes an elective contribution or employee contribution, including for purposes of applying the rules of subsection (l).

“(E) RULES.—The Secretary may prescribe rules designed to prevent abuse of the plan designs otherwise permitted by reason of subparagraphs (B) and (D). Such rules shall be directed towards abuses under which the defined benefit plan was established within a specified period prior to the date that—

“(i) the class of participants described in subparagraphs (B)(i)(II)(aa), (B)(ii)(II)(aa), and (D)(ii)(I) is closed, or

“(ii) the defined benefit plan accruals have been reduced or eliminated, in the
case of the make-whole contributions described in subparagraph (C).

“(F) TRANSITION RULES.—Within one year after the date of enactment of the Retirement Plan Simplification and Enhancement Act of 2013, the Secretary shall prescribe rules that facilitate the use of the provisions of subparagraph (B) and (D) without regard to—

“(i) whether the closing of the class of participants referred to in such subparagraphs occurred before or after such date of enactment, or

“(ii) plan amendments that were adopted or effective before such date of enactment and that would not have been necessary if subparagraphs (B) and (D) had been in effect.”.

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

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

“(I) cease all benefit accruals, or

“(II) provide future benefit accruals only to a closed class of participants, and

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

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

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, without regard to whether any plan modifications referenced in such amendments are adopted or effective before, on, or after such date of enactment.