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

Mr. CARDIN (for himself and Mr. PORTMAN) introduced the following bill; which was read twice and 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 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) by striking the semicolon at the end of paragraph (2) and inserting “; and”,

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

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

“(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) A defined benefit plan that provides benefits, rights, or features to a closed class of participants shall not fail to satisfy the requirements of this paragraph by reason of the composition of such closed class or the benefits, rights, or features provided to such closed class, if—
“(I) such closed class and such benefits, rights, and features satisfied the requirements of subparagraph (A) (without regard to this clause) as of the date that the class was closed, and

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

If a plan amendment is adopted that does not meet the requirements of subclause (II), the plan shall be treated as meeting the requirements of this paragraph if such plan satisfied such requirements (without regard to subclause (II)) as of the effective date of such amendment. In such cases, subclauses (I) and (II) shall subsequently be applied by reference to the effective date of the plan amendment, rather than by reference to the date that the class was closed.
“(ii) A defined contribution plan shall be permitted to be tested on a benefits basis if—

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

“(II) such closed class of participants satisfied section 410(b)(2)(A)(i) as of the date that the class of participants was closed, and

“(III) 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 is adopted that does not meet the requirements of subclause (III), the plan shall be treated as meeting the requirements of this paragraph if such plan satisfied such requirements (without regard to subclause (III)) as of the effec-
tive date of such amendment. In such cases, subclauses (II) and (III) shall subse-
quently be applied by reference to the ef-
fective date of the plan amendment, rather than by reference to the 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 clause (ii) that provide make-whole contributions, such portion of such plans may be aggregated and tested on a benefits basis with the por-
tion of one or more defined contribution plans that—

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

“(II) 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 no change had been made to 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) A defined benefit shall be permitted to be tested on a benefits basis with one or more defined contribution plans 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 is adopted that does not meet the requirements of subclause (III), the plan shall be treated as meeting the requirements of this paragraph if such plan satisfied such requirements (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 date that the class was closed.

“(ii) 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 that meet the requirements of subclauses (I), (II), and (III) of clause (i), 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 to prevent abuse of the plan designs otherwise permitted by reason of subparagraphs (B) and (D). Such rules shall be directed toward abuses under which the defined benefit plan was established within a specified period prior to the date that—

“(i) the closed class of participants referred to in subparagraph (B)(i), (B)(ii), or (D)(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 1 year after the date of enactment of the Retirement Security Preservation Act of 2014, the Secretary shall prescribe rules that facilitate the
use of the provisions of subparagraphs (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 shall be deemed to satisfy the requirements of subparagraph (A) if—

“(i) the plan is amended—

“(I) to cease all benefit accruals,

or

“(II) to 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 specified 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.