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(Original Signature of Member)

113TH CONGRESS
2D SESSION

H. R.

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 Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PROTECTING OLDER, LONGER SERVICE PAR-**
4 **TICIPANTS.**

5 (a) IN GENERAL.—Paragraph (4) of section 401(a)
6 of the Internal Revenue Code of 1986 is amended to read
7 as follows:

8 “(4) NONDISCRIMINATION.—

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

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

12 “(i)(I) A defined benefit plan de-
13 scribed in subclause (II) shall not fail to
14 satisfy this paragraph with respect to plan
15 benefits, rights, or features by reason of—

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

19 “(bb) the benefits, rights, or fea-
20 tures provided to such closed class.

21 “(II) A plan is described in this sub-
22 clause if—

23 “(aa) the plan provides benefits,
24 rights, or features to a closed class of
25 participants,

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

6 “(cc) 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 causes a plan to
14 cease to be described in this subclause (II)
15 by reason of subclause (II)(cc), the plan is
16 nevertheless described in this subclause
17 (II) if such plan satisfies this subclause
18 (II) (without regard to subclause (II)(cc))
19 as of the effective date of such amend-
20 ment. In such cases, subclauses (II)(bb)
21 and (cc) shall subsequently be applied by
22 reference to the effective date of the plan
23 amendment, rather than by reference to
24 the original date that the class was closed.

1 “(ii)(I) A defined contribution plan
2 described in subclause (II) shall permitted
3 to be tested on a benefits basis.

4 “(II) A defined contribution plan is
5 described in this subclause if—

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

11 “(bb) such closed class of partici-
12 pants satisfies section 410(b)(2)(A)(i)
13 as of the date that the class of partici-
14 pants was closed, and

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

22 If a plan amendment causes a plan to
23 cease to be described in this subclause (II)
24 by reason of subclause (II)(cc), the plan is
25 nevertheless described in this subclause

1 (II) if such plan satisfies this subclause
2 (II) (without regard to subclause (II)(cc))
3 as of the effective date of such amend-
4 ment. In such cases, subclause (II)(bb)
5 and (cc) shall subsequently be applied by
6 reference to the effective date of the plan
7 amendment, rather than by reference to
8 the original date that the class was closed.

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

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

23 “(bb) consists of an employee
24 stock ownership plan within the mean-
25 ing of section 4975(e)(7) or a tax

1 credit employee stock ownership plan
2 within the meaning of section 409(a).
3 For such purposes, matching contributions
4 shall be treated in the same manner as em-
5 ployer contributions that are made without
6 regard to whether an employee makes an
7 elective contribution or employee contribu-
8 tion, including for purposes of applying the
9 rules of subsection (l).

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

12 “(i) MAKE-WHOLE CONTRIBUTIONS.—
13 The term ‘make-whole contributions’
14 means allocations for each employee in the
15 class that are reasonably calculated, in a
16 consistent manner, to replace some or all
17 of the retirement benefits that the em-
18 ployee would have received under the de-
19 fined benefit plan and any other plan or
20 arrangement if the employee had continued
21 to benefit at the same level under such de-
22 fined benefit plan and such other plan or
23 arrangement.

24 “(ii) REFERENCES TO CLOSED CLASS
25 OF PARTICIPANTS.—References to a closed

1 class of participants and similar references
2 to a closed class shall include arrange-
3 ments under which one or more classes of
4 participants are closed.

5 “(D) PROTECTING GRANDFATHERED PAR-
6 TICIPANTS IN DEFINED BENEFIT PLANS.—

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

11 “(ii) A defined benefit plan is de-
12 scribed in this clause if—

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

15 “(II) the plan and such benefits
16 satisfy the requirements of subpara-
17 graph (A) (without regard to this sub-
18 paragraph) as of the date the class
19 was closed, and

20 “(III) after the date as of which
21 the class was closed, any plan amend-
22 ments that modify the closed class or
23 the benefits provided to such closed
24 class satisfy subparagraph (A) (with-
25 out regard to this subparagraph).

1 If a plan amendment causes a plan to
2 cease to be described in this clause (ii) by
3 reason of subclause (III), the plan is never-
4 theless described in this clause (ii) if such
5 plan satisfies this clause (ii) (without re-
6 gard to subclause (III)) as of the effective
7 date of such amendment. In such cases,
8 subclauses (II) and (III) shall subsequently
9 be applied by reference to the effective
10 date of the plan amendment, rather than
11 by reference to the original date that the
12 class was closed.

13 “(iii) In addition to other testing
14 methodologies otherwise applicable, for
15 purposes of determining compliance with
16 this paragraph and with section 410(b) of
17 one or more defined benefit plans described
18 in clause (ii), such plans may be aggre-
19 gated and tested on a benefits basis with
20 the portion of one or more defined con-
21 tribution plans that—

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

1 “(II) consists of an employee
2 stock ownership plan within the mean-
3 ing of section 4975(e)(7) or a tax
4 credit employee stock ownership plan
5 within the meaning of section 409(a).

6 For such purposes, matching contributions
7 shall be treated in the same manner as em-
8 ployer contributions that are made without
9 regard to whether an employee makes an
10 elective contribution or employee contribu-
11 tion, including for purposes of applying the
12 rules of subsection (I).

13 “(E) RULES.—The Secretary may pre-
14 scribe rules designed to prevent abuse of the
15 plan designs otherwise permitted by reason of
16 subparagraphs (B) and (D). Such rules shall be
17 directed towards abuses under which the de-
18 fined benefit plan was established within a spec-
19 ified period prior to the date that—

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

23 “(ii) the defined benefit plan accruals
24 have been reduced or eliminated, in the

1 case of the make-whole contributions de-
2 scribed in subparagraph (C).

3 “(F) TRANSITION RULES.—Within one
4 year after the date of enactment of the Retire-
5 ment Plan Simplification and Enhancement Act
6 of 2013, the Secretary shall prescribe rules that
7 facilitate the use of the provisions of subpara-
8 graph (B) and (D) without regard to—

9 “(i) whether the closing of the class of
10 participants referred to in such subpara-
11 graphs occurred before or after such date
12 of enactment, or

13 “(ii) plan amendments that were
14 adopted or effective before such date of en-
15 actment and that would not have been nec-
16 essary if subparagraphs (B) and (D) had
17 been in effect.”.

18 (b) PARTICIPATION REQUIREMENTS.—Paragraph
19 (26) of section 401(a) of the Internal Revenue Code of
20 1986 is amended by adding at the end the following new
21 subparagraph:

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

1 “(i) the plan is amended to—
2 “(I) cease all benefit accruals, or
3 “(II) provide future benefit ac-
4 cruals only to a closed class of partici-
5 pants, and

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

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

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