

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.

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## 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. 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

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## 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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