

111TH CONGRESS  
2D SESSION

# S. 4012

To improve the employability of older Americans.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 7, 2010

Mr. KOHL introduced the following bill; which was read twice and referred to  
the Committee on Finance

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# A BILL

To improve the employability of older Americans.

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; TABLE OF CONTENTS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “*Incentives for Older Workers Act*”.

6       (b) **TABLE OF CONTENTS.**—The table of contents for  
7       this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Prohibition of benefit reduction due to phased retirement.

Sec. 3. Allowance of delayed retirement social security credits until age 72.

Sec. 4. Reduction in social security benefit offset resulting from certain earn-  
ings.

Sec. 5. National Resource Center on Aging and the Workforce.

Sec. 6. Workforce investment activities for older workers.

Sec. 7. Eligibility of older workers for the work opportunity credit.

Sec. 8. Normal retirement age.

1   **SEC. 2. PROHIBITION OF BENEFIT REDUCTION DUE TO**  
2                   **PHASED RETIREMENT.**

3           (a) PROHIBITION OF BENEFIT REDUCTION DUE TO  
4   PHASED RETIREMENT.—

5               (1) AMENDMENT TO THE EMPLOYEE RETIRE-  
6   MENT INCOME SECURITY ACT OF 1974.—Section  
7   204(b)(1) of the Employee Retirement Income Secu-  
8   rity Act of 1974 (29 U.S.C. 1054(b)(1)) is amended  
9   by adding at the end the following:

10               “(I)(i) Notwithstanding the preceding sub-  
11   paragraphs, in the case of a participant who—

12                   “(I) begins a period of phased retire-  
13   ment, and

14                   “(II) was employed on a substantially  
15   full-time basis during the 12-month period  
16   preceding the period of phased retirement,  
17   a defined benefit plan shall be treated as meet-  
18   ing the requirements of this paragraph with re-  
19   spect to the participant only if the participant’s  
20   compensation or average compensation taken  
21   into account under the plan with respect to the  
22   years of service before the period of phased re-  
23   tirement is not, for purposes of determining the  
24   accrued benefit for such years of service, re-  
25   duced due to such phased retirement.

1                         “(ii) For purposes of this subparagraph, a  
2                         period of phased retirement is a period during  
3                         which an employee is employed on substantially  
4                         less than a full-time basis or with substantially  
5                         reduced responsibilities, but only if the period  
6                         begins after the participant reaches age 50 or  
7                         has completed 30 years of service creditable  
8                         under the plan.”.

9                         (2) AMENDMENT TO THE INTERNAL REVENUE  
10                         CODE OF 1986.—Section 411(b)(1) of the Internal  
11                         Revenue Code of 1986 (relating to accrued benefits)  
12                         is amended by adding at the end the following:

13                         “(I) ACCRUED BENEFIT MAY NOT DE-  
14                         CREASE ON ACCOUNT OF PHASED RETIRE-  
15                         MENT.—

16                         “(i) IN GENERAL.—Notwithstanding  
17                         the preceding subparagraphs, in the case  
18                         of a participant who—

19                         “(I) begins a period of phased re-  
20                         tirement, and

21                         “(II) was employed on a substan-  
22                         tially full-time basis during the 12-  
23                         month period preceding the period of  
24                         phased retirement,

1                   a defined benefit plan shall be treated as  
2                   meeting the requirements of this para-  
3                   graph with respect to the participant only  
4                   if the participant's compensation or aver-  
5                   age compensation taken into account under  
6                   the plan with respect to the years of serv-  
7                   ice before the period of phased retirement  
8                   is not, for purposes of determining the ac-  
9                   crued benefit for such years of service, re-  
10                  duced due to such phased retirement.

11                  “(ii) PERIOD OF PHASED RETIRE-  
12                  MENT.—For purposes of this subparagraph,  
13                  a period of phased retirement is a  
14                  period during which an employee is em-  
15                  ployed on substantially less than a full-  
16                  time basis or with substantially reduced re-  
17                  sponsibilities, but only if the period begins  
18                  after the participant reaches age 50 or has  
19                  completed 30 years of service creditable  
20                  under the plan.”.

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

1 **SEC. 3. ALLOWANCE OF DELAYED RETIREMENT SOCIAL SE-**2 **CURITY CREDITS UNTIL AGE 72.**

3 (a) IN GENERAL.—Paragraphs (2) and (3) of section  
4 202(w) of the Social Security Act (42 U.S.C. 402(w)) are  
5 each amended by striking “age 70” and inserting “age  
6 72”.

7 (b) EFFECTIVE DATES.—The amendments made by  
8 this section shall take effect on the date of the enactment  
9 of this Act.

10 **SEC. 4. REDUCTION IN SOCIAL SECURITY BENEFIT OFFSET**11 **RESULTING FROM CERTAIN EARNINGS.**

12 (a) IN GENERAL.—Section 203(f)(3) of the Social  
13 Security Act (42 U.S.C. 403(f)(3)) is amended by striking  
14 “in the case of any individual” and all that follows through  
15 “in the case of any other individual”.

16 (b) EFFECTIVE DATE.—The amendment made by  
17 this section shall apply to taxable years beginning after  
18 the date of the enactment of this Act.

19 **SEC. 5. NATIONAL RESOURCE CENTER ON AGING AND THE**20 **WORKFORCE.**

21 (a) ESTABLISHMENT.—The Secretary of Labor shall  
22 award a grant for the establishment and operation of a  
23 National Resource Center on Aging and the Workforce to  
24 address issues on age and the workforce and to collect,  
25 organize, and disseminate information on older workers.

1       (b) ACTIVITIES.—The Center established under sub-  
2 section (a) shall—

3               (1) serve as a national information clearing-  
4 house on workforce issues, challenges, and solutions  
5 planning for older workers that would serve employers,  
6 local communities, and State and local govern-  
7 ment organizations, as well as other public and pri-  
8 vate agencies, including providing for the cataloging,  
9 organization, and summarizing of existing research,  
10 resources, and scholarship relating to older work-  
11 force issues;

12               (2) identify best or most-promising practices  
13 across the United States that have enjoyed success  
14 in productively engaging older Americans in the  
15 workforce;

16               (3) create toolkits for employers, trade associa-  
17 tions, labor organizations, and non-profit employers  
18 that would feature a series of issue papers outlining  
19 specific tasks and activities for engaging older indi-  
20 viduals in select industries;

21               (4) distribute information to government plan-  
22 ners and policymakers, employers, organizations rep-  
23 resenting and serving older adults, and other appro-  
24 priate entities through the establishment of an inter-  
25 active Internet website, the publications of articles in

1       periodicals, pamphlets, brochures, and reports, as  
2       well as through national and international con-  
3       ferences and events; and

4 (5) provide targeted and ongoing technical as-  
5 sistance to select units of government, private cor-  
6 porations, and nonprofit organizations.

7 (c) AUTHORIZATION OF APPROPRIATIONS.—There is  
8 authorized to be appropriated such sums as may be avail-  
9 able in each fiscal year to carry out this section.

## 10 SEC. 6. WORKFORCE INVESTMENT ACTIVITIES FOR OLDER 11 WORKERS.

12 (a) STATE BOARDS.—Section 111(b)(1)(C) of the  
13 Workforce Investment Act of 1998 (29 U.S.C.  
14 2821(b)(1)(C)) is amended—

15 (1) in clause (vi), by striking “and” at the end;  
16 (2) by redesignating clause (vii) as clause (viii);  
17 and

1       (b) LOCAL BOARDS.—Section 117(b)(2)(A) of such  
2 Act (29 U.S.C. 2832(b)(2)(A)) is amended—

3               (1) in clause (v), by striking “and” at the end;

4               and

5               (2) by adding at the end the following:

6                       “(vii) representatives of older individ-  
7                       uals, who shall be representatives from an  
8                       area agency on aging (as defined in section  
9                       102 of the Older Americans Act of 1965  
10                      (42 U.S.C. 3002)) in the local area or re-  
11                      cipients of grants under title V of such Act  
12                      (42 U.S.C. 3056 et seq.) in the local area;  
13                      and”.

14       (c) RESERVATION OF FUNDS FOR OLDER INDIVID-  
15       UALS.—Section 134 of such Act (29 U.S.C. 2864) is  
16       amended by adding at the end the following:

17               “(f) RESERVATION FOR OLDER INDIVIDUALS FROM  
18       FUNDS ALLOCATED FOR ADULTS.—

19               “(1) DEFINITION.—In this subsection, the term  
20               ‘allocated funds’ means the funds allocated to a local  
21               area under paragraph (2)(A) or (3) of section  
22               133(b).

23               “(2) RESERVATION.—The local area shall en-  
24               sure that 5 percent of the allocated funds that are

1       used to provide services under subsection (d) or (e)  
2       are reserved for services for older individuals.”.

3   **SEC. 7. ELIGIBILITY OF OLDER WORKERS FOR THE WORK**

4                   **OPPORTUNITY CREDIT.**

5       (a) IN GENERAL.—Section 51(d)(1) of the Internal  
6       Revenue Code of 1986 (relating to members of targeted  
7       groups) is amended—

8                   (1) by striking “or” at the end of subparagraph  
9                   (H),

10                  (2) by striking the period at the end of sub-  
11       paragraph (I) and inserting “, or”, and

12                  (3) by adding at the end the following new sub-  
13       paragraph:

14                   “(J) a qualified older worker.”.

15       (b) QUALIFIED OLDER WORKER.—Section 51(d) of  
16       the Internal Revenue Code of 1986 is amended by adding  
17       at the end the following new paragraph:

18                  “(15) QUALIFIED OLDER WORKER.—The term  
19       ‘qualified older worker’ means any individual who is  
20       certified by the designated local agency as being an  
21       individual who is age 55 or older and whose income  
22       is not more than 125 percent of the poverty line (as  
23       defined by the Office of Management and Budget),  
24       excluding any income that is unemployment com-  
25       pensation, a benefit received under title XVI of the

1       Social Security Act (42 U.S.C. 1381 et seq.), a pay-  
2       ment made to or on behalf of veterans or former  
3       members of the Armed Forces under the laws ad-  
4       ministered by the Secretary of Veterans Affairs, or  
5       25 percent of a benefit received under title II of the  
6       Social Security Act (42 U.S.C. 401 et seq.).”.

7       (c) EFFECTIVE DATE.—The amendments made this  
8       section shall apply to amounts paid or incurred after the  
9       date of the enactment of this Act to individuals who begin  
10      work for the employer after such date.

11      **SEC. 8. NORMAL RETIREMENT AGE.**

12       (a) AMENDMENT TO INTERNAL REVENUE CODE OF  
13      1986.—Section 411 of the Internal Revenue Code of 1986  
14      is amended by adding at the end the following new sub-  
15      section:

16       “(f) SPECIAL RULE FOR DETERMINING NORMAL RE-  
17      TIREMENT AGE FOR CERTAIN EXISTING DEFINED BEN-  
18      EFIT PLANS.—

19       “(1) IN GENERAL.—For purposes of subsection  
20      (a)(8)(A), an applicable plan shall not be treated as  
21      failing to meet any requirement of this subchapter,  
22      or as failing to have a uniform normal retirement  
23      age for purposes of this subchapter, solely because  
24      the plan has adopted the normal retirement age de-  
25      scribed in paragraph (2).

1                   “(2) APPLICABLE PLAN.—For purposes of this  
2                   subsection—

3                   “(A) IN GENERAL.—The term ‘applicable  
4                   plan’ means a defined benefit plan that, on the  
5                   date of the introduction of the Incentives for  
6                   Older Workers Act, has adopted a normal re-  
7                   tirement age which is the earlier of—

8                   “(i) an age otherwise permitted under  
9                   subsection (a)(8)(A), or

10                   “(ii) the age at which a participant  
11                   completes the number of years (not less  
12                   than 30 years) of benefit accrual service  
13                   specified by the plan.

14                   A plan shall not fail to be treated as an applica-  
15                   ble plan solely because, as of such date, the  
16                   normal retirement age described in the pre-  
17                   ceding sentence only applied to certain partici-  
18                   pants or to certain employers participating in  
19                   the plan.

20                   “(B) EXPANDED APPLICATION.—If, after  
21                   the date described in subparagraph (A), an ap-  
22                   plicable plan expands the application of the nor-  
23                   mal retirement age described in subparagraph  
24                   (A) to additional participants or participating  
25                   employers, such plan shall also be treated as an

1                   applicable plan with respect to such partici-  
2                   pants or participating employers.”.

3                   (b) AMENDMENTS TO EMPLOYEE RETIREMENT IN-  
4                   COME SECURITY ACT OF 1974.—Section 204 of the Em-  
5                   ployee Retirement Income Security Act of 1974 is amend-  
6                   ed by redesignating subsection (k) as subsection (l) and  
7                   by inserting after subsection (j) the following new sub-  
8                   section:

9                   “(k) SPECIAL RULE FOR DETERMINING NORMAL  
10                   RETIREMENT AGE FOR CERTAIN EXISTING DEFINED  
11                   BENEFIT PLANS.—

12                   “(1) IN GENERAL.—For purposes of section  
13                   3(24), an applicable plan shall not be treated as fail-  
14                   ing to meet any requirement of this title, or as fail-  
15                   ing to have a uniform normal retirement age for  
16                   purposes of this title, solely because the plan has  
17                   adopted the normal retirement age described in  
18                   paragraph (2).

19                   “(2) APPLICABLE PLAN.—For purposes of this  
20                   subsection—

21                   “(A) IN GENERAL.—The term ‘applicable  
22                   plan’ means a defined benefit plan that, on the  
23                   date of the introduction of the Incentives for  
24                   Older Workers Act, has adopted a normal re-  
25                   tirement age which is the earlier of—

1                             “(i) an age otherwise permitted under  
2                             section 2(24), or

3                             “(ii) the age at which a participant  
4                             completes the number of years (not less  
5                             than 30 years) of benefit accrual service  
6                             specified by the plan.

7                             A plan shall not fail to be treated as an applica-  
8                             ble plan solely because, as of such date, the  
9                             normal retirement age described in the pre-  
10                            ceding sentence only applied to certain partici-  
11                            pants or to certain employers participating in  
12                            the plan.

13                             “(B) EXPANDED APPLICATION.—If, after  
14                             the date described in subparagraph (A), an ap-  
15                             plicable plan expands the application of the nor-  
16                             mal retirement age described in subparagraph  
17                             (A) to additional participants or participating  
18                             employers, such plan shall also be treated as an  
19                             applicable plan with respect to such partici-  
20                             pants or participating employers.”.

21                             (c) EFFECTIVE DATE.—The amendments made by  
22                             this section shall apply to years beginning before, on, or  
23                             after the date of the enactment of this Act.

