S. 145

To promote labor force participation of older Americans, with the goals of increasing retirement security, reducing the projected shortage of experienced workers, maintaining future economic growth, and improving the Nation’s fiscal outlook.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

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

A BILL

To promote labor force participation of older Americans, with the goals of increasing retirement security, reducing the projected shortage of experienced workers, maintaining future economic growth, and improving the Nation’s fiscal outlook.

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 “Older Worker Oppor-
5 tunity Act of 2011”.
SEC. 2. TAX CREDIT FOR EMPLOYING OLDER WORKERS IN FLEXIBLE WORK PROGRAMS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 45S. FLEXIBLE WORK CREDIT."

“(a) IN GENERAL.—For purposes of section 38, in the case of an eligible employer, the flexible work credit determined under this section for the taxable year shall be equal to 25 percent of the qualified wages for such taxable year.

“(b) ELIGIBLE EMPLOYER.—For purposes of this section, the term ‘eligible employer’ means an employer which—

“(1) maintains a qualified trust (within the meaning of section 401(a)), and

“(2) provides health insurance coverage (as defined in section 9832(b)(1)(A)) to employees and pays no less than 60 percent of the cost of such health insurance coverage with respect to each full-time employee receiving such coverage.

“(c) QUALIFIED WAGES DEFINED.—For purposes of this section—

“(1) QUALIFIED WAGES.—The term ‘qualified wages’ means the wages paid or incurred by an eli—
3

(2) Eligible Individuals.—

(A) In General.—The term ‘eligible individual’ means an individual who, at the time such wages are paid or incurred—

(i) has attained the age of 62, and

(ii) is participating in a formal flexible work program.

(B) Limitation.—Such term shall not include any individual who begins participation in a formal flexible work program during any period in which more than 20 percent of the employees of the eligible employer are already participating in a formal flexible work program.

(3) Wages.—

(A) In General.—The term ‘wages’ has the meaning given such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section).

(B) Other Rules.—Rules similar to the rules of paragraph (2) and (3) of section 51(c) shall apply for purposes of this section.
“(C) TERMINATION.—The term ‘wages’ shall not include any amount paid or incurred to an individual after December 31, 2014.

“(4) ONLY FIRST $6,000 OF WAGES PER YEAR TAKEN INTO ACCOUNT.—The amount of the qualified wages which may be taken into account with respect to any individual shall not exceed $6,000 per year.

“(d) FORMAL FLEXIBLE WORK PROGRAM.—For purposes of this section—

“(1) IN GENERAL.—The term ‘formal flexible work program’ means a program of an eligible employer—

“(A) which consists of core time and flex time,

“(B) under which core time does not exceed—

“(i) 20 hours per week,

“(ii) 3 days per week, or

“(iii) 1,000 hours per year, and

“(C) which meets the requirements of subsection (e).

“(2) CORE TIME.—The term ‘core time’ means the specific time—
“(A) during which an employee is required to perform services related to employment, and
“(B) which is determined by the employer.
“(3) FLEX TIME.—The term ‘flex time’ means the time other than core time—
“(A) during which an employee is required to perform services related to employment, and
“(B) which is determined at the election of the employee.
“(e) REQUIREMENTS.—A program shall not be considered a formal flexible work program under this section unless such program meets the following requirements:
“(1) DURATION OF PROGRAM.—The program shall allow for participation for a period of at least 1 year.
“(2) NO CHANGE IN HEALTH CARE BENEFITS.—With respect to a participant whose work schedule is no less than 20 percent of the work schedule of a similarly situated full-time employee—
“(A) such participant shall be entitled to the same health insurance coverage to which a similarly situated full-time employee would be entitled,
“(B) the employer shall contribute the same percentage of the cost of health insurance
coverage for such participant as the employer
would contribute for a similarly situated full-
time employee, and

“(C) such participant shall be entitled to
participate in a retiree health benefits plan of
the employer in the same manner as a similarly
situated full-time employee, except that service
credited under the plan for any plan year shall
be equal to the ratio of the participant’s work
schedule during such year to the work schedule
of a similarly situated full-time employee during
such year.

“(3) NO REDUCTION IN PENSION BENEFITS.—

“(A) DEFINED BENEFIT PLANS.—

“(i) A participant shall be entitled to
participate in a defined benefit plan (within
the meaning of section 414(j)) of the
employer in the same manner as a simi-
larly situated full-time employee.

“(ii) Service credited to a participant
under the plan for any plan year shall be
equal to the ratio of the participant’s work
schedule during such year to the work
schedule of a similarly situated full-time
employee during such year.
“(iii) If the plan uses final average earnings to determine benefits, final average earnings of the participant shall be no less than such earnings were before the participant entered the program.

“(B) DEFINED CONTRIBUTION PLANS.—A participant shall be entitled to participate in a defined contribution plan (within the meaning of section 414(i)) of the employer in the same manner as a similarly situated full-time employee, and the employer shall match the participant’s contributions at the same rate that the employer would match the contributions of a similarly situated full-time employee.

“(C) NO FORFEITURE OF PENSION BENEFITS.—The pension benefits of a participant shall not be forfeited under the rules of section 411(a)(3)(B) or section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 with respect to a participant who has attained normal retirement age as of the end of the plan year.

“(4) NONDISCRIMINATION RULE.—Eligibility to participate in the program shall not discriminate in
favor of highly compensated employees (within the meaning of section 414(q)).

“(f) CERTAIN INDIVIDUALS INELIGIBLE.—For purposes of this section, rules similar to the rules of section 51(i)(1) and section 52 shall apply.

“(g) REGULATIONS.—The Secretary may prescribe such regulations as are necessary to carry out the purposes of this section, including simplified rules to satisfy the requirements of subsection (e)(3)(C) taking into account the requirements of section 411 and section 203 of the Employee Retirement Income Security Act of 1974.”.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 of the Internal Revenue Code of 1986 is amended by striking “plus” at the end of paragraph (35), by striking the period at the end of paragraph (36) and inserting “, plus”, and by adding at the end the following new paragraph:

“(37) the flexible work credit determined under section 45S(a).”.

(e) NO DOUBLE BENEFIT.—Subsection (a) of section 280C of the Internal Revenue Code of 1986 is amended by inserting “45S(a),” after “45P(a),”.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1...
of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

“Sec. 45S. Flexible work credit.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to wages paid after December 31, 2010.