

112TH CONGRESS  
1ST SESSION

# H. R. 3561

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to reduce administrative burdens and encourage retirement plan formation and retention.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 2011

Mr. KIND (for himself, Mr. GERLACH, and Mr. NEAL) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to reduce administrative burdens and encourage retirement plan formation and retention.

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 “Small Business Pen-  
5 sion Promotion Act of 2011”.

1 **SEC. 2. ALTERNATIVE VALUATION DATE FOR REQUIRED**  
2 **MINIMUM DISTRIBUTIONS.**

3 If the Secretary of the Treasury determines there has  
4 been a significant and broadly applicable decrease in the  
5 value of investment assets held by defined contribution  
6 plans and individual retirement accounts for any calendar  
7 year, the Secretary may—

8 (1) allow taxpayers to use a later valuation date  
9 than would otherwise be required under Treasury  
10 Regulations to determine the required minimum dis-  
11 tribution for such year from individual accounts  
12 under section 401(a)(9), 403(b)(10), 408(a)(6),  
13 408(b)(3), or 457(d)(2) of the Internal Revenue  
14 Code of 1986,

15 (2) allow additional time for making any such  
16 distributions, and

17 (3) provide such other relief as may be appro-  
18 priate in light of such a decrease in investment asset  
19 values.

20 **SEC. 3. DEDUCTION FOR PENSION AND IRA CONTRIBU-**  
21 **TIONS ALLOWED IN COMPUTING NET EARN-**  
22 **INGS FROM SELF-EMPLOYMENT.**

23 (a) IN GENERAL.—Subsection (a) of section 1402 of  
24 the Internal Revenue Code of 1986 is amended by striking  
25 “and” at the end of paragraph (16), by striking the period  
26 at the end of paragraph (17) and inserting “, and”, and

1 by inserting after paragraph (17) the following new para-  
2 graph:

3 “(18) any deduction allowed under section 404  
4 by reason of section 404(a)(8)(C) (other than any  
5 deduction allowed for elective deferrals (as defined in  
6 section 402(g)(3)) shall be allowed, except that the  
7 amount of such deduction shall be determined with-  
8 out regard to this paragraph.”.

9 (b) CONFORMING AMENDMENT.—Clause (v) of sec-  
10 tion 401(c)(2)(A) of such Code is amended by inserting  
11 “for elective deferrals (as defined in section 402(g)(3))”  
12 after “to the taxpayer”.

13 (c) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to taxable years beginning after  
15 December 31, 2011.

16 **SEC. 4. ADJUSTED FUNDING TARGET ATTAINMENT PER-**  
17 **CENTAGE DETERMINED WITHOUT REGARD**  
18 **TO REDUCTION FOR CREDIT BALANCES FOR**  
19 **FUNDING-BASED LIMITS UNDER SINGLE EM-**  
20 **PLOYER PLANS.**

21 (a) AMENDMENT OF 1986 CODE.—Paragraph (2) of  
22 section 436(j) of the Internal Revenue Code of 1986 is  
23 amended—

24 (1) by striking the period at the end and insert-  
25 ing “, and”,

1           (2) by striking “under paragraph (1) by in-  
2           creasing” and inserting the following: “under para-  
3           graph (1)—

4                       “(A) by increasing”, and

5           (3) by adding at the end the following new sub-  
6           paragraph:

7                       “(B) without regard to the reduction under  
8                       section 430(f)(4)(B).”.

9           (b) AMENDMENT OF ERISA.—Section 206(g)(9)(B)  
10          of the Employee Retirement Income Security Act of 1974  
11          (29 U.S.C. 1056(g)(9)(B)) is amended—

12           (1) by striking the period at the end and insert-  
13           ing “, and”,

14           (2) by striking “under subparagraph (A) by in-  
15           creasing” and inserting the following: “under sub-  
16           paragraph (A)—

17                       “(i) by increasing”, and

18           (3) by adding at the end the following new  
19           clause:

20                       “(ii) without regard to the reduction  
21                       under section 303(f)(4)(B).”.

22           (c) EFFECTIVE DATE.—The amendments made by  
23          this section shall apply to plan years beginning after De-  
24          cember 31, 2011.

1 **SEC. 5. REPEAL OF TAX ON NONDEDUCTIBLE CONTRIBU-**  
2 **TIONS TO QUALIFIED EMPLOYER PLANS.**

3 Effective for taxable years beginning after December  
4 31, 2011, section 4972 is repealed.

5 **SEC. 6. INTERIM AMENDMENTS TO QUALIFIED PLANS.**

6 The Secretary of the Treasury shall, not later than  
7 2 years after the date of the enactment of this Act, revise  
8 the administrative rules governing interim amendments of  
9 qualified plans to provide greater flexibility and reduce  
10 plan sponsor burden, while taking into account the need  
11 for plan terms to reflect the benefits to which participants  
12 are entitled.

13 **SEC. 7. GRANDFATHERING OF PLANS WITH NORMAL RE-**  
14 **TIREMENT AGE BASED ON EARLIER OF AT-**  
15 **TAINMENT OF SPECIFIC AGE OR COMPLE-**  
16 **TION OF 30 OR MORE YEARS OF BENEFIT AC-**  
17 **CRUAL SERVICE.**

18 (a) AMENDMENT OF 1986 CODE.—

19 (1) IN GENERAL.—Section 411 of the Internal  
20 Revenue Code of 1986 is amended by adding at the  
21 end the following new subsection:

22 “(f) SPECIAL RULE FOR DETERMINING NORMAL RE-  
23 TIREMENT AGE FOR CERTAIN EXISTING DEFINED BEN-  
24 EFIT PLANS.—

25 “(1) IN GENERAL.—An applicable trust shall  
26 not fail to be treated as a qualified trust under sec-

1       tion 401(a) of the Internal Revenue Code of 1986,  
2       and shall not be treated as failing to have a uniform  
3       normal retirement age for purposes of this sub-  
4       chapter, solely because the plan of which it is a part  
5       has a normal retirement age described in paragraph  
6       (2)(A).

7               “(2) APPLICABLE TRUST.—For purposes of this  
8       subsection—

9               “(A) IN GENERAL.—The term ‘applicable  
10       trust’ means a trust forming a part of a plan  
11       that on December 5, 2011, has a normal retire-  
12       ment age which is the earlier of—

13               “(i) the attainment of an age which is  
14       not earlier than age 60 but not later than  
15       65, or

16               “(ii) the completion of 30 or more  
17       years of benefit accrual service.

18               “(B) LIMITED APPLICATION OF SPECIFIED  
19       NORMAL RETIREMENT AGE PERMITTED.—A  
20       trust shall not fail to be treated as an applica-  
21       ble trust solely because, as of such date, a nor-  
22       mal retirement age described in subparagraph  
23       (A) only applies to certain participants or cer-  
24       tain employers participating in the plan of  
25       which such trust is a part.

1           “(C) EXPANDED APPLICATION PER-  
2           MITTED.—If, after such date, the plan of which  
3           an applicable trust is a part expands the appli-  
4           cation of a normal retirement age described in  
5           subparagraph (A) to additional participants or  
6           employers, such trust shall be treated as an ap-  
7           plicable trust with respect to any such partici-  
8           pants and employers.”.

9           (2) SERVICE-BASED RETIREMENTS IN GOVERN-  
10          MENTAL PLANS.—

11           (A) IN GENERAL.—Subsection (e) of sec-  
12          tion 411 of such Code is amended by adding at  
13          the end the following new paragraph:

14           “(3) A plan described in paragraph (1)(A) shall  
15          not be treated as failing to meet any requirement of  
16          this subchapter or any regulation issued under this  
17          subchapter, or as failing to have a permissible nor-  
18          mal retirement age for the purposes of this sub-  
19          chapter or any regulation issued under this sub-  
20          chapter, solely because—

21           “(A) the plan expresses its normal retire-  
22          ment age (whether stated in, or implied  
23          through, the terms of the plan) based on years  
24          of service or a combination of years of service

1 and the chronological age of the plan partici-  
2 pant, or

3 “(B) the plan expresses a normal retire-  
4 ment benefit as a benefit payable without actu-  
5 arial reduction for age upon attainment of an  
6 age, years of service, or a combination of age  
7 and years of service.”.

8 (B) RULES.—Not later than 180 after the  
9 date of the enactment of this Act, the Secretary  
10 of the Treasury shall modify the rules for deter-  
11 mining normal retirement age under sections  
12 401(a) and 411 of the Internal Revenue Code  
13 of 1986, including Treasury Regulation  
14 § 1.401(a)–1, to be consistent with the amend-  
15 ment made by this paragraph.

16 (b) AMENDMENTS OF ERISA.—Section 204 of the  
17 Employee Retirement Income Security Act of 1974 (29  
18 U.S.C. 1054) is amended by redesignating subsection (k)  
19 as subsection (l) and by inserting after subsection (j) the  
20 following new subsection:

21 “(k) SPECIAL RULE FOR DETERMINING NORMAL  
22 RETIREMENT AGE FOR CERTAIN EXISTING DEFINED  
23 BENEFIT PLANS.—

24 “(1) IN GENERAL.—An applicable trust shall  
25 not fail to meet any of the requirements of this title,

1 and shall not be treated as failing to have a uniform  
2 normal retirement age for purposes of this title, sole-  
3 ly because the plan of which it is a part has a nor-  
4 mal retirement age described in paragraph (2)(A).

5 “(2) APPLICABLE TRUST.—For purposes of this  
6 subsection—

7 “(A) IN GENERAL.—The term ‘applicable  
8 trust’ means a trust forming a part of a plan  
9 that on December 5, 2011, has a normal retire-  
10 ment age which is the earlier of—

11 “(i) the attainment of an age which is  
12 not earlier than age 60 but not later than  
13 65, or

14 “(ii) the completion of 30 or more  
15 years of benefit accrual service.

16 “(B) LIMITED APPLICATION OF SPECIFIED  
17 NORMAL RETIREMENT AGE PERMITTED.—A  
18 trust shall not fail to be treated as an applica-  
19 ble trust solely because, as of such date, the  
20 normal retirement age described in subpara-  
21 graph (A) only applies to certain participants or  
22 certain employers participating in the plan of  
23 which such trust is a part.

24 “(C) EXPANDED APPLICATION PER-  
25 MITTED.—If, after such date, the plan of which

1           an applicable trust is a part expands the appli-  
2           cation of the normal retirement age described in  
3           subparagraph (A) to additional participants or  
4           employers, such trust shall be treated as an ap-  
5           plicable trust with respect to any such partici-  
6           pants and employers.”.

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

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