

## OECD THEMATIC FOLLOW-UP REVIEW OF POLICIES TO IMPROVE LABOUR MARKET PROSPECTS FOR OLDER WORKERS

### UNITED STATES (*situation mid-2012*)

*In 2011, the employment rate for the population aged 50-64 in the United States was 2.2 percentage points **lower than in 2005** and 3.9 percentage points **above the OECD average**. Further statistical information about the labour market situation for older workers in the United States is presented in the scoreboard in Table 1.*

A major multi-country OECD review of employment policies to address ageing took place during 2003-05 and was summarised in the OECD synthesis report *Live Longer, Work Longer*, published in 2006. That report put forward an agenda for reform, consisting of three broad areas where policy action was seen as necessary to encourage work at an older age:

- strengthening financial incentives to carry on working
- tackling employment barriers on the side of employers
- improving the employability of older workers

One of the main purposes of this follow-up review is to take stock of the progress OECD countries have made in implementing this reform agenda. In the third quarter of 2011, a questionnaire was sent to all member countries, seeking information on the measures and reforms carried out since 2006. For each of the 21 countries<sup>1</sup> that had participated in the original review, the questionnaire was adapted to refer to the OECD's specific policy recommendations in each corresponding country report.

The main actions taken in the United States since 2005 are described in this Note. A summary assessment of the extent to which the United States has followed the OECD's recommendations in the report *Ageing and Employment Policies: United States* is given in Table 2.

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<sup>1</sup> Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, Japan, Korea, Luxembourg, Netherlands, Norway, Spain, Sweden, Switzerland, United Kingdom, United States. For further information, see [www.oecd.org/els/employment/olderworkers](http://www.oecd.org/els/employment/olderworkers).

## **A. STRENGTHENING FINANCIAL INCENTIVES TO CARRY ON WORKING**

### **A.1. OECD recommendations to the United States in 2005 – action taken**

#### ***Raise the minimum age for social security***

Reduced retirement benefits are still available as early as age 62. The maximum overall reduction for early retirement is gradually increasing from 20% to 30% for workers born in 1960 or later, in harmony with the gradual increase in the full retirement age.

After attaining full retirement age, individuals can work and receive unlimited wages without affecting the amount of their retirement insurance benefits. There are also financial incentives (in the form of increased benefits) for working beyond full retirement (up to age 70) without receiving social security retirement benefits.

While no steps have been taken to increase the early retirement age, efforts are under way to educate workers about the financial benefits of delaying retirement until later.

### **A.2. OECD recommendations to the United States in 2005 – no action taken**

#### ***Speed up the transition from 65 to 67 for the full retirement age***

The United States has not accelerated what is a gradual transition: raising of the full retirement age for social security retirement insurance benefits, from age 65 to 67. Workers born in 1943 to 1954 need to attain age 66 for full retirement age. Workers born in 1960 or later currently need to attain age 67 for full retirement age.

#### ***Ensure that disability benefits do not become an alternative route to early retirement***

In order to be entitled to Social Security Disability Insurance (SSDI) benefits, or Supplemental Security Income (SSI) based on a disability, individuals must be unable to perform their past work or any other substantial gainful work that exists in the national economy. The reason for the disability must be a medically determinable physical or mental impairment that has lasted or can be expected to either last for a continuous period of not less than twelve months or result in death.

#### ***Limit tax advantages in private pension schemes for those taking early retirement***

The recommendation applied to early retirement through private or occupational systems, so that there was consistency with the proposed changes in the social security early retirement age. At the same time, the eligibility age for the Earned Income Tax Credit (EITC) should be extended, so that it covers everyone up to the full retirement age for social security.

## **B. TACKLING EMPLOYMENT BARRIERS ON THE SIDE OF EMPLOYERS**

### **B.1. OECD recommendations to the United States in 2005 – action taken**

#### ***Support further spread of defined-contribution pension schemes***

The Pension Protection Act (PPA) of 2006 contained several provisions to help American workers who save for retirement through defined contribution plans, such as 401(k)-type plans. Specifically, the PPA made permanent the higher contribution limits for defined contribution plans, and for catch-up

contributions for workers aged 50 and over that were included in the Economic Growth and Tax Relief Reconciliation Act of 2001. These provisions had been set to expire in 2010.

The PPA of 2006 also contains a provision regarding the automatic enrolment of participants in a 401(k) retirement plan, which has proved to be a factor in increasing participation in defined-contribution schemes. The provision encourages employers to adopt automatic enrolment by providing non-discrimination “Safe Harbor” retirement plans for high-paid employees’ elective deferrals and in certain cases matching contributions, as well as providing protection from state payroll-withholding laws provided that the plans meet certain requirements.

### ***Strengthen measures to combat age discrimination***

The Equal Employment Opportunity Commission (EEOC) has long asserted in its regulations that disparate impact liability exists under the Age Discrimination in Employment Act (ADEA), but the EEOC’s ability to advance this position was constrained by contrary US Courts of Appeals decisions in several regions. Finally in 2005 the US Supreme Court issued a decision confirming the nationwide availability of disparate impact claims under the ADEA.

This decision raised several new legal questions, which the EEOC subsequently addressed through rulemaking. The final regulation, which was published on March 30, 2012 and became effective on April 30, 2012, defines the reasonable factors other than age defence and conforms the agency’s position to the Supreme Court’s rulings on this subject. The EEOC also issued a Question and Answer document to explain the regulation in plain language.

The EEOC has published information on other ADEA-related issues since 2005 to improve stakeholders’ understanding of their rights and responsibilities. In December 2007 the Commission issued a Fact Sheet on Employment Tests and Selection Procedures, which noted that the ADEA, as well as Title VII of the Civil Rights Act and the Americans with Disabilities Act, prohibits discriminatory employment tests and other selection procedures in the hiring process. It provided a list of employer best practices for complying with employment discrimination laws, including the ADEA, when testing applicants or using other selection procedures in hiring.

Another example of recent EEOC technical assistance to aid ADEA compliance is the 2009 question-and-answer document on “Understanding Waivers of Discrimination Claims in Employee Severance Agreements”. As the economy began to falter and layoffs mounted in 2008 and 2009, the Commission received numerous inquiries about when lawful, enforceable waiver agreements may be used in conjunction with employment termination. The “Understanding Waivers” document provides a plain-language explanation of the rules surrounding lawful waivers.

With respect to the OECD’s suggestions that the United States consider extending the ADEA to cover all workers, instead of just those over 40, and expanding coverage beyond its current limitations to businesses with at least 20 employees, such changes would require action by the legislature and cannot be made by the executive branch. However, some state laws bar age discrimination in employment irrespective of the worker’s age, and also cover smaller business employers than the federal law.

### ***Promote business case for employing older workers***

The EEOC also is determined to ensure that ADEA enforcement, particularly with regard to hiring, is as effective as possible. For this reason, the Commissioners have held several public meetings to gather testimony from panels of subject matter experts on issues such as age-based stereotypes, barriers to hiring

older workers, and the effect of the economy on older workers. Since 2009, no less than four public Commission meetings, at least in part, have concerned age discrimination. They include:

- Age Discrimination in the 21<sup>st</sup> Century – Barriers to the Employment of Older Workers (15 July 2009)
- Impact of the Economy on Older Workers (17 November 2010)
- Disparate Treatment in 21<sup>st</sup> Century Hiring Decisions (22 June 2011)
- Final Regulation on Disparate Impact and Reasonable Factors Other than Age under the Age Discrimination in Employment Act (ADEA) and Overcoming Barriers to the Employment of Veterans with Disabilities (16 November 2011).

The EEOC also offers Technical Assistance Programs (TAPS) to employers, which often include a session on age discrimination. These detailed training programmes are designed to help business owners understand their legal obligations. Additionally, age discrimination was a topic of “customer-specific trainings”, which are programmes customised to fit the stakeholders’ specific needs. EEOC field offices also conduct less formal outreach in their local communities.

## **B.2. OECD recommendations to the United States in 2005 – no action taken**

### ***Eliminate the “Medicare-as-secondary-payer” rule***

Employers who offer health insurance to their employees under the age of 65 must offer the same health insurance to employees who are eligible for Medicare. Abolishing this requirement would enhance the employment opportunities for workers aged 65 and over. The budgetary consequences would need to be considered carefully.

## **C. IMPROVING THE EMPLOYABILITY OF OLDER WORKERS**

### **C.1. OECD recommendations to the United States in 2005 – action taken**

#### ***Strengthen and expand training opportunities for low-skilled workers including tailoring training to the needs of older workers***

In the United States, the federally funded public workforce system provides employment and training services to jobseekers and connects employers to qualified workers through a nationwide network of nearly 3 000 One-Stop Career Centers. Low-skilled workers, including older workers, are able to access workforce services such as job search and placement assistance, access to workforce information, and specialised assessments. Eligible individuals may qualify for training. In Program Year 2010, older individuals (ages 55 and up) were served by the public workforce system through various US Department of Labor programmes:

- 96 402 individuals were served through the *Senior Community Service Employment Program (SCSEP)*
- 225 927 individuals were served through the *Workforce Investment Act (WIA) Adult Program*
- 214 826 individuals were served through the *WIA Dislocated Worker Program*
- 10 281 individuals were served through the *American Recovery and Reinvestment Act (ARRA) High-Growth Job Training Initiative*

SCSEP, funded at approximately USD 448 million in fiscal year 2012, offers part-time community service employment opportunities for low-income unemployed individuals aged 55 or over at non-profits or government agencies, with a view to preparing them to enter or re-enter the workforce. SCSEP is focused

on assuring that workers are equipped with the skills and knowledge necessary to succeed in a knowledge-based economy, including in high-growth and emerging industry sectors such as “green” industries.

With economic stimulus funding provided through ARRA, an additional USD 120 million was made available to serve additional unemployed low-income senior citizens under SCSEP. The US Department of Labor expanded the number of participants assigned to community service work, especially in growth industries such as healthcare, childcare, education, energy efficiency and environmental services.

In addition to the opportunities for employment under SCSEP, Career Pathway models and On-the-Job Training (OJT) grants have been helping improve prospects for the unemployed, including seniors.

***Evaluate the effectiveness of the current arrangements for providing employment services to older jobseekers***

SCSEP uses different measures to track **results**. In particular, the following measures - Six Months' Average Earnings, Entered Employment rates, and Employment Retention rates - are critical in analysing performance outcomes. Using the most recent data available, the SCSEP is on track to meet or exceed all of its Government Performance and Results Act Goals (GPRA Goals) by the end of June 2012.

Effective March 2011, the Department of Labor is implementing an additional performance indicator to assess the engagement of SCSEP participants in volunteer work once that work has ended. This measure will allow the Department to gather more specific information about the breadth and depth of participation in SCSEP, and the impact that the programme has on both the lives of participants and the community.

The US Department of Labor is currently conducting a process evaluation of SCSEP, with publication expected in September 2012.

***Tackle barriers to phased retirement arising from the regulation of employer-provided pension plans***

The PPA provides that a defined-benefit plan may allow in-service distributions to a participant who has reached the age of 62 and who is not separated from employment at the time of the distribution, even if normal retirement age is later than 62. The rules apply to distributions in plan years beginning after 31 December 2006.

Employers were concerned that offering phased retirement to older workers, such as those aged at least 55, could trigger ADEA liability with respect to workers aged 40-54. The Supreme Court helped assuage this concern with its decision in *General Dynamics Land Systems, Inc. v. Cline* (2004), where it stated that the ADEA only prohibits discrimination that disfavours the relatively older worker. Through notice-and-comment rulemaking, the EEOC subsequently issued regulations in 2007 to reflect the Court's holding. It should now be clear to employers that they will not violate the ADEA by offering a voluntary phased retirement programme that benefits only relatively older workers.

***Promote better opportunities for self-employment***

The US Department of Labor encourages states to support entrepreneurial and self-employment training for all jobseekers. The Department issued guidance to state workforce agencies, administrators, liaisons, boards and staff, One-Stop Career Centers and local workforce boards and staff in 2010, encouraging states to establish parameters for funding entrepreneurial and self-employment training and entrepreneurial work experiences for youth.

To demonstrate the role of the workforce investment system in supporting new entrepreneurs, the Department of Labor funded a project, implemented between Autumn 2003 and Summer 2005, designed to assist people in creating or expanding their own businesses: Project GATE (Growing America Through Entrepreneurship). Because of the success of the original Project GATE demonstration, in 2008 the Department awarded four new Project GATE II grants for extension of the Project GATE model to dislocated workers in rural areas and over the age of 45.

***Improve the knowledge base on health, well-being and safety at work***

The Occupational Safety and Health Administration (OSHA) has taken a number of actions since 2005 that address the safety and health of older workers in the workplace. Most concern all workers, but some may have some particular relevance to older workers. The latter could include the 2011 campaign to prevent heat illness in outdoor workers and the distracted driving campaign. OSHA continues to seek and study feedback on this issue. For example, OSHA's Office of Small Business Assistance hosted a Small Business Forum in 2009 on "Safety and Health Issues in an Aging Workforce".

**C.2. OECD recommendations to the United States in 2005 – no action taken**

***Monitor effect of changes to the Fair Labor Standards Act (FLSA) on hours of work***

Given that American workers already work much longer hours on average than in most other OECD countries, it is important that government policies do not impede reductions in long hours of work for older workers. The OECD recommended that the impact of these regulatory changes on working hours be closely monitored.

***Encourage and assist employers to adapt working conditions to the needs of older workers***

The OECD recommended that the US Department of Labor, possibly in collaboration with OSHA, seek to promote best practices among employers in terms of accommodating age diversity in the workplace. Employer groups themselves should be encouraged to set up websites with information on best practices and tools for employers to rank their own performance as an age-friendly employer.

Table 1. Older workers scoreboard, 2005 and 2011

	United States			OECD <sup>h</sup>		
	2001	2005	2011	2001	2005	2011
<b>Employment</b>						
-- Employment rate, 50-64 (% of the age group)	66.7	67.3	65.1	55.6	58.4	61.2
<i>of which</i> 50-54	77.9	77.2	73.8	71.8	73.7	76.1
55-59	67.1	69.0	68.1	55.9	59.9	64.8
60-64	47.6	50.0	50.8	32.5	35.6	40.0
-- Employment rate, 55-64 (% of the age group)	58.6	60.8	60.0	44.9	49.0	52.9
-- Employment rate, 65-69 (% of the age group)	24.0	27.3	29.9	15.2	16.5	18.5
<b>Job quality</b>						
-- Incidence of part-time work, 55-64 (% of total employment)	11.3	10.8	10.3	17.2	17.2	18.7
-- Incidence of temporary work, 55-64 (% employees)	-	-	-	9.0	9.1	9.1
-- Full-time <sup>a</sup> earnings, 55-59 relative to 25-29 (ratio)	1.28	1.37	1.42	1.32	1.33	1.34
<b>Dynamics</b>						
-- Retention rate <sup>b</sup> , after 60 (% of employees <i>t</i> -5)	-	-	-	37.8	40.4	42.2
-- Hiring rate <sup>c</sup> , 55-64 (% of employees <i>t</i> -1)	-	-	-	7.8	9.2	8.5
-- Effective labour force exit age <sup>d</sup> (years) Men	64.6	64.6	65.2	63.1	63.3	63.9
Women	63.3	63.2	64.8	61.1	62.0	62.8
<b>Unemployment</b>						
-- Unemployment rate, 55-64 (% of the labour force)	3.0	3.3	6.6	4.6	4.8	5.8
-- Incidence of long-term <sup>e</sup> unemployment, 55+ (% of total unemployment)	10.8	17.8	42.2	46.8	47.7	45.9
<b>Employability</b>						
-- Share of 55-64 with tertiary education <sup>f</sup> (% of the age group)	29.7	36.9	41.0	15.9	19.9	22.9
-- Participation in training <sup>g</sup> , 55-64						
Absolute (% of all employed in the age group)	-	-	-	6.6	8.2	9.4
Relative to employed persons aged 25-54 (ratio)	-	-	-	0.44	0.52	0.57

-- unavailable.

a) Mean gross hourly earnings, 2000, 2001, 2005 and 2011.

b) All employees currently aged 60-64 with tenure of five years or more as a percentage of all employees aged 55-59 5-years previously.

c) Percentage of employees aged 55-64 with a job tenure of less than one year.

d) 2001, 2005 and 2011. Effective exit age over the five-year periods 1996-2001, 2000-2005 and 2006-2011. The effective exit age (also called the effective age of retirement) is calculated as a weighted average of the exit ages of each five-year age cohort, starting with the cohort aged 40-44 at the first date, using absolute changes in the labour force participation rate of each cohort as weights.

e) Unemployed for more than one year.

f) 2000, 2005, 2010.

g) Job-related training during the last month.

h) Unweighted averages for 34 OECD countries.

Source: OECD estimations from national labour force surveys and OECD Education database.

[www.oecd.org/els/employment/olderworkers](http://www.oecd.org/els/employment/olderworkers)

Table 2. Ageing and employment policies: United States (situation mid-2012)

OECD's recommendations to United States in 2005	Action taken
<b>A. Strengthening financial incentives to carry on working</b>	
<i>Speed up the transition from 65 to 67 for the full retirement age</i>	/
<i>Raise the minimum age for Social Security</i>	+
<i>Ensure that disability benefits do not become an alternative route to early retirement</i>	/
<i>Limit tax advantages in private pension schemes for those taking early retirement</i>	/
<b>B. Tackling employment barriers on the side of employers</b>	
<i>Support further spread of defined-contribution pension schemes</i>	+
<i>Eliminate the "Medicare-as-secondary-payer" rule</i>	/
<i>Strengthen measures to combat age discrimination</i>	+
<i>Promote the business case for employing older workers</i>	+
<b>C. Improving the employability of older workers</b>	
<i>Strengthen and expand training opportunities for low-skilled workers including tailoring training to the needs of older workers</i>	+
<i>Evaluate the effectiveness of the current arrangements for providing employment services to older jobseekers</i>	+
<i>Tackle barriers to phased retirement arising from the regulation of employer-provided pension plans</i>	+
<i>Monitor effect of changes to the Fair Labor Standards Act (FLSA) on hours of work</i>	/
<i>Promote better opportunities for self-employment</i>	+
<i>Encourage and assist employers to adapt working conditions to the needs of older workers</i>	/
<i>Improve the knowledge base on health, well-being and safety at work</i>	+
<p><i>Notes</i></p> <p>/ = no (relevant) action taken; + = some action taken, but more could be done; ? = some action taken, but could have negative impact and requires further assessment; ++ = substantial action has been taken.</p> <p>Source: OECD (2005), <i>Ageing and Employment Policies: United States</i> and answers to the follow-up questionnaire from the United States.</p>	