U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

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Kevin M. Salinger, Esq.
Assistant Secretary for Tax Policy (Acting)
U.S. Department of Treasury
1500 Pennsylvania Avenue N.W., Room 3120
Washington, D.C. 20220

Re: Enhancement of the Employer-Provided Child Care Credit (Section 45F) – Priority Guidance Recommendations

Dear Mr. Salinger:

On behalf of the U.S. Chamber of Commerce ("Chamber"), I am pleased to submit the following comments regarding the employer-provided child care credit in section 45F of the Internal Revenue Code,[1] as amended by the One Big Beautiful Bill Act ("OBBBA").[2] The comments below identify several threshold interpretative issues arising under the OBBBA's changes to section 45F and provide constructive recommendations for addressing them in regulations or other published guidance, consistent with congressional intent. These comments reflect the practical, real-world concerns of Chamber member companies from across the industry spectrum and warrant due consideration as you and your colleagues work to implement the new law.

Background

Originally added to the Code in 2001,[3] section 45F was designed to encourage employers to provide in-kind child care benefits to their employees.[4] Section 45F

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[1] Unless otherwise indicated, all textual references to "section" are to sections of the Internal Revenue Code of 1986, as amended ("Code").

[2] Pub. L. No. 119-21, § 70401, 139 Stat. 72, 212–213 (2025).

[3] Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 205, 115 Stat. 38, 50–53.

[4] As explained by the Congressional Research Service, policymakers view employer-provided child care as a model that can align the needs of some working families with the needs of some employers. *See* Brendan McDermott, Cong. Rsch. Serv., *IF12379, The Section 45F Tax Credit for Employer-Provided Child Care* (2025). Many families find that employer-provided care is easier to access, while employers find that providing child care expands their potential labor force and improves employee recruitment and retention. *See id.*

provided businesses a nonrefundable tax credit of up to $150,000 per year on up to 25% of their qualified child care expenditures and 10% of their qualified child care resource and referral service expenditures. More than two decades later, however, the available data increasingly called the original credit's efficacy into question, with very few businesses claiming the section 45F credit each year.[5] Lawmakers cited the original credit's low take-up rate as a reason for change during the OBBBA's legislative process, noting the relatively low amount of the credit and the restrictions on its use.[6] As a result, Congress made several responsive enhancements to the credit in the OBBBA that are designed to significantly improve its take-up rate, and thereby improve the supply of child care options for individual households.[7]

The OBBBA permanently increased the amount of the section 45F credit, created a separate (higher) credit amount for eligible small businesses, and indexed both amounts for inflation.[8] And to expand the types of child care options eligible for the credit, the OBBBA also made two important qualitative changes. First, it expanded the definition of a "qualified child care expenditure" to include any amount paid or incurred under a contract with an intermediate entity that contracts with one or more qualified child care facilities to provide child care services.[9] Second, the law expanded the definition of a "qualified child care facility" to include a qualified child care facility that is jointly owned or operated by the taxpayer and other persons.[10] And, importantly, the OBBBA included an express delegation of authority directing the Secretary of the Treasury ("Treasury") to issue such regulations or other guidance as may be necessary to carry out the purposes of section 45F, including guidance to carry out the purposes of these two qualitative changes.[11] The following discussion identifies several areas where Treasury should exercise its authority to provide clarity and certainty to employers, consistent with congressional intent.

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[5] *See, e.g.*, U.S. Gov't Accountability Off., GAO-22-105264, *Employer-Provided Child Care Credit: Estimated Claims and Factors Limiting Wider Use* 4–5 (2022) (finding that the credit was having only a minimal impact on encouraging employers to provide child care).

[6] *See* H.R. Rep. No. 119-106, pt. 2, at 1515 (2025).

[7] *See id.*

[8] *See* Pub. L. No. 119-21, § 70401(a)–(c), 139 Stat. 72, 212–123 (2025) (codified at I.R.C. § 45F(a)–(c)). Specifically, the OBBBA increased the maximum credit amount from $150,000 to $500,000 and the percentage of qualified child care expenditures covered from 25% to 40%. And it further strengthened the credit for small businesses by increasing the maximum credit amount to $600,000 and the percentage of qualified child care expenditures covered to 50%.

[9] Pub. L. No. 119-21, § 70401(d), 139 Stat. at 213 (codified at I.R.C. § 45F(c)(1)(A)(iii)).

[10] Pub. L. No. 119-21, § 70401(e), 139 Stat. at 213 (codified at I.R.C. § 45F(c)(2)(C)).

[11] Pub. L. No. 119-21, § 70401(f), 139 Stat. at 213 (codified at I.R.C. § 45F(g)).

Credit Allowed for Third-Party Intermediaries

The Chamber commends lawmakers for expanding the definition of a "qualified child care expenditure" in section 45F(c)(1) to include amounts paid or incurred under a contract with a third party who contracts with one or more qualified child care facilities to provide child care services. The complexity of planning and administering on-site child care services has discouraged many employers—especially small businesses—from considering it for their employees.[12] Allowing employers to use third-party intermediaries to procure child care services for their employees, therefore, promises more flexibility and fewer restrictions for businesses of all sizes. But realizing this promise will require clear, actionable guidance for employers.

Qualified Child Care Services

As Treasury works to fulfill its statutory mandate to carry out the purposes of this change through regulations or other guidance, we recommend that such guidance clearly define the nature or types of "child care services" an intermediate entity may be contracted to provide. At a minimum, qualifying "child care services" should include: (i) identifying or securing available child care slots at qualified child care facilities; (ii) offering on- or off-site back-up care arrangements for employees on an as-needed basis; and (iii) coordinating relationships between employers and child care providers. The timely issuance of clear, expansive guidance—with real-world examples—will empower employers of all sizes to confidently engage with a variety of third-party partners to provide high-quality child care options to their employees, as Congress intended.

Child Care Deserts and Resource Hubs

Far too many communities throughout the United States are considered "child care deserts," which are generally defined as census tracts with limited or no access to quality child care. All too often, businesses located in these areas lack the capital or expertise needed to operate qualified child care facilities for their employees. More recently, however, businesses in some of these communities have responded by using a third-party entity that acts as a child care "resource hub" for multiple businesses. Two or more businesses will contribute resources (e.g., time, money, expertise) to a third-party "resource hub" to help identify or facilitate child care solutions for their employees. These resource hubs act as centralized community infrastructure designed to increase the viability and stabilize the supply of child care in areas otherwise constituting child care deserts.

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[12] *See, e.g.*, U.S. Gov't Accountability Off., GAO-22-105264, *Employer-Provided Child Care Credit: Estimated Claims and Factors Limiting Wider Use* 16–17 (2022) (noting that small businesses often lack the scale and capacity to provide child care for employees).

The Chamber invites Treasury to make clear in regulations or other guidance that amounts paid or incurred under a contract with an intermediate entity that provides this type of "resource hub" or communal service will be considered qualified child care expenditures under section 45F(c)(1)(A)(iii). Here again, such treatment would align with Congress's intent to encourage employers of all types and sizes to provide in-kind child care benefits to their employees.

Treatment of Jointly Owned or Operated Child Care Facilities

The Chamber likewise applauds lawmakers' decision to expand the definition of a "qualified child care facility" in section 45F(c)(2) to include a qualified child care facility that is jointly owned or operated by the taxpayer and other persons. This expanded definition has the potential to be extremely impactful for many employers—especially small businesses—lacking the resources necessary to acquire, construct, or operate a qualified child care facility of their own. But here again, realizing this potential will require clear, actionable guidance on which employers can rely.

In their post-enactment section-by-section summary of the legislation, the staff of the Senate Committee on Finance explained that this change "allows for small businesses to pool their resources to provide child care to their employees."[13] The Chamber encourages Treasury to prioritize the issuance of regulations or other published guidance defining the term "jointly owned or operated" and clarifying—with examples—how businesses can or should "pool their resources" for purposes of section 45F(c)(2). And to carry out the purposes of that provision, such guidance should also make clear that there is neither a minimum ownership requirement nor any limitation or restriction on with whom an employer may jointly own or operate a qualified child care facility.

Finally, the Chamber respectfully requests that forthcoming regulations or other published guidance under section 45F include examples clarifying how joint ownership or operation affects a taxpayer's ability to claim the maximum credit amount. For instance, such guidance should make clear that the dollar limitation in section 45F(b) applies separately to each taxpayer, and that an eligible small business continues to enjoy the 50% credit rate under section 45F(a)(1) regardless of whether it jointly owns a facility with a larger business. Providing timely, clear, and flexible guidance under section 45F will empower more employers of all sizes to understand how to structure these arrangements in compliance with the Code and allow them to

[13] Staff of S. Comm. on Fin., 119th Cong., *Senate Finance Committee Section-by-Section* 23 (Comm. Print 2025), https://www.finance.senate.gov/imo/media/doc/finance_committee_section-by-section_title_vii5.pdf.

confidently pursue joint ownership or operation of qualified child care facilities, as Congress intended.

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The Chamber greatly appreciates Treasury's methodical and consultative approach to OBBBA implementation and its commitment to releasing guidance under section 45F by the end of this year. We hope that these recommendations will inform your deliberations and that the forthcoming guidance will deliver maximum clarity and flexibility to employers, consistent with purposes of section 45F. With the right guidance, the OBBBA promises to substantially increase the efficacy of section 45F as a tool to help American employers of all sizes address persistent workforce challenges, allowing them to hire, invest, and grow. Thank you for your attention to this matter.

Sincerely,

Watson M. McLeish
Senior Vice President, Tax Policy
U.S. Chamber of Commerce