



## Statement of the U.S. Chamber of Commerce

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**ON: Cafeteria Plans: A Menu of Non-Options for Small Business Owners**

**TO: Subcommittee on Economic Growth, Tax, and Capital Access of the House Small Business Committee**

**BY: U.S. Chamber of Commerce**

**DATE: March 16, 2017**

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1615 H Street NW | Washington, DC | 20062

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

**Statement on  
Cafeteria Plans: A Menu of Non-Options for Small Business Owners  
Hearing before  
The Subcommittee on Economic Growth, Tax, and Capital Access  
of the  
House Small Business Committee  
on behalf of the  
U.S. CHAMBER OF COMMERCE  
March 16, 2017**

The U.S. Chamber of Commerce would like to thank Chairman Brat, Ranking Member Evans, and members of the Subcommittee for the opportunity to provide a statement for the record. The topic of today's hearing—cafeteria plans and the lack of options for small business owners—is of significant concern to our membership.

The Chamber very much supports the statement given during the March 16, 2017 hearing by Paula Calimafde, who is an active and long-standing member of the Employee Benefits Committee of the U.S. Chamber of Commerce. Specifically, we concur with Ms. Calimafde's recommendations to permit owner-employees to participate in cafeteria plans.

A significant portion of Chamber membership is made up of small businesses. While many of these small businesses offer substantial benefits to their employees, they should be encouraged and—at the very least—not discouraged from offering as wide an array of benefits as possible. However, when it comes to cafeteria plans, small business owners are at a significant disadvantage and, therefore, it discourages them from implementing cafeteria plans for their employees. Consequently, we urge Congress to allow small business owners to participate in cafeteria plans and, thereby, encourage the expanded implementation of cafeteria plans by small businesses.

### **Introduction**

Cafeteria plans are governed by IRS Section 125 which allows employees to make contributions to designated accounts before taxes are calculated; thereby, providing workers an opportunity to receive certain benefits on a pretax basis. Benefits provided under cafeteria plans include health insurance, disability insurance, life insurance, 401(k) plan contributions, dependent care assistance, adoption assistance, and contributions to Health Savings Accounts (HSAs).

### **Discussion**

**Small Business Owners Should be allowed to Participate in Cafeteria Plans.** Sole proprietors, partners, members of limited liability companies and most stockholders in a Sub-S corporation are not allowed to participate in a cafeteria plan. These types of entities represent a significant portion of American business—approximately 78% of all non-farm businesses are organized in a manner under which the owners of the business are not permitted to participate in a business sponsored cafeteria plan. This rule clearly discriminates against business

owners/employees based solely upon the type of entity in which they are operating their business.

Since they are not able to participate, owners are discouraged from implementing cafeteria plans. Because these entities choose not to sponsor a cafeteria plan, their employees do not have the opportunity to participate in a cafeteria plan. Therefore, changing this law would increase opportunities for not just business owners to benefit from cafeteria plans, but also their employees.

Consequently, we urge Congress to pass legislation to modify IRS section 125 to make it clear that self-employed individuals, including sole proprietors, partners, S-corporation shareholders and members in a limited liability company that has elected to be taxed as a partnership, are deemed to be employees for the purpose of eligibility to participate in a cafeteria plan. Moreover, such language should also make it clear that self-employed individuals are deemed to be employees for the purposes of eligibility to participate not just in the cafeteria plan itself, but in the specific benefits that may be offered through the cafeteria plan.<sup>1</sup>

**Congress Should Encourage Expansion of the Types of Benefits That Can be Provided in a Cafeteria Plan.** Long-term care insurance is specifically excluded from the list of qualified benefits under a cafeteria plan.<sup>2</sup> However, there are increasing concerns about long-term care. The number of Americans in need of long-term care services, either at home or in institutions, is projected to increase from 12 million today to 27 million by 2050, and 70% of people who reach age 65 will require long-term care services at one point in their lives.<sup>3</sup> Moreover, 45% of Americans ages 40 and older have provided long-term care for a family member or close friend at some point.<sup>4</sup> Paying for long-term care can be prohibitively expensive. Long-term care costs after age 65 is estimated to be about \$138,000.<sup>5</sup> These rising costs are particularly troubling because families will pay about half of the total share of long-term care costs through out-of-pocket spending, which can be a drain on personal savings, retirement accounts, and other assets.<sup>6</sup> About the other half (44.8%) of these long-term costs will be borne by government programs, particularly Medicaid and Medicare.<sup>7</sup>

Long-term care insurance policies are more affordable and accessible when the applicant is below retirement age. The cost of a basic policy with average benefits is \$1,725 a year for a

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<sup>1</sup> The Chamber supported S. 555 - (110<sup>th</sup> Congress) the SIMPLE Cafeteria Plan Act of 2007 and encourages Congress to move forward with similar legislation.

<sup>2</sup> Code section 125(f)(2).

<sup>3</sup> Bipartisan Policy Center, Long-Term Care Initiative, "America's Long-Term Care Crisis: Challenges in Financing and Delivery," (April 2014), available at <https://bipartisanpolicy.org/library/americas-long-term-care-crisis/>.

<sup>4</sup> Associated Press-NORC Center for Public Affairs Research, "Long-Term Care in America: Americans' Outlook and Planning for Future Care," (July 2015), available at <http://www.longtermcarepoll.org/Pages/Polls/long-term-care-in-america-americans-outlook-and-planning-for-future.aspx>. Among those with experience providing care for a family member or friend, 19% are currently providing assistance and 65% have household incomes less than \$75,000 a year.

<sup>5</sup> Melissa Favreault and Judith Dey, U.S. Department of Health and Human Services, Office of Disability, Aging, and Long-Term Care Policy, "Long-Term Services and Supports for Older Americans: Risks and Financing," ASPE Issue Brief, (July 2015), available at [http://aspe.hhs.gov/sites/default/files/pdf/106211/ElderLTCrb\\_0.pdf](http://aspe.hhs.gov/sites/default/files/pdf/106211/ElderLTCrb_0.pdf).

<sup>6</sup> Id.

<sup>7</sup> Id.

45-year-old; however, the same policy for a 65-year-old is double that amount, at \$3,451 a year.<sup>8</sup> To help pay for these premiums while they are affordable, the Chamber recommends that employers be allowed to offer long-term care insurance through a cafeteria plan.

While longevity insurance is not specifically excluded, it would be helpful if Congress could encourage the inclusion of this benefit in cafeteria plans. As we are aware, life expectancy is increasing. While living longer is a great thing, it can create challenges for retirement security. The most obvious longevity challenge is outliving one's retirement savings. In 2015, life expectancy at birth was 78.8 years for the total U.S. population.<sup>9</sup> This represents an increase of approximately 30 years since 1900 and 8 years since 1971.<sup>10</sup> Moreover in 2015, life expectancy at age 65 for the total population was 19.4 years.<sup>11</sup> Thus, workers must plan for longer lives that could include a longer period in retirement. To avoid this situation, a retiree could purchase longevity insurance, a form of deferred annuity with a payment start date that begins at a later age in retirement. Thus, individuals can protect themselves against the financial risk of outliving their retirement savings. An effective way to encourage the purchase of longevity insurance is to allow employees to purchase it through a cafeteria plan.

### **Conclusion**

We reiterate the importance of encouraging small business owners to implement benefit plans. Changing IRS section 125 to allow owners to participate and expanding benefits offerings under the plan would encourage more small businesses to implement cafeteria plans. We look forward to working with this Subcommittee and Congress to enact legislation that will encourage further participation by small business owners and their employees in cafeteria plans. Thank you for your consideration of this statement.

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<sup>8</sup> Long-Term Care Insurance Premium Sample, available at <http://www.guidetolongtermcare.com/premiumsample.html>.

<sup>9</sup>Jiaquan Xu, M.D., Sherry L. Murphy, B.S., Kenneth D. Kochanek, M.A., and Elizabeth Arias, Ph.D, "Mortality in the United States," NCHS Data Brief No. 267 (December 2016), available at <https://www.cdc.gov/nchs/products/databriefs/db267.htm>.

<sup>10</sup>In 1900, the average life expectancy in the U.S. was 49.24 years and in 1971 it was 70.75 years. National Vital Statistics Reports, Vol. 64, No. 11, September 22, 2015. [https://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64\\_11.pdf](https://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64_11.pdf).

<sup>11</sup>Jiaquan Xu, M.D., Sherry L. Murphy, B.S., Kenneth D. Kochanek, M.A., and Elizabeth Arias, Ph.D, "Mortality in the United States," NCHS Data Brief No. 267 (December 2016), available at <https://www.cdc.gov/nchs/products/databriefs/db267.htm>.