SMALL BUSINESS COUNCIL OF AMERICA

Protecting and Promoting the Long Term Financial Security of Small Business Employees and Their Families By Maintaining Current Retirement Plan Contributions, Tax Incentives and the Stretch IRA

- **Impairing Americans' ability to save for retirement and plan for the security of their families now could be devastating for their retirement security in the future.**

Longer life expectancies are requiring increased retirement savings. Additional health and living expenses will be incurred by these increasingly elderly retirees. The present qualified retirement plan system has been very successful in providing retirement security. To protect the retirement security of small business employees, the small business voluntary retirement plan system must be promoted. In order to do so, it is essential that the current contribution limits for both employers and employees be maintained and not reduced. Congress should do everything possible to encourage the adoption and continuation of 401(k), profit sharing, defined benefit or cash balance plans by small businesses.[1]

To protect the small business voluntary retirement plan system it is essential that the current contribution limits for both employers and employees be maintained and not reduced.

The data clearly demonstrates that the most effective way for people to save is through payroll deduction – in fact, it is almost the only way people save. Employees are far more likely to save in a 401(k) plan than in any other vehicle, including an IRA.

The tax incentives inherent in the retirement plan system are the primary motivation for small business owners to sponsor retirement plans and thus cannot be cut back without imperiling the system.

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[1] Contribution limits on SIMPLE or other IRA based plans should not be increased, however, because these plans allow easy withdrawal access to IRA owners prior to retirement and provide neither ERISA safeguards nor preselection of prudent investment choices or investment education. Thus, while they are good starter plans and should be used to draw small businesses into the qualified retirement plan system, they are not nearly as effective at helping employees make educated investments that will guarentee their post-retirement financial security.

● **The tax incentives inherent in the retirement plan system are the primary motivation for small business owners to sponsor retirement plans and thus cannot be cut back without imperiling the system**.

If the tax advantages of sponsoring a retirement plan are reduced (particularly when combined with a favorable capital gains rate), small business owners will be incentivized to freeze or terminate their companies' retirement plans. ***Most small business owners view the meaningful contributions that are made for the non-key employees as the price of admission to be able to save in a qualified retirement plan for themselves.*** From time to time, economists, particularly those who work with or for the government, claim that if a small business did not sponsor a retirement plan, the small business owners would pay the employees their regular compensation *plus* the amount that would have gone into the retirement plan for them. These economists argue that this total amount is the real value of the employee to a small business and that if the money was not going to a retirement plan, the employee would still receive it in another form. However, these economists clearly do not understand the financial decisions faced by small business owners nor the fact that many employees themselves do not consider retirement contributions when assessing their compensation. ***When a small business closes down its retirement plan, the owners are not likely to increase the pay of the non-key employees to take into account the loss of the plan contribution, nor are the employees likely to expect this. Rather the owners will take the amount that would have been contributed to the non-key employees as additional compensation for themselves, or reinvest it in the company.***

Eliminating or curtailing the tax advantages of sponsoring a retirement plan will cause many small business owners to freeze or terminate their plans.

Employer money no longer going into the retirement plans will likely go back to the business - not to the employees.

The early 1980s demonstrated that the small business retirement plan system is largely dependent upon tax incentives. The onslaught of laws that occurred at that time decreased benefits for the key employees and increased contributions for non-key employees while increasing administrative burdens. As a result, many small business owners determined that the costs of sponsoring a retirement plan outweighed the benefits to be derived for the key employees. Accordingly, existing plans were frozen or terminated in droves and new plans were not established. ***We do not have to guess what will happen if the tax incentives are removed from the underpinning of the small business qualified retirement plan system – all we have to do is look back to the 1980s to see what will happen. Small business owners will go through a cost-benefit tax analysis to determine whether to sponsor a qualified retirement plan.***

● **Detrimental Proposals to the Small Business Defined Contribution Retirement Plan System Must be Rejected.**

Despite common misperceptions, as a whole the tax treatment of retirement plans is not particularly attractive since all retirement plan funds are eventually subject to ordinary income. Further, retirement plan assets do not receive a step up in basis upon the death of the owner. Because of this, it is important that all existing tax incentives for retirement plans be preserved. This includes maintaining existing contribution levels, not subjecting 401(k) contributions to additional personal income taxes for individuals in higher tax brackets and retaining the ability of individuals to have any money remaining in an IRA be paid in installments over their beneficiaries' lifetimes, especially for their children.

Proposals which curtail or eliminate the existing tax treatment for retirement plans must be rejected because the small business retirement plan system is largely dependent upon its tax advantages for its survival. Any of the proposed changes listed above (and particularly all of them together) could cause employees to decide against participating in a retirement plan. More significantly still, they could also cause small business owners to take out the funds that would have gone into the retirement plan (including all of the employer contributions for the non-owner employees and the costs of running the plan) as compensation and invest the assets in a more tax advantaged method – e.g., life insurance or assets subject to capital gains treatment. Ultimately the real losers will be the small business employees who often enjoy generous employer contributions. This is what happened when "excess" retirement plan accumulations were taxed with an excise tax. Accountants advised small business owners that retirement plan money was "tainted" and that they should not accumulate "too much." The "excess" accumulation tax caused retirement plan contributions to be significantly reduced and significant numbers of small and mid sized plans to be prematurely frozen or terminated.

Eliminating the "stretch IRA" will cause people to be wary of accumulating too much in retirement money and may cause employees to under save.

If the "stretch IRA" is eliminated, once the owners have accumulated what they think they can definitely use up during their lifetimes they will freeze or close down their plans.

Recently a proposal has emerged in the Senate Finance Committee which would require retirement plan assets to be forced out of an IRA shortly after the passing of both spouses. While IRAs are not always the optimal vehicle for many employees to save for retirement because they allow for easy withdrawals and do not provide ERISA safeguards, they play a critical role in the retirement plan system. This role is as the final receptacle for account balances of employees. This is done by employees directly transferring or rolling over their account balances from retirement plans to an IRA. It is likely that a proposal eliminating "stretch IRAs" (which allows the amount remaining in an IRA at an employee's death to be distributed over the life expectancy of the beneficiaries who inherit it), will cause the same response by accountants as did the "excess" retirement plan accumulations. That is, people will be wary of accumulating "too much" retirement money because of its ultimate undesirable tax treatment. This may cause employees to under save for their retirement and could further give rise to owners freezing contributions or closing down the whole plan. It is important to many individuals who have accumulated funds that they can name their children as beneficiaries. This is why, for most employees, IRAs are a preferable alternative to annuities. The employee who purchases an annuity with his/her retirement plan money runs the risk that in the event of premature death, his/her investment will be a windfall for the insurance company. In contrast, an employee who rolls his/her funds to an IRA can ensure that any remaining funds in the IRA at death will pass to his/her beneficiaries. With the "stretch IRA" employees can invest in an IRA not only to secure their own retirement future but knowing that any remaining funds can provide their children with a safety net by allowing them to take the funds out of the IRA over their lifetimes rather than being forced to take the funds out in a lump sum as called for in this proposal. With every generation of employees seeming to live longer than the one before it, the law should be structured to encourage employees to plan towards their futures as much as possible without having to fear that over-investing will result in a loss of their hard earned money. Proposing to eliminate the "stretch IRA" is directly counter to these goals. This proposal should be modified at a minimum to either a) grandfather current funds in plans and IRAs to receive existing tax treatment, b) allow payments to be made over the lifetimes of at least the children, or c) not apply to anybody over a certain age, say age 55. The latter alternative would allow individuals to save only the amount they were certain to use up during their lifetime and to save the remainder in other, more tax-advantaged, vehicles. If these modifications are not made, then taxpayers have unfairly had the tax rules changed on them without notice. There are many taxpayers who would not have saved as much in the retirement plan system if they had known that the tax rules would be changed in such a drastic way.

Any proposal to eliminate the stretch IRA should be modified to at least grandfather existing plan assets or allow payments to be made over the lives of the employee's children or apply only to individuals who are younger than a certain age.

Additionally, any proposal to tax 401(k) contributions for those in higher income brackets could lead to the 401(k) feature in a profit sharing plan being cut back or frozen since this is the most burdensome part of the plan.

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Finally, proposals to reduce the amount that can be contributed to a 401(k)/profit sharing plan to the lesser of 20% or $20,000 would likely "tip the scales" so that the small business owners would determine that from a tax viewpoint it is better to close down the plan and take out the extra funds as compensation or reinvest them in the business. Funds taken out as compensation could then be invested in capital gain assets which receive a step up in basis at death or in insurance which gives rise to favorable tax treatment.

Congress should do everything possible to encourage employees to participate in and small businesses to sponsor retirement plans - not work against them. Retirement plan contributions should not be cut back, 401(k) contributions should not be subject to tax when made and existing accumulated IRA and plan funds should either be grandfathered from any change in the "stretch" IRA rules or at least payments should be allowed to be made over the children's life times.

● **The deduction for retirement plan contributions is <u>not</u> a significant tax expenditure, primarily it is a tax deferral.**

In the recent discussions on how to raise revenue (and conceivability lower tax rates through tax reform), the deduction for retirement plan contributions has been treated the same as other tax expenditures in the tax code. This is a mischaracterization because retirement plan contributions are eventually brought into income, along with any earnings. ***The only loss to the government with respect to the deduction for retirement plan contributions and tax free growth inside the plan is the time value of money. But the potential detrimental impact on savings by Americans due to a reduction on contributions to retirement plans could be huge.***

A study prepared for the American Society of Pension Professionals & Actuaries (ASPPA)[2] quantifies the "real" cost of this so-called tax expenditure. This study reflects ***the value of the retirement plan tax expenditure to be roughly 55 – 75% lower than estimates by the Joint Committee and the Treasury.*** This study assumes that people will enjoy lower income tax rates during retirement than when contributions are made to the retirement plan. This assumption increases the value of the "tax expenditure." Many experts believe, however, that tax rates are going to be higher for most taxpayers in the future. Because tax rates are at historic lows and because of our country's need for revenue, it is unlikely that the tax rates will rise in the future. Thus, some experts believe the "real" cost of the retirement plan tax expenditure is even lower than that set forth in the ASPPA report.

There are 670,000 private-sector defined contribution plans covering 67 million participants and over 48,000 private-sector defined benefit plans covering 19 million participants. The U.S. private retirement plan system paid out over $3.824 trillion in benefits from 2000 through 2009 and U.S. public sector plans paid out $2.651 trillion during the same period. All of this money was brought into income and subject to regular income tax rates (the only exception would be money that was contributed on an after-tax basis).

In the upcoming debate on deficit reduction and tax reform, the retirement plan system should not be used to generate revenues, particularly when the savings are largely illusory due to budget time frames which do not accurately portray the true economic reality.

The retirement plan system is critical to the security of our aging population and should not be jeopardized in a misguided attempt to raise meaningful revenue.

Small businesses make significant contributions for their employees often more than their larger counterparts.

[2] Xanthopoulos and Schmitt, Retirement Savings and Tax Expenditure Estimates, ASPPA May, 2011.

- **Because of the large number of employees who are actually covered by the qualified retirement plan system any changes that would motivate employers to freeze or eliminate the plans could have significant and detrimental long term repercussions.**

Many knowledgeable people believe the qualified retirement plan system covers about 50% of employees. A recent study,[3] which used actual data from employees' W-2 forms rather than relying upon employees' responses, found 77% of all employees who work in companies with 10 or more employees are offered a retirement plan and of these employees, 62% made 401(k) contributions. What was startling is that when asked, only 49% of these employees thought they were contributing. This means that 13% of all employees making 401(k) contributions through payroll deduction do not even remember that they are making 401(k) contributions. Note that this survey did not analyze the actual numbers for retirement plan contributions made by the employer because this data is not reported on the W-2. One has to assume this number would be even greater than the 77% number because many employees who receive employer contributions cannot afford, or choose not, to make 401(k) contributions and many small business' plans provide for employer contributions whether an employee contributes or not. If employees can not remember that they reduced their take home pay to make contributions into a retirement plan, it is even more likely that employees do not recall that their employer was making a contribution to the plan on their behalf.

The small business retirement plan system has been successful at delivering benefits for small business employees and its growth should continue to be encouraged.

The size of the company makes a significant difference. W-2 data, which is accurate only to 401(k) plans, reflects that 46% of small businesses with more than 10 employees but less than 25 offer a retirement plan. The same data reflects that 60% of small businesses which employ 25 employees but less than 50 offer a retirement plan. 70% of small businesses which employ 50 employees but less than 100 offer a retirement plan. 84% of businesses with more than 100 employees offer a retirement plan. There is no further breakdown given for over 100 employees so we do not know how many small to mid-size businesses – often defined as up to 500 employees offer plans compared to the large businesses.

However, only 34% of small businesses which employ fewer than 10 employees offer a retirement plan. The data, however does not take into account that in the first 4 years of a company's existence, approximately 40% of all new start ups fail. One would assume that most start ups fall within the under 10 employee group. It is not surprising, then, that there is a lower level of sponsorship of retirement plans for the under 10 employee group when taking into account the precarious nature of most "new" small businesses.

[3] Dushi, Iams and Lichtenstein, Social Security Bulletin, Vol. 71 No.2 2011, Assessment of Retirement Plan Coverage by Firm Size, Using W-2 Tax Records.

Nevertheless, these numbers reflect that the small business retirement plan system is successful by any measure as far as delivering benefits for small business employees. Further, most small business plans are adopted by the small business to provide a tax advantaged way for the owners to save for their and the other key employees' retirement. The rules with respect to retirement plans force the owners to make significant contributions for the non-highly compensated employees. Thus, in the small business qualified retirement plan world it is not unusual for the company (in addition to contributions made by the employee) to make contributions for its employees in the 3 – 8.5% of compensation range.

In addition to Dushi, Iams and Lichtenstein utilizing verifiable data, they accounted for the fact that there is a difference between employees who do not participate in the retirement plan system and employees who are not eligible to participate in the retirement plan system. Most data used to measure the success of the retirement plan system (unlike the Dushi, Iams and Lichtenstein data), ignores the fact that not all employees meet the retirement plan eligibility requirements. Part-time employees, employees under age 21 and transient employees are generally not eligible to participate in a retirement plan. The statistics cited for the low retirement plan coverage, however, most often include the entire workforce and do not differentiate between the entire workforce and that percentage of the workforce that is actually eligible to participate in a retirement plan. When these ineligible employees are excluded, the coverage numbers improve significantly.

A qualified retirement plan, whether small or large, creates significant rights for the plan participants and generates significant costs for the company. Funds in a retirement plan are not tax sheltered, rather they are tax deferred until the participants receive them, at which time they are brought into the participant's gross income. Retirement plan assets are not subject to favorable capital gains treatment, nor do they receive a step up in basis at the owner's death. Those who specialize in the small business retirement plan area know that those plans which benefit the owners of small businesses also provide significant benefits for the non-highly compensated employees.

Congress should do everything possible to encourage employees to participate in and small businesses to sponsor retirement plans - not work against them.

Retirement plan contributions should not be cut back, 401(k) contributions should not be subject to tax when made and existing accumulated IRA and plan funds should be grandfathered from any attempt to change the "stretch" IRA rules.

Retirement plan assets are not subject to favorable capital gains treatment, nor do they receive a step up in basis at the owner's death.

The Small Business Council of America (SBCA) is a national nonprofit organization which represents the interests of privately-held and family-owned businesses on federal tax, health care and employee benefit matters. The SBCA, through its members, represents well over 20,000 enterprises in retail, manufacturing and service industries, virtually all of which provide health insurance and retirement plans.

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