

Honorable Paul Ryan
Speaker of the House
United States House of Representatives
1233 Longworth House Office Building
Washington, DC 20515

Re: Unified Framework for Tax Reform

Dear Speaker Ryan:

The Employers Council on Flexible Compensation (ECFC) is appreciative of the efforts of the Trump Administration and Republican leadership in the Senate and the House of Representatives in developing the Unified Framework on Tax Reform. We are writing to provide the perspective of ECFC's membership on the tax reform framework and to suggest other changes that we believe would make the tax code fairer, simpler and easier to understand.

ECFC is a membership association dedicated to preserving and expanding employer-provided tax-advantaged benefit choices for working Americans, including account-based benefit plans which provide benefits in areas such as health care, child care, and commuting. These benefits provide families with the support they need to meet their everyday living expenses and remain productive members of the workforce. ECFC's members include employers who sponsor employee benefit plans, including Health Reimbursement Arrangements (HRAs), Flexible Spending Arrangements (FSAs) (including dependent care assistance FSAs), and health savings accounts (HSAs), commuter and parking benefits as well as insurance, accounting, consulting, and actuarial companies that design or administer employee benefit plans. ECFC member companies assist in the administration of cafeteria plan and health benefits for over 33 million employees.

Efforts to Simplify the Tax Code Should Not Eliminate Important Tax Provisions That Help Working Americans.

The Unified Framework for Tax Reform notes that the tax code has numerous other exemptions, deductions and credits for individuals and it envisions the repeal of many of these provisions to make the system simpler and fairer for all families and individuals, and allow for lower tax rates. However, it is important that in attempting to simplify the tax code, provisions in the tax code that help working Americans manage expenses of daily life could be eliminated. ECFC strongly supports preserving the tax advantaged accounts currently allowed under the tax code so employers and employees can together invest in their life needs such as health care, commuting and child care that allow them to remain productive and working. Without support from the tax code, many working families would not be able to fulfill their financial obligations while addressing unpredictable costs such as health event, increased housing costs or a growing family.

Tax Reform Should Not Change the Current Tax Exclusion for Employer-Provided Health Coverage

The tax exclusion for employer-provided health coverage is an important tax benefit for employees, and it provides the foundation for consumer-directed health accounts offered by employers. This exclusion exempts employer-provided health coverage from both income taxes and employment taxes. With this exclusion, the employer-paid portion of health coverage (such as premiums for health insurance or coverage under a self-insured health plan) is not taxed and the employee's portion paid by salary reduction through a cafeteria plan is also not taxed. Similarly, any contributions an employer makes to a consumer-directed health account that only reimburses employees for qualified health costs (such as an HRA, FSA or HSA) is not taxed. Employer-provided wellness programs are also not taxed due to the exclusion. Finally, employee contributions to an FSA or an HSA through a cafeteria plan are not taxed due to the exclusion. While an

employee can deduct a contribution to an HSA on his or her income tax return if the employer does not offer a cafeteria plan, that HSA contribution will still be subject to employment taxes.

While other tax reform proposals have been advanced which would eliminate or place a cap on the tax exclusion for employer-provided health coverage, the Unified Framework for Tax Reform does not contain any provision that expressly eliminates or caps the tax exclusion for employer-provided health coverage and ECFC's membership appreciates that the developers of the framework did not follow previous tax reform proposals. However, ECFC membership is concerned that, in the effort to provide revenue to offset the costs of the rate reductions and business tax reform provisions included in the Unified Framework for Tax Reform, eliminating or capping of the exclusion may be considered as a source for revenue. ECFC's membership would strongly object to any proposal which would eliminate or cap the tax exclusion for employer-provided health coverage and would urge the tax writing Committees not to consider any such proposal. Any proposal to eliminate or cap this tax exclusion would have a devastating impact on working Americans. Without the exclusion, the costs of health care costs for coverage to hard-working employees would increase as they will lose the tax benefits currently provided by FSAs, HSAs and HRAs. Employers will no longer incur the costs of establishing consumer-directed plans if there is no tax benefit to employees to participate in these plans. In addition, any cap created on the exclusion would include contributions made by employees to their accounts. Individuals and families rely on these accounts to save for and manage their health care expenses, and the ability to deduct them from their taxes allows them to invest in the preventative care they need and continue to fulfill their other financial obligations.

Some have said that elimination of the exclusion is appropriate because the tax exclusion shields employees from a true realization of the cost of health care and results in employees being inefficient consumers of health care since they don't understand the real cost of the health care they are consuming. However, employees who participate in consumer-directed health account have a real appreciation of the costs of health care, since it is the dollars in their accounts that are used purchase health care. If the goal is to make people more cognizant of health care costs and become better consumers of health care, eliminating consumer-directed health accounts by eliminating or capping the exclusion makes little sense.

Another reason advanced to eliminate the exclusion is that the current tax treatment does not treat all tax payers equally; those who receive health coverage through their employers get better tax treatment than self-employed individuals or those who work for employers that do not provide health coverage. While it is true that the tax treatment of health care is not the same for all taxpayers, it does not follow that we should tear down the employer system to put everyone on the same footing. Republicans called President Obama to task when he stated if you liked your health plan, you could keep it under the ACA. Similarly, Republicans should be wary of a tax reform proposal which will result in employees losing coverage they currently receive from their employer.

ECFC believes that any cap of the employer exclusion is bad for employees and will result in employers curtailing the maintenance of consumer-directed health accounts, particularly those accounts funded through employee salary deductions through a cafeteria plan. Consequently, it is very important that tax reform legislation not cap the tax exclusion on employer-provided health coverage.

An Expanded Child Care Credit Should Not Force Employers To Stop Offering Dependent Care Assistance FSAs

ECFC members sponsor and administer dependent care assistance FSAs. Dependent care assistance FSAs are a valuable benefit for millions of working Americans. In 2014, 39 percent of civilian workers had access (available for their use) to employer-sponsored dependent care reimbursement accounts, and 11 percent of

civilian workers had access to workplace-funded childcare. Dependent care assistance FSAs are pre-tax dollars set aside to offset work-related dependent care costs. ECFC believes that the current benefits provided Americans are important and tax reform should not adversely impact the ability of employers to offer these plans and for employees to utilize the favorable tax benefits available with a dependent care assistance FSA.

The Unified Framework for Tax Reform looks to change and enhance the tax provisions dealing with child care. The framework repeals the personal exemptions for dependents and significantly increases the Child Tax Credit. The first \$1,000 of the credit will be refundable as under current law. In addition, the framework will increase the income levels at which the Child Tax Credit begins to phase out. The modified income limits will make the credit available to more middle-income families and eliminate the marriage penalty in the existing credit. The framework also provides a non-refundable credit of \$500 for non-child dependents to help defray the cost of caring for other dependents. ECFC supports providing additional tax relief for families by expanding the Child Tax Credit and the enhanced Child Tax Credit could work in concert with the dependent care assistance FSAs to provide assistance in financing child care expenses for all working Americans.

The tax writing committees should be aware that expansion of the Child Tax Credit could force employers to discontinue offering dependent care assistance FSAs to their employees. Under the Code, the average benefits provided under a dependent care FSA to employees that are not highly compensated must be at least 55 percent of the average benefits provided to highly compensated employees. Under this average benefits test, employees whose compensation is less than \$25,000 may be disregarded under this average benefits test, because these lower-paid employees typically elect the child care tax credit rather than salary reduction to a dependent care FSA. However, when Congress increased the child care tax credit to \$6,000, the \$25,000 compensation exclusion was not concurrently adjusted causing more dependent care assistance plans to fail the average benefits test. The further increase in the compensation of who is eligible for child care tax credit contained in the Unified Framework for Tax Reform would make it even more difficult for employers pass this average benefits test therefore forcing them to stop offering employees the opportunity to make pre-tax contributions to a dependent care assistance FSA – eliminating a benefit for employees whose income level precludes them from being eligible for the child care tax credit. ECFC requests that when developing legislation to increase eligibility for the child care credit as advanced as part of the Unified Framework for Tax Reform, provisions be added to increase compensation level of employees who are disregarded under the average benefits test, thereby restoring the original balance under the Code when the child care tax credit was lower.

In addition, ECFC advocates that the maximum contribution that can be made to a dependent care assistance FSA. Under the Code, only \$5,000 per year can be contributed to a dependent care assistance FSA. This statutory limit was set over twenty years ago and did not have an inflation adjustor attached to the limit. ECFC has advocated for an increase in this contribution limitation. ECFC supports the Family Care Savings Act (H.R. 782), recently introduced by Rep. McHenry, which would increase the dollar limitation to \$10,000 and index that amount for inflation in future years. An increase in the amount that can be contributed to a dependent care FSA would provide the perfect counterpart to the increase in the Child Tax Credit and provide a means for employees whose incomes make them ineligible for expanded Child Tax Credit to fund family care expenses in a tax efficient manner.

Commuter Benefits Should Be Preserved Under Tax Reform

As the effort to craft legislation to implement the Unified Framework for Tax Reform moves forward, Congress should preserve the tax treatment of the current commuter benefit. The Protecting Americans from Tax Hikes (PATH) Act of 2015 permanently established parity between employer-provided parking and mass transit benefits. For more than 25 years, Congress has provided employers the opportunity to offer their employees, either tax-free subsidies or on salary reduction basis, commuting expenses, including mass transit, van pools, and commuter parking. This allows employers to help their workforce get to the workplace by the most efficient manner possible, enhancing productivity and helping relieve one of the major costs associated with working.

This middle-class benefit helps working Americans cover what is often their second largest household expense – transportation, particularly transportation related to work. Eliminating or decreasing the mass transit benefit effectively raises taxes on millions of middle-class working families who are accustomed to budgeting for this important benefit that helps them meet the rising costs of commuting. Suburban families who commute into cities have the highest commuting costs.

When considering the cost to the government of continuing the current commuter benefit, the Committee should consider other savings to the government outside of the tax code by incentivizing employees to use public transit. A study conducted by the non-profit TransitCenter found that when commuter benefits are offered in the workplace, 18 percent of employees alter their commuting from single occupancy vehicles to public transit – a significant modal shift. The transit benefit saves the government money by reducing the need for federal spending on roads, bridges, and the accompanying infrastructure – increasing transit ridership means that fewer people will be driving and less federal funding is needed to repair, replace, and expand our nation’s vital roadways. Increased utilization of mass transit also reduces road congestion, vehicle emissions, and dependence on foreign sources of energy. When commuters use the nation’s mass transit system, it helps support self-reliance on the part of mass transit systems which otherwise must rely on government subsidies.

Effective Tax Reform Must Also Address Tax Provisions Added by the ACA That Adversely Impact Working Americans

The Affordable Care Act (the ACA) added provisions to the tax code which either raised revenue for the ACA or served to effectuate some health policy objectives. The United Framework does not address whether any of these ACA created taxes will be addressed as part of the tax reform process. ECFC advocates that, in developing tax reform legislation, consideration be given to repealing or reforming some of these ACA created taxes. Of particular interest to ECFC is the excise tax, commonly referred to as the Cadillac Tax, on certain high-end health care plans. Currently, when determining what constitutes a “Cadillac” plan, an overly broad net is cast including many employer- sponsored arrangements that promote efficient health care such as wellness program incentives and consumer-directed coverage arrangements such as FSAs, HRAs, and HSAs. The statute is being interpreted under guidance issued by the Treasury Department and the Internal Revenue Service (IRS) to require the contributions made by individuals into their HSAs and FSAs to be deemed as if they were provided by the employer for purposes of calculating the tax. As a result, employers are curtailing or eliminating employee contributions to FSA and HSA to avoid triggering the Cadillac Tax. This trend is alarming and Congress should, as part of the tax reform effort, take steps to stop the impact of the Cadillac Tax on consumer-directed health plans.

We are appreciative previous efforts in Congress to repeal the Cadillac Tax. Those efforts, however, only delayed the effective date of the tax. The repeal of this excise tax is an important priority of ECFC’s members. If full repeal of the excise tax is not feasible as part of tax reform legislation, we would advocate that tax reform legislation provide that employee contributions to FSAs and HSAs be exempted from the

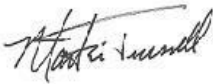
calculation of the Cadillac Tax or any direct limitation that may be proposed on employer-provided coverage. While delay of the effective date of the Cadillac Tax is helpful in the short run, delay will only slow the trend of employers eliminating or curtailing employee contributions to FSA and HSA; only complete repeal of the Cadillac Tax or the exemption of employee contributions from the calculation of the tax will stop this trend.

ECFC also advocates that other tax provisions in the ACA detrimental to consumer-directed health plans, such as the cap on employee contributions to FSAs and the prohibition on reimbursements for over-the-counter medications from FSAs, HRAs and HSAs unless they are prescribed by a provider, should also be eliminated as part of tax reform.

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We hope that in developing legislation to implement the Unified Framework for Tax Reform account-based benefit plans in areas such as commuter benefits, health care and child care will be preserved. These are important benefits for working Americans. If you have any questions regarding our recommendations or would like further information, please contact Martin Trussell (202.350.1788 or mtrussell@ecfc.org) or Bill Sweetnam (202.465.6397 or wsweetnam@ecfc.org).

Sincerely,



Martin Trussell
Executive Director



William F. Sweetnam, Jr.
Legislative and Technical Director