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SENATORS MUST VOTE AGAINST SECURE ACT

WILL CHILL SMALL BUSINESS RETIREMENT PLANS

WASHINGTON, D.C. (June 25, 2019) – The Small Business Council of America (SBCA) urges the U.S. Senate to vote **against** the Setting Every Community up For Retirement Enhancement (SECURE) Act of 2019 (H.R. 1994) because it will have a detrimental effect on small business retirement plans, owners and employees.

"If the Senate passes the SECURE Act, owners will take funds out of the company as additional compensation and invest them in more tax-advantaged assets rather than making contributions to retirement plans for themselves and their employees," says SBCA Chair **Paula Calimafde**. "This will harm small business employees who enjoy significant employer contributions."

The SECURE Act attempts to raise revenue by eliminating the "Stretch IRA." Most employees, including owners, roll-over their plan assets to an IRA upon retirement. Under this provision of the SECURE Act, inherited IRA or retirement plan assets for most non-spouse beneficiaries, usually children, would be forced into taxable income within a 10 year period.

Currently plan or IRA assets must only be brought into taxable income over the beneficiary's life expectancy. SBCA believes this negative change in the tax treatment for beneficiaries (most often children) will trigger the premature freezing or termination of employer contributions to a significant portion of small business retirement plans.

The Senate has its own legislation – the Retirement Enhancement and Savings Act (RESA) (S. 972) which is similar to the SECURE Act and which would also eliminate the Stretch IRA. While still a concern, the RESA approach would be less damaging to small business owners and not as likely to trigger the loss of employer contributions to retirement plans.

"Both provisions would present significant retroactive changes in the law with no grandfathering for account balances already accumulated in the plan," adds Calimafde. "If owners had known Stretch IRAs would be eliminated, they could have saved for their retirement in assets which they could leave to their children with little to no tax consequences."

If the SECURE Act proposal becomes law, it is likely that small business advisors will advise their clients to contribute to the plan only an amount they are certain to use during their lifetimes. Once they reach the advised amount, owners are likely to stop employer contributions. As a result, employees stand to lose the generous plan contributions made by the owners and are unlikely to have these foregone contributions paid to them as additional salary.

The bills also present age inequity issues. Older Americans will not be able to divert the tax disaster awaiting their children because they have already saved for their retirement in retirement plans at Congress' encouragement.

To combat this inequity, the SBCA is urging the Senate to either adopt the RESA provision or allow distributions to be paid out within 15 years, rather than 10. The SBCA believes a 15-year payout period is sufficiently long so that owners will not be advised to stop making employer contributions in order to protect their beneficiaries from an income tax disaster.

The SBCA also has grave concerns about Section 403 of the SECURE Act, which dramatically increases the penalties for failure to file certain retirement plan returns, particularly Form 5500. The penalty for a failure to file this Form would increase from $25 to $250 per day, not to exceed $150,000, up from $15,000 today!

"It doesn't take an expert to figure out which group of businesses are most likely to be late filing these forms and pay the increased penalties – big companies with accounting and benefits departments or small businesses without in-house resources?" says Calimafde. "We cannot support the revenue raisers in this bill because they single out small businesses, their owners and employees to pay for the lion's share of the bill. Even though there are many parts of the bill we do support, overall the negative impact of the revenue raisers, primarily on small business, is not acceptable."

The SBCA is a national nonprofit organization which represents the interests of more than 100,000 privately-held and family-owned organizations exclusively on Federal tax, employee benefit and health care matters.