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## **SMALL EMPLOYER BENEFIT ARRANGEMENTS (SEBAs)**

### *Legislative Draft and Narrative Explanation*

Wilson H. Beebe Jr., Chairman  
wbeebe@thanexus.coop  
(C) 908.415.0745  
(T) 732.974.9444

Rosemary Mahoney, Director  
rmahoney@coopmetrics.coop  
(C) 434.962.0897  
(T) 434.263.5492

Michael Merola, Legislative Counsel  
mike\_merola@wswdc.com  
(C) 202.669.2960  
(T) 202.589.0800



**Alliance for Employee Benefit Cooperatives**  
866 Harvey Road • Arrington, VA 22922  
T: 434.263.5492 • F: 206.350.8764  
info@aebc.coop • www.aebc.coop

## LEGISLATIVE DRAFT

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Amend Internal Revenue Code subsection 414(w) by adding at the end a new subsection (y) to read as follows:

"(y) Small Employer Benefit Arrangements.

(1) Definition. A small employer benefit arrangement means –

(A) A member owned, democratically controlled cooperative organization meeting the requirements of Subchapter T, and

- i. having at least 21 shareholders;
- ii. having at least 90% of its shareholders in the same or similar line of business;
- iii. sponsoring an accident and health plan for its shareholder-members and any employees of its shareholder-members;
- iv. sponsoring a qualified retirement plan meeting the requirements of section 401(k)(12) or 401(k)(13) for its shareholder-members and any employees of its shareholder-members;
- v. that its provision of employee benefits to shareholder members and any employees of its shareholder-members be pursuant to a written agreement; and
- vi. that substantially all benefit eligible employees of a shareholder be required to participate according to the same statutory eligibility criteria normally accorded such persons.

(2) Certain Organizations Prohibited –

(A) An organization shall not be treated as a small employer benefit arrangement if the small employer benefit arrangement or any related entity is owned, in whole or in part, or managed or controlled in whole or in part by any management agreement or certificates of indebtedness, directly or indirectly, or by any agents, brokers or providers of any:

- i. health, life or disability insurer;
- ii. retirement plan service provider (including plan design, administration and investment advice);
- iii. claim administrators;
- iv. investment advisors;

(B) Nothing herein shall be construed to prohibit a small employer benefit arrangement from contracting for the ordinary provision of products and services from any persons or organizations that might otherwise be prohibited

from having an ownership or management interest in a small employer benefit arrangement, nor to prohibit small employer benefit arrangements from creating by and between themselves, service organizations owned and controlled exclusively by small employer benefit arrangements to provide for such products and services in the fulfillment of their purposes.

(3) Treatment as Employer –

(A) A small employer benefit arrangement meeting these requirements may be treated as an 'employer' for the purpose of providing qualified retirement and accident and health plans (including a plan qualified under section 105(h) or section 125 [as amended in P.L. 111-148]), or group term life insurance under section 79.

(4) Allocation of Income and Other –

(A) For purposes of administering and allocating income, credits, deductions or exclusions associated with the provision of employee benefits, the shareholder members of the small employer benefit arrangement shall be treated as the employer.

**Amend the Employee Retirement Income Security Act (ERISA) as follows:**

Amend section 3(5) off by inserting the words “or a small employer benefit arrangement” after the word “employer” and before the word “acting to read as follows:

Revised section. 3(5): The term “employer” means any person acting directly as an employer, or indirectly in the interests of an employer in relation to an employee benefit plan; and includes a group of employers or a small employer benefit arrangement acting for an employer in such capacity.”

Insert new section 3(43) to read as follows:

“The term ‘small employer benefit arrangement’ means a member owned, democratically controlled cooperative organization meeting the requirements of Subchapter T of the Internal Revenue Code, consisting solely of its members and operated for the primary purpose of providing employee benefits to its members, which only has as members employers in the same or similar line of business, that has no members having more than a 5 percent voting interest in the cooperative, and is governed by a board of directors elected from and by its members. Such small employer benefit arrangements shall meet all of the requirements of [Sec. 1301 of H.R. 3590 now P.L. 111-148) national health reform ]; shall not be proscribed from procuring welfare benefits either from within or outside of the health benefit exchanges provided for under [Sec. 1311(b) of H.R. 3590 now P.L. 111-148) national health reform citation]; and shall not engage in self insurance with respect to any welfare benefit plan.”

## NARRATIVE EXPLANATION

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### **What are the primary drafting goals of the legislative initiative?**

To modify the Internal Revenue Code (IRC) and Employee Retirement Income Security Act (ERISA) to make it possible for “small employer benefit arrangements (SEBAs),” operating as IRC § 1381 cooperatives, to offer employees of small employers in the same or similar line of business access to total integrated benefit solutions on an aggregated, “single employer” basis.

### **Concept**

SEBAs would provide for a total integrated benefits solution, including health, welfare and retirements plans, but would not have the authority to self-insure. This structure will allow small businesses to achieve economies of scale and expertise in the administration of such programs, which they do not have today. In so doing, SEBAs would provide opportunities to participate in tax favored plans much as their larger counterparts are able to do who have the human resource and benefits expertise to deploy such plans.

SEBAs would offer expert management of an overall employee benefits program not usually offered by independent businesses because of the complexity in creating, managing and remaining compliant with the requirements of such plans. In the process, both employers and employees will be able to realize tax qualified savings while receiving more benefits per dollar of expenditure in addition to eliminating the general and administrative costs of brokers and third party administrators, thus moderating the rate of benefit cost increases when compared with small employer market plans.

### **What would be the key features of a “small employer benefit arrangement?”**

It would be a cooperative meeting the requirements of Subchapter T of the Internal Revenue Code as described in § 1381. The cooperative would be required to have at least 21 shareholders in the same or similar lines of business.

It would be treated as a “single employer” for employee benefit purposes, and would be eligible to provide the full range of employee benefits, including but not limited to:

- insured health; (*the legislation does not seek authority as a self insurer*)
- retirement plans (401(k)(12) or 401(k)(13);
- other welfare benefits (life, disability);
- direct reimbursement benefits (105(h));
- premium conversion plans (Sec. 125);
- flexible spending accounts;
- dependent care accounts.

Participating employers must enroll all benefit eligible employees.

### **About the Cooperative Form**

Cooperatives are an ideal small business aggregation vehicle for this purpose because they efficiently and fairly apportion costs, risks, and responsibilities among their members.

Because of their proven and defining structural characteristics, cooperatives are an accountable and reliable vehicle for the delivery of employee benefits to their independent business stockholders. The enlightened economic self interest of participating individuals and businesses is supported by the democratic principles of cooperative operations that require the subordination of capital to the voting rights of stockholders: one stockholder, one vote, irrespective of the amount of business a stockholder does or the amount of its membership equity.

### **Why can't this be done today?**

Prevailing tax and benefits law (IRC and ERISA) prevents small employers from aggregating together for the administration, testing and distribution of retirement plans, and health and welfare benefits. In the case of current alternatives such as multiple employer welfare arrangements (MEWAs) or non-union multi-employer plans, the costs associated with multi-state plan requirements (in the case of health), and the requirements for complex plan filings, testing, maintenance and administration, tend to far outweigh the benefits for small employers and their employees. Moreover, and this is unique to the SEBA concept, those plans cannot be united into a single integrated plan structure that maximizes participant participation in other tax favored plans (such as sections 125 Cafeteria and 105(h) Direct Reimbursement plans). Additionally, SEBAs will not self-insure.

### **What about national health reform?**

The Alliance for Employee Benefit Cooperatives (AEBC) has supported national health reform from inception and believes that its enactment now favors the creation of SEBAs. Minimum benefit standards in health plan design, and national policies of community rating and guaranteed issue, significantly diminish the regulatory and political barriers to cross state lines, leaving as the final matter only the question of the locus of state jurisdiction.

SEBAs do not seek the authority to self insure, one of the traditional obstacles to aggregation models.

Because of the complexity of national health reform, small employers will benefit greatly from having a benefits advocate that they own and operate on a cooperative basis. SEBAs will help its members and employees navigate health benefit plan selection, obtain benefit credits and subsidy qualification, and otherwise comply with other aspects of the law.

## **Other Components**

- In the case of a retirement savings vehicle for employees of member employers, minimum benefits would be required for any retirement plan provided to employees (e.g., a safe harbor 401(k) plan).
- In the case of an insured health plan for employees of shareholder, SEBAs will conform benefit plan offerings to future federal standards, upon finalization, ahead of the full national health reform implementation deadlines.
- Favorable rules would apply to permit a single Code § 125 premium conversion plan and a single flexible spending account plan (health, dependent care), both sponsored by the cooperative.
- Favorable rules would apply to >2 percent Sub S owners (and >5 percent shareholder of other corporations), partners in a partnership, etc., each of which would be deemed eligible as an employee under a SEBA and treated as such for tax purposes.

## **Protections Against Fraud and Abuse**

- Provides for prohibitions on ownership and/or management of SEBAs (or related entities) by insurers, brokers, third party administrators and investment advisors.
- All testing and requirements are to be performed on the aggregated basis.
- Extension of Tax Favored Benefits to 2%> Sub S Shareholders (and >5% other corporations). Extending the pretax benefits of Sec. 125 cafeteria and other tax favored plans to rank and file employees is difficult without extension to 2%> Sub S Shareholders because of the lack of incentive to participate where the employee population is small.
- In the case of non-delivery of goods and services to a beneficiary, the SEBA and the beneficiary's employer shareholder member will be jointly liable (except for pre-existing defined benefit plans of a member/shareholder).
- SEBAs would have no impact union employees' multi-employer benefit plans and would only apply to non-union employees of a member shareholder.

## ALLIANCE FOR EMPLOYEE BENEFIT COOPERATIVES MEMBERS

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*The Alliance for Employee Benefit Cooperatives is a broad-based coalition of cooperative organizations committed to advancing health care and benefits coverage for American workers and families through the creation of “Employee Benefit Cooperatives.” Alliance members operate in all 50 States, representing over 13,000 member-owners, approximately 40,000 local businesses, and more than 700,000 employees. Visit us at [www.aebc.coop](http://www.aebc.coop).*



### **Blue Hawk Distribution Cooperative, Inc.— [www.bluehawk.coop](http://www.bluehawk.coop)**

Blue Hawk is a purchasing cooperative of heating, ventilation, air conditioning and refrigeration products distributors to the residential and construction trades with 205 members in 908 locations.



CCA Global Partners

### **CCA Global Partners—[www.ccaglobal.com](http://www.ccaglobal.com)**

CCA Global Partners is an organization of 15 franchise purchasing cooperatives concentrated in retail flooring and lighting (Carpet One and Lighting One) with 3,600 United States locations and \$10.2 billion in aggregate sales.



**COMPLIANT  
PHARMACY ALLIANCE  
COOPERATIVE**

### **Compliant Pharmacy Alliance Cooperative**

Compliant Pharmacy Alliance Cooperative is a purchasing cooperative of 564 independent pharmacies across the United States.



### **Cooperative Network—[www.cooperativenetwork.com](http://www.cooperativenetwork.com)**

Cooperative Network is the association representing more than 600 member cooperatives in Wisconsin and Minnesota, owned by more than 6.3 million residents, providing government relations, education, marketing and technical services.



### **CUNA Mutual Group—[www.cunamutual.com](http://www.cunamutual.com)**

CUNA Mutual Group is a leading provider of financial services to cooperatives, credit unions, their members, and valued customers worldwide. CUNA Mutual Group, a Fortune 1000 company, reported \$13.2 billion in assets, \$12.0 billion in liabilities, and \$1.2 billion in policyholder surplus in 2008.



### **Federation of Southern Cooperatives—[www.federationsoutherncoop.com](http://www.federationsoutherncoop.com)**

The Federation is a cooperative of 12,000 African-American family farms in the southeast working through 35 agricultural cooperatives to purchase supplies, provide technical assistance and market their crops.



### **National Cooperative Business Association—[www.ncba.coop](http://www.ncba.coop)**

NCBA is the lead national membership association representing cooperatives of all types and in all industries.



**National Cooperative Grocers Association (NCGA)—[www.ncga.coop](http://www.ncga.coop)**

NCGA is a business services cooperative for 130 natural food co-ops located in 32 states.



**Nationwide—[www.nationwide.com](http://www.nationwide.com)**

Nationwide is one of the largest insurance and financial services companies in the world, with more than \$160 billion in statutory assets. Nationwide offers a full range of insurance products and financial services for home, car, family and financial security.



**NCB (National Cooperative Bank)—[www.ncb.coop](http://www.ncb.coop)**

NCB is a cooperative bank, serving consumer, worker and housing cooperatives with more than 2,600 customer-owners and \$6.19 billion in assets under management.



**Nemeon—[www.nemeon.com](http://www.nemeon.com)**

Nemeon is a purchasing cooperative of independent roofing and siding distributors in the United States consisting of 184 member companies in more than 475 locations with combined revenue in excess of \$3 billion.



**Organic Valley—[www.organicvalley.coop](http://www.organicvalley.coop)**

Organic Valley is the cooperative voice of 1326 farmers representing approximately 10 percent of the organic farming communities in America.



**Thanexus, Inc.—[www.thanexus.coop](http://www.thanexus.coop)**

Thanexus, Inc. is a funeral practice management cooperative created by the New Jersey State Funeral Directors Association (NJSFDA) that represents 109 funeral homes in New Jersey.



**U.S. Central Credit Union—[www.uscentral.org](http://www.uscentral.org)**

U.S. Central is the wholesale financial credit union serving 8,400 credit unions across the country.



**Unified Grocers—[www.unifiedgrocers.com](http://www.unifiedgrocers.com)**

Unified Grocers is a retailer-owned wholesale grocery cooperative that provides grocery products and services to independent retailers throughout the Western United States.



**Wakefern Food Corporation—[www.wakefern.com](http://www.wakefern.com)**

The cooperative supplier to the 217 Shop Rite Supermarkets that serve the greater New Jersey region.

