



# The Employer-Provided Child Tax Credit (45F)

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# Introduction

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Parents need child care in order to work. Without access to safe, affordable child care, working families are forced to make tough decisions, perhaps reducing their work hours or even leaving the workforce. Despite the important role that child care plays in keeping the nation's economy running, many parents lack accessible and affordable child care options.

Through the Employer-Provided Child Care Credit (45F), the federal tax code provides an incentive for businesses to help their employees receive child care.<sup>i</sup> This credit is designed to offset some of the costs a business incurs by providing child care for their employees.<sup>ii</sup> However, the credit typically does not provide enough financial benefits to make employer-provided child care feasible for all businesses. Small businesses, many of which have only a handful of employees with young children, limited financial resources, and small administrative teams, are frequently unable to use 45F.

Increasing take-up rates would better support working parents and strengthen the workforce. For the greatest economic benefit, any changes to 45F must address the feasibility of use for small businesses, which employ almost half of the private-sector workforce in the United States.<sup>iii</sup>

# Background

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Child care is notoriously inaccessible and unaffordable for many families with young children. BPC’s Child Care Gap mapping initiative found that 31.7% of children below age 6 with working parents do not have access to formal child care.<sup>iv</sup> Even when formal care is available, it may not be affordable. A 2019 survey conducted by BPC and Morning Consult found that most families with young children make significant financial sacrifices to afford child care, including reducing spending on groceries and transportation, tapping into emergency savings, and delaying major life purchases such as a home or car.<sup>v</sup>

Child care expenses do not just strain a family’s budget; they affect parents’ ability to work. Two-thirds of parents said child care affected their ability to stay in the workforce or forced them to work more hours, the same survey found; the effects on mothers and low-income parents were greatest.

The pandemic further increased the tension between child care and work. According to the Bureau of Labor Statistics (BLS), between February 2020 and February 2021, 1.4 million fewer women were in the workforce.<sup>vi</sup> An analysis by the Federal Reserve Board found that caregiving reasons accounted for three-quarters of the decline in labor force participation for mothers from February 2020 to August 2021; declines were greater for parents with children under 6.<sup>vii</sup> Each year, when parents with children under 3 do not have adequate child care, businesses lose an average of \$1,150 per working parent in reduced revenue and in extra recruitment costs. The aggregate burden on businesses is \$13 billion annually.<sup>viii</sup>

Although business leaders understand the importance of ensuring their employees have access to child care for their company to thrive, businesses face significant barriers to address the gap. Owning and operating, or contracting with, a child care facility is a complicated, long-term, and expensive financial investment. Even for employees working at the largest companies in the United States, only one-quarter have access to employer-provided or -sponsored child care.<sup>ix</sup> At smaller companies with fewer than 50 employees, the share is only 6%.<sup>x</sup> It is not that small businesses do not struggle with child care issues—in the Goldman Sachs “10,000 Small Businesses Voices” national survey,<sup>xi</sup> more than half of small-business owners said their employees have faced child care challenges during the pandemic.<sup>xii</sup> Rather, the time and cost it takes to facilitate employer-provided child care is not feasible for most small businesses.



# The Employer-Provided Child Care Credit (45F)

The Employer-Provided Child Care Credit, under the Internal Revenue Code Section 45F,<sup>xiii</sup> is a federal tax program designed to encourage businesses to invest in child care for their employees. Through this program, employers are eligible for a nonrefundable tax credit of up to 25% of qualified child care expenditures and 10% of qualified child care resource and referral expenditures. The credit is capped at \$150,000, meaning employers must spend approximately \$600,000 on child care expenditures of \$1.5 million to receive the full credit. Qualified expenditures are defined in the following ways:

- *Qualified Child Care Expenditures* include the cost of acquiring, constructing, rehabilitating, or expanding property to be used as a qualified child care facility; operating costs associated with running a facility; or contracting with a qualified child care facility to provide services to their employees.
- *Qualified Resource and Referral Expenditures* are defined as those child care resource and referral services provided directly to their employees, or incurred under a contract
- *To be a Qualified Child Care facility*, the facility must meet the requirements of all applicable laws and regulations of the state or local governments in which it is located. At least 30% of children enrolled in the facility must be dependents of employees. A business may not discriminate in favor of highly compensated employees when determining how the facility is used and who is eligible to enroll in the program.

Employers who claim the tax credit can also claim a business expense deduction. The starting point for the business expense deduction is calculated by subtracting the total tax credit from the amount of qualified expenditures. Taken together, employers can save more in taxes than by taking the credit or deduction alone.

A **nonrefundable tax credit** can only reduce a company's tax liability to zero, meaning any amount of credit beyond the tax liability is not recouped by the business. Because the Employer-Provided Child Care Credit is nonrefundable, any employer that does not have a federal tax liability including nonprofits, are ineligible for this credit.

Although this credit is often referred to as the "Child Care Facilities Credit," **employers can also contract with licensed child care programs**, including home-based providers, in addition to operating on-site child care facilities.

# Why Is 45F Important?

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The Employer-Provided Child Care Credit is uniquely designed to address child care access. Although other tax programs are available to help employers and working parents offset the financial burden of child care, policies that only target cost cannot address the needs of a workforce that lacks access to quality child care providers.

45F allows employers to address accessibility head-on by offsetting the cost of constructing on-site care or contracting with an off-site provider. The tax credit is especially beneficial for employers in regions with a large child care gap. Contracts with child care providers can also ensure long-term and stable funding to help maintain the supply of child care.<sup>xiv</sup> Child care providers might be more willing to open a facility in an underserved region if they have a contract with local employers that helps assure them of financial stability.<sup>xv</sup> Because employers have more purchasing power than an individual, they might be able to use their greater leverage to incentivize providers to offer nontraditional hours<sup>xvi</sup> of care that fit their hours of operation.

Historically, larger companies are more likely to have the financial resources and capacity to take advantage of the credit. For example, Patagonia has since 1983 offered on-site child care to employees with children ages 2 months to 9 years.<sup>xvii</sup> The program costs approximately \$1 million annually, and Patagonia uses the Employer Child Care Credit to the fullest extent, receiving a tax credit of \$150,000.<sup>xviii</sup> Patagonia has annual revenue exceeding \$200 million.<sup>xix</sup>

The company has documented a variety of benefits for both Patagonia and its employees. In the past five years, Patagonia has seen 100% of mothers return to work after having a child, compared with the national average of 80% of mothers who return to work within one year (although a lower percentage return to their previous job). Other reported benefits include placing more women in managerial positions, greater employee loyalty, and a stronger workplace culture built around trust and community. Overall, when considering savings in terms of employee retention and engagement, the company estimates it recoups 91% of costs, and that the inclusion of intangible benefits would raise the return on investment to 115% to 125%.

Although smaller employers may not have the resources and capacity to provide on-site child care, other employer-led child care initiatives are more feasible. For example, in Mercer County, N.D., several employers realized that the lack of child care was affecting their ability to recruit and retain a workforce.<sup>xx</sup> No single employer had enough employees to sustain a child care center, but business leaders in the region realized that they could work together to address the child care gap. In 2016, they formed the Energy Capital Cooperative Child Care.<sup>xxi</sup> Several large employers funded the startup, including Basin Electric Power Cooperative and subsidiary Dakota Gasification Co., Sakakawea Medical Center, and the North American Coal Corp. The center offers child care for infant, toddler, and preschool-age children from 5:30 a.m. to 6:30 p.m., as well as a summer program for school-age children. Because a large portion of their employees are shift workers, the companies run a program that enables the center to coordinate child care schedules by having the families submit their work schedule four weeks in advance. Employees pay tuition for their child, but they are eligible for subsidies based on need. Using this consortium model, even small employers could utilize this tax credit to address the child care needs in their community.

## Low Take-Up Rates

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Before 2022, the most recent year the IRS published data surrounding take-up of the credit was 2013. It reported that 45F accounted for just 0.02% of all general business tax credits claimed that year. Data and information on the credit usage are scarce. House Committee Report 116-456 required the U.S. Government Accountability Office (GAO) to review, report on, and provide recommendations to enhance employers' understanding and use of the employer-provided child care credit.<sup>xxii</sup> The GAO report was published in February 2022.<sup>xxiii</sup>



Take-up remains low. In 2016, the most recent year data are available, an estimated 169 to 278 corporate income tax returns claimed \$15,727,000 to \$18,829,000 in child care credits. Less than 0.01% of businesses that filed Form 3800 for general business credits claimed expenses related to employer-provided child care. Some individual filers could also claim the credit as partners or shareholders of employers claiming the credit. Only 0.03% of individual filers that filed Form 3800 claimed the Employer-Provided Child Care Credit, receiving \$6,382,000 to \$7,953,000 in credits. Across industries, corporate filers in the manufacturing, financing and insurance, and information sectors were most likely to claim the credit. Other industries, including accommodation (i.e., the hospitality industry) and food services, health care and social assistance, educational services, and agriculture sectors, were least likely to claim the credit.

## GAO Findings

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The GAO said three factors limited employers' take-up of the credit: the cost and complexity of providing child care; employers' lack of awareness or understanding of the credit; and credit design. Although these barriers affect all businesses, they are most acute for small businesses that typically lack a large enough staff to administer and effectively utilize child care.

### **COST AND COMPLEXITY OF PROVIDING CHILD CARE**

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Constructing and operating a child care facility requires a long-term financial commitment. Stakeholders interviewed by the GAO said that limitations in on- or near-site locations suitable for a child care center, the complexity of administering child care, and potential legal liabilities were barriers to utilizing the Employer-Provided Child Care Credit. The challenges are greater for smaller employers who might not have the staff or resources to operate their own child care center or to partner with an off-site provider. Instead, benefits administered exclusively through Dependent Care Assistance Plans (DCAPs) and Flexible Spending Accounts (FSAs) may be simpler for an employer to implement.<sup>1</sup>

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<sup>1</sup> For more information on DCAPs and FSAs, see Appendix A.

## **EMPLOYERS' UNDERSTANDING OF THE CREDIT**

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Stakeholders said that lack of awareness or understanding of eligible expenses can limit businesses from claiming the credit. Specifically, many employers might not know that eligible expenses are limited to the cost of constructing and operating on-site child care centers. 45F is often referred to as the Child Care Facilities Credit, but employers can also contract with licensed child care programs, including home-based providers, to offer child care services to their employees. Businesses often partner with child care companies, such as Learning Care Group, Bright Horizons, and KinderCare, to offer this benefit.

For small businesses, entering a consortium with other area employers to share administrative costs and enroll more employees with young children in a single facility might make the credit more attainable. Currently, this type of joint arrangement is not addressed in the statute, meaning additional clarifications are necessary to make the credit a feasible option for smaller employers.

## **CREDIT DESIGN**

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Stakeholders explained that because the credit is nonrefundable and the maximum credit is relatively small, employers have a limited incentive to claim the credit. And because the credit is nonrefundable, businesses that do not have a positive federal tax liability or organizations that are exempt from federal taxes, including nonprofits, are ineligible. Small businesses with low tax liability would also not see the full tax benefits from their child care investments. The maximum credit is \$150,000, which is insufficient to incentivize large-scale investment in child care. This problem can be especially deterring for small employers that need more significant financial assistance to offer or contract for child care services. Providing child care is a significant long-term financial investment that is not possible for many employers without further tax incentives.

## **GAO RECOMMENDATIONS**

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The GAO makes several recommendations to improve the credit design and take-up rates, including:

- Expanding the maximum expenses that can be offset and the maximum allowable credit;
- Expanding the definition of services eligible for the credit, including in-home care;
- Extending the credit to employers, such as nonprofits, that do not have a federal tax liability;

- Allowing multiple employers to jointly acquire, construct, or operate a qualified child care facility to claim the credit;
- And directing federal agencies, such as the IRS, to create and disseminate information on how the tax works and how employers can use it in various situations.

## BPC Recommendations

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BPC supports all the recommendations in the GAO report and offers three additional ones for Congress to improve the credit design:

- Make the tax credit fully refundable.
- Explore developing a tiered system with a greater credit rate and maximum credit for small employers, as defined by the IRS,<sup>xxiv</sup> to make it more financially feasible to claim the credit.
- Allow multiple employers to jointly enter into a contract with a qualified child care provider for child care services to claim the credit.

Although these recommendations would make the credit more accessible to employers, Congress must also ensure that employer-provided child care does not create undue burdens on families. BPC recommends that Congress change overlapping tax credits to delink them from employer-provided child care benefits:<sup>2</sup>

- Congress should make all employer-provided child care benefits exempt from gross income tax,<sup>3</sup> similar to health care benefits,<sup>4</sup> to ensure that employees maintain eligibility for the Child Tax Credit (CTC) and the Earned Income Tax Credit (EITC).
- Congress should allow employees to claim the Child and Dependent Care Tax Credit (CDCTC) up to the maximum allowable expenses for any out-of-pocket child care expenses, regardless of employer contribution.<sup>5</sup>

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<sup>2</sup> For more information, see Appendix A.

<sup>3</sup> This would mean amending the tax requirements for dependent care and assistance programs in [26 U.S. Code § 129\(a\)\(2\)](#) and what is included in the regular rate of pay in [29 U.S. Code § 207\(e\)](#).

<sup>4</sup> The language for health care tax benefits can be found in [26 U.S. Code § 106\(a\)](#).

<sup>5</sup> This would mean amending [26 U.S. Code § 21\(c\)](#), which links eligibility for the CDCTC with the amount of gross income excluded under Section 129.

# Appendix A: Tax Implications of Child Care Benefits for Individual Tax Returns

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The Employer-Provided Child Care Credit is designed to incentivize employers to help find solutions to the nation's child care crisis. Although this tax credit offsets businesses' cost of providing child care, it also can affect an employee's individual tax return.

## DEPENDENT CARE ASSISTANCE PROGRAMS

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The dependent care assistance is considered a fringe benefit, and individuals can exclude up to \$5,000 from their reported gross income.

The tax code defines dependent care assistance as the payment or provision of child care services by the employer.<sup>xxv</sup> Employers usually refer to these benefits as a Dependent Care Assistance Plan (DCAP) and can involve a variety of child care assistance plans. Typically, employers will sponsor a flexible spending account (FSA), which allows employees to set aside up to \$5,000 of their pretax wages for child care expenses.

If an employer claims the Employer-Provided Child Care Credit for expenses related to tuition discounts at an on-site or contracted facility, this would be considered dependent care assistance. Employees who receive this benefit are required to report any child care tuition reduction in excess of \$5,000 as taxable income. This might affect an individual's eligibility for two common income-dependent tax provisions intended to ease the financial burden for working families:

- Child Tax Credit (CTC):<sup>xxvi</sup> A partially refundable credit of up to \$2,000 per child. Single parents with incomes under \$75,000 and married couples with incomes under \$150,000 are eligible to claim the full credit.<sup>6</sup>

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<sup>6</sup> The American Rescue Plan Act (ARPA) of 2021 temporarily expanded the CTC, EITC, and CDCTC. For more information, please see BPC's brief [Comparing the CDCTC and CTC](#) and the Congressional Research Service's paper [The "Childless" EITC: Temporary Expansion for 2021 Under the American Rescue Plan Act of 2021](#). The numbers here do not reflect the temporary expansion.

- Earned Income Tax Credit (EITC):<sup>xxvii</sup> A refundable credit of \$3,584 to \$6,660, depending on the number of qualifying children. Working parents with incomes that do not exceed \$43,492 to \$59,187, depending on the number of children and marital status, are eligible to claim the credit.

The dependent care assistance programs aim to incentivize employers to become more involved in providing dependent care for their employees, according to the Joint Committee on Taxation.<sup>xxviii</sup> However, employees of these engaged employers should not be penalized on their individual tax returns for employer-provided child care benefits that are necessary for them to remain employed.

## **CHILD AND DEPENDENT CARE TAX CREDIT**

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The Child and Dependent Care Tax Credit (CDCTC) is a nonrefundable credit that allows eligible taxpayers to offset a portion of their out-of-pocket child and dependent care expenses necessary for work.<sup>xxix</sup> Taxpayers can claim up to \$3,000 for one dependent and \$6,000 for two or more. The maximum credit rate is 35%, and it phases-out with income until it reaches 20%.

Employer-provided dependent care assistance is directly linked with CDCTC eligibility. Individuals must decrease their maximum eligible expenses for the CDCTC dollar-for-dollar with employer contributions to child care.<sup>xxx</sup>

The average cost of child care exceeds the \$3,000 per child allotted by the CDCTC. Tuition ranges from \$4,000 to \$22,600 depending on location and the child's age.<sup>xxxi</sup> Employees who only have a portion of their child care expenses covered by their employer should not be disallowed from accessing the CDCTC for the costs they bear themselves. Delinking eligibility for the CDCTC and dependent care benefits would ensure that employees are not penalized on their tax return for benefits offered by their employers.

# Endnotes

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