Statement Presented to
The U.S. Senate Committee
On Health, Education, Labor and Pensions
Subcommittee on Primary Health and Retirement Security

Roundtable on

Small Business Retirement Pooling: Examining Open Multiple Employer Plans

June 21, 2016

Transamerica appreciates the opportunity to provide this written testimony in connection with the Roundtable held by the U.S. Senate Committee on Health, Education, Labor, and Pensions (HELP) Subcommittee on Primary Health and Retirement Security examining open multiple employer plans ("MEPs"). This testimony will discuss the role of small business in helping employees save for retirement, the role of multiple employer plans and recommendations for further reform.

Transamerica is focused on helping customers achieve a lifetime of financial security. Transamerica products and services help people protect against financial risk, build financial security and create successful retirements. Transamerica designs customized retirement plan solutions for both for profit and non-profit businesses nationwide. Transamerica provides services for over 27,000 plans that collectively include over 5 million participants and represent over $234 billion in plan assets as of December 31, 2015. Multiple employer plans comprise 280 of these plans adopted by 11,500 employers with nearly 600,000 participants and $18.23 billion in assets.

Transamerica services small to large size employer plans but finds the lack of coverage of employees in workplace retirement plans to be most prevalent in the small employer market.

We have three main points, which we will discuss in our testimony:

1. As the number of small businesses continue to grow and become a large source of new jobs, expanding retirement plan coverage among small businesses is critical to enhancing Americans' retirement security. We need to encourage small employers to provide plans through reforms that address the primary reasons that employers, especially small employers, do not offer plans: cost, complexity, and concern about fiduciary liability. In this regard, we encourage both removal of restrictions to employers entering into multiple employer plans and limitations on liability of participating employers in a multiple employer plan from the wrongful acts of another participating employer. We also encourage further reform to improve the efficiency of pooled arrangements.

2. Employers play a vital role in helping their employees in their retirement planning preparedness by offering retirement savings plans, improving plans, and enhancing benefits through innovations designed to help their employees. We need to be mindful that the employer plan system is voluntary and preserve a central role for employers in the private retirement system. Any reforms to or innovation in helping workers save for retirement should enhance and not disrupt the efficiencies and effectiveness of the current system.

3. The retirement security of workers can be increased by enacting other widely supported bi-partisan proposals long advocated by members of this Subcommittee and others in Congress.

Small business facts and employers' role in helping workers save for retirement. According to the U.S. Small Business Administration, the number of small businesses in the United States has increased 49 percent since 1982. Since 1990, as big business eliminated 4 million jobs, small businesses added 8 million new jobs. Small businesses (fewer than 500 employees) represent 99.7 percent of the total firms and 48.5 percent of the private sector workforce in the United States.[1] Therefore, expanding retirement plan coverage among small businesses is critical to enhancing Americans' retirement security.

Employers play a vital role in helping workers save for retirement. The workplace retirement savings system has succeeded in serving as the preferred method of saving for retirement for millions of workers. With the benefits of saving in an employer-sponsored plan governed by the Employer Retirement Income Security Act, as amended ("ERISA") (e.g., investment education, the potential for employer contributions, and fiduciary oversight), combined with the convenience of automatic payroll deduction, Americans are far more likely to save for retirement through participating in a company-sponsored retirement plan than through alternate savings structures. According to research from nonprofit Transamerica Center for Retirement Studies® (TCRS), 90 percent of workers who are offered a 401(k) or similar plan are saving for retirement, either through the plan and/or outside of work, compared to just 48 percent of workers are not offered such a plan.[2]

Multiple Employer Plans are a powerful solution to increasing coverage in the small employer market; however, further reform is needed to facilitate their adoption.
As small businesses continue to employ a greater portion of workers than ever before, focus should be placed on obstacles to employers establishing retirement plans for their workers. Common reasons employers cite for not offering retirement savings plans to their employees are: cost, complexity, and fiduciary liability. Under a multiple employer plan ("MEP"), many small businesses can join together to achieve economies of scale and avoid the administrative burden and liability in running the plan by turning over administration of the plan to a named plan fiduciary, recordkeeper and plan administrator, making the plan both more affordable and effectively managed. By joining a MEP, adopting employers delegate fiduciary and

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[1] U.S. Small Business Administration, Frequently Asked Questions, September 2014, https://www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf

[2] Transamerica Center for Retirement Studies® ("TCRS"), 16th Annual Retirement Survey of American workers and employers. TCRS is a division of Transamerica Institute® ("The Institute") a nonprofit, private foundation. The Institute is funded by contributions from Transamerica Life Insurance Company and its affiliates may receive funds from unaffiliated third parties. For full survey methodologies, see www.transamericacenter.org

administrative services, such as the selection of the investment fund lineup for the plan, and share in the costs of such services. TCRS' research found that 22 percent of small companies (10-499 employees) that do not offer a 401(k) or similar plan and are not likely to offer one in the next two years would be likely to consider joining a MEP.[3]

In order to facilitate the adoption of MEPs, Transamerica actively supports two essential reforms.

First, compliant employers in a MEP should be protected from liability for the non-compliant acts and omissions of other employers in the MEP and the resulting disqualification of the entire plan under the Internal Revenue Code (the "One Bad Apple" rule). Typical reasons for non-compliance (jeopardizing the qualified status of the plan) include providing insufficient information for discrimination testing and reporting purposes. Under existing bi-partisan proposals, the plan fiduciary could expel the non-compliant employer from the MEP and preserve the MEP's qualified status for the remaining employers in the plan.

Second, employers without any "common interest" should be able to join together in a MEP (an "Open MEP"). Current law requires "commonality" or a nexus among employers (e.g., in the same line of business) to join in a MEP. Elimination of the commonality requirement will increase the number of small employers that provide a retirement plan for their employees by joining in a MEP.

The above reforms have long been advocated by both Republican and Democrat Members in both Houses of Congress, including in bills sponsored by Senators Hatch, Collins, Nelson and in the last congress by Senator Brown and former Senator Harkin, as well as by Representatives Buchanan, Reichert and Kind in the House. The Senate Finance Committee, in its Savings & Investment Bi-Partisan Working Group ("Senate Finance Committee Working Group") co-chaired by Senators Crapo and Brown at the beginning of this Congress also endorsed the above proposed reforms. We also thank the Administration, in its FY2017 budget, for calling for open MEPs for the private sector; however, additional conditions called for by the Administration in its proposal need to be weighed against the added cost and complexity, as well as the nature of risks against which the additional conditions are designed to protect.

We especially thank the Chairman of this Subcommittee and Senator Hatch for their leadership on MEP reform,

Although the specifics of the various proposals vary to some extent, there is a very substantial amount of common ground, as recognized by the Senate Finance Committee Working Group.

Facilitate other efficiencies in pooled arrangements. Employers that want to retain their own stand-alone 401(k) plan but wish to address the cost, liability and administrative complexity concerns, may adopt a plan that shares with other employer plans a common trustee, a common named fiduciary, a common plan administrator, a common set of investment options, and a common record-keeper. Further efficiencies can be gained in these pooled arrangements by permitting the administrator of plans sharing this same administrative framework to file a

[3] Source: Transamerica Center for Retirement Studies®,16th Annual Retirement Survey.

consolidated Form 5500. The consolidated Form 5500 may contain such information about the separate plans as is necessary or appropriate to ensure that DOL and Treasury do not fail to receive needed information. In short, a combined Form 5500 would eliminate the wasteful duplication that occurs today but without giving up any valuable information.

Acknowledge and preserve the vital role of employers in retirement savings; do no harm to the current system.

We must acknowledge the vital role employers of all sizes play in providing the structure and opportunity for workers to save for a secure retirement. Employer sponsored plans are a well-established and preferred system of saving for retirement. They offer fiduciary oversight, protection from creditors, more robust contribution levels and in many instances, employer matching contributions. Employers offering retirement savings plans to their workers also generally provide education regarding the need to save for retirement, investing and general financial literacy.

There is no silver bullet to the coverage problem. Innovation and solutions should be encouraged to help workers save for retirement when not offered an employer plan. The MyRA program is a great example of a federal solution available to workers nationwide to help them save for retirement.

In seeking solutions, however, we must take care to “do no harm” to the current system. The current employer plan system is a voluntary one, and as noted above, is successful in providing workers with the ability to save for a secure retirement. Employers establish and maintain employer retirement savings plans at a considerable cost and administrative burden and with significant concern over liability. Solutions should address these concerns and not add to them. Without the voluntary maintenance of a plan by companies, we are left with far less savings and more pressure on the government to enhance social programs to address the needs of seniors.

Any new legislative or regulatory requirements adding further complexity and cost without any significant benefit to the employer plan or participant are likely to further tip that balance in favor of not offering a plan for many employers. Overly burdensome requirements that add to an employer’s fiduciary liability and are contrary to market demands without any significant benefit to either the employer or plan participants would similarly be very counterproductive.

For this reason, care should be taken to ensure that any new requirements that Congress or the Administration imposes upon open MEPs as part of their approval do not also apply to the current law MEPs (“closed MEPs”) structure. To do so would be to disrupt the closed MEP marketplace.

Similarly, any innovations in providing workers the ability to save should complement the current employer based system and not unfairly compete with it. Any competition with the current employer based system on an unlevel playing field that increase the burden on private employers without any significant benefit to either the employer or plan participants would be very counterproductive. We recognize the efforts of States, including Massachusetts, to provide retirement savings opportunities to workers not covered by an employer plan. The Department of Labor, in its Guidance issued earlier this year, noted that States would be able to establish open MEPs for the benefit of residents of its State. Transamerica urges this Congress and the Department of Labor to ensure that private sector open MEPs can be offered to private sector workers on the same terms as State or other governmental open MEP plans.

Additional Solutions to Coverage. While coverage of workers in employer plans is very broad, more can and should be done to encourage employers of all sizes to adopt retirement plans and drive up coverage of workers in those plans. Many excellent legislative and regulatory proposals, including those noted in the Senate Finance Committee Working Group Report, have been introduced to address the primary challenges that employers, especially small employers, face in establishing plans: cost, complexity and concern about fiduciary liability. Such proposals would also serve to facilitate employee participation in the employer plans as well as their ability to manage their savings to last their lifetime. I would like to express my appreciation to Members of this Committee for their leadership in developing many of these proposals, and specifically to Chairman Enzi for his leadership in calling for electronic delivery of Plan notices as the default mechanism. Electronic delivery of notices, with the ability of plan participants to retain the right to receive the notices by hard copy, will go a long way to decreasing the cost of plans in delivering the notices and will enable participants to receive more interactive information. For example, rather than including a glossary of terms, an electronic plan document may enable a reader to click on a term to access the definition. A recent survey found that 84 percent of plan participants are agreeable to making electronic delivery the default option (with the ability to opt-out at no cost to the participant)[4]

Conclusion

Transamerica commends Chairman Enzi, Ranking Member Warren and other members of this Subcommittee on their consideration of the important issue of multiple employer plans and employer plan coverage in general. We appreciate the opportunity to present our views on the particular challenges faced by small businesses in offering plans and our suggested approach to solutions.

[4] http://www.sparkinstitute.org/content-files/improving_outcomes_with_electronic_delivery_of_retirement_plan_documents.pdf. Retrieved June 16, 2016