



**STATEMENT OF MICHELE VARNHAGEN**

**ON BEHALF OF AARP**

**BEFORE THE US SENATE COMMITTEE ON HEALTH,  
EDUCATION, LABOR AND PENSIONS**

**SUBCOMMITTEE ON PRIMARY HEALTH AND  
RETIREMENT SECURITY**

**ON  
RETIREMENT PLAN OPTIONS FOR SMALL BUSINESSES**

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AARP, with its nearly 38 million members in all 50 States and the District of Columbia, Puerto Rico, and U.S. Virgin Islands, is a nonpartisan, nonprofit, nationwide organization that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse. We have been working for decades, at both the federal and state levels, to expand and improve coverage under the private retirement system. While 50% of the workforce is fortunate to have access to a retirement plan, 50% do not have a retirement plan at work.

AARP has long supported encouraging or requiring employer sponsorship of retirement savings vehicles. We need a strong and adequate retirement system to accumulate sufficient income to live in retirement. Social Security provides a strong base of income, but Social Security was never intended to be the sole source of retirement income. Workplace retirement plans have the greatest potential to provide additional income through regular paycheck withholding and investment in an appropriate retirement vehicle.

Having access to a workplace retirement plan makes workers 15 times more likely to save. When employees are offered a plan, about 70% voluntarily participate. Even better, when workers are automatically enrolled in a plan, with the option to opt out, participation jumps to about 90%. The growing body of behavioral research also has demonstrated the importance of professionally managed, diversified, and low cost investment portfolios to overcome our personal biases, including tendencies to buy high and sell low, failure to rebalance and lack of portfolio diversification, and even the inability to make decisions if presented with too many choices.

Large employers have largely understood and adopted such savings plans for their workers though even large employers could do more to include less than full-time workers. As 401(k) type plans have become the main source of workers' retirement income, large employers have learned how to offer a mix of different appropriate retirement investments with low total fees.

It has been a longstanding challenge to make it easy and affordable for small employers to offer retirement savings vehicles to their employees. Although there are many available options, including defined benefit, 401(k), SEPs, Simples, payroll deduction IRAs, etc – the choices can be confusing and lead to inertia among employers. Small employers often do not have human resource departments or access to trusted experts. Fortunately, through technology advances and emerging ideas like private and state and local government open multiple employer plans (MEPs), we are close to devising an easy and effective retirement option for small employers and their employees.

AARP has supported a variety of federal legislative proposals to expand retirement savings options such as Automatic Individual Retirement Accounts (IRAs) for employers that do not offer any retirement plan. We also have supported tax credits to encourage small employers to set up plans, including for administrative costs and employer contributions. And we have supported credits to help lower income workers save, such as the Savers credit. We also believe that proposals such as the President's MyRA initiative, opening retirement plans to part-time workers and lifetime income disclosures are worthy of legislative support.

In the absence of federal action, AARP has been engaging interested state and local leaders to consider what can be done at the state level. Increasingly, states are realizing that if retired individuals do not have adequate income, they are likely to be a burden on state resources such as housing, food, and medical care. Several states have already enacted statewide legislative reforms, including Connecticut, Illinois, Maryland, Oregon and Washington. Massachusetts passed a law providing a plan for non-profit organizations. California passed legislation to create a program that is under development, with a vote on a finalized plan expected in 2016. Over a dozen other states are actively considering similar types of laws or feasibility studies.

AARP has had many conversations with stakeholders and is pleased to help develop what is being called an open multiple employer pension (MEP) model. Federal open MEPs have many elements in common with ongoing state actions, and we believe both efforts have merit and can complement each other. With both efforts, we also need to make sure that the model works not only for individuals saving for retirement, but for employers, private providers and government.

For consumers and employers, the key is to make sure there is a licensed and qualified entity that is acting in their interest to offer them high performing low cost investment options. Employees want automatic payroll deduction, appropriate investment choices and default investments, low and transparent fees, and safe access to their assets. At retirement, employees want distribution choices, including lifetime income payments such as a fixed annuity, phased withdrawal options, or a combination of both.

The potential advantage of MEPs is the ability to lower costs for employers and participants through pooled size and bargaining power. However, Congress should establish the framework to ensure that participants benefit from the economies of scale derived from pooled investments and group pricing, comparable to similar groups in the marketplace. Several bills have been introduced that would eliminate the commonality requirement among employers in a MEP, but most continue to require small employers to prudently select and monitor the MEP and providers. Some industry firms have proposed creating a model MEP to further lessen the burden on small employers. Either Congress or DOL should determine the key features of “certified” MEPs in a manner that will deliver affordable and appropriate retirement investments and benefit employees, employers and financial service firms.

### **Key MEP Feature Decisions**

Congress should decide what type of entity may sponsor a MEP. There are two main choices. Option #1 would permit unbiased entities to serve as MEPs, such as not for profit organizations, professional associations, licensed financial advisors, or state or local governments. Option #2 would permit financial services firms to establish MEPs. None of the introduced bills are definitive on the type of entity that may sponsor a MEP. Option #1 would require an unbiased entity to shop around for and negotiate a mix of the best financial service firms, retirement investment products and affordable fees. Under Option #2, Congress or the Department of Labor should adopt strict consumer protections to ensure the financial service firms serve as fiduciaries, offer only a prudent selection of retirement investments and charge reasonable fees. Otherwise, Option #2 could open a Pandora’s box of conflicts of interest and leave small employers and

their employees with the burden of determining whether the MEP served their retirement interest or not, similar to the problems faced under current law.

In addition, Congress should make clear any MEP entity should:

- 1) Timely receive and invest employee and, if permitted, employer contributions;
- 2) Administratively track contributions, investments, and payments;
- 3) Solicit bids and negotiate with appropriate retirement investment firms;
- 4) Prepare and distribute understandable plan documents to employers and employees;
- 5) Train staff to answer employer and employee questions and resolve disputes; and
- 6) Obtain adequate liability insurance and, if required, bonding.

Any MEP should agree to act in a fiduciary capacity and comply with ERISA's longstanding consumer protections. All monies should be held in trust and timely transmitted for investment and to pay benefits to participants. Plans should prudently select and monitor all investment options. The introduced bills generally permit or require small employers to act as the main fiduciary. We know that most small employers do not want or cannot effectively carry out this fiduciary responsibility.

If Congress does not require the MEP to act as a fiduciary, then it or the Department of Labor should restrict the types of investments and the limit the maximum fees that may be charged. Most retirement experts primarily would limit investment options to target date funds (TDFs) or balanced funds.<sup>1</sup> Although TDFs are more popular, recent research has found balanced funds can also provide better returns at lower fees over most periods of time. Some experts would include money market funds or MyRA for small or short term accounts. An alternative approach would provide priority to TDFs and balanced funds, but afford workers the option to select additional types of investments if they affirmatively choose to do so. Permitting MEPs to offer every type of retirement investment without any prioritization is least likely to be effective. AARP strongly prefers the first or second option.

Similarly, Congress or DOL should establish limits on administrative and investment fees. Again, the more government entities establish clear and fair rules, the more likely the system will be understandable and effective. Most of the states enacting laws have set total fee limits, either at .75% or 1%. In the market today, there are retirement investments that include investment charges of as little as .02% or as much as 4%, but increasingly fees are dropping and .75-1% is considered a reasonable maximum total fee for all services (including administration and investment). Most financial firms will reduce fees, but only if an employer or another party negotiates it. Even a 1% fee can reduce retirement savings by as much as 30% over a 20-30 year period. If Congress or DOL does not set fee limits, each MEP or small employer will have to negotiate fee levels which will affect program complexity and success. Imposing a fee maximum balances the interests of employees, employers and the financial service firms.

AARP also believes any MEP proposal should make the rights and responsibilities of each of the parties clear in the following suggested ways:

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<sup>1</sup> Pensions & Investments, "2030 target- date strategies continue to underperform a 60/40 strategy", May 5, 2016.

## **Employer Responsibilities**

Employers should be required to timely transmit payroll contributions to the MEP and distribute MEP materials to employees. MEPs must be able to timely and effectively receive and collect contributions and to provide timely and plain language resource and educational materials that aid employees in participation.

Employers also should be required to continue to comply with ERISA's requirements for fair participation of all qualified employees. If employer contributions are permitted or required, immediate or one-year vesting should be the standard. MEPs also could continue to accept after-tax contributions from employees after a change in jobs.

## **DOL Oversight and Enforcement**

All MEPs should be required to register with DOL. There should be clear rules as to which entity, the employer or the MEP, will file plan documents and annual financial statements with participants and necessary government agencies. The MEP should list all participating employers so that employees can check their benefit eligibility. The Department of Labor should have clear authority to audit any MEP and ensure it is in compliance with all legal requirements. The bills introduced permit DOL to establish simplified MEP reporting rules, but AARP does not believe there should be limited reporting since the MEP and not the small employer likely will submit the reporting. Reporting should be sufficient so that DOL, employers and employees can understand plan operations for the year.

If the employee or employer has problems with an investment provider or the MEP, they should have easy access to DOL for assistance and help with resolving problems.

Most of these consumer protections currently exist in ERISA, but Congress needs to specify which functions remains the responsibility of the small employer and which will be carried out by the MEP. The easier Congress makes it for small employers, the more likely they are to use a MEP or similar option.

We look forward to working with the Committee on the ideas discussed today and other proposals to expand retirement coverage and adequacy to the tens of millions of Americans who need access to workplace retirement savings vehicles.

Thank you for this opportunity to share AARP's views.