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POOLED RETIREMENT PLANS: CLOSING THE RETIREMENT PLAN COVERAGE GAP FOR SMALL BUSINESSES

HEARING

OF THE

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

ON

EXAMINING POOLED RETIREMENT PLANS, FOCUSING ON CHALLENGES AND PROSPECTS FOR EMPLOYEES OF SMALL BUSINESSES

JULY 16, 2013

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POOLED RETIREMENT PLANS: CLOSING THE RETIREMENT PLAN COVERAGE GAP FOR SMALL BUSINESSES

TUESDAY, JULY 16, 2013

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The committee met, pursuant to notice, at 2:32 p.m. in room SD–430, Dirksen Senate Office Building, Hon. Tom Harkin, chairman of the committee, presiding.

Present: Senators Harkin, Alexander, Franken, Murphy, and Enzi.

OPENING STATEMENT OF SENATOR HARKIN

The CHAIRMAN. The Senate committee on Health, Education, Labor, and Pensions will come to order.

I would like to thank all of you for coming to the latest in our ongoing series of hearings on the retirement system.

Today, we are going to focus on the fact that most people employed by small businesses simply are not being offered good retirement benefits. We are going to look at whether we can address this problem by allowing groups of small employers to reduce costs, complexity, and risk to pooled retirement plans.

The retirement income deficit, that is the difference between what people have saved for retirement and what they should have saved, I have seen estimates now to be at least $6.6 trillion, and half of Americans have less than $10,000 in savings.

To make matters worse, only half of the workforce participates in an employer-provided retirement plan, and defined benefit pension plans are disappearing. When I first came to Congress, one in every two Americans had a pension. Now, it is only one in every five, and going down.

If you ask small business owners, they understand how big a problem the retirement crisis really is. A recent survey by the Main Street Alliance and the American Sustainable Business Council found that a super majority of small business owners believe that a lack of retirement security hurts the economy by both making older Americans less willing to spend and by forcing the current generation to devote time and money to the financial support of their aging parents.

As we will hear today, the 42 million people working for small businesses are not getting the retirement plans they need. Most small employers do not even offer a 401(k), let alone a pension.

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When they do offer a plan, studies consistently show that participants pay higher fees, which can profoundly reduce retirement savings over the course of a career.

The plans also are not typically designed to produce retirement income. They are basically savings plans that help people buildup a nest egg during their working years, but they really do not do anything to help convert those savings into a secure source of retirement income that they will have until they die.

So if we are ever going to solve the retirement crisis, we need to make sure that everyone, including those who work for small businesses, has the opportunity to participate in a quality retirement plan. That means we have to address the issues that are keeping small business owners from starting retirement plans. So we have to make the plans less costly, less complex, and less risky for business owners.

That is the heart of my proposal to create the USA Retirement Funds, a 21st century retirement plan that is easier for employers to offer and get participants a secure source of retirement income for life.

USA Retirement Funds would provide employers, especially small employers, the chance to pool their resources so they can have all of the advantages that large employers have, and will let them delegate their fiduciary responsibilities to professional boards of trustees. Employers just have to automatically enroll their employees and make minimal contributions, and that is all they would have to do.

The market is moving in that direction already. Providers are finding ways to help employers limit their liability and to incorporate lifetime income into plans. But there are a lot of roadblocks under current law. So what I would like to do is to clear a path and make it easier for the industry to innovate, and to make sure the law is sufficiently protective of participants.

I am actively working on legislation to implement the USA Retirement Funds and hope to introduce a comprehensive, bipartisan reform bill soon. But I am also committed to making the system work better for employers that are already offering good pension benefits to their employees, and we will hear about that today.

That is why I am introducing a bipartisan bill today called the Cooperative and Small Employer Charity Pension Flexibility Act of 2013. This bill—which is co-sponsored by Senator Roberts, Senator Murray, Senator Murkowski, and Senator Franken—will make it easier for charities and cooperative associations to provide cost-effective, defined benefit pension benefits through pooled plans.

I am confident that if we work together, we can solve this retirement crisis, and I look forward to working with my colleagues on both sides of the aisle to help make this happen.

I thank all of you for being here today. I look forward to hearing from our excellent panel of witnesses.

PREPARED STATEMENT OF SENATOR HARKIN

I want to supplement my opening remarks with more information about S. 1302, the *Cooperative and Small Employer Charity Pension Flexibility Act of 2013*, which I introduced today with Senator Roberts.

Currently, many charities and cooperative associations provide their employees with retirement benefits through defined benefit multiple employer pension plans. In the bill, we call them Cooperative and Small Employer Charity Pension Plans or CSEC plans. The plans allow small, community-focused employers to pool their resources to achieve economies of scale otherwise only available to large employers. Although CSEC plans have operated successfully for decades, they are poised to become subject to the *Pension Protection Act of 2006*, which would threaten the ability of many non-profit employers to continue to offer pension benefits.

PPA fundamentally changed the way most pension plans are funded in order to protect participants and the Pension Benefit Guaranty Corporation. However, Congress recognized that the new rules were not appropriate for rural cooperative multiple employer defined benefit plans because, by design, the plans pose little risk that they will be unable to pay benefits. Consequently, Congress granted the plans a temporary exemption from PPA in order to assess whether the rules would be appropriate. The exemption was later broadened to include eligible charities by the *Pension Relief Act of 2010*. Without congressional action, the temporary exemption will expire.

Since 2006, it has become increasingly apparent that the PPA funding rules remain inappropriate for the unique structure of CSEC plans. The rules create too much funding volatility, and they would force community-focused organizations to unnecessarily divert funds from critical services just when those services are needed most. Without changes, CSEC plans will be forced to comply with PPA funding rules, and many small, non-profit employers will be unable to continue to provide pension benefits.

S. 1302 ensures charities and cooperative associations will continue to be able to provide quality pension benefits to their employees by implementing pension funding rules that reflect the unique design of their CSEC plans. The rules are substantially similar to those that CSEC plans are currently subject to with modifications to make them work better and result in far less volatility. CSEC plans would have the flexibility to opt into PPA in 2014 if they want, and importantly, S. 1302 imposes additional transparency requirements on CSEC plans so that participants have access to accurate information.

S. 1302 also provides for a "time out" from scheduled increases to PBGC premiums. Last year, CSEC plans were indiscriminately subjected to significant premium increases without regard to the unique structure of the plans. S. 1302 would freeze premiums at current levels while the agency reevaluates how much CSEC plans should be paying for pension insurance.

S. 1302 is a good bill that will help thousands of people in Iowa and around the country. I would like to thank my friend from Kansas, Senator Roberts, for working on it with me and the other original cosponsors of the bill—Senators Patty Murray, Lisa Murkowski, and Al Franken. I would also like to submit for the record a letter of support for the bill signed by nine non-profit organizations.

[The information referred to may be found in additional material.]

Now, I recognize our Ranking Member, Senator Alexander.

OPENING STATEMENT OF SENATOR ALEXANDER

Senator ALEXANDER. Thanks, Mr. Chairman.

I want to welcome the witnesses. Thank you for taking time to come today. We know you have busy schedules.

I want to thank Senator Enzi and Senator Harkin for the work they have been doing for several years, really, as chairman and ranking member of this committee, on the issue about which we are talking today. I especially thank them for their work on pooled retirement plans where there seems to be some real promise of progress.

As the chairman says, small business employs about half our country's private sector workforce, but according to the Government Accountability Office, 50 percent of the workers who work for those small businesses with fewer than 100 workers, do not have access to any kind of work-based retirement plan. We are looking for ways not to require everybody to do something, but to make it easier for them to do something; to create an environment in which employers can find ways to offer more options for their employees.

We have our mandatory retirement plan—Social Security—but that was meant to subsidize retirement. We need to encourage individuals and businesses to save more. Many small businesses cannot afford the traditional defined benefit retirement plans. The 401(k) system has significant regulatory burdensome costs. Can Congress improve the situation? We would like to try.

The use of pooling is promising, allowing multiple businesses to put assets into a common fund to help small businesses by spreading out costs. We could take a hypothetical small business with 51 employees with varying salaries.

Our staff tried to put together a picture of that—salaries in the lower to mid-range. There are the FICA taxes; they would be about $130,000. There would be the unemployment taxes; that is another $2,800. Healthcare mandates, if they opt out and take the penalty; that is $42,000. If they do provide coverage and any employees receive premium credits in the exchanges, these businesses face a $3,000 per employee penalty. So we have to, in my view, be cautious about new mandates.

But we do not need to be cautious about fostering an environment to create more good paying jobs and to create more options for small businesses to provide more choices of retirement plans for their employees.

I thank the witnesses for being here. I thank Senators Harkin and Enzi for their work. I look forward to learning more today.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Alexander.

I want to acknowledge, again, the work that Senator Enzi has done over this for many years, and we have been working together on this over the last couple of years on looking at retirement plans and what is happening around America.

He is certainly one of our resident experts, I should say, on retirements and retirement plans. We have all benefited from his wisdom and his knowledge in this area. As I said, we are working with others on this to try to get something put together here in a bill form.

With that, I will introduce our witnesses. We have a great panel today. First, we have Dr. Charles Jeszeck, Director of Education, Workforce, and Income Security Issues at the Government Accountability Office. Dr. Jeszeck has been with the GAO for over 27 years, an expert on retirement security and related issues. He holds a Ph.D. in economics from U.C. Berkeley, and has taught economics at Barnard College and Amherst.

Next, we have Mr. David Koetje, president and CEO of Christian Schools International. Mr. Koetje has been involved in education administration for over 40 years serving as a teacher, principle, professor, and superintendent. Currently, he oversees Christian Schools International's pension plan, which covers thousands of teachers and other employees at schools all over the country.

Finally, we will hear from Jim Kais, senior vice president for Transamerica Retirement Solutions. Mr. Kais has nearly 20 years of experience with retirement services and has worked to help small and mid-sized businesses offer retirement plans.

I welcome you all here.

Without objection, each of your statements will be made a part of the record in their entirety.

The CHAIRMAN. We will start with Dr. Jeszeck and work over. If you could sum up your testimony in 5 or 7 minutes, then we will get into a nice colloquy.

Welcome. Please proceed.

STATEMENT OF CHARLES A. JESZECK, Ph.D., DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC

Mr. JESZECK. Thank you. Chairman Harkin and Ranking Member Alexander, thank you for inviting me here today to discuss the state of retirement security for the millions of workers employed by our Nation's small businesses.

Small businesses are a critical sector of our economy providing employment for over 42 million workers, about one-third of the private sector workforce.

While a secure retirement is increasingly at-risk for all workers, this risk is often greater for employees of small businesses. Further, the challenges facing small businesses in helping their employees save for retirement appear particularly daunting.

My comments today are based on the findings of several recent GAO reports. In summary, many of us will find the results disturbing. Pension sponsorship among small employers, those with fewer than 100 employees, is low and the challenges they face in sponsoring plans can be formidable. Few workers employed by small businesses are covered by traditional pension plans.

For those small business employees fortunate enough to participate in a 401(k) type plan, average account balances are low and they often pay higher fees that can lower their returns.

Small business plan sponsorship rates are low. In our 2012 report, we found an overall sponsorship rate of about 14 percent. Only 5 percent of small businesses offered a traditional defined benefit pension. Low sponsorship rates lead to low retirement plan coverage. For example, experts have estimated that less than 30 percent of small business employees are covered by any retirement plan.

We also found that the larger the firm, the more likely it was to offer a plan. Among the smallest firms, those with one to four employees, the rate was 5 percent. Sponsorship rates for firms with 26 to 100 employees were higher, at 31 percent.

Similarly, small firms with low-paid workforces were less likely to offer a pension plan. At the lowest level, only 3 percent of small employers who paid an average annual wage of $10,000 or less sponsored a plan. This low sponsorship rate is a consequence of the challenges small businesses report in sponsoring a plan.

In focus groups with small employers around the country, we heard about many of these challenges. Having insufficient financial resources, time, and personnel; being overwhelmed by the choice of plan design and investment options; frustrated by onerous administrative requirements; and fearful that they were not fully knowledgeable about the legal responsibilities associated with sponsoring a plan.

Of course, increased sponsorship alone is not enough. Employees must contribute faithfully and invest prudently. Again, the evidence suggests cause for some concern. The average account balance for workers in small plans is about $59,000 only somewhat above the Nation's median household income for 1 year.

Participants in small plans also face the challenge of high fees. In April 2012, we reported that participants in smaller plans typically pay more in fees than participants in larger plans. According to industry experts, plans with fewer participants generally have lower plan assets and therefore pay higher fees than plans with more assets.

For example, our nationally representative survey of plan sponsors found that participants in plans with fewer than 50 participants paid an average of 0.43 percent of plan assets annually for recordkeeping and administrative services. Meanwhile, participants in plans with more than 500 participants paid 0.22 percent.

In addition, participants often pay investment, trading, and a variety of other fees, some of which can be substantial. In our report, we found many instances where small employers were unaware of the amount of the fees paid, the types of fees being paid, and who was paying them. We note that our work was conducted before Labor's issuance of its fee disclosure regulations, which hopefully are having a positive effect.

However, our work also demonstrates the need for sponsors to understand plan fees to help participants secure adequate retirement savings. Any excessive fee paid by participants can significantly reduce retirement savings over time. For example, over a 20-year period, a 1 percent fee increase can reduce account growth by double-digits.

Small employers and experts we spoke with suggested a variety of solutions to address these challenges. These ranged from enhancing guidance from labor, expanding financial incentive for plan sponsorship, to introducing broader more universal solutions.

Each option poses tradeoffs, but it is time for all of us to explore these options carefully and initiate appropriate action.

That concludes my statement, Mr. Chairman. I would be happy to answer any questions you, or other members, may have.

[The prepared statement of Mr. Jeszeck follows:]

PREPARED STATEMENT OF CHARLES A. JESZECK, PH.D.

WHY GAO DID THIS STUDY

About 42 million workers, or about one-third of all private-sector employees, work for employers with fewer than 100 employees, and recent Federal data suggest many of these workers lack access to a work-based retirement benefits. Despite efforts by the Federal Government to develop new plan designs and to increase tax incentives, plan sponsorship remains low among small employers. MEPs, a type of arrangement involving more than one employer, have been suggested as a potential way to increase coverage.

This testimony describes (1) the challenges small employers face in helping ensure that their workers secure retirement income, and (2) types of MEPs and their potential to address these challenges. GAO drew from its previous reports related to small employer challenges in establishing and maintaining a retirement plan and recent work on MEPs issued from March 2012 through September 2012.

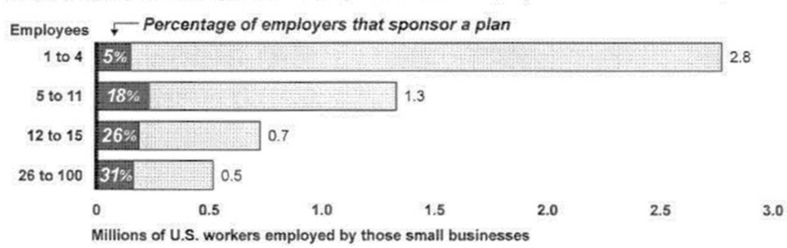
WHAT GAO RECOMMENDS

GAO is not making any new recommendations. GAO made several recommendations in prior reports to Labor and the Internal Revenue Service (IRS) to address challenges facing small employers and to improve oversight and coordination for MEPs. The agencies generally agreed with GAO's recommendations. However, Labor disagreed with a recommendation to create a single webportal for Federal guidance. GAO believes consolidating information could benefit small employers, mainly because resources are scattered.

WHAT GAO FOUND

About 14 percent of small employers sponsor some type of plan for their employees to save for retirement and these employers in general can face numerous challenges establishing and maintaining a plan. GAO's March 2012 report found that many of the small employers who were contacted said they felt overwhelmed by the number of plan options, plan administration requirements, and fiduciary responsibilities. For example, some small employers found it challenging to select investment funds for their plans. Small employers also cited other challenges in sponsoring a plan, including a lack of financial resources, time, and personnel. GAO's April 2012 review of select 401(k) plans—the most common type of plan sponsored by small employers—found that some smaller plan sponsors did not know about or fully understand fees they and their participants were charged, such as fees associated with group annuity contracts. In addition to these fees, participants in small plans often pay higher recordkeeping and investment management fees than participants in larger plans. GAO's work demonstrates the need for plan sponsors, particularly small sponsors, to understand fees in order to help participants secure adequate retirement savings. Any fees paid by participants, even a seemingly small amount can significantly reduce retirement savings over time.

Small Employer Plan Sponsorship by Number of Employees in 2009



Source: GAO analysis of Labor and IRS data.

Little is known about the types of employers that participate in multiple employer plans (MEP), particularly because, since 2004, no publically available information has been collected on such employers. MEP representatives have suggested MEPs as a viable way for small employers to reduce the administrative and fiduciary responsibilities that come with sponsoring a pension plan, and for reducing costs, in part through asset pooling. However, GAO found that these advantages are not always unique to MEPs. There was also no consensus on the potential for MEPs to increase plan coverage. During GAO's September 2012 study the Department of Labor (Labor) ruled that some MEPs made up of otherwise unrelated employers did not constitute a single pension plan but an arrangement under which each employer sponsored a separate plan for its own employees. Because this raises significant policy and compliance questions and data are limited, it is important that Labor gather information on participating employers to inform policy and oversight activities on retirement security for employees of small businesses.

Chairman Harkin, Ranking Member Alexander, and members of the committee, I am pleased to be here today to discuss retirement security for employees of small businesses. One-third of all private-sector employees, about 42 million, work for small businesses with fewer than 100 employees and many of these employees lack access to a work-based plan to save for retirement. In fact, an estimated 51 to 71 percent of employees of small businesses lack access to such plans.[1] Over the years, the Federal Government has taken steps to encourage small employers to sponsor some type of plan, and legislation has been enacted that has established incentives such as plan types with fewer Federal reporting requirements, higher plan contribution limits, and a tax credit for plan startup costs. Despite such efforts, plan sponsorship remains low among small employers. One proposed option to address this challenge is the use of pooled arrangements, such as multiple employer plan (MEP), a type of arrangement comprised of more than one employer. GAO recently examined the characteristics of MEPs and the ongoing challenges that small employers face in establishing and maintaining a plan for their employees. My statement today describes: (1) the challenges small employers face in helping ensure that their workers secure retirement income; and (2) the types of MEPs and their potential to address small employers' challenges. This statement is drawn from prior reports we issued from March 2012 through September 2012 regarding small employer plans and MEPs.[2] Those reports contain detailed explanations of the methods used to conduct our work. We conducted all of our work in accordance with generally accepted government auditing standards.

BACKGROUND

To encourage employers to provide retirement benefits for their employees, the Federal Government provides preferential tax treatment under the Internal Revenue Code (IRC) for pension plans that meet certain requirements. In addition, the Employee Retirement Income Security Act of 1974 (ERISA),[3] sets forth certain protections for participants in private-sector pension plans[4] and establishes standards of conduct for those who manage such plans and their assets, generally called fiduciaries.[5] To the extent they qualify as fiduciaries under the law, plan sponsors assume certain responsibilities and potential liability under ERISA. For example, a fiduciary must act prudently and in the sole interest of the plan's participants and beneficiaries.[6] Responsibilities of plan sponsors and other fiduciaries may include reporting plan information to the Federal Government and to participants, selecting and monitoring investment options the plan will offer, and ensuring that the serv-

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[1] The lower percentages in these ranges are Bureau of Labor Statistics' estimates based on 2011 data from the National Compensation Survey. The higher percentages are the Employee Benefit Research Institute's estimates based on 2011 data from the Census Bureau's Current Population Survey.

[2] GAO, *Private Sector Pensions: Federal Agencies Should Collect Data and Coordinate Oversight of Multiple Employer Plans*, GAO–12–665 (Washington, DC: Sept. 13, 2012); *401(k) Plans: Increased Educational Outreach and Broader Oversight May Help Reduce Plan Fees*, GAO–12–325 (Washington, DC: April 24, 2012); and *Private Pensions: Better Agency Coordination Could Help Small Employers Address Challenges to Plan Sponsorship*, GAO–12–326 (Washington, DC: Mar. 5, 2012).

[3] Pub. L. No. 93–406, 88 Stat. 829 (codified in part at 29 U.S.C. §§ 1002–1461).

[4] In this statement, consistent with ERISA, we use the term "pension" to refer generally to all types of private retirement plans, not just defined benefit plans.

[5] Under ERISA, a fiduciary is anyone who exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets or renders investment advice for a fee or compensation, direct or indirect, with respect to any moneys or other property of such plan, or has authority to do so, or has any discretionary authority or discretionary responsibility in the administration of the plan. 29 U.S.C. § 1002(21)(A).

[6] 29 U.S.C. § 1104.

ices provided to their plans are necessary and that the cost of those services is reasonable.

Employers may choose to sponsor a plan for their employees from one of three categories: employer-sponsored individual retirement arrangement (IRA) plans; defined contribution (DC) plans; and defined benefit (DB) plans.[7] Small employers may also choose to sponsor a Savings Incentive Match Plans for Employees (SIMPLE) IRA. Employer-sponsored IRAs and DC plans, generally allow employers, employees, or both to make contributions to individual employee accounts within the plan. DC plans tend to have higher contribution limits for employees than employer-sponsored IRA plans. However, DC plans are also subject to more reporting and other requirements.[8]

A MEP is a type of arrangement involving more than one employer, and can be structured as either a DB or a DC plan. A MEP is distinct from a single employer plan that is established and maintained by one employer for its employees.[9] MEPs are also distinct from multiemployer plans that are also maintained by more than one employer, in that MEPs need not be established by one or more employee organizations pursuant to a collective bargaining agreement.[10] When employers decide to participate in a MEP, they legally adopt the plan as their own as participating employers. A participating employer may sign an agreement that serves to identify the plan terms that will apply to its employees.

Some MEPs were formed long before the enactment of ERISA in 1974. Our September 2012 report identified four types of MEPs: association, corporate, professional employer organization (PEO), and open MEPs.[11] MEPs maintained by most associations we interviewed included over 100 participating employers and were often organized around a common trade or industry that served smaller employers. However, the majority of the largest 25 MEPs are corporate. These sponsors tend to be large Fortune 500 or Global 500 corporations with few participating employers.[12] Of the association and corporate MEPs we interviewed, all sponsored a traditional DB plan, while the other types generally sponsored DC plans only.

Other types of MEPS appear to have become popular more recently and are often structured as DC plans. These include MEPs sponsored by PEOs, which are firms that provide payroll and other human resources services to clients, and so-called "open" MEPs sponsored by firms that do not purport to employ plan participants. Employers in these "open" MEPs are related solely by their participation in the plan. [13]

To operate an employer-sponsored plan, employers may hire companies to provide services, such as legal, accounting, trustee/custodial, recordkeeping, investment management, investment education, or advice. These companies, typically referred

[7] Defined benefit plans are plans in which employers generally maintain a fund to provide a fixed level of monthly retirement income based on a formula specified in the plan. Defined contribution plans are plans in which retirement income is based on employer and employee contributions and the performance of investments in individual employee accounts.

[8] For additional information about the rules and reporting requirements plans are subject to, see GAO–12–326.

[9] 29 U.S.C. § 1002(41) and (42).

[10] For more information on multiemployer plans, see GAO, *Private Pensions: Timely Action Needed to Address Impending Multiemployer Plan Insolvencies*, GAO–13–240 (Washington, DC: Mar 28, 2013). Another plan-type that can involve multiple employers are master or prototype plans, which are largely based on uniform plan document sponsored by an organization for adoption by employers who are either its customers or members.

[11] GAO–12–665.

[12] Those we interviewed maintained MEPs to cover subsidiaries not under common control. For most purposes, all employees of employers in the same controlled group are treated as employed by a single employer. 26 U.S.C. § 414(b). The status of these large, corporate plans as MEPs may be temporary if the transactions that resulted in them becoming MEPs are undone. For example, one plan sponsor representative we interviewed said that the sponsor's DB and DC plans became MEPs in the early to mid-2000s as a result of a merger within a business segment. Not long after, however, that particular segment was spun-off from the company and, by sometime in 2012, both the DB and DC plans will no longer be MEPs, but may be single-employer plans. The extent to which two or more corporations are considered in the same controlled group has to do chiefly with the percentage of ownership one has in the other. 26 U.S.C. § 1563.

[13] On May 25, 2012, the Department of Labor (Labor) issued an advisory opinion on an open MEP arrangement and found that it was not a single employee benefit plan under Title I of ERISA. The Internal Revenue Service (IRS) has found at least one open MEP qualified for preferential tax treatment. IRS does not take into consideration a MEP's status under Title I of ERISA when considering whether it qualifies for preferential tax treatment. IRS focuses solely on compliance with IRC provisions. Labor's advisory opinion means, in effect, that an open MEP may be simultaneously considered both a single plan by IRS, for purposes of certain tax laws, and a series of plans by Labor. Dept. of Labor Advisory Op. 2012–04A.

to as plan service providers, can assist with administrative functions associated with establishing and maintaining a plan, including, for example, any required testing, plan audits, or filing of government reports, chiefly the Form 5500.[14] Service providers are compensated for their services generally in the form of fees charged to the plan, which may be passed on to plan participants. [15] Plan fees, even seemingly small ones, can significantly reduce a participant's retirement savings over the course of a career. Service providers charge an array of fees depending on the type of product and arrangement the provider may have with other entities that provide plan services. Some investment fees may be paid by third parties in connection with investment-related services, also known as revenue sharing, [16] which are ultimately indirectly paid for by the plan or its participants.

To respond to concerns about the lack of access to employer-sponsored plans for employees of small businesses, legislation has been enacted to lower costs, simplify requirements, and ease administrative burden. For example, the Revenue Act of 1978 [17] and the Small Business Job Protection Act of 1996 [18] established the SEP (Simplified Employee Pension) IRA plan and the SIMPLE IRA plan, respectively, featuring fewer compliance requirements than other plan types. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) [19] also included a number of provisions that affected small businesses. For example, EGTRRA eliminated top-heavy testing requirements [20] for safe harbor 401(k) plans,[21] increased contribution limits for employer-sponsored IRA plans and 401(k) plans, and created a tax credit for small employers to offset startup costs, including the cost of educating employees about a new plan.[22] EGTRRA also created a tax credit for individuals within certain income limits who make eligible contributions to retirement plans. The Pension Protection Act of 2006,[23] among other changes, made these EGTRRA provisions permanent and established additional provisions that support plan participation by rank-and-file employees, such as automatic enrollment. Despite these incentives and legislative efforts, the percentage of the U.S. workforce that participates in a pension plan remains around 50 percent.[24]

To help encourage plan sponsorship, Federal agencies conduct education and outreach activities, and provide information about retirement plans for small employers. The Department of Labor (Labor), the Internal Revenue Service (IRS), and the

[14] Most tax-qualified plans are required to annually file a Form 5500, developed jointly by the Department of Labor, the Internal Revenue Service, and Pension Benefit Guaranty Corporation (PBGC) to satisfy certain annual reporting requirements under ERISA and the Internal Revenue Code. ERISA established a reporting and disclosure framework, in part, to protect the interests of participants and beneficiaries by requiring that certain financial and other information be provided to participants and beneficiaries, as well as to the Federal Government. Some small plans may be eligible to use a simplified version of Form 5500. SIMPLE IRA and Simplified Employee Pension (SEP) IRA plans that comply with certain alternative methods of compliance are not required to file Form 5500.

[15] For details about how service provider charge plan fees and the types of fees that can be charged, see GAO–12–325.

[16] Revenue sharing, in the 401(k) plan industry, generally refers to indirect payments made from one service provider, such as the investment fund provider, to another service provider in connection with services provided to the plan, rather than payments made directly by the plan sponsor for plan services. For example, a plan's record keeper and investment fund manager may have an arrangement where the investment fund company collects sub-TA fees from plan assets invested in a particular fund that may then be used as a credit to offset the record keeper's fees.

[17] Pub. L. No. 95–600, § 152, 92 Stat. 2763, 2791.

[18] Pub. L. No. 104–188, § 1421, 110 Stat. 1755, 1792.

[19] Pub. L. No. 107–16, 115 Stat. 38.

[20] Some plans may be subject to top-heavy requirements and be required to conduct further testing to ensure a minimum level of benefits are provided to rank-and-file workers in plans that are sponsored by owner-dominated firms, where the majority of benefits accrue to "key" employees, such as owners and top executives.

[21] 26 U.S.C. § 401(k)(12). Safe harbor 401(k) plans require employers to either make a specified matching contribution to each participating employee's account or contribute at least 3 percent of compensation to all nonhighly compensated eligible employees.

[22] The credit for small employer pension plan startup costs applies to certain startup costs in connection with the establishment of a new qualified DB plan, DC plan (including 401(k) plans), SIMPLE IRA plan, or SEP IRA plan. To be eligible, an employer must have no more than 100 employees who received at least $5,000 of compensation in the preceding year. The credit equals 50 percent of qualified startup costs, which include administration costs and employee education, up to a maximum of $500 per year (for the first 3 years of the plan). 26 U.S.C. § 45E.

[23] Pub. L. No. 109–280, 120 Stat. 780. EGTRRA was set to expire on December 31, 2010, but the Pension Protection Act of 2006 made permanent EGTRRA's provisions relating to pensions and IRAs.

[24] John J. Topoleski, *U.S. Household Savings for Retirement in 2010* (Washington, DC: Congressional Research Service, April. 30, 2013).

Small Business Administration (SBA)—which maintains an extensive network of field offices—have collaborated with each other and with national and local organizations to develop information on small employers retirement plans and conduct outreach with small employers. For example, Labor, IRS, SBA and the U.S. Chamber of Commerce partnered to create the Choosing a Retirement Solution Campaign, which targets small employers and their employees.

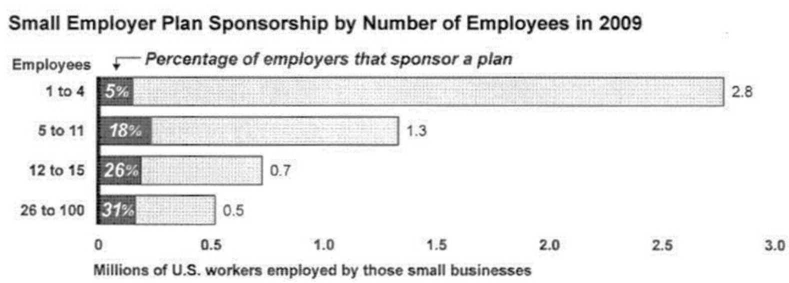
Labor's Employee Benefits Security Administration (EBSA) is the primary agency responsible for protecting private-sector pension plan participants from the misuse or theft of their pension assets, among other things, and carries out its responsibilities through such activities as issuing regulations and conducting investigations of plan fiduciaries and service providers. EBSA also issues advisory opinions in which it facilitates compliance with ERISA through interpretative guidance.

SMALL EMPLOYERS FACE CHALLENGES HELPING THEIR WORKERS SAVE FOR RETIREMENT

Complex Rules, Resource Constraints, and Financial Instability Contribute to Low Rates of Plan Sponsorship by Small Employers

As we reported in March 2012,[25] retirement plan sponsorship is low among small employers, which may reflect the challenges employers face in establishing and maintaining a plan.[26] Our analysis of available Labor and IRS data found that about 14 percent of small employers sponsored some type of plan in 2009.[27] As shown in figure 1, the smallest employers—those with 1 to 4 employees—had the lowest sponsorship rate at 5 percent but even employers with 26 to 100 employees had a sponsorship rate of 31 percent.[28] To put this in context, about 50 percent of the private sector workforce at any one time participates in an employer-sponsored pension plan. Also, small employers paying average annual wages of $50,000 to $99,999 had the highest rate of plan sponsorship at 34 percent while small employers paying average wages of under $10,000 had the lowest sponsorship rate at 3 percent.

Figure 1: Small Employer Plan Sponsorship by Number of Employees in 2009



Source: GAO analysis of Labor and IRS data.

When we met with small employers and other stakeholders, they identified a variety of factors as challenges to sponsoring retirement plans or as reasons for terminating existing plans.[29] One commonly cited concern focused on the multiplicity of

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[25] GAO–12–326.

[26] For the purposes of this statement, we defined a small employer as a for-profit firm with at least 1 employee and no more than 100 employees. Because not all employees may participate or be eligible to participate in the plan, we define a "small plan" as those with fewer than 50 participants.

[27] This sponsorship rate does not include small employers that sponsor SEP IRAs because the IRS currently does not have a means to collect data on employers that sponsor this plan type. The sponsorship rate also does not include small employers that participated only in MEPs or multiemployer retirement plans. In addition, for the purposes of this study, we chose to use a "firm" as our unit of analysis, which may differ from other studies. For example, the BLS's 2010 National Compensation Survey used "establishment" as a unit of analysis. An establishment differs from a firm in that an establishment can be a business at a single physical location or a branch of a larger companying operating multiple branches, where we defined a firm as a complete, for-profit, independent business. For additional information on the scope and methodology of this analysis, see GAO–12–326.

[28] Given the traditional dynamism of business formation in the United States, one would expect the "churn" rate of new business formations and dissolutions to result in a low sponsorship rate for the smallest employers.

[29] For our March 2012 report, we conducted structured interviews with groups of small employers that did and did not sponsor plans. Our interview protocols also sought to identify and

Continued

plan types and the burden of paperwork and administration. For example, some small employers and retirement experts said that the broad range of plan types and features made it difficult for small employers to compare and choose plans. Another small employer who previously sponsored a 401(k) plan with a company match said the amount of required plan paperwork, including generating annual reports, was a key reason he terminated it.

Other areas of concern for small employers centered on a sponsor's fiduciary responsibilities with respect to managing or controlling plan assets. Specifically, some small employer sponsors found the fiduciary responsibility of selecting investment fund choices for their plans particularly challenging. A small employer with a 401(k) plan described the difficulties of selecting investment options with an appropriate balance of risk, for a workforce that includes both younger and older workers. Moreover, a number of stakeholders said some small employers may not have an adequate understanding of their fiduciary duties and are not always aware of all their legal responsibilities. One service provider explained that some small employers mistakenly believe that all fiduciary responsibilities and liabilities are transferred to a service provider when they are hired. Another expert noted that some small employers have an exaggerated sense of the possible liabilities that being a fiduciary carries, and may avoid sponsoring a plan out of fear of being sued by their employees.

In addition to these challenges, smaller or newer firms may be unwilling or unable to sponsor plans because they lack sufficient financial resources, time, and personnel. For instance, smaller employers noted that startup and ongoing costs involved with maintaining a plan, costs associated with reporting and testing requirements, administrative fees paid to an outside party, and any employer requirements to match employee contributions were barriers to plan sponsorship. Small employers also expressed the need to reach a certain level of profitability before they would consider sponsoring a plan and that general economic uncertainty makes them reluctant to commit to such long-term expenses.

Low employee demand for an employer-sponsored plan may also be a challenge for small employers. For example, a number of small employers stated that employees prioritized health care benefits over retirement benefits. One small employer thought that, given the limited funds available to contribute toward benefits, his employees would prefer those resources be applied toward lowering the employees' share of health insurance premiums. Small employers emphasized that offering health care benefits was necessary to attract quality employees.

Additionally, some small employers, such as those who described having a younger workforce, stated that their employees were less concerned about saving for retirement and, as a result, were not demanding retirement benefits. Other small employers told us that employees, particularly those with low pay, do not have any interest in retirement benefits because they live paycheck to paycheck and are less likely to have funds left over to contribute to a plan. For example, one small employer discontinued his plan when too few of his employees—most of whom he described as low-wage—participated in the plan. Another small employer noted that even senior-level managers in his business did not participate in the plan. However, a retirement expert stated that while some employees might not be interested in participating in a retirement plan, he believed the perceived lack of demand to be exaggerated. He added that he believed some businesses may use lack of employee demand as an excuse when the small employer was not interested in sponsoring a plan.

In March 2012, we made a recommendation to Labor to convene an interagency task force with the Department of Treasury, IRS, SBA, and other appropriate agencies to review, analyze, and address the challenges small employers face in helping ensure retirement security.[30] The agencies generally agreed with this recommendation, however, Labor disagreed with one aspect of our recommendation, which was for the task force to create a single webportal for Federal guidance. We believe consolidating plan information onto one webportal could benefit small employers, mainly because Federal resources are scattered across different sites. We also made a recommendation to the Department of the Treasury to collect additional information on IRA plans.

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interview small employers of varying sizes and from various industries. While the findings from these interviews are not generalizable to the overall population of small employers, these discussions were extensive and included separate interviews with both sponsors and nonsponsors of pension plans to discuss the overall challenges of pension plan sponsorship. For additional details about our small group interviews, see GAO–12–326.

[30] GAO–12–326.

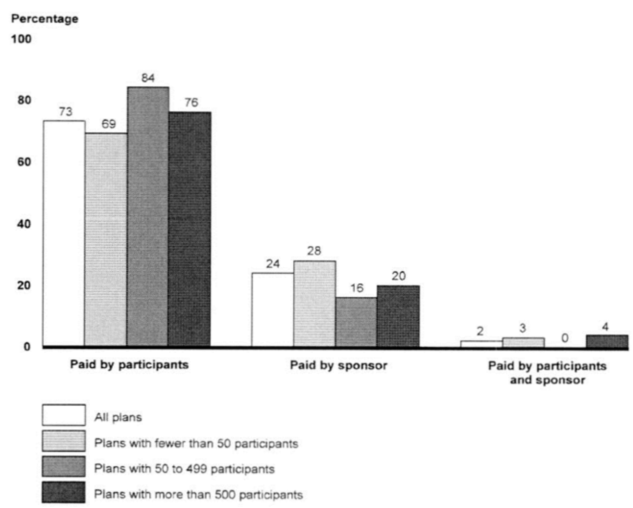
Participants of Small Employer 401(k) Plans are Likely to Pay Higher Fees

Small employers are more likely to sponsor 401(k) plans and participants of these plans tend to pay higher fees than larger plans. According to our analysis of Labor and IRS data, out of slightly more than 712,000 small employers that sponsored a single type of plan in 2009, about 46 percent sponsored a 401(k) plan, 40 percent a SIMPLE IRA, and the remaining employers sponsored other types of plans, including DB and non–401(k) profit sharing plans.[31] Experts have identified low contribution rates as a key problem facing workers seeking to a secure an adequate retirement income. In 2011, the average account balances of 401(k) plans with 100 or fewer participants was about $59,000. This may reflect the challenges facing participants in small plans of not only contributing faithfully, but also investing prudently and avoiding high fees.

Regarding fees, plans with fewer than 100 participants account for the majority of 401(k) plans, but these plans usually pay higher fees. According to industry experts and research, plans with fewer participants generally have lower plan assets, and therefore pay higher fees as a percentage of assets than plans with more assets or older plans that have grown their assets over time. Service providers and an industry expert we met with noted that administrative fees to start a 401(k) plan can be significant for small plans. Additionally, representatives of a retirement industry organization said that it may be difficult for sponsors of small plans to negotiate for lower fees because assets in these plans are modest.

In April 2012, we reported that participants in smaller plans typically pay higher fees than participants in larger plans.[32] Specifically, our nationally representative survey of plan sponsors found that participants in plans with fewer than 50 participants paid an average of 0.43 percent of their plan assets annually, while participants in larger plans—those with more than 500 participants—paid 0.22 percent for recordkeeping and administrative services.[33] On top of these fees, participants likely paid other plan fees. For example, according to survey results, in about 69 percent of small plans, participants paid all of the investment fees (see fig. 2 for additional details), which ranged from less than 0.01 percent to 3.24 percent of assets.[34]

Figure 2: Among Survey Respondents Who Provided Amounts, the Percentage of Investment Management Fees Paid by Participants, Sponsors, or Both, 2010



[31] For additional information about the number and types of other plans sponsored, see GAO–12–326.

[32] GAO–12–325. This work was conducted before Labor finalized the regulations regarding disclosure of service providers' direct and indirect compensation and before regulations to disclosure certain plan and investment-related information, such as fees, to participants and their beneficiaries in participant-directed individual accounts were in effect. 29 CFR §§ 2550.408b–2 and 2550.404a–5 (2012).

[33] For further details on the design of our 401(k) plan sponsor survey on fees, see GAO–12–325.

[34] Our estimates of investment management fees are not generalizable to the population of 401(k) plans.

Source: GAO analysis of Survey of 401(k) Plan Sponsors.

Note: Percentages may not total to 100 because of rounding. Estimates in this figure have margins of error that are less than plus or minus 24 percentage points.

Investment management fees account for the majority of 410(k) plan fees, but sponsors of about 50 percent of plans we surveyed did not know if they or their participants paid investment management fees or believed these fees were waived. This was especially prevalent among smaller plans. For example, respondents of 57 percent of small plans either did not know about fees or claimed fees were waived, compared with 31 percent of large plans. Some of these sponsors may not know about investment management fees, because these fees are usually borne by participants and are typically charged against participants' assets, as opposed to being invoiced to the plan sponsor.

Some Common Investment-Related Fees

- **Management fees:** These fees are typically paid out of fund assets to the fund's investment adviser for investment portfolio management, other management fees payable to the fund's investment adviser or its affiliates, and administrative fees payable to the investment adviser that may not be included in some of the fees identified below.
- **Marketing and distribution fees, also known as 12b-1 fees:** These fees may be used to pay commissions to brokers and other salespersons, to pay for advertising and other costs of promoting the fund to investors, and to pay various service providers of a 401(k) plan pursuant to a bundled services arrangement. They are usually between 0.25 percent and 1.00 percent of assets annually.
- **Sub-transfer agent (sub-TA) fees:** These fees are typically used to reimburse a plan's record keeper for shareholder services that the fund would have otherwise provided, such as maintaining participant-level accounts and distributing the fund's prospectus.
- **Trading or transaction costs:** These fees are associated with an investment manager's buying and selling of securities within a particular investment vehicle, such as a mutual fund, which can include commissions. These also include costs associated with portfolio turnover.
- **Wrap fees:** These fees are usually associated with insurance products, such as group variable annuities. They are aggregate fees that encompass multiple components, such as investment management fees, mortality risk and administrative expense charges, and surrender and transfer charges.

We also found instances in which participants paid for consulting and advisory services to help the employer with their plan responsibilities, such as monitoring investments and selecting plan vendors. These fees were also higher for participants in smaller plans. For example, while participants in small plans paid approximately 0.29 percent annually, the median amount participants in large plans (500 or more participants) paid was 0.07 percent of assets.

A lack of understanding on the part of plan sponsors about how fees are charged can also have adverse effects on participants' retirement savings by unknowingly passing those fees along to participants. As noted earlier, understanding these fee arrangements may be even more challenging for small employers, who lack the time and resources to fully identify and understand them. Our review of selected plans indicates that some smaller plan sponsors did not know about or fully understand revenue sharing arrangements, in which fees for plan services are indirectly charged to the plan through an outside entity. For example, in comparing survey responses to annual plan investment reports, we found that a plan with about $6 million in assets unknowingly paid about $5,000 in 12b–1 fees and other revenue sharing fees—a type of revenue sharing fee used to pay commissions to brokers, advertising and other costs of promoting a fund to investors, and various other marketing and distribution services. Moreover, plan sponsors that were aware of revenue sharing arrangements may not have fully understood the impact of these arrangements on plan services and plan fees, and therefore likely paid higher fees than they reported on our survey. For example, a plan with 65 participants and about $5.8 million in plan assets reported that the company did not pay anything for recordkeeping and administrative fees, though the fee report the sponsor provided indicated that these fees in total were about $10,700—about $5,900 was invoiced to the company and roughly $4,800 was paid to the provider from revenue sharing fees collected from participants' asset accounts. Failing to understand these arrangements can have adverse effects on the plan sponsor and participants.[35]

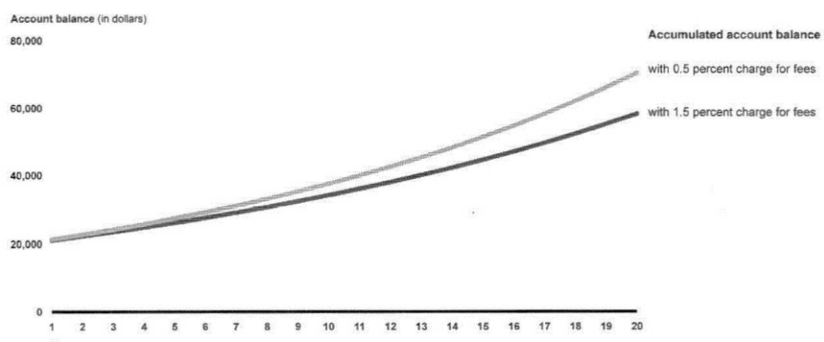
[35] A short video illustrating a hypothetical example of how revenue sharing arrangements can work and how the fees for services change over time under such an arrangement is available at *http://www.gao.gov/products/GAO–12–325*.

Small plan sponsors may also not be aware of others fees that participants are paying, such as wrap fees associated with group annuity contracts. These contracts are products that place a "wrapper" of benefits, namely a guaranteed lifetime annuity income or a minimum death benefit, around a bundle of investments that are similar to mutual funds—called separate accounts or subaccounts. Some service providers we met with said that plan sponsors often do not know that they are invested in group variable annuities and are unaware of the associated fees. These wrap fees include administrative fees and a mortality and expense risk charge, which is typically in the range of 1.25 percent of assets per year.[36]

Finally, small plan sponsors may not be aware that their participants are paying potentially significant transaction costs (also known as trading costs). These costs are commonly paid for indirectly by plan participants and typically include commissions incurred when an investment manager buys and sells securities within a particular investment vehicle.[37] While transaction costs are common among mutual funds, and more than 80 percent of 401(k) plans in our survey offer mutual funds, sponsors of an estimated 48 percent of plans did not know if their plans incurred transaction costs through the deduction from participants' returns on investments. We previously reported that the transaction cost for an investment option was as high as 2.72 percent.[38]

Our work demonstrates the need for plan sponsors, particularly small sponsors, to understand plan fees in order to help participants secure adequate retirement savings. Any fees paid by participants, even a seemingly small amount, such as a 1 percent annual fee, can significantly reduce retirement savings over time, as shown in Figure 3.

Figure 3: Effect of 1-Percentage Point in Higher Annual Fees on a $20,000 DC Plan Balance Invested over 20 Years



Source: GAO analysis.

In our April 2012 report, we have made a number of recommendations to help small and large plan sponsors better understand and monitor fees.[39] Specifically, we recommended that Labor develop and implement outreach and education initiatives that actively engage sponsors and we recommended enhancing online access to available plan fee information. Labor generally agreed with these recommendations. We will continue to monitor Labor's actions to address these recommendations.

Little Information Available About Current MEPs and Their Potential to Increase Small Business Sponsorship

As we reported in September 2012, little is known about the employers that participate in MEPs, or even the number of MEPs by type, in part because the Federal

[36] These fees can be significant and plan sponsors are likely contracting with providers that charge higher fee rates without knowing the benefits for which they and their participants are paying. Moreover, without knowing if their plan is a group annuity contract, plan sponsors cannot adequately assess whether the benefits tied to that product are worth the associated fees.

[37] There are also "transaction costs" associated with plan participant actions, such as withdrawals and taking a loan from their 401(k) plan accounts; however, this definition of transaction costs differs from the types of transactions referred to in this testimony.

[38] Our analysis of transaction costs was limited to 83 plans; see GAO–12–325 for additional details about this analysis.

[39] GAO–12–325.

Government no longer collects these data.[40] As of 2009, the most recent data available for our September 2012 report, MEPs represented only a small portion of the pension universe.[41] Specifically, DB MEPs represented 0.7 percent of all DB plans, about 6.0 percent of all DB assets and 5.0 percent of all DB participants. DC MEPs represented about the same percentage of all DC plans, assets and participants. In our September 2012 report, we found smaller employers in MEPs were mainly participating in association-sponsored MEPs.[42] Two associations told us their participating employers averaged between 20 and 60 employees. However, one MEP sponsored by a PEO[43] reported that the typical participating employer in its plan was small as well. In particular, little data exist on the current number of PEO or open MEP plan types,[44] their asset size, the number of participants or the participating employers. Relative to other MEP types, PEO and open MEPs are the newest, and may be the only types actively marketing their MEPs to participating employers.[45]

MEPs have been suggested by PEO and open MEP representatives as a viable way for small employers to reduce their administrative responsibility for their pension plans. Several MEP representatives said MEP administrators can complete the recordkeeping and the annual testing, and can submit required filings such as a single Form 5500 for the MEP on behalf of all the participating employers. Furthermore, employees can more easily move among employers in the plan. For example, in a DB MEP sponsored by an association, as long as a participant remains an employee of an employer within the association, participants can change employers and continue earning vesting service credit in the same plan. A small employer sponsoring a single employer plan can also contract with a service provider to perform administrative functions, but a couple of interviewees said employers not already offering plans might find it easier and faster to join a MEP than to create their own single employer plan. MEPs have also been suggested by some as a possible means to lower the costs of plan sponsorship, since participating employers can pool assets to obtain lower pricing available to larger plans. One expert we spoke with said that certain association plans have been very effective at offering efficient, cost-effective retirement options for their members. Furthermore, a couple of interviewees said MEPs may also reduce costs for employers since they will not need to spend money to create an initial plan document, as they would in establishing a new single-employer plan.

As we found in September 2012, another possible benefit of MEPs, according to some MEP marketing material, is reducing participating employers' fiduciary liability since the MEP administrator takes on some fiduciary duties.[46] However, it is not clear how much relief from fiduciary liability a MEP can provide to participating employers, and it is not clear that such relief is unique to MEPs. For example, small employers may also be able to receive a similar degree of reduced fiduciary liability by using a service provider to administer the employer's own plan. Because small employers may not be familiar with how to manage a plan, reduced fiduciary liability may be an attractive feature for them, and, in our March 2012 small employer report,[47] small employers identified possible fiduciary responsibility as a barrier to sponsoring a pension plan. However, while MEP representatives and MEP marketing materials sometimes stated otherwise, participating employers retain some fiduciary responsibility, according to Labor officials. At a minimum, participating employers must still select a MEP to join and monitor a plan's investments and fees, which Labor considers a fiduciary function.

Overall, no consensus existed among MEP representatives and pension experts on the potential for MEPs to substantially expand coverage. Large associations can pro-

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[40] GAO–12–665.

[41] While the Federal Government stopped collecting data on MEP participating employers in 2005, the most recent Form 5500 plan-level data on MEPs was from 2009.

[42] GAO–12–665.

[43] A PEO is a firm that provides payroll and other human resources services to clients.

[44] The key differences between PEO MEPs and open MEPs appear to be that open MEPs do not (1) offer payroll management or other administrative services PEOs typically offer, or (2) purport to be an employer of plan participants. Employers in open MEPs are related solely by their participation in the MEP.

[45] Key public data on participating employers have not been collected since 2004. Additionally participating employer information alone does not identify sponsor types or specific employer relationships that could indicate whether the MEP is sponsored by, for example, a large corporation, PEO, or association. According to officials we interviewed, the information that was collected in 2004 and prior was also not particularly useful because it was not required on an annual schedule for all employers—and the information that was collected was not particularly direct or timely. For our September 2012 report, GAO–12–665, we were able to obtain such information by interviewing plan representatives.

[46] GAO–12–665.

[47] GAO–12–326.

vide the option of joining a MEP to their members. That option is unavailable to small employers not part of a membership organization looking out for their interests. The extent to which small employers can join a MEP may depend on whether a MEP is actively marketed and sold, since one pension expert observed that small employers do not extensively research pension plans or actively seek them out. Additionally, employers who choose to become part of a MEP for the first time may already have been providing a plan for their employees. While a couple of the MEP representatives we spoke with specifically targeted employers without plans, several targeted businesses with existing plans.

From Labor's perspective, their primary regulatory concern centers on one type of MEP, the open MEP. During our review for our September 2012 report, Labor issued an advisory opinion stating that one particular open MEP did not constitute a pension plan under ERISA because it was not established or maintained by an employer or an employee organization.[48] Labor determined that, in the case of this MEP, participating employers did not constitute a bona fide employer group or association, sufficient to be considered an employer sponsoring the arrangement, because, among other things, they did not exercise sufficient control over the plan.[49] As a consequence of this guidance, the participating employers in that open MEP were instead determined to each be the sponsors of their own, individual plans. Association MEP representatives told us Labor's guidance had no affect on their plans.[50]

As a practical matter, Labor's ruling is being treated by many as meaning that individual participating employers in an open MEP have to comply with any reporting, auditing and bonding requirements on an individual rather than aggregate basis. In our September 2012 report, we noted that a number of compliance-related questions were left unanswered for open MEPs.[51] Additionally, we noted that, for purposes of preferential tax treatment, IRS might still consider an open MEP to be one plan rather than a series of individual plans. In an effort to remove confusion for plan sponsors, we recommended Labor and IRS coordinate their interpretations and develop compliance-related guidance. Labor and IRS generally agreed with our recommendations on coordination.[52]

Labor's expectation is that the recently issued opinions on open MEPs will serve as guidance to the pension industry at large. However, despite the ruling on open MEPs from Labor, pension experts and MEP representatives told us that broader policy questions remain. The opinion did not provide Labor's view on the potential of open MEPs to lower plan costs or expand coverage, but we were told by MEP representatives and pension experts that open MEPs will continue to receive the attention of policymakers for that reason. At this time no one knows for certain how many open MEPs there are, who is in them, or how they may affect future pension coverage. Pension experts cautioned that any legislative change allowing certain open MEPs should ensure that there are appropriate safeguards to protect plan participants.

Labor officials said the potential for inadequate employer oversight of a MEP is greater than for other pension arrangements because employers pass along so much responsibility to the entity controlling the MEP. Labor officials noted that potential

[48] An advisory opinion, which is limited to the facts in the opinion, can be relied upon, as a legal matter, only by the parties in the opinion. However, these opinions serve as guidance to others on what arrangements are considered employee benefit plans under ERISA.

[49] Dept. of Labor Advisory. Op 2012–04A. On both MEWAs (Multiple Employer Welfare Arrangements), arrangements providing welfare benefits such as health coverage and MEPs, Labor has held that multiple employers may maintain a single plan through a bona fide employer group or association of employers. However, Labor has been careful to define the nature of such an association in advisory opinions. Labor's advisory opinions on MEWAs may have been prompted by abuses by their promoters. When State insurance regulators found such practices violated their insurance laws, MEWAs claimed to be ERISA-covered plans preempted from State regulation. According to a Labor official, the MEWAs that failed to maintain adequate funds to pay promised benefits were often comprised of otherwise unrelated employers. Labor is still confronting challenges stemming from abuses of participants. For additional details, see GAO–12–665.

[50] The PEO representatives we interviewed said their PEOs operated under what they referred to as a "coemployer" contract. We did not find coemployer defined in Federal statute. Because the term PEO is not well-defined either, and the actual services are contractually determined, some refer to certain PEO practices as "employee leasing" or "payrolling," which involves providing administrative or financial services to employers, rather than serving as an employer in the sense of hiring or supervising workers. According to Labor officials, a PEO does not represent a bona fide association but establishes an employer relationship with the employees of its clients through the services it offers them.

[51] GAO–12–665.

[52] Specifically, Labor and IRS officials said they will amend their coordination agreement if compliance issues become more apparent.

abuses might include layering fees, misusing assets, or falsifying benefit statements.[53] One pension expert agreed that there is potential for MEPs to charge excess fees without the enrolled employer being aware. While Labor officials acknowledged that single employer plans could be subject to similar abuses, they cautioned that the way a MEP is structured and operated could make it particularly susceptible to abuses.[54] For this reason, the structure of a particular MEP can be important. Representatives of MEPs maintained by associations we interviewed said they had an appointed board made up of association members who served as the named fiduciaries of the plan. Most of these associations required board members to also participate in the MEP. However, the extent to which open MEPs have or would have such structures in place is unclear. Given the limited knowledge some plan sponsors have of the fees they pay and their fiduciary responsibilities, it would appear that some such governance structure or related safeguards is warranted to protect employer and participant interests.

Labor's lack of data to identify different MEP sponsor types or any employers participating in MEPs limits the agency's ability to protect MEP employers and participants. To ensure Labor has information needed to oversee MEPs, in September 2012, we recommended that Labor gather additional information about the employers participating in MEPs, potentially through the Form 5500, which is the primary source of pension plan information for government oversight activities.[55] Labor officials said the number of participating employers or the names of participating employers could be useful oversight information. The agencies generally agreed with our recommendation on gathering additional MEP-related information and said they will consider MEP-related changes to the Form 5500 as part of their regular evaluations. We consider this an important first step, and await any proposed or scheduled changes to data collection.

CONCLUDING OBSERVATIONS

For workers at small employers, building an adequate level of income for retirement is becoming increasingly challenging. Particularly for small employers, the low level of plan sponsorship means that many of their workers may enter retirement with little or no income outside of Social Security. Small employers also face some greater challenges to sponsorship than larger employers and they often have less time, fewer resources and personnel to handle them. The potential advantages of multiple employer plan design are appealing in this context, however, current data and information, as well as other safeguards, will be necessary to ensure that small employer interests are protected and promises to participants are not broken.

Chairman Harkin, Ranking Member Alexander, and members of the committee, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

For further information about this testimony, please contact Charles A. Jeszeck at (202) 512–7215 or *jeszeckc@gao.gov*.

The CHAIRMAN. Thank you very much, Dr. Jeszeck.

Mr. Koetje, welcome. I read all of your statements last evening and I was quite impressed by the plans that you offer.

Please proceed.

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[53] Under ERISA, an employee pension plan can only be sponsored by an employer, an employee organization, or both. A group or association can be considered an employer under ERISA if Labor determines the association is bona fide. Under its advisory opinions, Labor has long looked at certain factors, such as pre-existing relationships among employers, to determine if a group of employers constitutes a bona fide association of employers that may, therefore, sponsor a single employer plan under Title I of ERISA. Pension and Welfare Benefits Admin., U.S. Dept. of Labor, Advisory Opinion 83–15A, 1983 ERISA Lexis 43. Because by definition an open MEP is open for any employer to join, without pre-existing relationships or other factors necessary to establish a bona fide association, it is not considered an employer under ERISA and cannot maintain an employee pension benefit plan.

[54] On April 15, 2013, a former trustee and fiduciary of a number of MEPs was convicted of 17 counts of wire fraud by a Federal jury in Boise, ID. The jury heard evidence that the individual misappropriated plan assets for his personal use. According to Labor officials, sentencing is scheduled for July 31, 2013. Labor officials told us that last year, they obtained the appointment of an independent fiduciary who is currently managing the remaining plan assets and making distributions. They stated further that the department is monitoring the progress of the criminal case, as well as the efforts of the independent fiduciary, who they report is actively attempting to recover additional assets.

[55] GAO–12–665.

STATEMENT OF DAVID J. KOETJE, PRESIDENT AND CEO, CHRISTIAN SCHOOLS INTERNATIONAL, GRAND RAPIDS, MI

Mr. KOETJE. Thank you. Chairman Harkin, Ranking Member Alexander, committee members, and staff of committee members.

I am Dave Koetje, president and CEO of Christian Schools International. Christian Schools International was the first national organization to serve Christian schools. From eight charter members in 1920, we have grown into a 400-school membership organization. Today, all of our programs and services are designed to reinforce school strength, stimulate teacher creativity, and nurture institutional redesign in Christian schools across the country.

Our twin goals of advancing and supporting Christian education mean that we are constantly listening to our members, discerning their needs, and striving to support the important work they do in our schools.

I am honored to testify today regarding our voluntary retirement program, and how this defined benefit multiple-employer plan remains a critical tool for our members to recruit and retain employees.

We are repeatedly told by plan participants of the value they place in the long-term security provided by the Christian Schools International plan. I am especially honored to tell how the bill Chairman Harkin and Senators Roberts, Murray, Murkowski, and Franken introduced today, the Cooperative and Small Employer Charity Pension Flexibility Act of 2013, will enable our members to retain our plan by permanently recognizing the unique nature of our Multiple Employer Plan and its lack of risk to the PBGC.

The CSI plan plays a vital role in ensuring that our teachers and administrators have a secure retirement that enables them to live with dignity in the communities they have served. Our plan is part of our members' core business strategy to recruit, retain, and reward long service employees with a secure, financial retirement.

I cannot overemphasize how important this plan is to the men and women who work in our schools, nor can I overemphasize the opportunity that this committee has to help our employees by cosponsoring, and approving, the Harkin-Roberts pension bill.

Rural, suburban, urban, and central city schools are all part of the Christian Schools International mix. Economic and cultural diversity characterize the student bodies of our schools. Our schools service students regardless of their cognitive package or developmental complexities.

Excellence is embedded in the learning culture of our schools. Teachers prepare students to connect learning to the busy-ness of life and to the messiness of life. They do this because it is their passion that their graduates enter this world equipped to straighten that which is crooked and to heal that which brings pain.

Excellence for us is Thomas Jahl, a Princeton graduate, who teaches at Cono Christian School in Cono, IA. A school designed especially for disadvantaged students; students that suffer through trauma, and neglect, and family disruption. Thomas knows the power a school has when the school is intentional about creating a community where healing can take place. He and his colleagues make Cono Christian a safe place where in all the complexities of life, the heart of a child is given voice. A place where spiritual growth takes place. A place where children turn into adults. A place where learning and maturity flourish.

Excellence to us is Shaun La Rose, an art teacher, at Chattanooga Christian School in Chattanooga, TN where what students learn and do needs to connect to the world that is real. Mr. La Rose, therefore, had his high school art students create a mural in a section of Chattanooga that, by any standard, is hungry for revitalization. Mr. La Rose took the time to do this because he and his students know that visible, quality art on display in decaying neighborhoods provide small, but powerful stimulation for constructive neighborhood revitalization.

Whether it is Iowa, Tennessee, or any of the 22 States and U.S. territories including here in DC, we have schools that tell these stories over and over again. Today, there is not a profession that is not dotted with one of our graduates.

We are proud of our teachers and it is those teachers that we refer to today. We are proud that our schools offer a comprehensive guaranteed retirement benefit to over 11,000 employees and retirees through our Multiple Employer defined benefit pension plan.

Our 300 U.S. member schools have as few as 5 employees with a median of 25 employees. The CSI plan provides our members with a convenient and affordable mechanism to pool resources, maximize group purchasing power, and leverage economies of scale that would otherwise not be unavailable to small organizations like private and parochial schools. That is why we created the plan in 1943 that was recognized that no one school can do independently what we could do together.

The plan is funded by contributions that can be made in two ways. One way is for the school to contribute a set percent of pay for each employee and that same amount is contributed by the employee. The second way is for the school to make the total contribution. Most importantly, both formulas treat all employees at each school the same. Since the benefits are based on contribution and the same percent of pay is connected to all employees.

PPA reflecting the core, fundamental principle that a promise made is a promise kept. We strongly support these principles which are equally reflected in the Harkin-Roberts bill. However, in PPA itself, Congress recognized its new pension funding rules that are especially designed to protect the PBGC in case a single employer maintaining a plan goes bankrupt. We are not appropriate for rural cooperative multiple employer defined benefit plans since, by design, these plans pose virtually no risk of default to PBGC. Accordingly, Congress granted these plans a temporary exemption to stay under the pre-PPA rules. Congress later extended the treatment to eligible charities like Christian Schools International, but this treatment ends in 2017.

The Harkin-Roberts bill would solve the challenges I have described by allowing these cooperative and small employer charity Multiple Employer Plans that are already temporarily excluded from PPA, to choose between either staying excluded from PPA permanently, as Christian Schools International wants to do, or jumping into PPA in 2014 if, due to unusual circumstances, that is helpful.

In reality, the Harkin-Roberts bill tweaks PPA to fulfill its original intent that it should not apply to plans like ours.

We hope to continue our work with the committee to address the challenges. And I look forward to responding to your questions.

[The prepared statement of Mr. Koetje follows:]

PREPARED STATEMENT OF DAVE J. KOETJE

SUMMARY

Christian Schools International (CSI) was the first national organization to serve Christian schools. From eight charter members in 1920, we have grown into a 400-school organization.

Who We Serve—Rural, suburban, urban, and central city schools are all part of the CSI mix. Economic and cultural diversity characterize the student bodies of our schools. Our schools service students regardless of their cognitive package or developmental complexities.

Our Employees—Excellence is imbedded in the learning cultures of our schools. Our teachers prepare students to connect learning to the messiness of life. Our teachers do this because it is their passion that our graduates enter this world equipped to straighten that which is crooked and to heal that which brings pain. Our 300 U.S. member schools have as few as 5 employees, with a median of 25 employees.

The CSI Plan—CSI is proud that many of its members offer comprehensive, guaranteed retirement benefits to over 11,000 employees and retirees through our "multiple-employer" defined-benefit pension plan (under Sec. 413(c) of the Code). The CSI Plan provides members with a convenient and affordable mechanism to pool resources, maximize group purchasing power, and leverage economies of scale that would otherwise be unavailable to small organizations like us. That is why CSI created the plan in 1943; no one school could do independently what we could establish together. It is *not* administered by a collective bargaining agreement—which differentiates us from union multi-employer plans, aka Taft/Hartley plans. The CSI Plan is a critical tool for our members to recruit and retain employees who can often earn higher wages at other institutions, but value the long-term security provided by the Plan.

PPA Rules Don't Fit Our Plan Design—PPA reflected the core, fundamental principle that a promise made is a promise kept. We strongly support these principles. However, in PPA itself, Congress recognized its new pension funding rules—that are specifically designed to protect the PBGC in case a single employer maintaining a plan goes bankrupt—were not appropriate for rural cooperative "multiple-employer" defined benefit plans, since by design these plans pose *virtually no risk of default to PBGC*. Accordingly, Congress granted these plans a temporary exemption to stay under the pre-PPA rules. (*See PPA Sec. 104*). Congress later extended this treatment to eligible charities like CSI (*See Sec. 202, Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010; Pub. L. No 111–192*). But this treatment ends in 2017.

Harkin/Roberts Recognizes CSI Plan's Unique Plan Design—The bill Chairman Harkin and Senator Roberts introduced today, the "Cooperative and Small Employer Charity Pension Flexibility Act of 2013" solves these challenges, enables our members to retain our plan, and permanently recognizes the unique nature of our plan and its lack of risk to the PBGC. It allows plans that are *already* temporarily excluded from PPA to choose between (1) staying excluded from PPA permanently (as CSI wants to do) or (2) jumping into PPA in 2014 if, due to unusual circumstances, that is helpful. In reality, the Harkin/Roberts bill "tweaks" PPA to fulfill its original intent—that it should not apply to plans like ours.

DB Plan Works for CSI, But Financial Challenges are Growing—Congress should continually examine new and innovative policies to address the challenges of administering and participating in a defined-benefit pension plan, particularly "multiple-employer" plans like CSI's, so they remain a viable vehicle in the future for small employers trying to do the right thing: provide meaningful retirement benefits to their faithful employees. The best way to achieve this goal today is for each of you to **co-sponsor and approve the Harkin/Roberts CSEC Pension Bill as soon as possible**.

Chairman Harkin, Ranking Member Alexander, and all committee members, I am Dave Koetje, president and CEO of Christian Schools International (CSI). CSI was the first national organization to serve Christian schools. From eight charter members in 1920, we have grown into a 400-school membership organization serving high-quality Christian schools, with a primary emphasis on North American Christian schools.

CSI's initial programs were designed to advance the professional status of teachers and principals. In 1943 we established what is now known as an ERISA defined benefit "multiple-employer" pension plan, for any of our schools that choose to participate. By the 1950s we were publishing textbooks and other instructional materials. Today all of our programs and services are designed to reinforce strength, stimulate creativity, and nurture institutional redesign in Christian schools across the country.

With a history of steady growth, solid leadership, and exceptional service, CSI looks optimistically toward its future and the future of Christian schooling. Our twin goals of advancing and supporting Christian education mean that we are constantly listening to our members, discerning their needs, and striving to support the important work they do in their schools.

I am honored to testify today regarding our voluntary retirement program and how this defined-benefit "multiple-employer" plan remains a critical tool for our members to recruit and retain employees who can often earn higher wages at other institutions, but value the long-term security provided by the CSI Plan. I am especially honored to tell you how the bill Chairman Harkin and Senator Roberts introduced today, the "Cooperative and Small Employer Charity Pension Flexibility Act of 2013" (CSEC) will enable our members to retain our plan by permanently recognizing the unique nature of our multiple-employer plan and its lack of risk to the Pension Benefit Guaranty Corporation (PBGC).

The CSI Plan plays a vital role in ensuring that our teachers and administrators have a secure retirement that enables them to live with dignity in the communities they served. Today, I will discuss who we serve, what we do, and why maintaining our plan is part of our members' core business strategy to recruit, retain, and reward long-service employees with a secure financial retirement. But first I want to emphasize up front that **this committee has the opportunity to help our employees by co-sponsoring and approving the Harkin/Roberts Pension Bill.** I urge you to do so as soon as possible.

WHO WE SERVE

Rural, suburban, urban, and central city schools are all part of the CSI mix. Economic and cultural diversity characterize the student bodies of our schools. Our schools service students regardless of their cognitive package or developmental complexities.

OUR EMPLOYEES

Excellence is imbedded in the learning cultures of our schools. In our schools teachers prepare students to connect learning to the messiness of life. Our teachers do this because it is their passion that our graduates enter this world equipped to straighten that which is crooked and to heal that which brings pain.

It's Thomas Jahl, a Princeton graduate who teaches at Cono Christian School in Cono, IA, working in a school designed especially for students who come from hard places—children that suffer through trauma, neglect, or family disruption. Mr. Jahl is at this school because he knows the power a school has when the school is intentional about creating a community where healing can take place. He teaches at Cono Christian because this Christian school is a safe place where the heart of the child is given voice. A place where spiritual growth takes place. A place where learning and maturity flourish.

It's Shaun La Rose, for example, an art teacher at Chattanooga Christian School in Chattanooga, TN, who had his high school art students create a mural in a section of Chattanooga that is hungry for revitalization because he believes quality art that is visible in decaying neighborhoods provides stimulation for neighborhood revitalization.

Whether it's Iowa, Tennessee or any of the 22 States and U.S. Territories—including here in DC—where our schools are located, I could go on for hours with stories like these.

CSI ROLE IN OUR COMMUNITIES

Our role in communities around the country is not insignificant. CSI represents $800,000,000 in education costs paid for by the private sector. We represent 10,000 wage earners representing a combined $450,000,000 in income. Our high school graduation rates exceed 95 percent—a statistic of significance when one recognizes the wide diversity of students that we serve. There is not a profession that is not dotted with our graduates—graduates who are motivated by a passion to fix and to heal. Graduates who have been shaped by Christian school teachers, the teachers we are talking about this morning.

THE CSI PLAN

CSI is proud that many of its members offer comprehensive retirement benefits to their committed employees through a traditional defined-benefit plan, a "multiple-employer" retirement plan (under § 413(c) of the Internal Revenue Code) that is operated to maximize retirement savings for employees, retirees, and their families and provide each employee the financial means to enjoy a comfortable and secure retirement.[1] It is *not* administered by a collective bargaining agreement—which differentiates us from union multi-employer plans, aka Taft/Hartley plans.

The CSI Plan (the "plan") provides comprehensive, guaranteed retirement benefits to over 11,000 employees and retirees throughout the United States. Our 300 U.S. member schools have as few as 5 employees, with a median of 25 employees. Our multiple-employer defined-benefit pension plan provides our members with a convenient and affordable mechanism to pool resources, maximize group purchasing power, and leverage economies of scale that would otherwise be unavailable to small employers like private and parochial schools. In fact, that is why CSI created the plan in 1943; it was recognized that no one school could do independently what we could establish together.

HOW THE CSI PLAN WORKS

The plan is funded by contributions that can be made in two ways. One way is for the school to contribute a set percent of pay for each employee and that same amount is contributed by each employee. A second way is for the school to make the total contribution. The pension benefit is based on the contributions made for/by an employee. For contributions made before September 1, 2005, the employee receives 30 cents annually for every dollar contributed. For contributions made on and after September 1, 2005, the employee receives 25 cents annually for every dollar contributed.

This formula treats all employees at each school the same since the benefits are based on contributions and the same percent of pay is contributed for all employees of the school—from principal to teacher's assistant to janitor.

PPA RULES DON'T FIT OUR PLAN DESIGN

The Pension Protection Act of 2006 (PPA) reflected the core, fundamental principle that a promise made is a promise kept. That is, it sought to strengthen the private retirement plan system with substantially increased funding requirements and improved disclosure to participants so that long service employees were more able to depend on a secure, financial retirement. We strongly support these principles, and believe these principles are equally reflected in the Harkin/Roberts bill.

However, PPA's single-employer plan rules are specifically designed to protect the PBGC in case a single employer maintaining a plan goes bankrupt. In the case of a multiple-employer defined benefit plan maintained by charities or rural cooperatives ("CSECs," as explained below), the plan can continue to be maintained despite the bankruptcy of one or more of the participating employers. Thus, the rationale for the PPA single-employer plan funding rules does not apply to CSECs, since by design these plans pose *virtually no risk of default to PBGC*.

In PPA itself, Congress recognized its new pension funding rules were not appropriate for rural cooperative multiple-employer defined benefit plans, Accordingly Congress granted these plans a temporary exemption to stay under the pre-PPA rules (*See PPA Sec. 104*). Congress later extended this treatment to eligible charities

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[1] This permits CSI members to pool experience and expenses while being controlled by a single Plan Document with limited optional plan features for each employer. The Plan annually files one Form 5500 with the U.S. Department of Labor. Each participating employer must execute an adoption agreement that binds them to the plan terms. For this reason we operate as a type of single-employer plan for some legal and administrative requirements, but each participating employer must meet other requirements, such as IRS nondiscrimination requirements, individually. Contributions to the Plan are pooled in a single trust and (unlike Master Prototype Plans) are available to pay benefits to employees of any of the participating organizations. Also, for funding purposes, the Plan is treated as one plan, rather than as a collection of single-employer plans, pursuant to Code section 413(c)(4)(B). This funding regime is very important to us, as it allows us to deal with funding issues with one overall approach, instead of some hundreds of different approaches.

like CSI (*See Sec. 202, Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010; Pub. L. No 111–192*).

There are, however, two serious problems. First, the exemption runs out in 2017, at which time CSECs would be subjected to single-employer plan rules not designed for CSECs. Second, as soon as next year, elements of the pre-PPA funding rules, which currently apply to CSECs, could become very problematic, because certain elements of those pre-PPA funding rules were also designed to protect the PBGC with respect to single-employer plans.

Application of the inappropriate single-employer plan funding rules is so onerous for CSECs, like CSI's plan, that they can greatly interfere with our ability to fulfill our charitable and non-profit missions. The single-employer plan funding rules would cause our participating member schools to have to divert assets from serving their missions in order to overfund our plan causing unacceptable and unmanageable financial strain. This simply makes no sense.

HARKIN/ROBERTS RECOGNIZES CSI PLAN'S UNIQUE PLAN DESIGN

The Harkin/Roberts bill would solve the above challenges by allowing these Cooperative and Small Employer Charity (CSEC) "multiple-employer" plans that are *already* temporarily excluded from PPA to choose between (1) staying excluded from PPA permanently (as CSI wants to do) or (2) jumping into PPA in 2014 if, due to unusual circumstances, that is helpful. In addition, the bill would modify the pre-PPA rules so that they fit the unique features of CSECs. In reality, the Harkin/Roberts bill "tweaks" PPA to fulfill its original intent—that it should not apply to CSEC plans.

Harkin/Roberts also resolves the inequity of plans that, by design, pose virtually no risk of default to the PBGC, by making scheduled increases in PBGC premiums inapplicable to CSECs. Recent increases to PBGC premiums were applied without consideration of the unique structure and low-risk profile of CSEC plans and without a thorough examination of the impact such increases would have on CSEC participants and beneficiaries. Harkin/Roberts would freeze current premium rates at 2013 levels—preventing scheduled increases—while the PBGC conducts a study to determine what CSEC premium rates should be. PBGC would then make recommendations to Congress. If Congress chooses not to act, premium rates would remain at 2013 levels.

According to publicly disclosed data compiled by PBGC, only 33 multiple-employer plans (covering just over 127,000 active employees) are currently exempt from PPA. Harkin/Roberts is narrowly targeted to only impact these existing plans.

ECONOMIC DOWNTURN IMPACT ON THE PLAN AND EMPLOYEES

In both good times and in bad times, CSI members have kept their promises to their employees and retirees, which has not always been easy. Congress specifically recognized the challenges faced by charities like CSI by granting a temporary exemption to stay under the pre-PPA rules in 2010. We believe providing employees with a secure retirement is critical to reward their commitment to providing our children with a bright future, and the best way to do that is to pass the Harkin/Roberts bill.

DB PLANS WORK FOR CSI, BUT FINANCIAL CHALLENGES ARE GROWING

We are looking toward the future, working with our members to maintain our plan going forward. Cost uncertainty is anathema to any entity, let alone a charity that sponsors an increasingly complex and expensive defined-benefit plan.

CSI members sometimes ask us: "If everyone else is cutting their defined benefit plans, why aren't we?" Thankfully for us that has not happened, largely due to the unique multiple-employer plan design that reduces complexity and maximizes group purchasing power that would otherwise be unavailable while allowing schools to tailor benefits to meet their needs. Congress should continually examine new and innovative policies to encourage current plan sponsors to remain in the game and should reject policies that leave companies no choice but to abandon the system.

CONCLUSION

CSI strongly believes that any reforms to the retirement savings system should continue to encourage workers to provide for their own economic security, while encouraging employers to continue sponsoring benefit plans. We hope to continue our work with the committee to address the challenges of administering and participating in a defined-benefit pension plan, particularly multiple-employer plans like CSI's, so they remain a viable vehicle in the future for organizations trying to do the right thing: provide meaningful retirement benefits to their faithful employees. The best way to achieve this goal today is for each of you to **co-sponsor and approve the Harkin/Roberts Pension bill as soon as possible.** I look forward to answering your questions.

The CHAIRMAN. Thank you very much, Mr. Koetje.

Now, we will turn to Mr. Kais.

STATEMENT OF JIM KAIS, SENIOR VICE PRESIDENT AND NATIONAL PRACTICE LEADER, SPECIAL MARKETS, TRANSAMERICA RETIREMENT SOLUTIONS, RINGOES, NJ

Mr. KAIS. Thank you, Chairman Harkin, Senator Alexander, members of the committee and staff.

Transamerica Retirement Solutions provides services for over 21,000 employer retirement savings plans with over $102 billion in plan assets. Specifically in the small employer market, Transamerica services over 18,500 plans with over 800,000 participants and $24 billion in assets.

Our company employs approximately 11,000 individuals in the United States. Approximately 3,800 of those work in the State of Iowa.

I will focus this testimony on the particular challenges employers face in providing retirement plans to their employees. I will also discuss a new Transamerica plan or platform, a new approach that we believe can help very much to improve small business coverage.

According to the U.S. Small Business Administration, small businesses employ over 49 percent of the U.S. workforce. Therefore, expanding retirement plan coverage amongst small businesses is critical to enhancing American's retirement security.

Employers play a vital role in helping workers save for retirement, and Americans are far more likely to save for retirement by participating in a company-sponsored retirement plan versus contributing to an individual IRA or other savings vehicles.

According to research from the Transamerica Center of Retirement Studies, approximately 77 percent of workers whose employers offered a 401(k) plan or similar arrangement participated in that plan. By comparison, the Investment Company Institute found only 16 percent of U.S. households contributed to an IRA in 2011.

There are several principles that should be followed in developing proposals to increase coverage and enhance benefits.

No. 1, we must acknowledge and preserve employers' central role in effectively helping their employees save for their own secure retirement. Employer-sponsored plans typically provide employees with investment education, the potential for employer match, fiduciary oversight, as well as the convenience of automatic payroll deduction.

Employers and plan service providers working together have made huge strides forward by constantly seeking improved plans and enhanced savings. Innovation such as auto-enrollment and target-based funds were products of these efforts. Investment education targeted to a particular workforce has vastly improved understanding of retirement issues and investment principles.

No. 2, in seeking solutions, we must take care to do no harm to the current system. The current employer plan system is a voluntary one which employers provide at a considerable cost and administrative burden, and with significant concern about fiduciary liability. Solutions should address these concerns and not add to them.

Any requirements adding further complexity and costs without any significant benefit to the employer plan or participant are likely to further tip that balance in favor of an employer deciding not to offer a plan.

No. 3, we need to focus reforms to improve the system and the retirement security outcomes of planned participants on the primary challenges that employers, especially small employers, face in offering retirement plans: cost, complexity, and concern about fiduciary liability.

I will highlight two solutions to address employer concerns that can be facilitated through additional reforms. First, small employers connected by a common interest are currently able to address costs and complexity challenges by joining together in a multiple employer plan. A multiple employer plan provides the employer the same flexible features and benefits of a traditional 401(k) plan, but spreads the cost and administrative complexity of administering a plan among all participating employers through the pooling of assets in one investment trust and retention of one or more providers to service the entire Multiple Employer Plan.

Reforms to protect employers from any fiduciary liability for the acts, or failure to act, of other employers participating in a Multiple Employer Plan, as well as proposals to reduce administrative complexity of Multiple Employer Plans should be encouraged.

Second, employers can help employees manage their investment risk and their retirement savings to last their lifetime through offering annuities both as a plan investment option and as a distribution option. Reforms to require the statement of an employee's account balance in the form of an annuity will increase the employee's awareness of the savings needed to provide for a guaranteed monthly income.

Similarly, reforms to limit employer's fiduciary liability for offering an annuity as a distribution option will facilitate the availability of products to help employees manage their savings and retirement to last their entire lifetime.

No. 4, we must acknowledge that there is no one solution to the coverage problem and room for continued innovation in industry should be allowed. The workforce retirement plan system complements the other two legs of the retirement security stool: Social Security and private savings. But no one leg can be fully expected to ensure the retirement security of all Americans.

The Retirement Plan Exchange is a new Transamerica private sector solution designed to help more small businesses offer workplace retirement plans to more employees, and to help employees save for retirement at higher rates. The Retirement Plan Exchange includes, within the current employer retirement plan system, many of the elements of Senator Harkin's USA Retirement Fund proposal including asset pooling, automatic enrollment, and escalation features, risk sharing, and enhanced coverage for more small businesses.

The Retirement Plan Exchange is a collection of single employer plans that builds on the cost of administrative benefits of a Multiple Employer Plan by providing employers the ability to enter into a pooled investment arrangement resulting in cost savings through economies of scale as the asset pool increases.

The pooled investment arrangement allows participant accounts for the various participating employers to be collectively invested in and through a Transamerica group annuity. These cost savings may be in the form of lower investment fees and expenses, as well as lower fees from the Exchange's service providers.

Fiduciary and administrative services such as a selection of investment fund lineup for the plan are outsourced to independent firms, a benefit that is typically reserved for larger corporations or businesses.

Like a Multiple Employer Plan, the Retirement Plan Exchange also allows a small business to save on administrative expenses. Most importantly, we believe as the Retirement Exchange will auto-enroll eligible workers at a 6 percent contribution rate with a 2 percent auto-increase each of the next 2 years.

In conclusion, TRS would like to commend Chairman Harkin and Ranking Member Alexander, and other members of the committee on their consideration of the important issue of employer plan coverage. We appreciate the opportunity to present our views today on the particular challenges faced by small businesses in offering plans and our suggested approach to solutions.

Thank you very much.

[The prepared statement of Mr. Kais follows:]

PREPARED STATEMENT OF JIM KAIS

Transamerica Retirement Solutions appreciates the opportunity to provide this written testimony in connection with the hearing of the U.S. Senate Committee on Health, Education, Labor, and Pensions (HELP) entitled "Pooled Retirement Plans: Closing the Retirement Plans Coverage Gap for Small Business." This testimony will discuss the role of small business in helping employees to save for retirement, principles for solutions to coverage, and innovative private sector solutions.

Transamerica Retirement Solutions Corporation ("TRS"), an affiliate of Transamerica Life Insurance Company and its affiliates, designs customized retirement plan solutions to meet the unique needs of small- to mid-sized businesses. TRS provides services for over 21,000 plans that collectively represent over $102 billion in plan assets as of December 31, 2012. Specifically, in the small employer market, TRS services over 18,500 plans with over 800,000 participants and $24.5 billion in assets. Transamerica Life Insurance Company and its affiliates focus on life insurance, pension, annuity, supplemental health, savings, and investment products. Transamerica has approximately 11,000 employees in the United States; approximately 3,800 of whom work in Iowa. The primary call center for employer plans that TRS administers is also located in Iowa.

TRS 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. Therefore, this testimony will focus on coverage in the small business market.

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

1. Employers have played a vital role in improving plans and enhancing benefits through innovations designed to help their employees. We need to preserve a central role for employers in the private retirement system.

2. The private retirement system has made great strides forward, and is continuing to improve. We should be careful not to do any harm to the wonderful progress that has been made.

3. We need to continue to improve the voluntary system by making it easier for 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 proposals to enhance coverage and benefits, such as proposals to expand the safe harbor for auto-enrollment,

and proposals to limit the liability of participating employers in a multiple employer plan from the wrongful acts of another participating employer.

4. Because there is not a single right way to enhance retirement security, we need to promote and encourage innovation. We at Transamerica can share an exciting story of a new approach that we believe can very much help to improve small business coverage.

Small business facts and employers' role in helping workers save for retirement. According to the U.S. Small Business Administration, small businesses (less than 500 employees) represent 99.7 percent of the total firms and 49.2 percent of the 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 (e.g., often investment education, the potential for employer contributions, and fiduciary oversight), combined with the employer match and the convenience of automatic payroll deduction, Americans are far more likely to save for retirement through participating in a company-sponsored retirement plan versus contributing to an individual IRA or other alternate savings structures. According to research from the Transamerica Center for Retirement Studies® (TCRS), a nonprofit private foundation, plan participation rates among workers who are offered a 401(k) or similar plan remained strong and steady at 77 percent between 2007 and 2012.[2] By comparison, the Investment Company Institute found that only 16 percent of U.S. households contributed to an IRA in 2011.[3] The role of employers in providing retirement savings plans to their employees has long been supported by public policy and the work of this and prior Congresses in providing tax incentives both for employers to sponsor retirement plans for their employees and for employees to accumulate long-term savings through those plans.

Despite the many difficult cost-cutting decisions faced by employers over the last 5 years, employer-sponsored defined contribution retirement plans have remained relatively intact. According to government data, between 2007 and 2010, the number of firms in the United States declined by 5.6 percent[4] yet the number of private defined contribution plans declined only 0.7 percent.[5] This strength in the defined contribution system can be further illustrated by the vast majority of employers (82 percent) who believe that these retirement benefits are important for attracting and retaining talent.[6]

Principles for Developing Solutions to Coverage. While coverage of workers in employer plans is very broad, the industry remains as concerned as policymakers that more can be done and continues to seek solutions to drive up coverage of workers in retirement plans. There are several principles that should be followed in developing proposals to increase coverage and enhance benefits:

1. *Acknowledge the vital role of employers in retirement savings*. We must acknowledge the vital role employers play in providing the structure and opportunity for workers to save for a secure retirement. Employers and their service providers, working together, have made huge strides forward by constantly seeking to improve plans and enhance savings. Innovations such as auto enrollment and auto escalation were products of these efforts. Although we have a long way to go, employers and their service providers have pioneered investment education approaches that have vastly improved understanding of retirement issues and investment principles. Target date funds are another product of this continual effort to find answers for retirement challenges. In addition, without employers, not only would there be far less innovation, but we would be reliant on individual savings, which on its own has proven to be far less effective in achieving retirement security.

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[1] U.S. Small Business Administration, Frequently Asked Questions, September 2012, *http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf*.

[2] Transamerica Center for Retirement Studies, Emerging from the Economic Storm: Retirement Plans in the United States, 2007–12, 2013. The Transamerica Center for Retirement Studies ("TCRS") is a nonprofit, private foundation. TCRS is funded by contributions from Transamerica Life Insurance Company and its affiliates and may receive funds from unaffiliated third parties. For more information about TCRS, please refer to *www.transamericacenter.org*.

[3] Investment Company Institute, The Role of IRAs in U.S. Households' Saving for Retirement, 2012.

[4] United States Census Bureau, Statistics of U.S. Businesses, 2007, 2010.

[5] U.S. Department of Labor, EBSA, Private Pension Plan Bulletin Historical Tables and Graphs, 2012.

[6] Transamerica Center for Retirement Studies, Emerging from the Economic Storm: Retirement Plans in the United States, 2007–12.

2. *Do no harm*. In seeking solutions, 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.

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.

New restrictions on benefits and contributions would also undermine the voluntary system by reducing the incentives for company decisionmakers to maintain a plan. 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.

Even some apparent simplifications can be very disruptive and harmful, and ironically can actually cause complexity. For example, proposals to consolidate 401(k), 403(b), and 457(b) plans would cause very significant complexities.

Thousands of governments, churches, colleges, schools, and charities, and their millions of employees would be forced to adjust to new unfamiliar rules and uncertainties, and likely endure burdensome transition rules. The end result would be plans that are not suited to these unique employers and workforces.

3. *Address obstacles to employers providing retirement plans*. Industry, employers and policymakers should continue to seek and find ways of enhancing the current system. Many excellent legislative and regulatory proposals 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. I would like to express my appreciation to members of this committee for their leadership in developing many of these proposals, which include:

a. *Facilitating electronic delivery of plan notices to participants.* The required use of paper raises costs, creates inefficiencies, and makes communication with participants far less effective.

b. *Permitting consolidation of plan notices.* It is critical that participants understand their rights and their opportunities. The provision of numerous redundant, complex and lengthy notices is severely counterproductive and leads to fewer participants reading important disclosures.

c. *Preventing plan leakage.* We need to enhance opportunities to keep plan assets in plans and IRAs, such as through improved rollover opportunities with respect to plan loans.

d. *Limiting plan sponsor liability issues.* Potential liabilities remain a major obstacle to broader plan coverage among small employers.

Proposals to expand the attractiveness of multiple employer plans (MEPs) as a cost-effective alternative to a stand-alone 401(k) plan for small employers, as well as proposals to increase participation of employees in employer plans and to reduce the employees' investment risk and risk of outliving his or her retirement savings deserve special mention.

Multiple Employer Plans. Under a multiple employer plan, many small businesses can join together to achieve economies of scale and advantages with respect to plan administration, making plans both more affordable and effectively managed. Proposals that protect employers from any fiduciary liability for the acts or failure to act of other employers participating in the MEP, as well as proposals to reduce administrative complexity of MEPs should be encouraged. TCRS' research found that many small companies that do not offer a 401(k) plan would be likely to consider joining a MEP (36 percent).[7]

Annuities: Managing retirement savings to last a lifetime. Proposals that help increase plan participants' awareness of amounts needed to fund their retirement, as well as that help participants both manage their investment risk and ensure their retirement savings will last their lifetime should also be encouraged. These proposals include requiring benefit statements to provide a participant's account balance in the form of a lifetime income stream as well as a lump sum, and facilitating the offering of in-plan annuities and annuities as a distribution option. Investment

[7] Source: Transamerica Center for Retirement Studies, 13th Annual Retirement Survey, 2012.

in an in-plan annuity will enable an employee to shift the investment risk and risk of outliving his or her retirement savings to the annuity provider.

Auto-enrollment: higher levels of default contribution rate. Proposals to increase auto enrollment will address employee inertia and help employees increase their retirement savings. In particular, we support proposals that increase the level of default contribution rates in the existing safe harbors. The current minimum default contribution rates in the safe harbor, ranging from 3 percent to 6 percent, send a powerful message that savings at those levels are sufficient to ensure a secure retirement. However, we know that this is not the case and we should work together on a more robust safe harbor with minimum default contribution rates as high as 10 percent without maximum limits on default contribution rates.

4. *Acknowledge that there is no silver bullet to the coverage problem; allow room for continued innovation in the industry*. We must acknowledge that there is no one solution to the coverage problem. The workforce retirement plans system complements the other two legs of the retirement security stool—Social Security and private savings, and no one leg can be expected to fully ensure the retirement security of all Americans. The employer plan system continues to be adopted by more employers and cover more workers. It should be given room to further innovate to adapt to changes in the current workforce and the needs of the employees.

The Retirement Exchange. For example, Transamerica Retirement Solutions recently introduced The Retirement Exchange SM (the "Retirement Exchange") a new private sector solution designed to help more small businesses offer workplace retirement plans to more employees, and to help employees save for retirement at higher rates. The Retirement Plan Exchange includes, within the current employer retirement plan system, many of the elements of Senator Harkin's USA Retirement Fund Proposal, including: (a) asset pooling, (b) automatic enrollment and escalation features, (c) risk sharing and (d) coverage.

The Retirement Plan Exchange is not a multiple employer plan but a collection of single employer plans that builds on the cost and administration benefits of a MEP by providing employers the ability to enter into a pooled retirement arrangement, resulting in cost advantages and fee reductions as the asset pool increases. Fiduciary and administrator services, such as selection of the investment fund lineup for the plan, are outsourced to independent firms—a benefit that is typically available only for large retirement plans. Like a MEP, the Retirement Plan Exchange also allows a small business to save on audit fees, document preparation and filing fees. To help plan participants better prepare for retirement, the Retirement Plan Exchange will auto-enroll eligible workers at a 6-percent contribution rate with a 2-percent auto increase in each of the next 2 years.

Transamerica is able to provide The Retirement Exchange within the current 401(k) rules, and the Retirement Exchange will benefit from any legislative or regulatory reforms, such as those discussed in this testimony, that will enhance the efficiency of the current employer-provided retirement plan system. Ultimately, this will facilitate the ability of employees to increase their retirement savings and manage those savings to last their lifetime.

CONCLUSION

TRS commends Chairman Harkin, Ranking Member Alexander and other members of the committee on their consideration of the important issue of employer plan coverage. 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.

The CHAIRMAN. Thank you very much, Mr. Kais. Thank you all for your excellent testimonies. We will now start a round of 5 minute questions.

Dr. Jeszeck, I will start with you. GAO did an extensive study for this committee on Multiple Employer Plans, and in particular, efforts to expand the use of those plans to include employers that are not related. I know you heard some concerns from the regulators and others about that approach.

Can you explain to us what those concerns were, so that we need to know what to do to address them?

Mr. JESZECK. Yes, Senator. In our discussions with DOL, I think the first thing to keep in mind is that in our work, we were able to identify four different types of Multiple Employer Plans.

The Labor Department really does not have any problem with three of those types. That includes the corporate MEP's where they are related by—they are either subsidiaries of a main company or part—just outside of the controlled group. Association MEP's like the Christian Schools International here.

And then the so-called Professional Employer Organization, that is PEO's, where these are essentially companies that come in and serve—to engage in these co-employer relationships where they come in and not only do—where they may provide a pension plan, but they will provide a health plan. They will take over your workers' compensation program, unemployment insurance, essentially take over a lot of the administrative functions. So for those three groups, the Labor Department pretty much does not have any concerns.

The main concern was with the fourth group, which is something that has become more popular in recent years, the so-called open MEP's. And from the Labor Department's concern, they told us there are two major concerns here.

One is just at a legal level, I am in a little deepwater here since I am an economist, not an attorney, but the question is the definition of ERISA for an employer plan—is an open MEP an employer for purposes of providing a plan. Is there sufficient connection between the employers in a MEP besides them just being part of in the MEP? So there is a legal concern there that under ERISA they do not consider an open MEP to be a single plan but, in fact, a collection of individual plans. And that means that for the individual employers, they have to file their own 5500's. They have to do a number of things which sort of negate the benefits of being in the full MEP.

The more substantive concern is in terms of enforcement and protecting the benefits of workers. The Labor Department has had a long history of regulating Multiple Employer Welfare Plans, which are essentially in the health area. There have been a lot of abuses there.

They also, given our past work on fees, we know that a lot of small employers are very afraid of fiduciary liability. To the extent that some of these—the market expanse and you have some bad apples coming in and going to small employers and saying, "We will take over all of your fiduciary liability," where labor says that that could not happen. An employer could think that they are doing the right thing and they could be, basically, vulnerable to fraud and loss of money and so on. So there is that.

I think there is just a lot of misinformation out there. Employers, we found very often, are just not knowledgeable enough about even running a plan, of any kind of plan, and they would be very vulnerable to marketing techniques that may not be particularly legal.

So those are the two major concerns that the Labor Department has.

The CHAIRMAN. Thank you very much, Dr. Jeszeck.

Mr. Koetje, I have always thought that one of the key advantages of a pension like yours is that small employers do not have to do everything themselves. They can participate. Offer a quality benefit to their employees. They can have someone else's professionals actually manage the plan.

Can you give us some idea of how your plan is managed? How did you do that?

Mr. KOETJE. Sure, sure. I also apologize for finally reading this clock here. I thought the time remaining, the number was going up on me, so I thought I had even more time than my colleagues here, so. I have this thing figured out now.

As the plan sponsor, Christian Schools International board appoints a fiduciary board to oversee our pension plan. That fiduciary board then appoints financial managers and consultants to oversee the workings of that plan. We have a small office in Grand Rapids, MI that does the nuts and bolts administering of that plan.

So, what we can do with a small office of, say, 15 individuals in our office, no one of our schools would be able to do on its own.

The CHAIRMAN. By the way, I was reading your testimony last night. I think I know my State pretty well.

Mr. KOETJE. Yes.

The CHAIRMAN. I saw this town Cono, IA.

Mr. KOETJE. Yes.

The CHAIRMAN. And I said, "Boy, that must be a really small town because I do not think I have been there." So I seriously, started thinking, "Where is Cono, IA?" And I looked it up on my map, and I could not find it. So I got bedeviled by this. I thought, "Maybe he means Colo, IA." So I checked with Colo. No, there are no Christian Schools International in Colo, IA.

Mr. KOETJE. No.

The CHAIRMAN. Well, what I found out is it is Cono Township in rural Buchannan County.

Mr. KOETJE. There you go.

The CHAIRMAN. And I have got to tell you, the address of your school is Walker, IA.

Mr. KOETJE. Oh, I stand corrected.

[Laughter.]

The CHAIRMAN. It caused me to do a lot of looking last night. I did not know where this was.

Mr. KOETJE. I am impressed with the level of your research.

The CHAIRMAN. Anyway, thank you very much.

Mr. KOETJE. Thank you.

The CHAIRMAN. Senator Alexander.

Senator ALEXANDER. Thanks, Mr. Chairman. There are lots of little towns in Iowa, and I have been to most of them.

[Laughter.]

The CHAIRMAN. So have I. More than once.

Senator ALEXANDER. Yes, more than once.

[Laughter.]

With varying results, but I enjoyed it.

Mr. Kais, you mentioned Transamerica's new retirement exchange, and that follows up to some comments that were made earlier. The Retirement Exchange has outsourced the fiduciary liability to an independent firm.

How are you able to insulate small businesses from fiduciary liability? And what about this suggestion that some small businesses get buffaloed by that, and are getting services that do not really do everything that they think those services might be doing?

Mr. KAIS. It is a great question and my response to that is usually you can delegate, but you cannot abdicate.

And what I mean by that is that there are agreements in place where the small business owner can delegate certain authorities under the fiduciary regulations and fiduciary laws to independent third parties. However, our belief is that there is still a duty for that small business to monitor those particular service providers.

Senator ALEXANDER. Now, give me an example of those. What can be delegated and what has to be monitored? What are we talking about?

Mr. KAIS. Sure. You could have a registered investment advisor or an investment manager, somebody that acts in concert, or on behalf, of the small business owner to select——

Senator ALEXANDER. So turn the money over to that person, yes.

Mr. KAIS. Effectively select or replace funds based on preset criteria. So the employer there is delegating the vast majority of the responsibility to perform those tasks.

For instance, maintaining an investment policy statement, that is the roadmap for how they are going to review and select their funds, keeping meeting minutes. A lot of that work is outsourced to this third party.

Senator ALEXANDER. But say the economy tanks and the fund goes south, and an employee is aggrieved. Who do they complain to? Do they complain to their employer who delegated the responsibility, or do they complain to you, the person to whom they delegated it?

Mr. KAIS. They could complain to a multitude of parties, but I think——

Senator ALEXANDER. Well, what is the use of delegating it if you are going to get sued anyway?

Mr. KAIS. Because the process, effectively the process trumps the performance. If you have a logical way to get to the selection of the investment lineup through normal, proven techniques, the process will always trump.

Senator ALEXANDER. So the employer will be able to say, "I took normal, prudent steps to pick a qualified investment advisor," and that will limit the employer's liability from a lawsuit, from a disappointed employee?

Mr. KAIS. Again, like my colleague here, I am not a lawyer either, but yes. I effectively believe that is the case where process will trump performance. Most defined contribution plans are also participant-directed.

Senator ALEXANDER. Yes, but if you are going to sell me on this and I am an employer—that I am going to delegate to you—you've got to do better than that. You have got to tell me why it is to my advantage to do that.

Mr. KAIS. To delegate? Because logically or in most cases, in the small business community, the registered investment advisor or the third party is better able and better equipped to come to more prudent decisions as opposed to the small business owner. They have the requisite knowledge to be able to get them to the best place possible, rather than going it alone.

The business owner knows how to run their business, they know how to run their P&L and make revenue——

Senator ALEXANDER. But I am still liable, am I not, as the employer if you mess up? Is that right?

Mr. KAIS. Not entirely. So that is one of the——

Senator ALEXANDER. You cannot tell me that you will limit or reduce my liability if I delegate to you?

Mr. KAIS. We can never say we can eliminate your total liability. However, the vast majority of the work that goes into coming to the conclusion is outsourced and delegated, and that responsibility lies with the third party. And they are bonded and the plan is protected.

Senator ALEXANDER. Dr. Jeszeck, would you have any further comment on that?

Mr. JESZECK. Yes, my understanding would be similar to Mr. Kais'. There still would be some liability for the employer. The employer is still the person who was choosing the firm to outsource, and so, they would, to the extent that they picked a reputable firm, they would likely be liable.

If they did it in 2007, picked a reputable firm and did everything by the book, sort of what's considered to be prudent, and people lost money during the financial crisis, they likely would not be liable.

Senator ALEXANDER. Yes.

Mr. JESZECK. On the other hand, if they went out and got Joe's MEP and simply put all the money in racehorses or something, the fact that they did not have any procedure and just picked a disreputable firm——

Senator ALEXANDER. But based on your looking at all of this, is it your judgment that a small business who is prudent and careful about picking an investment advisor can limit its liability to the question of whether it was prudent and competent about picking a good advisor and not to the question of whether it picked this stock or that stock?

Mr. JESZECK. I think in any instance, it would always be the facts and circumstances of the case, but I would think that in general, if a small employer went out and did the right thing. Went out and had a very structured, methodical way, was prudent in every stage that they would likely not face—they would not have a lot of liability.

Senator ALEXANDER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Alexander. I just, I have to add before I recognize Senator Franken and then Senator Enzi, that one of the things we are trying to do in our bill that we have been working on is to specifically insulate the employer from that liability. To make it very absolutely clear that they have no fiduciary responsibility, so it clears up this kind of murky little thing that is out there.

Senator FRANKEN.

STATEMENT OF SENATOR FRANKEN

Senator FRANKEN. Thank you, Mr. Chairman.

I want to thank all of you for your testimony today. Mr. Koetje, thank you for sharing the importance of Multiple Employer Plans for the employees in your organization. This is a great example of how small employers can work together and improve benefits for employees. We have a similar story in Minnesota where many workers at our rural electric co-ops save for retirement through Multiple Employer Plans.

Can you talk about the differences between single employer and multiple employer plans in terms of cost and risk?

Mr. KOETJE. If the question is the difference between a single employer plan and a Multiple Employer Plan, and could I—I am trying to hide behind—I am not an economist. I am not a lawyer. I am the president of an organization that happens to have a Multiple Employer Plan and knowing the benefits of that.

For me, the difference would lie in if we were a single employer plan and Christian Schools International were to go under financial stress, the entire plan would go down with Christian Schools International's financial stress.

Because we are a Multiple Employer Plan, we could have 15 of our schools close, and it would not have a negative adverse effect on the plan. We could have 30 of our schools close, and it would not have a negative adverse effect on our plan.

Senator FRANKEN. How many schools do you have, again?

Mr. KOETJE. We have 300 U.S. schools.

Senator FRANKEN. OK.

Mr. KOETJE. Of those 300, 159 schools are part of the plan.

Senator FRANKEN. If some of the schools go under, employees at these schools are protected.

Mr. KOETJE. The employee at that school is protected. That is correct.

Senator FRANKEN. And your Multiple Employer Plan is covered under the exemption.

Mr. KOETJE. That is correct.

Senator FRANKEN. That applies to certain groups, right?

Mr. KOETJE. Like the electrical co-op, that is correct.

Senator FRANKEN. What will happen if that expires?

Mr. KOETJE. If that expires and we do not get a legislative relief, there are two factors that put our plan into difficulty.

One is the way our schools plan their budgets, our schools like predictability. We like the fact that we can use historic averages for a rate of return. Our schools do not function well with spikes to get a surprise from us. So they like to know that they can predict right now what their pension liability is going to be in 2 years or in 3 years.

If that goes away, if we lose our exemption, we lose two important factors. One, we lose a credit balance that we build up over the years. If we received any criticism from our plan participants, it was the level of conservatism that we had. We had been funded anywhere from 147 percent of liabilities down to our current status of about 105 percent.

We fulfill our promise to our employees. You can imagine a retiree, though, noticing that we are funded at 130 percent wanting to know why we are not increasing the benefit to them.

We build up a credit balance. We are not able to use that credit balance after 2017 if we do not get a legislative relief. And most importantly, it is the elimination of a predictable interest rate that would be the most detrimental to our plan.

Senator FRANKEN. And did you say you have 15 employees?

Mr. KOETJE. We have 15 employees in our employee benefit plan, and of those 15——

Senator FRANKEN. Who administer it.

Mr. KOETJE. Who administer it. That is correct.

Senator FRANKEN. OK.

Mr. KOETJE. Yes.

Senator FRANKEN. And what is your personal role?

Mr. KOETJE. My personal role is as president and CEO of Christian Schools International, we have a vice president of Employee Benefits who is with me here today. That vice president of Employee Benefits is directly responsible for administering the plan.

Senator FRANKEN. This can go to anyone, maybe Dr. Jeszeck.

For many workers, Social Security is their main, sometimes the only, source of retirement savings. This fact underscores the importance of maintaining a strong Social Security system. But Social Security payments alone will not sustain a worker's standard of living in their retirement.

In your testimony, you said that small employers paying average wages under $10,000 had a plan sponsorship rate of only 3 percent.

What can we do to improve retirement security specifically for those low-wage workers?

Mr. JESZECK. Well, there are a lot of options out there that the people are talking about that are on the table. There is, in the past in the Portman-Cardin bill, there was the saver's credit that was targeted to low-income workers.

One limitation that some experts have mentioned is that it is not refundable, and so there are a lot of lower earning workers who really cannot take advantage of the saver's credit. And basically, the way the saver's credit would work is that if you contribute a certain amount to a 401(k) plan, you would get money back on your taxes. If it was refundable, even if you paid no taxes, you would get a check equal to $500 to $1,000 depending on how much you contributed. So that is something that some people have suggested in the past.

Of course, the issue with that is it would cost money, and that is something that—a priority that is something that would have to be balanced against other needs. But that is certainly one option.

There are a lot of other things that have been suggested, auto-IRA's. Senator Harkin has a comprehensive proposal which we have not analyzed, but that is also something that is on the table.

So there are a lot of different ideas out there. It is just something that we have to look at and balance the tradeoffs.

Senator FRANKEN. Thank you. Thank you, Mr. Chairman, for this hearing.

The CHAIRMAN. Thank you.

Senator ENZI.

STATEMENT OF SENATOR ENZI

Senator ENZI. Thank you, Mr. Chairman. And I want to thank you for working so diligently on your goal to get retirement security for more workers. I do note that there is some confusion over Multiple Employer Plans. The wording itself, and that confuses "big" with "small," and so I am hoping that we can separate that out as we go along.

Mr. Koetje, you mentioned that these plans that have already been temporarily excluded from the PPA should have the choice to choose between one staying excluded from the PPA permanently, or two, jumping into the PPA.

What are some of the ways that some of these rural cooperatives and small charities would benefit from jumping into the PPA, and who should be responsible for making that decision?

Mr. KOETJE. I am not aware. I am aware only of the benefits to us to remove ourselves from PPA regulations. I am not aware of the specifics of an organization that would need to do that. So I wish I could give you some more specificity as to the reason behind that. I have some colleagues with me who could probably answer that question, if you would prefer.

Senator ENZI. I will submit questions in writing for all three of you because I am not going to have time to ask all that I would like to. So I appreciate that.

Dr. Jeszeck, you mentioned in your testimony that in order to ensure that the Department of Labor has information needed to oversee these MEP's, the Department of Labor should gather additional information about the employers participating.

Can you talk more about this, and describe the information you believe would be most useful in obtaining, and why?

Mr. JESZECK. Yes, Senator. Back in 2004, the Department of Labor on a Form 5500, collected some limited information on MEP's, and this was primarily for the IRS for use in discrimination testing.

When the Department of Labor moved Form 5500 to EFAST2, which was an electronic system, they no longer collected that information because there is a statutory prohibition for the IRS to collect information electronically. So that was sort of thrown out.

Collecting information on the individual employers would allow a lot of things. One, we could check to see whether there are any problems in terms of the employer being in a particular plan, whether there was any fiduciary irresponsibility or some other enforcement problems there. People's deposits not being made and so on.

Another issue that the employer—we could look to see whether, in fact, the multiple employer model was actually creating additional coverage because we would know whether there are new plans or whether they are simply chasing old plans, and forcing them into an MEP.

But by and large, the main information would be on the number of employers so that they could make sure to provide targeting information to them to make sure while they still—they would be giving up most of their fiduciary liability, they still would have some awareness of the fees that were being charged to their participants, to the investment options that were being offered, that they could be better stewards.

So both for an enforcement and also to make the pension system work better, we think that labor—that getting information not only whether a plan is a MEP or not, but whether they are the participating employers would be very helpful.

Senator ENZI. Most of what you are describing is information that should be given to the employer for——

Mr. JESZECK. That would be one thing that could come out of this.

Right now, the Department of Labor really does not even know who a MEP is or not. And certainly, these new forms of MEP's, open MEP's, they have no idea at all. Basically, they have to go on the Internet and look for them, essentially. Sad as that might be.

At the very least, if we think that this is a type of coverage that has merit, it is something that information should be collected upon so not only to help those employers, but also maybe to even foster greater expansion in this area.

Senator ENZI. OK. Thank you.

Quickly, Mr. Kais, could you give us some more details on the asset pooling and risk-sharing features of a retirement exchange?

Mr. KAIS. Sure. The retirement exchange was meant to build off the efficiencies in the Multiple Employer Plan arena. It is kind of an interesting segue from the last question.

In the retirement exchange, each employer has a 5500 filed on their own behalf. What is also interesting is that one rogue employer or one bad actor will not taint the assets of the entire pool or the plan of a fellow employer that adopts into the exchange. We thought that was critical in terms of addressing those two particular issues.

The asset pooling and the centralized administration allows for fixed costs to reduce especially over time. As the pool grows, the efficiencies increase, and those savings can be passed down to each of the employers that adopt into the exchange.

Senator ENZI. So your company does that Form 5500 filing for each of the companies, then?

Mr. KAIS. On a go-forward basis, that is correct. This is in direct response to the open multiple employer plan advisory back from last May that Dr. Charles mentioned.

Senator ENZI. And that the top-heavy measurement applies to that too, then?

Mr. KAIS. Testing is done for each employer and they do maintain their own plan, top-heavy and all. Compliance testing is done employer by employer similar to a Multiple Employer Plan.

Senator ENZI. Senator Harkin, I will see if we can simplify that a little bit. Thank you.

The CHAIRMAN. Senator Murphy.

STATEMENT OF SENATOR MURPHY

Senator MURPHY. Thank you, Senator Harkin. Thank you very much for this hearing. And your focus as well, Senator Alexander and Senator Enzi, on this issue.

I wanted to talk for just a few minutes about the issue of employee demand. That is something that you raised, Dr. Jeszeck, in your report. Senator Isakson and I have a piece of legislation called the Lifetime Income Disclosure Act, and that would require that benefit statements for retirement plans include the annual annuity of the employee's benefits. Such that the participant could actually see what they are eventually going to get as a means, perhaps, of increasing demand for a contribution. Of course, that presupposes that there is a plan in place to begin with.

But Dr. Jeszeck, you talk about this issue of employee demand as a contributing factor to why a lot of small employers do not have plans in the first place, and why they may be even hesitant to enter into pooled retirement plans.

Can you just talk a little bit about how big a factor you feel that employee demand is? How big a barrier as compared to some of the others that you talk about in your report to small employers adopting retirement plans?

Mr. JESZECK. Yes, Senator. I think there are two aspects to this.

One is that a lot of small employer plans, you often have younger workers who really do not focus a lot on the future. They may value other benefits, more importantly healthcare or more days off, higher wages than a pension plan.

But I think the larger aspect about the demand here is really low wages. Is that a lot of people simply, a lot of workers particularly, I think low-wage workers in companies of any size, have to make decisions between saving for retirement, paying the rent, saving for school. They have a lot of competing demands on their income. So, I think those are sort of two big issues.

I think the issue about getting your benefit expressed in an annuity would be particularly helpful, actually, for workers as they approach retirement because in this instance workers—we talked today a lot that the focus has been on accumulation. How you get into a plan, how do you save? How do you have money for retirement?

But an equally big problem, particularly now with the Baby Boomers, is as you go into retirement, what do you do with your lump sums? What do you do with your account balances? I think a lot of times people think that they have more money in their account than what it really is. It is like $59,000 to some people, that is a lot of money, but if you had to annuitize that, particularly at today's interest rates, that would be, what, a couple hundred dollars a month?

So I think telling workers what their balance, the equivalent of in terms of an annuity would be particularly helpful. Again, also, in regards to Social Security, they could see how much in addition they would have from their pension.

Senator MURPHY. Sometimes bad news is very useful——

Mr. JESZECK. Right.

Senator MURPHY [continuing]. In the long run.

Mr. Kais, just in terms of your interaction with employers, to put that same initial question to you. One of the things mentioned in the GAO report is that maybe there is a little bit of exaggeration as to how much employee demand contributes to the willingness of an employer to step up and offer a plan.

What do you find as the degree to which employee demand, or employee wages, is a contributing factor?

Mr. KAIS. I think inertia can actually work in our favor viś-a-viś auto-enroll and auto-escalate. We see the opt-out rates are extremely low.

We also started publishing the expected amounts in the form of an annuity payment on the statements already. And that could be sobering, as you mentioned earlier.

Help me with the second part of the question, again.

Senator MURPHY. I think you are answering it. The question was really about when you have reluctant employers, how much are they putting on the backs of employees who do not want the plan versus the other reasons that they might have.

Mr. KAIS. That is almost never an issue, Senator.

Mr. MURPHY. Yes.

Mr. KAIS. It is always about complexity, cost, and when they start to look at the alphabet soup of what they have to do to comply with the current law and the disclosure they need to make, they freeze up and are risk-averse. They see the cost. They are generally pumping a lot of their money back into their business to grow it. So I think it is more employer-related issues than employee demand.

Senator MURPHY. And you said you do provide an annuity equivalent on your statements?

Mr. KAIS. That is correct, sir.

Senator MURPHY. All right, thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murphy.

I just have a couple of other things. I wanted to ask Mr. Kais about the proposal that we have been working on, USA Retirement Funds, which I hope you have taken a look at. We are asking for people to look at it and give us input.

One of the things is to focus on this idea of lifetime income: annuitization. Can you just talk a little bit about that? I know you mentioned once in your statement here about plan leakage. Senator Enzi has been focused a lot on that, but what is happening is that there is just a lot of leakage so they are not getting a lifetime income.

Again, if we are going to have savings plans, which quite frankly, I think basically 401(k)'s really are a savings plan. OK, fine. But that somehow making it better or making sure that people can convert them into a lifetime stream more easily or with some benefits.

I am just asking if you can elaborate a little bit on that. How we get people to focus more on converting those to a lifetime stream rather than a lump sum or borrowing against it, that type of thing.

Mr. KAIS. We have read your USA Retirement Fund Act on more than one occasion. A lot of that was—part of that was the inspiration for our Retirement Plan Exchange as well, at least we thought there were fantastic ideas there.

As far as annuitization is concerned, people are living longer. They stand to outlive their retirement more now than ever. So we are proponents and we believe pretty strongly that annuities need to be a part of that part of your lifecycle at retirement.

That really starts with education. However, there is a lot of confusion on what is the right annuity? Do I get a fixed annuity? Do we have an annuity with a guarantee? Is it appropriate to annuitize the entire amount? Or do I want to keep part of it in a lump sum to manage?

So there is probably not one perfect silver bullet or perfect answer for an employee, but we believe that annuitization is extremely important, at least in part. And that starts with education and helping people understand what it means at retirement.

The CHAIRMAN. I think part of that education is what Senator Murphy just said, and that is making sure people know what their savings would convert to as they go along through their lifetime.

Mr. KAIS. Precisely.

The CHAIRMAN. And giving them more of an idea of what that would mean to them as a monthly income as they go along.

Mr. JESZECK. Excuse me, Senator. I wanted to say one thing.

The CHAIRMAN. OK.

Mr. JESZECK. We are currently conducting some work for Congressman Miller where we have been looking at other countries' approaches to annuitization and the different strategies available to employees when they retire in terms of making sure that their income lasts for the duration of their lives. And it should be available in a few months. We looked at a number of other different nations that have largely defined, very robust, defined contribution systems, and looked at what their policies are. How did they help their participants ensure that they had money throughout their lifetimes?

The CHAIRMAN. I would like to see that. You think in, what, a couple, 3 months?

Mr. JESZECK. It should be out in September, I think.

The CHAIRMAN. That would be good to know. You know a lot about that. You have told me about some of these other countries that have done this.

I do not have any more questions. Do you have more questions?

Senator ALEXANDER. No.

The CHAIRMAN. Senator Enzi.

Senator ENZI. I have something else, but they are fairly technical.

The CHAIRMAN. OK. He knows a lot of the technical stuff here. Do any of you have anything else you would like to offer for our benefit here at all? Nothing else?

Mr. Koetje.

Mr. KOETJE. Yes, I just want to summarize how incredibly important Christian Schools International's defined benefit pension plan is to its participants. And how just unworkable PPA is for us and how committed we are to continuing some way to provide a defined benefit plan for our constituents.

So, any tweaking of PPA that could move us toward pre-PPA regulations would be incredibly welcomed and incredibly helpful for us. Thank you.

The CHAIRMAN. I appreciate that and I cannot speak for everybody on the committee, but I think you will find a general consensus here that we do want to address that issue.

Mr. KOETJE. Thank you.

The CHAIRMAN. Maybe in a broader bill.

Mr. KOETJE. Sure.

The CHAIRMAN. Which we tried to do with this USA Retirement Fund, but nonetheless, I think you will find a consensus here that we want to do that.

Mr. KOETJE. Thanks.

The CHAIRMAN. Yes, Mr. Kais.

Mr. KAIS. In closing, we are obviously big proponents of asset pooling and making it easier for small businesses to offer a retirement plan. Anything that could be done to limit administrative burden through reporting requirements or disclosures being consolidated, reducing fiduciary risk is very much appreciated.

We have a body of work to operate off of now. Internally, we are covering nearly 10,000 small businesses through these pooled arrangements, and we think the sky is the limit just based on our limited body of work.

The CHAIRMAN. I tell you one thing, just getting rid of all that paperwork.

Mr. KAIS. Absolutely.

The CHAIRMAN. That has to come out. Obviously, we are investors, my wife and I. We get all of this paperwork on retirement systems. I think I am fairly smart. My political opponents may not think so, but nonetheless, I cannot even understand that stuff. And so you get it, and you open it, and you just throw it away.

I have to think, how much money is that costing them, and in turn costing me and everybody else? Put it out electronically. It seems to me that would be the best solution, just put it out electronically.

With that, thank you all very much. I think there was very good input provided to this committee, and we are going to keep moving ahead as aggressively as we can to address the retirement issue in this country.

Thank you all very, very much. And it is Cono Township, Buchanan County. All right. Thanks.

[Additional material follows.]

ADDITIONAL MATERIAL

LETTER OF SUPPORT

JULY 16, 2013.

CO-SPONSOR THE "HARKIN/ROBERTS" COOPERATIVE AND SMALL EMPLOYER CHARITY PENSION FLEXIBILITY ACT OF 2013 (S. 1302)

Defined-benefit "multiple-employer" pension plans established by not-for-profit cooperatives and charities should not be subject to rules designed for other types of plans.

As not-for-profit cooperatives and charities, we urge Congress to promptly pass the bipartisan "Cooperative and Small Employer Charity Pension Flexibility Act of 2013" (S. 1302), introduced today by **Senators Tom Harkin (D–IA), Pat Roberts (R–KS), Patty Murray (D–WA), Lisa Murkowski (R–AK) and Al Franken (D–MN).** The core mission of these organizations is to provide food, electricity, communications, and other necessities of life, educate and empower children, and for the sustainable development of the communities in which their millions of members, volunteers and beneficiaries live. However, current pension funding laws designed for other types of plans require them to divert scarce resources to overfund their pension plans that—by their nature—pose *virtually no risk of default to the Pension Benefit Guaranty Corporation (PBGC)*.

In the Pension Protection Act of 2006 (Pub L. No. 109–280) ("PPA"), Congress recognized its new pension funding rules were not appropriate for rural cooperative "multiple-employer" defined benefit plans, since by design, these plans pose *virtually no risk of default to PBGC*. As such, Congress granted these plans a temporary exemption to stay under the pre-PPA rules (*See PPA Sec. 104*). Congress later extended this treatment to eligible charities (*See Sec. 202, Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010; Pub. L. No 111–192*).

S. 1302 is narrowly targeted to permit Cooperative and Small Employer Charity (CSEC) "multiple-employer" plans that are *already* temporarily excluded from PPA to choose between (1) staying excluded from PPA permanently without one element (the "DRC") that was added in 1987 to address single-employer/non-CSEC problems; or (2) jumping into PPA in 2014 if they wish to do so. According to data provided by the PBGC, only 33 rural cooperative and charitable "multiple-employer" plans (covering just over 127,000 active employees) filed their annual required reports with this PPA Sec. 104 designation.

Taken together, these entities are today making multi-billion dollar decisions on this urgent issue that *must be resolved this year* to prevent not-for-profit cooperative and charity CSECs from diverting scarce resources from their core missions.

In short, because CSECs are by far the least common type of pension plan, CSECs are often not separately considered when new rules are added. The result is the application of some "single-employer" plan rules that should not apply. S. 1302 resolves this inequity permanently.

We urge Congress to pass S. 1302 today.

Christian Schools International (*csionline.org*); UJA–Federation of New York, Inc. (*ujafedny.org*); United Way Worldwide (*unitedway.org*); The Jewish Federations of North America (*www.jewishfederations.org*); National Rural Electric Cooperative Association (*nreca.org*); Hawkeye Insurance Association (*iowarec.org*); Girl Scouts of America (*girlscouts.org*); NTCA–The Rural Broadband Association (*ntca.org*); United Benefits Group (*ubgretire.com*).

RESPONSE TO QUESTIONS OF SENATOR ENZI BY CHARLES A. JESZECK, PH.D. AND DAVID J. KOETJE

CHARLES A. JESZECK, PH.D.

U.S. GOVERNMENT ACCOUNTABILITY OFFICE (GAO),
WASHINGTON, DC 20548,
August 21, 2013.

Hon. TOM HARKIN, *Chairman*,
Hon. LAMAR ALEXANDER, *Ranking Member*,
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Enclosed is our response to the question submitted for the record by you and other committee members following the hearing "*Pooled Retirement Plans*: *Closing the Retirement Plan Coverage Gap for Small Businesses*" on July 16, 2013. If you have questions, please contact me at 202–512–7215 or *jeszeckc@gao.gov* or my Assistant Director, Tamara Cross, (202) 512–4890 or *crosst@gao.gov*.

CHARLES A. JESZECK,
Director, Education, Workforce,
and Income Security Issues.

Question. You mentioned that a MEP can be structured as either a DB or a DC plan. Many businesses may struggle with the burdensome regulations or convoluted laws associated with setting up and maintaining a defined benefit plan.

In your opinion, which is easier for large companies to set up—a defined contribution or a defined benefit plan? Does a defined contribution plan offer more of a "*turn-key*" operation for many businesses? What about for small- and medium-sized businesses?

Answer. We have not assessed the extent to which it may be easier for companies of any size to form and administer a defined contribution (DC) compared to a defined benefit (DB) plan. However, there is an overall trend of new plan formation toward DC plans and away from DB plans. When we examined new plan formation in 2011, we found that over 90 percent of all plans formed between 2003 and 2007 were DC in design.

Of the less than 9 percent that were newly created DB plans, very few were sponsored by large companies. In fact, less than 1 percent of all newly formed plans by private employers between 2003 and 2007 were DB plans with more than 100 participants. In addition, many of these employers of newly formed DB plans during this period were also sponsoring a DC plan.

For large companies, there is evidence suggesting that existing regulation can be a deterrent to new plan formation. When we surveyed the sponsors of some of the largest private sector DB plans in 2008, about a quarter of the respondents said they would consider starting a new DB plan and, of those, 55 percent responded that reduced regulatory and administrative requirements would increase the chance they might consider a new DB plan. As for smaller companies, they are also generally not starting DB plans—about 8 percent of all new plans formed by companies with fewer than 100 employees between 2003 and 2007 were DB plans. We also found that in 2009 among small businesses that sponsored a plan, only about 1 percent sponsored a DB plan.

Although we have not used the term "turn-key" operation to describe the design and structure of DC plans, our work indicates that many plan sponsors hire a third-party for key administrative duties. Our nationally representative survey of 401(k) plan sponsors found that more than half of all plans use some sort of "bundled" service arrangement, in which one company provides most of the plans services. Regardless of a bundled or unbundled arrangement, the majority of sponsors hired at least one outside service provider to help them manage their plan and about 60 percent of those sponsors used the provider to handle most of the plan administrative functions, instead of having in-house staff for recordkeeping and reporting.

Nevertheless, operating and managing such plans can be challenging for employers, who always retain some fiduciary responsibilities regardless of how they choose to operate the plan. As I mentioned during the hearing, many small employers we have spoken with say that they are overwhelmed by the administrative and fiduciary responsibilities associated with retirement savings plans. Some small and large 401(k) plan sponsors also face challenges understanding plan fees. Additionally, most 401(k) plan sponsors tend to rely on service providers to help them manage their plans. Our work suggests that service providers are marketing their products and services to employers in a way that appears to relieve them of many of the responsibilities that come with starting and maintaining a plan. However, even with the assistance of a service provider, employers of all plan sizes often continue to have significant plan responsibilities, such as managing plan enrollments and separations, and carrying out other fiduciary duties.

DAVID J. KOETJE

Question. In your written testimony, you stated that the funding rules in the Pension Protection Act were not appropriate for rural cooperative or small employer charity multiple employer defined benefit plans and how Congress granted these plans a temporary exemption to stay under the pre-PPA rules. You mentioned that the Christian School plan that has already been temporarily excluded from the PPA should have the choice between (1) staying excluded from PPA permanently or (2) jumping into PPA.

What are some of the ways that the rural cooperatives and small charities would benefit by jumping into PPA? Who should be responsible for making the decision on whether plans should have the PPA rules apply to them?

Answer. As I said during the hearing, I can only speak for Christian Schools International, our member schools, and the 11,000 employees and retirees throughout the United States that participate in the CSI Plan. For CSI, PPA places us in an unworkable situation. If the CSI Plan is ever subject to PPA, costs and complexity could increase dramatically, required minimum contributions will be more volatile and unpredictable, and current benefits options and accruals could be restricted or eliminated completely.

We need your help and support.

PPA's single-employer plan rules are specifically designed to protect the PBGC in case that one, single employer maintaining a plan goes bankrupt. In the case of the CSI Plan—a "multiple-employer" defined benefit plan maintained by over 150 independent, 501(c)(3) schools—the plan can continue to be maintained despite the bankruptcy of one or more of the participating employers. We have a completely different risk profile.

As you know much better than I do, there are three types of plans: single employer plans, multiemployer plans, ***and*** "multiple-employer" plans.

- Rules for singles are carefully designed for plans maintained by a single company.
- Rules for multies are carefully designed to fit the collectively bargained context.
- Rules are almost never tailored to "multiple-employer" plans like ours, which are subject to the singles' rules. That is why PPA "kicked the can down the road" to provide a 10-year delayed effective date for its new single-employer rules to apply to rural cooperative "multiple-employer" plans, that was thankfully extended to eligible charities like CSI back in 2010.

For CSI, we hope to make our temporary exemption permanent. S. 1302 makes this possible.

Without a change in the law, the CSI Plan and all other charity and rural cooperative "multiple-employer" plans will be subject to PPA in 2017. We hope that, with your help, S. 1302 will be enacted, so the CSI Plan can stay permanently excluded from PPA. Once enacted, each plan sponsor can choose whether PPA provides the appropriate rules for its plan. As noted above, in our case, the PPA would hurt our plan, the 150-plus plan sponsors, and the 11,000-plus participants, so our decision would be very simple: we would choose to stay permanently excluded from PPA.

[Whereupon, at 3:37 p.m., the hearing was adjourned.]

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