

**SMALL BUSINESS RETIREMENT POOLING:
EXAMINING OPEN MULTIPLE EMPLOYER PLANS**

HEARING

BEFORE

THE SUBCOMMITTEE ON PRIMARY HEALTH AND
RETIREMENT SECURITY

OF THE

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

ON

EXAMINING SMALL BUSINESS RETIREMENT POOLING, FOCUSING ON
EXAMINING OPEN MULTIPLE EMPLOYER PLANS

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JUNE 21, 2016
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TUESDAY, JUNE 21, 2016

U.S. SENATE,
Subcommittee on Primary Health and Retirement Security,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:30 p.m., in room SH-216, Hart Senate Office Building, Hon. Michael Enzi, chairman of the subcommittee, presiding.

Present: Senators Enzi, Murray, Warren, and Scott.

OPENING STATEMENT OF SENATOR ENZI

Senator ENZI. The Senate Committee on Health, Education, Labor, and Pensions, the Subcommittee on Retirement Security, will come to order.

I'd like to welcome everyone to this roundtable discussion on Small Business Retirement Pooling, which is examining open multiple employer plans. I'm not sure that I really like that title for it, because it makes it sound like it's only for the really big plans out there as opposed to being a cost effective tool for small businesses which we can and should be encouraging.

We'll be focusing this discussion on the benefits of small business retirement pooling, specifically open MEPs—I think I'll call it small business retirement pooling—and how they are one of the ways we can help close the retirement gap in America. I am very grateful to both Ranking Member Sanders and Senator Warren for agreeing to host this roundtable with me.

I've hosted a number of roundtables. When I was Chairman of the HELP Committee, Senator Kennedy and I held many thoughtful and productive roundtables. The difference between a roundtable and a hearing is we start off with more brief introductory remarks and then try to focus a little bit more on questions.

At a regular hearing, there's a division between the majority party and the minority party, and then everybody shows up to beat up on witnesses. I never found that to be very productive. We're doing a roundtable, and I do truly appreciate the bipartisan way this discussion is organized. It's always nice to have a discussion on a topic, especially one that we all agree needs some work.

I'm often reminded why legislation on small business retirement pooling, especially for small business, can help provide additional retirement assets for tens of millions of Americans. A critical challenge in enhancing the retirement security for all Americans is expanding plan coverage among small businesses. To address this, I

believe we need to make retirement plans less complicated, less intimidating, and less expensive for small businesses. One way to do this is by allowing the expansion of these employer plans.

This roundtable is a followup to the terrific and bipartisan discussion that Senator Sanders and I hosted on the same topic back in October. Since then, the president has said that we need to make it easier for employers to create pooled 401(k) plans to lower costs and burdens. I agree with President Obama on this topic and appreciate that he desires to enable employers to take advantage of these open plans.

As a member of the Senate Finance Committee, I've seen great bipartisan discussions on small business retirement pooling over the last few years. I'd like to thank Chairman Hatch for his leadership on this issue in Finance, as well as to let him know that I look forward to helping him in this effort to allow these to exist.

My interest in holding this roundtable is based on my view that Congress can and should help narrow the retirement coverage gap in America. I believe we can do this through expanding small business retirement pooling by allowing the broadening of diversity among those businesses within such plans.

Finally, I urge committee members to focus on what we can agree on with regard to this particular topic. I know there are many contentious issues currently being debated that would impact retirees and small businesses. There is, however, bipartisan support for the expansion of these programs, and this is a great opportunity for us to examine the bipartisan ideas.

We were able to accomplish a great amount in the past working on pensions. Quite frankly, I'm surprised at how many people we have at this. Usually, anything that deals with pensions is so technical that we have trouble getting any audience to show up for it. If it were one of the really, truly contentious issues, we'd have a bunch of TV cameras up here too.

But what we're trying to get to, of course, are solutions. When I worked with Senator Kennedy, we were able to accomplish a lot by using the 80 percent rule. We focused on the 80 percent that we could agree on, and we kept working on the 20 percent after we got the bill finished. I look forward to again working with the senior senator from Massachusetts, Senator Warren, and I hope that all the committee members and witnesses will join me in focusing this discussion on what we can agree on.

I'll have Senator Warren offer her opening remarks at this time.

STATEMENT OF SENATOR WARREN

Senator WARREN. Thank you very much, Senator Enzi, and I want to say thank you for holding this roundtable, for putting it together, and for your bipartisan efforts in this area. It's so important, and, as you say, I think there's a lot that we can agree on here.

I want to thank you all for being here.

I just want to start by saying that America is in a retirement crisis. Years of a middle class squeeze are taking a huge toll so that, today, families are hitting their retirement years with less savings and more debt than ever before. A third of those on the verge of retirement don't have a single dollar saved, and another third have

not saved even 1 year's worth of income. It is a massive problem, and it is long past time to explore anything and everything we can do to fix it.

I believe that part of the solution is to expand Social Security. With the disappearance of traditional pensions and a \$7.7 trillion shortfall between what Americans have saved and what they need for retirement, it seems obvious to me that we need to augment the modest Social Security benefits that 14 million Americans already depend on to keep themselves out of poverty. After a lifetime of hard work, people are entitled to retire with dignity, and Social Security is our baseline for that. We need to protect it, and we need to expand it.

But there is more that we can also do. We can work harder to increase private savings for workers. Laws encourage employer-based plans, but not all employers provide retirement benefits, largely because of the expense and the administrative burdens involved. Only about half of all workers are covered.

Second, not all workers have a single steady employer. Some are temps, independent contractors, gig workers, who can't access employer-sponsored plans. Third, when workers change jobs, their benefits are typically not portable, meaning they don't usually follow along to the new employer.

Until we address these issues, the employer-sponsored retirement benefit system just simply won't work for our modern workforce. I believe it is time for reform on this.

One idea is to allow more employers, particularly small employers, to outsource the administration and investment management of retirement plans to a pooled administrator, sharing the operating costs among several different employers. Current law allows related employers in the same industry or occupation to set up pooled plans. But in order to allow this pooling for unrelated employers, we would need a legislative fix.

Now, there are several bipartisan proposals floating around to create these so-called open multiple employer plans, or open MEPs, as you were describing. These proposals, I think, are a good first step. But for these ideas to work, they must address both workers who do not have a traditional employer and allow for full portability.

Open MEPs should also allow all workers to have access to prudent, low-cost, well protected retirement products that some employers in some unions provide today. Any worker should be able to enroll in one, regardless of whether their employer has chosen to participate and regardless of whether they even have a traditional employer.

In addition, when workers switch jobs, they should be able to easily take their retirement account with them. If a worker moves from a job that offers a plan through an open MEP to a job that doesn't offer such a retirement account, then the worker should be able to stay with their current open MEP and continue contributing through their individual payroll deductions.

This is good for employees, and it's good for employers who do not want to administer these plans. It's good for startups. It's good for small businesses. All employers can still contribute to their employees' retirement accounts, just without being the plan adminis-

trator. They can do this by paying higher wages, or they can do it by matching employees' contributions to the retirement accounts. Such contributions would be easier for employers to make if they aren't spending as much money on plan administration.

Finally, any legislation that addresses open MEPs should make sure that these plans use best-in-class practices when it comes to asset allocation, governance, and fee structure and fee transparency. Whether unions, financial services firms, or member-driven organizations, such as AARP or the local Chamber of Commerce, operate these plans, they should be operated solely in the interest of the workers and retirees, and those individuals should have a voice in how those plans are operated.

I want to thank the witnesses for being here today.

I want to say, again, thank you to Senator Enzi, and I'm ready to start whenever you are.

Senator ENZI. Thank you, Senator Warren.

I'd like to briefly introduce our witnesses and then ask them each to give a 3-minute opening statement, and then we'll get into an open discussion.

Our first witness is Mr. Jeffrey Stacey from Cheyenne, WY. Mr. Stacey is the Senior Manager of Employee Benefits at McGee, Hearne & Paiz, LLP, the largest accounting firm in Wyoming. I make the trip home to Wyoming almost every weekend and know how long that journey is. I thank you for representing our great State in this discussion and coming out here.

I'll now invite Senator Warren to introduce the witness from Massachusetts.

Senator WARREN. Thank you. Yes, we do have a witness here today from Massachusetts. Mr. Nick Favorito serves as the Deputy Treasurer for Retirement Services for Massachusetts Treasurer and Receiver General, Deborah Goldberg. Nick has also served as Executive Director of the Massachusetts State Employees Retirement System since February 2003, and he oversees the Commonwealth's Deferred Compensation Plans Unit.

He's here today to talk about a new retirement plan that Massachusetts has designed for workers in small nonprofits. These workers often do not have access to a retirement plan from their employer, so this new State plan, we believe, is going to fill an important gap, helping tens of thousands of workers in Massachusetts build some savings for their retirement. I'm looking forward to hearing more about this plan, and I welcome Mr. Favorito.

Senator ENZI. Thank you.

Our third witness is Mr. James Kais. Mr. Kais is the Senior Vice President and the National Retirement Practice Leader at Trans-America Retirement Solutions.

Our fourth witness is Mr. Kent Mason, a Partner at Davis and Harman LLP here in Washington, DC, where he advises clients on a number of retirement savings issues.

Our final witness is Ms. Michele Varnhagen, the Senior Legislative Representative with the AARP here in Washington, DC. I very much appreciate AARP's participation in the October roundtable and look forward to the input on this important topic.

Thank you all again for joining us in this discussion. After you've given brief opening statements, we'll pose some questions to the

witnesses for their discussion. When we're doing that, if you want to answer, if you'll just stand your name tag up on end, then we'll know that you want to make a comment on that.

Mr. Stacey.

STATEMENT OF JEFFREY STACEY, SENIOR MANAGER, MCGEE, HEARNE & PAIZ, LLP, CHEYENNE, WY

Mr. STACEY. Thank you, Chairman Enzi, Ranking Member Warren, and members of the committee, for the opportunity to participate in today's discussion. My name is Jeffrey Stacey. As Senator Enzi mentioned, I am a Senior Manager for Employee Benefits with Cheyenne, WY, based accounting firm, McGee, Hearne and Paiz.

We are the largest accounting firm in the State of Wyoming, and among the many accounting services that offer to small businesses is third-party administration of retirement plans. I personally became involved in the retirement plan industry in my hometown of Nashville, TN, 20 years ago, working with one of the Baby Bell Telephone companies and administering the multiple plans that they had.

Thirteen years ago, I moved to Wyoming to work with McGee, Hearne and Paiz, and while at the accounting firm have worked with plans ranging from the solo, sole proprietor, one participant plan up to the largest plan we've worked with, which has probably about 500 participants. I am an enrolled retirement plan agent, allowing me to represent plans before the IRS and hold several industry designations.

Kind of following up on what Senator Warren had to say, I've often heard retirement funding in this country compared to a three-legged stool—one, Social Security; two, employer pensions; and, three, private savings. For many Americans, myself included, legs two and three are combined into one. Employer pensions and personal savings are one in a 401(k) or similar type of plan.

Most employers no longer offer a defined benefit pension plan like my parents and in-laws participate in and benefit from. If anything, it's a defined contribution plan, a 401(k) plan. Regardless of one's opinion, my own opinion, or anyone's opinion of how we got here or why we're here, we are in this situation currently. The main issues that I see as far as retirement issues are concerned in our country are, first off, to encourage Americans to start saving, encourage people to increase their contributions over time, and to maintain those savings over time.

Small businesses like those that we serve in Wyoming and the surrounding region often don't have the luxury of having a separate HR Department. The business owner is the Human Resources Department, and attracting and retaining employees is difficult in small communities, particularly isolated communities like we have in the West. Building a benefits package is a key component of being able to attract and recruit employees, and while healthcare has consumed much of the debate over the last number of years, retirement is just as important, even though it's a longer-term issue.

What I bring to the table today is my firm's and my experience with our firm from 2006 to 2010 in sponsoring and administering

an open MEP. At its peak, our open MEP had 18 participating employers, all unrelated, all in different industries. Our MEP was a win for the participating employers through lower costs. It was a win for the participants through lower fees from pooling and economies of scale.

But for our firm, it was a money-losing business proposition, because we could not grow it to the point that we thought we needed to in order to make it a self-perpetuating piece of our business. The reasons for the losses were time costs, plan document costs, and audit costs. While our attempt at an open MEP several years ago was not successful, subsequent regulations would have made the plan unviable since all of the employers were unrelated. The only commonality between them was that they were participating in the plan that we offered.

While I believe that open multiple employer plans can be viable for small businesses, that legislation and the subsequent regulations, in my opinion, have to make the plans easy to understand, inexpensive to operate, and efficient to administer.

Once again, Senators, thank you for the opportunity to be here and to participate in our discussion.

[The prepared statement of Mr. Stacey follows:]

PREPARED STATEMENT OF JEFFREY STACEY

INTRODUCTION

Thank you Chairman Enzi, Ranking Member Warren, and members of the committee for the opportunity to participate in today's retirement plan discussion. My name is Jeffrey Stacey. I am the Senior Manager for Employee Benefits with the Cheyenne, WY based accounting firm McGee, Hearne & Paiz, LLP. We are the largest accounting firm in Wyoming. Among the many services we offer to our clients is Third Party Administration (TPA) of employer sponsored retirement plans.

I first started working in the retirement plan industry in my hometown of Nashville, TN 20 years ago administering the retirement plans for one of the Baby Bell telephone companies which had thousands of participants in several different plans. Thirteen years ago I moved to Wyoming to work for McGee, Hearne & Paiz, LLP and have worked with retirement plans ranging from one-participant sole-proprietor plans to a 500-participant retirement plan. During my two decades of experience I have worked with profit sharing plans, 401(k) plans, traditional defined benefit pension plans, cash balance pension plans, executive deferred compensation plans, and cafeteria plans. I am an Enrolled Retirement Plan Agent (ERPA) allowing me to represent clients before the IRS on retirement plan matters. I also hold the following industry designations: Certified Employee Benefits Specialist (CEBS) from the International Foundation of Employee Benefit Plans, Accredited Pension Administrator (APA) and Accredited Pension Representative (APR) from the National Institute of Pension Administrators.

I have often heard retirement funding compared to a three-legged stool: (1) Social Security, (2) employer pension, and (3) personal savings. For the vast majority of today's workforce including me, legs 2 and 3, employer pension and personal savings, are combined. Most employers no longer offer defined benefit pension plans but instead offer defined contribution plans such as a 401(k) plan. Regardless of whether one thinks the slow shift during the last 40 years away from defined benefit plans to defined contribution plans was a good thing for individual Americans and the country as a whole, it is the reality where we find ourselves today. The issue now is how can we encourage Americans to start saving for retirement, maintain their retirement savings when transferring jobs, and increase their retirement savings rate over time.

RETIREMENT SAVINGS OPTIONS FOR SMALL BUSINESSES

Small businesses such as the ones we serve in Wyoming and the surrounding region often do not have the luxury of a Human Resources Department. The business owner is the HR Department. The owner is an expert at providing their chosen goods and services to their customers. Attracting and retaining employees is often

difficult, especially in small communities. This makes a benefits package very important. In addition to running day-to-day operations, the small business person must shop for and build a benefits package. While health insurance has dominated the headlines for many years, saving for retirement is just as important.

Being an accounting firm, our clients will often seek our advice about their savings options for retirement. Some small business owners look at their business itself as their retirement account meaning that they intend to sell the business in the future and use the proceeds to fund their retirement. Others see the need to save in a retirement vehicle where it is protected from bankruptcy. Some see the need for a retirement plan as a necessary employee benefit to not only attract good employees but also to assist their employees with achieving their own retirement goals. Regardless of what prompts our client's questions or what prompts us to bring up the subject with them during a tax planning meeting, a small business owner is almost always interested in a defined contribution plan such as a:

- 401(k) plan
- Profit sharing plan
- SIMPLE IRA
- SEP IRA

COMPLEXITY OF PLAN ADMINISTRATION

I have yet to meet a small business owner who during our initial discussions had any idea of the complexities, paperwork, and liability of an employer sponsored retirement plan. They just want to save money and taxes as well as offer the same opportunity to their employees. One thing the Nation's long health insurance discussion has taught us is that larger businesses usually get better per-person pricing than smaller businesses. This is often true in retirement plans since investment companies usually consider three key factors when pricing their services for a retirement plan:

1. Number of participants.
2. Current plan asset value.
3. Expected total annual contributions.

A small business that is starting a plan with no assets will usually pay higher fees than a plan with an existing asset base. It may take many years before the assets reach a price breakpoint where fees will decrease. Higher fees translates into a lower annual rate of return and therefore a lower account balance. In addition to fees within the investments themselves, the small business has the expense of accounting fees. Outside of the plan, we charge the plan sponsor for TPA services such as the preparation of an IRS pre-approved plan document and plan compliance services which include discrimination testing, contribution calculations, participant account reconciliation, participant loans and distributions, Form 5500 and potentially numerous other tax forms depending on the plans design and activity during the past year. Most small businesses pay for our TPA services directly as a business expense rather than pay from plan assets which would further reduce the plan's rate of return. Where TPA services are bundled with the recordkeeping services provided by the investment company, the cost is often built into the plan's overall fee structure.

In addition to the difficulty of understanding plan design and compliance, small business owners are bombarded with an ever-growing number of required notifications and disclosures they need to distribute to plan participants. Whether they must distribute notices on paper or can distribute to employees by e-mail, it is another small burden on their time.

OUR EXPERIENCE WITH AN OPEN MULTIPLE-EMPLOYER RETIREMENT PLAN

In 2005, our firm was approached by MassMutual with whom we had several mutual retirement plan clients and was asked to consider sponsoring an open multiple-employer 401(k) plan or MEP for our small business clients who could not afford to have a plan of their own. After much consideration and discussion with MassMutual's local investment advisors, we decided to proceed with the opportunity. We viewed it as a simpler option for some of our small business clients and a potentially profitable business opportunity for our firm.

McGee, Hearne & Paiz, LLP is formerly a satellite office of RSM McGladrey, now RSM US LLP. Since becoming independent in 2000, we have maintained a network affiliation with them. As we considered establishing a MEP, we sought RSM's advice on how to proceed. They drafted an individually designed plan document for us and recommended that our firm also have participants in the plan so we would have

“skin in the game”, so to speak. One of our partners and I became participants in the new MEP, so I have personal experience being a participant in a MEP as well.

Working with the local investment advisors and mining our own extensive client database for appropriate prospects, we marketed the MEP to small businesses in our area. All parties involved expected great results, but ultimately we were only able to add 18 employers to the plan. Listed below are the types of small businesses that joined our MEP:

- Agriculture association
- Bookkeeping
- Commercial printing
- Construction
 - Earthwork
 - Home building (2)
 - General contracting
- Land surveying
- Law firm
- Lobbying
- Plumbing
- Property management
- Retailing
 - Carpet & tile
 - Furniture
 - Pharmacy
 - Photocopier distribution
 - Tires
 - Windows & glass

At its peak, our open MEP covered approximately 150 participants from 18 different unrelated employers. The range of participants is detailed below.

• Sole-proprietors with no other employees	2
• 2 to 10 participants	9
• 11–20 Participants	5
• 20–30 Participants	2

Two features that we did not include in our open MEP and I often do not recommend to clients were automatic enrollment and automatic escalation. While I have seen the statistics demonstrating the benefits of both features, I have also seen the pitfalls that small employers can fall into. Inaction often leads automatically enrolled participants to continue contributing which is a good thing; however many of our small business owners have been concerned about having to deal with the additional work to refund the few participants who might want to opt-out of deferring. Additionally, many of our small business clients want their employees to take some responsibility for making an informed affirmative election. Furthermore, some plan sponsors whose plans may be close to the annual audit participant count could see the plan easily pushed over that threshold by people terminating employment and leaving balances in excess of \$5,000 in the plan. Finally, businesses with high turnover can have numerous small account balances that can produce a great deal of additional work for numerous parties.

Automatic escalation of deferrals can be particularly difficult for small businesses to manage. Many small businesses process their payroll in-house. Without a sophisticated system in place, it is very easy to overlook required increases or to override a participant’s affirmative election or their previous choice to opt-out of deferring. Such errors result in an additional expense to the small business due to required corrections.

Our MEP was cost-effective for participating employers. We charged the participating employer a one-time setup fee. After that, the participating employers bore no additional direct cost of having a 401(k) plan other than paying employer contributions. Additionally, participating employers had our professional oversight of the plan’s operations. Participating employers had an employee benefit that would assist them in attracting and retaining employees. Participants received the benefit of having a retirement plan for the first time with their current employer. Since MassMutual based their charges on total assets, participants experienced lower fees than they would have experienced had their employer sponsored their own stand-alone 401(k) plan. The MEP was a “win” for the participating employers and a “win” for participants, but it was a money losing business for McGee, Hearne & Paiz, LLP.

It was our expectation that the plan assets would grow to be large enough so that the revenue sharing we received would cover our expenses. We expected that having plan assets of at least \$10,000,000 would generate sufficient revenue sharing. That

growth did not materialize, and plan assets never exceeded \$3,000,000. Our firm experienced losses from beginning to end since the time, document, and audit costs far surpassed the revenue sharing we received. With those losses in mind and with the concern that pending regulations at that time could be unfavorable toward open MEPs, we made the decision to terminate the plan in 2010. The investment advisors worked with each participating employer regarding establishing a SIMPLE IRA or stand-alone 401(k) plan for their business. Listed below are the choices made by our MEP participating employers:

- Adopt 401(k) Plan—6
- Adopt SIMPLE IRA—11
- No retirement plan—0 (one employer went out of business while participating)

Once the plan terminated, the account balance for the two McGee, Hearne & Paiz, LLP participants was transferred to our firms regular 401(k) plan which we still sponsor.

Although our attempt at an open MEP was not successful, subsequent regulations would have made the plan unviable since the participating employers were all unrelated. I believe that open multiple-employer retirement plans can be a viable option for small employers provided that legislation and regulations are such that the plans are easy to understand, inexpensive, and efficient to administer.

STATE SPONSORED OPEN MEPS

The last several years has seen increasing interest in State capitols in the topic of retirement savings. Specifically, State leaders are interested in ensuring that employees in small businesses have a retirement savings option if their employer does not already offer a retirement plan. Many States are studying their options, and a handful have passed legislation mandating coverage. Many of the proposals I have read about support payroll-deduction IRAs. The current IRA contribution level is \$5,500 annually plus a \$1,000 annual catch-up contribution for those age 50 and over. Furthermore, recent DOL guidance is tilting the playing field in favor of State-sponsored retirement plans vs. those offered only by the private sector. My personal opinion is that the State mandates will prompt covered small businesses to research their options and move to adopt their own plan instead of participating in their State's plan. This is where an open MEP alternative can be a valuable option for small businesses.

SUGGESTIONS FOR A PRIVATE SECTOR SOLUTION

There are numerous things that can be done to make open multiple-employer 401(k) plans a viable option for small businesses. Many of these recommendations could be applied to stand-alone 401(k) plans to improve them as well.

1. *Allow Open MEPs*—The current opinion of the Department of Labor is that an employment based common nexus or other organizational relationship must be present in order for a true multiple-employer plan to exist. This prohibits nonrelated small businesses from enjoying the benefits of an open MEP. I recommend that employers with fewer than 100 employees be eligible to join an open MEP which is the same employee limit for SIMPLE IRAs. An employer that grows too large for a MEP would have a transition period to transfer out of the MEP to their own stand-alone 401(k) plan. Additionally, a MEP 401(k) would offer participants a higher contribution ceiling (currently \$18,000 + \$6,000 catch-up) vs. the above referenced IRA limits or the SIMPLE IRA limits of \$12,500 + \$3,000 catch-up.

2. *“One Bad Apple Rule”*—This was an ongoing concern for our firm's open MEP that the actions or inactions of one participating employer could have negative repercussions on the entire plan and other innocent participating employers. Each participating employer should be responsible for only its own participants as well as actions and decisions under its control. We had two major concerns in the day-to-day administration of our MEP: timely enrollment of newly eligible participants and timely submission of employee deferrals and loan payments. To address the enrollment concern, we required the participating employers to provide us with current census data as each enrollment date approached. To address the timely deposit concern, our office submitted the contribution files to the investment company each pay period for each participating employer so we always knew deposits were timely. MassMutual had a sub-plan setup in the MEP for each participating employer. The sub-plan included the business bank account number and routing number for each participating employer. We would submit the contribution file on the plan website and MassMutual would process the debit ACH against the appropriate bank account. Continually contacting employers for their payroll reports as well as pre-

paring and submitting the online contribution files consumed a lot of our time each week.

3. *Model Document*—In order to promote the creation of open MEPs, a model plan document should be created so that service providers can either use the model document or use it as a template for the creation of their own MEP plan document. This could provide certainty and consistency to the service provider community regarding open MEPs.

4. *Higher Annual Plan Audit Participant Count*—Currently, plans that exceed 120 participants as of the first day of the plan year are required to have an audit of the plan for each plan year until the beginning of the year participant count is below 100. A growing MEP will quickly pass that threshold. Our MEP required an audit for 3 of the 5 plan years in which it existed. The cost of the first audit was paid by the plan. The cost of the audit for the last full plan year and the short final year of the plan were paid by McGee, Hearne & Paiz, LLP which added to our firm's losses from offering the MEP. I recommend that an audit not be required until there are at least 1,000 participants. While I previously recommended that employer eligibility be limited to businesses with fewer than 100 employees, a participating employer's sub-plan may over time have more than 100 participants due to terminated participants keeping their account in the plan. I propose that participating employers with more than 100 participants have a transition period to transfer out of the MEP to their own stand-alone 401(k) plan.

5. *Electronic Delivery of Notices and Disclosures as the Default Delivery Method*—Due to the widespread availability of mobile devices capable of accessing the Internet, electronic delivery of required notices and disclosures either via posting on a website or by email should be the default vs. the current default being paper delivery. A participant can be given the option to opt out of electronic delivery in favor of paper delivery.

6. *Modification to Top Heavy Rules*—Current top heavy rules can discourage the initial adoption of a plan, prohibit participation by family members of the business owner(s), and produce a windfall for participants due to an accidental contribution. A 3-percent top heavy contribution can be due to a non-safe harbor 401(k) plan if anyone who is a key employee either by direct ownership of the business or by family attribution contributes during a top heavy plan year. I recall a plan many years ago where the son of the owner deferred 5 percent to the plan since he did not know of the top heavy issues. That 5 percent contribution of approximately \$1,300 cost the employer more than \$80,000 in unexpected top heavy contributions. In a non-safe harbor plan, the ADP and ACP Tests already restrict contributions by highly compensated employees who in a small business are usually also the key employees or owners. Loosening or eliminating top heavy contributions in an open MEP would encourage more small business participation. It could do the same in a stand-alone 401(k) plan as well.

7. *Expand and Promote the Retirement Savings Contributions Credit*—The comment I most often hear from either newly eligible participants or eligible participants who do not contribute is "I can't afford it." It is my opinion that few know of the credit available for making retirement plan contributions, and it is also my opinion that the credit should be increased from its current phaseout levels. A worker filing as single gets a 50 percent credit if the Adjusted Gross Income (AGI) is below \$18,250, and the credit phases out once AGI surpasses \$30,500. For a married couple filing jointly, the 50 percent credit is on AGI up to \$36,500 and phases out once AGI surpasses \$61,000. Essentially, a person working full-time at an hourly pay rate of about \$15 is no longer eligible for the credit. While the credit results in lower *current* income tax revenue, the revenue is not lost. It is *deferred* until the participant taxes a taxable distribution, hopefully in retirement.

8. *Simplicity*—Perhaps one of the most important requirements is simplicity. As mentioned previously, most small business owners are not benefits professionals. They seek advice from others and want to feel like they understand what they are signing up for vs. having no understanding at all. There have been many times when prospective 401(k) plan clients that I have met with have chosen to adopt a SIMPLE IRA instead of a 401(k) plan because there is no plan document to maintain, no annual Form 5500 to file, and the rules are easier to understand. I believe that an open MEP needs to be easy to understand in order for many small businesses to be willing to consider it as an alternative to meet their needs.

Small businesses hire a TPA like me to help keep them out of trouble. The regulations are too complex for most small business owners to understand while also trying to run their day-to-day operations. Many investment advisors and large record-keepers like to work with TPAs because people like me help them retain their retirement plan business. In the case of McGee, Hearne & Paiz, LLP, we are a local presence in our community. Many small business people like doing business with

other small businesses. In addition to our expertise, we can often have a face-to-face conversation with our clients and can take the time to personally help them deal with situations as they arise. We are not simply a voice on the telephone that they will never meet. Our clients know us, and we know them. I recommend that open MEP legislation preserve a role for local TPAs who can work with small business owners in their community.

OTHER SUGGESTIONS TO STREAMLINE RETIREMENT PLAN ADMINISTRATION

Many of the suggestions above can be applied to stand-alone qualified retirement plans in addition to being applicable to open MEPs. Listed below are additional suggestions that can be applicable to all qualified retirement plans.

1. *Expanded Self-Correction Opportunities*—Due to the complexity of the regulations and simple human error, administrative errors occur in retirement plans. One of the most common is the late deposit of employee deferrals and loan payments. The Form 5500 requires plan sponsors to report the amount of employee deferrals and loan payments that were deposited late during the plan year. In my experience, this issue more than any other prompts a Department of Labor investigation of a retirement plan. These investigations are lengthy and expensive in terms of both time and money. I recommend that the question be removed from the Form 5500 and that employers be required to self-correct and retain documentation of the correction. Small businesses are often reluctant to make a filing with the DOL and/or IRS when an error occurs due to (1) fear of the agencies, (2) accounting and/or legal fees, and (3) agency filing fees. Many other administrative errors are not required to be reported on the Form 5500, and employers act to make corrections when errors are identified. Removing the reporting requirement for late deposits would be a step toward simplifying compliance.

2. *Seven Business Day Safe Harbor Deposit Window for All Plans*—Plans with less than 100 participants have a 7 business day safe harbor period to timely deposit employee deferrals and loan payments. For larger employers, timely deposit is a facts and circumstances determination based upon the earliest date that the funds can be segregated from the employer's general assets. In reality, the standard for a large employer is the shortest length of time from payday to the deposit date that is identified during the period being examined. For example, if a 2-year timeframe is analyzed and the 401(k) deposit was made on payday even once, the employer is deemed to have demonstrated that it can make the deposit on payday and everything deposited later than payday is deemed late. Large employers should have the same 7 business day safe harbor deposit window as granted to small employers.

3. *Limit 401(k) Loans*—Many employers that I have worked with dislike participant loans due to the extra work they represent and the potential for administrative errors. Despite this, many plans allow loans as an "incentive" for participants so they know they can access funds in a time a need. While a participant's immediate financial need can be satisfied by taking a retirement plan loan, the loan can have unexpected consequences. The opportunity cost of the lost rate of return can be large. Terminating participants often have a short period of time to repay the loan before the unpaid balance becomes taxable income. Some employers can, in my opinion, be too generous by not limiting the number of participant loans. Some employers simply limit the overall dollar amount in order to comply with the IRS limits, but otherwise allow participants to take as many loans as they like. I recommend limiting loans to 1 at a time with no refinancing option available.

4. *Remove the 6-month Deferral Suspension Following Hardship Distributions*—Currently, participants experience a 6-month suspension from making 401(k) deferrals following a hardship distribution. As the term implies, a "hardship" distribution is taken because the participant lacks funds to cover a certain major expense. Many participants face a double penalty since in addition to the missed deferral opportunity they also miss 6 months of employer match in plans that provide a match contribution. Participants who cannot afford to defer for a period of time are free to lower or suspend their deferrals. Those who can afford to continue should be given the opportunity to do so.

5. *Encourage Portability of Accounts*—Although we inform participants of the 10 percent excise tax on most distributions prior to age 59½, many participants cash-out from their former employer's retirement plan when they transition to another job. A distribution from a SIMPLE IRA within the first 2 years of participation results in a 25 percent unless an exception applies. In my experience, account balances under \$10,000 seem to be at the most risk of being cashed-out. I talked to one such participant within the last month who was fired from his job and desperate to have his \$1,200 account balance distributed in order to make the next rent payment. While a lengthy discussion can be had about how a person comes to be

in that financial situation, I most often see balances under \$10,000 used to pay debts, living expenses, or moving expenses. The 10 percent excise tax acts to discourage premature distributions but people don't have a reward for rollovers. A small refundable tax credit might assist.

CONCLUSION

Employer sponsored retirement plans are an effective tool for Americans to save for their retirement. Some people I talk with do not expect Social Security to still be there for younger generations. My response to such statements is that I personally expect Social Security to be there when I reach my full retirement age in 21 years; however, I expect there to be reforms to the program to address its long-term financial health and the increasing life expectancy of Americans. Such reforms will probably include an increase in payroll taxes and the Taxable Wage Base as well as increases to the eligibility ages for partial and full benefits. Despite the possibility of future changes to the program, I believe that Social Security will for the foreseeable future maintain its role as the retirement cornerstone of most Americans, but it is not enough. Americans must also save for their own retirement.

A variety of retirement savings vehicles are available. Individuals can save in an IRA. Businesses and non-profits can sponsor a SIMPLE IRA, SEP, or 401(k) plan. Governments can sponsor a 457 plan. Educational institutions and some non-profits can sponsor a 403(b) plan. Additionally, all of these employers can sponsor a defined benefit pension plan if they can afford to do so, but fewer and fewer actively employed private sector employees are covered by such a benefit.

Numerous State governments see a retirement plan coverage gap and are either studying the available alternatives or are actively taking steps to fill the gap. Our Federal Government should take steps to promote saving through employer sponsored retirement plans. The DOL and IRS provide important oversight and enforcement of the retirement plan sector, but can be inefficient and heavy-handed with well-intentioned small businesses when minor mistakes occur. The intent of regulation and enforcement should be to provide a level playing field and consumer protections for everyone involved in the industry from service providers, to employers, to participants benefiting under a plan. The ever-increasing volume of regulations make compliance difficult and more costly. When I recently provided information to several newly eligible participants in our own accounting firm's 401(k) plan, I provided the following documents.

1. Summary Plan Description	24 pages
2. Investment Company Enrollment Booklet	50 pages
3. Section 404(a)(5) Participant Fee Disclosure	9 pages
4. Safe Harbor Notice	3 pages
5. Qualified Default Investment Alternative Notice	2 pages
6. Contribution Election Form	1 page

89 pages

Fortunately, everyone in our company uses a computer and email as part of their daily duties, so I could deliver these documents via email instead of printing 6 documents totaling 89 pages for each person. Electronic delivery is not an option for many businesses both small and large.

I believe that the vast majority of small business owners across America are just like the ones we serve in Wyoming in that they would like to offer a retirement plan benefit to attract and retain good employees. More importantly, an employer-sponsored retirement plan can assist the business owner and the employees to prepare for their future. Open MEPs can be another option to help Americans achieve their retirement goals.

Once again, I appreciate the opportunity be a part of this discussion.

Senator ENZI. Thank you.
Mr. Favorito.

**STATEMENT OF NICOLA FAVORITO, DEPUTY TREASURER,
RETIREMENT SERVICES FOR MASSACHUSETTS, BOSTON, MA**

Mr. FAVORITO. On behalf of Treasurer Goldberg, we'd like to thank you, Chairman Enzi, Senator Warren, of course, and members of the committee and staff for providing us the opportunity to be here today to discuss open multiple employer plans. The goal of

my remarks is to highlight to the committee another example of how the MEP approach may prove beneficial in improving retirement access, specifically through a State sponsored plan being developed for Massachusetts nonprofit organizations.

By way of background, the Commonwealth has a long history in sponsoring benefits for its own employees. The State defined benefit plan has been in existence since 1911, the teacher system since 1914, and its optional 457(b) plan since 1976. Collectively, this accounts for more than 250,000 active members, participants, and beneficiaries, many of whom are without Social Security coverage, and it also accounts for more than \$67 billion in assets.

These and other factors afford our office economies of scale, as we'll discuss later on, around plan design and costs, which will benefit plan participants and taxpayers in the proposal that I'll outline for you.

The specific challenge that we're trying to address in the Commonwealth with regard to nonprofits has to do with the fact that they represent nearly 17 percent of the Massachusetts economy, employing over half a million people, making it almost, I think, the sixth largest in the country. As with other small businesses, nonprofit organizations simply—as has been stated in October and will be again today, small organizations simply lack the resources sometimes to administer affordable retirement plans, resulting in countless employees being isolated from any benefits other than Social Security.

According to a study by the Boston Foundation, some 56 percent of nonprofit organizations with budgets less than \$250,000 do not offer any retirement plans to their employees in the Commonwealth, making it challenging for the nonprofit sector to attract high-quality talent. Importantly, there are some unique characteristics with regard to the nonprofit employer in the Commonwealth.

It is characterized by dedicated employees who tend to remain in the industry when they do change employers. It is a sector that heavily employs women, who typically face shorter working careers, improving longevity relative to their male counterparts, and, unfortunately, lower rates of compensation, all factors which make retirement security more challenging for them. We are exploring the feasibility in the Commonwealth of trying to improve retirement access in this sector by way of a 401(k) model using the MEP approach.

The committee and its staff is very familiar through previous testimony with regard to the overall structure of MEPs, in terms of permitting individual employers that meet eligibility criteria to collectively join a plan. The plan, as we are proposing, would be considered a single plan and trust under ERISA. The plan document would provide that the plan would be subject to Title I and would be intended to comply with the relevant IRS tax qualification requirements. There would be a single trust holding contributions made by employers, employees, or both, and only a single Form 5500 annual return report would be filed for the whole arrangement.

Under this structure, participating employers would have limited fiduciary and administrative responsibilities. Administrative costs

would be kept low by aggregating assets and leveraging economies of scale as the plan grows.

The plan design that the Commonwealth is contemplating would allow us to incorporate all the consumer protections inherent in an ERISA type plan, as well as all the best practice design features found in both DB and DC plans. This would include auto enrollment, auto escalation of employee contributions, professionally managed diversified investment options, and portability, just to name a few. Additional protections we would emphasize are secured through the public procurement process that we undergo that would be required to engage recordkeepers, auditors, investment managers, and consultants.

Additional benefits would be found through the investment design, which would combine target date funds, objective-based portfolios, and managed account services, depending on the expertise of the individual employee.

As with many other small businesses, we think the greatest barrier for nonprofit organizations is not the willingness to offer retirement benefits, but the cost and the other responsibilities that go along with it. The MEP structure would directly address some of the key challenges small nonprofits face when deciding whether it's feasible to offer a plan to their employees. We see an increasing receptiveness and activity around the country that has been reported and is being generated from all corners of the retirement industry in terms of using the open MEP, and we would like to take advantage of that opportunity.

On behalf of the Treasurer and the Commonwealth, we would encourage the committee and Congress to continue its efforts toward expanding accessibility to well-run retirement programs for those who don't have it now. We'd also urge the continued consideration of MEPs in this regard.

Thank you for the opportunity to submit our views and for your consideration.

[The prepared statement of Mr. Favorito follows:]

PREPARED STATEMENT OF NICOLA FAVORITO

INTRODUCTION

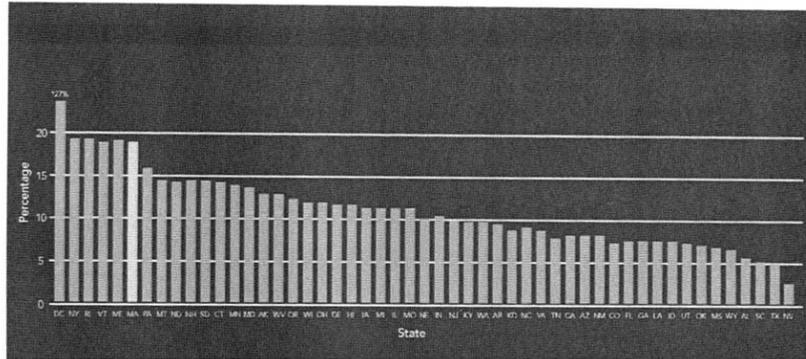
On behalf of Massachusetts Treasurer & Receiver General Deborah Goldberg, we would like to thank you Chairman Enzi, Senator Warren and members of the committee for the opportunity to participate in today's discussion regarding Open Multiple Employer Plans. We will outline our efforts in this regard at the State level as we develop a retirement plan for Massachusetts nonprofit organizations. We hope you will concur that the information we provide you will be consistent with many of the themes previously expressed to this committee and those who have testified in support of expanding retirement plan accessibility and the use of MEPs.

The Commonwealth has a long history in sponsoring retirement benefits for its own employees. Its State defined benefit plan was established in 1911; its teacher system in 1914; and its optional § 457(b) plan in 1976. These plans collectively account for more than 250,000 active members/participants, retirees, and more than \$67b in assets. As we will describe further, these and other factors afford our office economies of scale around plan design and costs which benefit plan participants and the taxpayers.

As chair of the Massachusetts State Employees Retirement System, and having prior extensive experience with private sector business management, Treasurer Goldberg recognizes the importance of providing workers with quality retirement benefits, especially to those who may not have them readily accessible. In an effort to leverage its experience providing retirement benefits, the Commonwealth has embarked to make retirement benefits accessible to private sector employees.

THE CHALLENGE

As illustrated in the graph below, the nonprofit business sector represents nearly 17 percent of the Massachusetts State economy employing over 500,000 individuals making it the sixth largest in the Nation.¹ In many cases nonprofit organizations simply lack the resources to administer an affordable retirement plan, resulting in countless employees being isolated from any retirement benefits outside of Social Security. According to the Boston Foundation, a full 56 percent of grassroots organizations with budgets of less than \$250,000 do not offer any retirement plans to their employees making it challenging for the nonprofit sector to attract high quality talent.



Importantly, this sector is characterized by dedicated employees who tend to remain in the non-profit world even when they do change employment. It is a sector that employs women predominantly, who typically face shorter working careers, improving longevity relative to their male counterparts, and unfortunately lower rates of compensation: Factors which make retirement security more challenging.

Chapter 60 of the Acts of 2012, signed into law on March 22, 2012, authorized the Treasurer and Receiver General to establish a defined contribution retirement plan for not-for-profit employers of the Commonwealth of Massachusetts incorporated under section 501(c) of the Internal Revenue Code, that are established, organized or chartered under the laws of the Commonwealth and doing business in the Commonwealth. The Legislation limited the size of participating employers to those with not more than 20 persons.

VOLUME SUBMITTER VS MULTIPLE EMPLOYER PLAN

With the foregoing as background, we would like to highlight how this committee's focus on MEP's has bearing on our efforts at the State level. In 2012 establishing our program as a volume submitter plan represented the most practical plan design at the time. Volume submitter plans allow multiple employers to adopt their own separate plan via an adoption agreement with the State as the plan sponsor. As a general matter for a volume submitter all employers would have their own autonomous plans and would be responsible for maintaining their own documents, trust agreement, IRS form 5500 filings and plan records. However, each employer would also need to adopt amendments to the plan documents as needed, such as for changes in law, changes in plan design, and fee changes. Adopting employers under a volume submitter plan assume fiduciary and administrative responsibilities in the oversight of their individual plan to ensure compliance with ERISA. This structure also presents cost challenges to prospective employers.

By comparison, as has been detailed to this committee previously, a multiple employer plan structure ("MEP") would permit employers (that meet specified eligibility criteria) to join the plan. The MEP would be considered a single Plan and trust under ERISA. The plan document would provide that the plan is subject to Title I of ERISA and is intended to comply with Internal Revenue Code tax qualification requirements. The MEP would have a single separate trust holding contributions made by the participating employers, the employer's employees, or both. Only a single Form 5500 annual return report would be filed for the whole arrangement.

¹Bureau of Labor Statistics.

Under this structure participating employers would have limited fiduciary and administrative responsibilities. Administrative costs could be kept low by aggregating assets and leveraging economies of scale as the plan grows. The Treasury is in the process of exploring the feasibility and advantages of offering the nonprofit 401k plan as a MEP.

PLAN DESIGN

The Treasurer's office is developing the nonprofit plan as a 401(k). Offering the program as a 401(k) would allow us to incorporate all of the consumer protections inherent in ERISA-type-plans as well as best practice design features found in both defined benefit and defined contribution plans. These features would include:

- Auto-enrollment of employees at a rate equal to 6 percent of pay with employees eligible to opt out or select an alternate savings rate;
- Auto-escalation of employee contributions to 10 percent of pay in annual 1 percent increments;
- Professionally managed diversified investment options; and
- Portability.

Additional protections are secured through the public procurement process we are required to utilize in engaging recordkeepers, auditors and consultants.

Key demographic data for the nonprofit sector as well as behavioral science observed in our own experience and in the defined contribution industry support the need for automatic features within the plan design. The higher ratio of female to male employees with a large percentage of those employees earning salaries less than \$30,000.00 support this conclusion. The following charts from Vanguard's *How America Saves 2015—A report on Vanguard 2014 defined contribution plan data*; illustrate the dangers of participant inertia for these employees in the absence of auto features:

Participation Rates by Plan Design, 2015
(Vanguard defined contribution plans permitting employee-elective deferrals)

	Voluntary Enrollment (In percent)	Automatic Enrollment (In percent)	All (In percent)
All	58	88	66
Income			
<\$30,000	29	82	42
\$30,000-\$49,999	53	90	64
\$50,000-\$49,999	62	92	69
\$75,000-\$99,999	69	94	74
\$100,000+	85	96	87
Age			
<25	25	81	37
25-34	51	88	62
35-44	61	88	68
45/54	65	90	71
55-64	69	91	74
65+	64	87	69
Gender			
Male	56	89	65
Female	63	88	71
Job Tenure (years)			
0-1	33	82	48
2-3	56	92	67
4-6	63	92	71
7-9	68	92	73

Participation Rates by Plan Design, 2015—Continued
(Vanguard defined contribution plans permitting employee-elective deferrals)

	Voluntary Enrollment (In percent)	Automatic Enrollment (In percent)	All (In percent)
10+	73	93	77

Source: Vanguard, 2016.

Participant deferral rates by plan design, 2015
(Vanguard defined contribution plans permitting employee-elective deferrals)

	Voluntary Enrollment (In percent)	Automatic Enrollment (In percent)	All (In percent)
All	7.2	6.1	6.8
Income			
<\$30,000	5.1	3.6	4.4
\$30,000–\$49,999	5.9	5.0	5.5
\$50,000–\$49,999	6.9	6.5	6.8
\$75,000–\$99,999	7.7	7.8	7.7
\$100,000+	8.4	8.1	8.3
Age			
<25	5.1	3.8	4.5
25–34	5.8	4.9	5.5
35–44	6.5	5.7	6.3
45/54	7.4	6.8	7.2
55–64	8.9	8.1	8.7
65+	10.4	9.0	10.0
Gender			
Male	7.0	6.3	6.8
Female	7.4	6.0	6.9
Job Tenure (years)			
0–1	5.4	4.1	4.7
2–3	6.5	5.9	6.2
4–6	6.9	6.8	6.8
7–9	7.3	7.1	7.3
10+	8.0	8.1	8.0
Account Balance			
1. <10K	4.0	3.5	3.8
2. <25K	6.2	6.3	6.3
3. <50K	7.3	7.2	7.3
4. <100K	8.5	7.9	8.3
5. <250K	9.8	9.2	9.6
6. 250K+	10.8	10.7	10.7

Source: Vanguard, 2016.

As illustrated in the above tables, plans with automatic enrollment have higher participation rates across all demographic data points as compared to voluntary plans. While automatic enrollment will lead to increased participation rates it may, in some circumstances have an unintended negative effect on participant deferral rates. For example if the default participant deferral rate is set too low (3 percent or lower) and/or in the absence of an auto-escalation feature, employees could face shortfalls in their retirement savings.

INVESTMENT DESIGN

The Plan's investment structure is being designed to permit all Plan participants, regardless of their previous knowledge or experience, to construct an investment plan appropriate to their financial circumstances, goals, time horizons and risk tolerances. All investment options will be "white label" to help participants focus on each option's investment strategy. The nonprofit 401(k) Plan investment structure would have three tiers; Plan participants may allocate and transfer their assets among investments in each tier. A description of each tier follows:

Tier 1—Custom Target Date Funds—For Plan participants lacking the knowledge, experience or time to construct a unique asset allocation plan: a series of low cost custom target-date retirement funds constructed, managed and monitored by the Plan's investment consultant acting as a 3(38) fiduciary.

Tier 2—Objective Based Portfolios—The objective based funds offer four diversified investment options in four classes of the defined contribution objectives menu (Growth, Income, Capital Preservation and Inflation Protection). Each fund offers participants a professionally managed efficient portfolio constructed and monitored by the Plan's investment consultant acting as a 3(38) fiduciary.

Tier 3—Managed Account Service—This would be an advice service offered through the Plan's recordkeeper.

CONCLUSION

As with many other small businesses, the greatest barrier for nonprofit organizations is not the willingness or desire to offer retirement benefits to their employees but the cost. Because a nonprofit organization's ability to fundraise is often tied to overall operating expenses it is critical to keep administrative costs to an absolute minimum. This has a direct effect on the organization's ability to cover the administrative oversight and expenses associated with the sponsorship of a quality retirement plan.

The MEP structure would directly address some of the key challenges nonprofit employers face when deciding whether it is feasible to offer a retirement plan to their employees. Employers must also assess plan administration and their fiduciary responsibilities and liabilities.

As contemplated by our office, the State (either directly or through one or more contract agents) would be an ERISA fiduciary and assume administrative responsibilities for the program. Administrative costs could be kept low by aggregating assets and leveraging economies of scale as the plan grows.

On behalf of Treasurer Goldberg and the Commonwealth we would encourage this committee and Congress to continue its efforts toward expanding accessibility to well-run retirement programs for those who may not have it now. We would also urge the continued consideration of MEPs in this regard.

Thank you for the opportunity to submit our views and for your consideration.

Senator ENZI. Thank you.

Mr. Kais.

STATEMENT OF JAMES KAIS, SENIOR VICE PRESIDENT AND NATIONAL RETIREMENT PRACTICE LEADER, TRANS-AMERICA, MIAMI, FL

Mr. KAIS. Thank you for having TransAmerica at the committee meeting today. We really appreciate your work on this topic.

I'm Jim Kais. I'm Senior Vice President and Retirement Practice Leader for TransAmerica. TransAmerica is focused on helping customers achieve a lifetime of financial security.

Senator ENZI. Can you pull the microphone a little closer to you?

Mr. KAIS. There we go. Apologies. TransAmerica is focused on helping customers achieve a lifetime of financial security. Of the 27,000 plans that we service today, 280 of those are multiple employer plans, or MEPs, which have been adopted by 11,000 adopting employers and nearly 600,000 participants. It's been a focus of our business since 1998.

I will focus my remarks on two of the three main points in my written testimony. No. 1, we need to encourage small employers to

provide plans through reforms that address the primary reasons they do not offer plans in the first place: cost, complexity, and concerns about fiduciary liability. Under a MEP, many small businesses can join together to achieve economies of scale and avoid the administrative burden and most of the liability in running the plan. Adopting employers delegate fiduciary and administrative services, such as the selection of the investment fund lineup for the plan, and share in the cost of such services.

In order to facilitate the adoption of MEPs, TransAmerica actively supports two essential reforms. First, compliant employers in the MEP should be protected from liability for the noncompliant acts and omissions of other employers in the MEP and the resulting disqualification of the said plan, the so-called one-bad-apple rule. Second, the requirement that only employers with a nexus can join in a MEP should be eliminated. Permitting all open MEPs will increase the number of small employers that provide a retirement plan for their employees.

These reforms have long been advocated by both Republican and Democratic Members of Congress. We especially thank the chairman of the subcommittee and Senator Hatch for their leadership on MEP reform. The administration has also called for open MEPs for the private sector, however, with additional conditions that should be weighed against the need and increase cost.

It should be noted that efficiencies in other pooled arrangements can also be achieved. Employers that want to retain their own standalone plan but wish to address the cost, complexity, and liability concerns may adopt a plan that shares a common trustee, named fiduciary, and plan administrator with other employer plans. Further efficiencies can be gained by permitting the shared administrator to file a consolidated Form 5500. A combined Form 5500 would eliminate the wasteful duplication that occurs today without giving up any valuable information.

No. 2, in seeking solutions to the coverage problem, we must take care to do no harm to the current system. According to research from nonprofit TransAmerica Center for Retirement Studies, 90 percent of workers who are offered a 401(k) or similar plan are saving for retirement, compared to just 48 percent of workers who are not offered such a plan. Similarly, innovations in coverage should complement the current system and not unfairly compete with it.

We recognize the efforts of States to provide retirement savings opportunities to workers not covered by an employer plan. TransAmerica urges this Congress and the Department of Labor to ensure that private sector open MEPs can be offered to private sector workers on the same terms as State or other governmental open MEP plans.

TransAmerica commends Chairman Enzi, Ranking Member Warren, and other members of the subcommittee on their consideration of this important issue of multiple employer plans and employer plan coverage in general. We appreciate the opportunity to present our views today.

Thank you very much.

[The prepared statement of Mr. Kais follows:]

PREPARED STATEMENT OF JAMES KAIS

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

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

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

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

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

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

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

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

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

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

² Transamerica Center for Retirement Studies® (“TCRS”), 16th Annual Retirement Survey of American workers and employers. TCRS is a division of Transamerica Institute® (“The Institute”) a nonprofit, private foundation. The Institute is funded by contributions from Trans-

Multiple Employer Plans are a powerful solution to increasing coverage in the small employer market; however, further reform is needed to facilitate their adoption.

As small businesses continue to employ a greater portion of workers than ever before, focus should be placed on obstacles to employers establishing retirement plans for their workers. Common reasons employers cite for not offering retirement savings plans to their employees are: cost, complexity, and fiduciary liability. Under a multiple employer plan (“MEP”), many small businesses can join together to achieve economies of scale and avoid the administrative burden and liability in running the plan by turning over administration of the plan to a named plan fiduciary, record-keeper and plan administrator, making the plan both more affordable and effectively managed. By joining a MEP, adopting employers delegate fiduciary and administrative services, such as the selection of the investment fund lineup for the plan, and share in the costs of such services. TCRS’ research found that 22 percent of small companies (10–499 employees) that do not offer a 401(k) or similar plan and are not likely to offer one in the next 2 years would be likely to consider joining a MEP.³

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

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

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

The above reforms have long been advocated by both Republican and Democrat Members in both Houses of Congress, including in bills sponsored by Senators Hatch, Collins, Nelson and in the last Congress by Senator Brown and former Senator Harkin, as well as by Representatives Buchanan, Reichert and Kind in the House. The Senate Finance Committee, in its Savings & Investment Bi-Partisan Working Group (“Senate Finance Committee Working Group”) co-chaired by Senators Crapo and Brown at the beginning of this Congress also endorsed the above proposed reforms. We also thank the Administration, in its fiscal year 2017 budget, for calling for open MEPs for the private sector; however, additional conditions called for by the Administration in its proposal need to be weighed against the added cost and complexity, as well as the nature of risks against which the additional conditions are designed to protect.

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

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

Facilitate other efficiencies in pooled arrangements. Employers that want to retain their own stand-alone 401(k) plan but wish to address the cost, liability and administrative complexity concerns, may adopt a plan that shares with other employer plans a common trustee, a common named fiduciary, a common plan administrator, a common set of investment options, and a common recordkeeper. Further efficiencies can be gained in these pooled arrangements by permitting the administrator of plans sharing this same administrative framework to file a consolidated Form 5500. The consolidated Form 5500 may contain such information about the separate plans as is necessary or appropriate to ensure that DOL and Treasury do not fail to receive needed information. In short, a combined Form 5500 would eliminate the wasteful duplication that occurs today but without giving up any valuable information.

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

Transamerica Life Insurance Company and its affiliates may receive funds from unaffiliated third parties. For full survey methodologies, see www.transamericacenter.org.

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

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

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

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

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

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

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

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

⁴http://www.sparkinstitute.org/content_files/improving_outcomes_with_electronic_delivery_of_retirement_plan_documents.pdf. Retrieved June 16, 2016.

CONCLUSION

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

Senator ENZI. Thank you.

I want to mention that the Ranking Member, Patty Murray, is here, and if she wants to make a few comments—I know that you’ve got multiple things happening today.

OPENING STATEMENT OF SENATOR MURRAY

Senator MURRAY. I appreciate it, Senator Enzi. I wanted to come by and thank you for hosting this roundtable today and Senator Warren for participating with you on this. I really appreciate the focus on retirement security for our seniors across the country and your persistence in raising these issues in the HELP Committee, and I really appreciate both of your hard work to really spotlight these issues each and every day.

I believe strongly that after a lifetime of hard work, all seniors should have the chance to live out their golden years on firm financial footing and with peace of mind. A secure retirement is also important to strengthening our Nation’s middle class and making sure our country works for all Americans, not just the wealthiest few.

But today, too many of our seniors are spending their golden years scraping to make ends meet, and too many Americans nearing the age of 65 want to retire but are financially unable to stop working, and far too few of our younger Americans have the ability or the tools to secure their future. In short, our country really is facing a retirement crisis.

Last year, I asked the GAO to study this critical issue, and they determined that an astonishing 29 percent of households age 55 and older do not have any retirement savings at all. This is largely in part because they lack access to a retirement plan, and, in fact, nearly half of all private sector workers don’t have a workplace retirement plan. The majority of those are, of course, lower-income, part-time, and work for small employers.

In other words, the challenge isn’t that people didn’t choose to save through a workplace plan. It’s about that half of all of our workers don’t even have the option to put away money for retirement through their employer. The promising finding in the GAO report was that when offered the chance to save in a plan, a majority of those workers would participate regardless of their income.

It’s clear that in order to solve the retirement crisis, we’ve got to do more to ensure that every single person, including those who work part-time, workers in our gig economy, and those who work for small employers have the opportunity to participate in a retirement plan. Multiple employer plans make it easier for employers to offer those retirement plans, and they allow groups of small employers to reduce cost, complexity, and risk by joining together to offer a single retirement plan as their crucial part in closing that gap.

I am committed to clearing a path through the current legal roadblocks preventing MEPs from becoming more accessible. Additionally, I am equally committed to making sure of adequate protection for participants in those plans. I also think it's vitally important that as we talk about any new retirement plan designs and options, we ensure that stakeholders and advocates are fully engaged as we do this.

The stakes are too high to rush through these issues without really thorough feedback. I'm really glad that we're having this discussion today, and I think if we can continue to work through this in a bipartisan manner to solve the retirement crisis, we will have gone a long way in making sure that we can help grow our economy from the middle out, not from the top down, which is a goal of mine.

Thank you very much.

Senator ENZI. Thank you for your comments and your leadership on getting something done in this area.

If the Chairman comes by, we'll have him make some comments as well.

Mr. Mason.

**STATEMENT OF KENT MASON, PARTNER, DAVIS AND HARMAN
LLP, WASHINGTON, DC**

Mr. MASON. Thank you.

I just want to thank Chairman Enzi, Ranking Member Warren, and the subcommittee for holding this roundtable and for inviting me to participate.

I think there are really two core issues here. One is expanding the availability of multiple employer plans, MEPs, and second is removing a significant obstacle to small businesses adopting a MEP. Let's go through those two issues.

The first—and both of these have been discussed by others here—is expanding the availability of MEPs. Under the current rules—I think Senator Warren talked about this—the Department of Labor requires all employers in a multiple employer plan to share a very close relationship, a nexus, other than participating in the same plan. What this does is really limit the number of small employers that can join together because not that many have very many employers with whom they share such a close relationship.

This deprives small employers across the country of the ability to band together to achieve the economies of scale that large employers have. Like others here, and like the Chair and Ranking Member, I would be strongly in favor of eliminating the nexus requirement in the context of defined contribution MEPs, and that is—and, again, as referenced before—a point that has been made on a very bipartisan basis in both the House and the Senate.

The second issue—I think Jim Kais referenced—is eliminating what is often referred to as the one-bad-apple rule. Under the tax qualification rules, if there are 1,000 employers in a multiple employer plan, and if one of those employers violates the tax qualification rules, the entire plan can be disqualified with adverse tax consequences for all 1,000.

This can be a very severe obstacle to small, risk-averse employers adopting a MEP, because you say to them, “This has some advantages in terms of cost savings,” and they say, “Well, gee, if I do everything right, but somebody out there makes a mistake, could I be penalized?” The answer is, “Yes, very severely.” That can be a real obstacle for them adopting a plan.

There’s no real rationale for this rule. The rule should be—and, again, reflected in bipartisan bills—the rule should be the person that violates the rule gets hit with the sanctions. The innocent employers do not.

I’m just going to close because I want to—we very much all want to get to the interactive portion of this—but by talking very briefly about some very interesting research that came to fore last week. The TransAmerica Center for Retirement Studies president, Catherine Collinson, testified last week, and she had done a survey and looked at the employers who do not maintain a plan, and she said that of those employers that do not maintain a plan, 27 percent are actually considering strongly adopting a plan in the next 2 years. But that leaves 73 percent not considering it.

She went to those 73 percent, the most reluctant employers, and said, “If you had a low-cost multiple employer plan available, would that change your mind?” Over a fifth of those employers said, “That could very well change our minds. That could make a difference.”

To me, that really resonated in a sense that this one change could address more than a fifth of those uncovered employers. That would be a wonderful, wonderful start. We have a long way to go, and there’s no reason to stop there. But if we can take that step, it would make an enormous difference.

[The prepared statement of Mr. Mason follows:]

PREPARED STATEMENT OF KENT MASON

My name is Kent Mason. I am a partner with the law firm of Davis & Harman LLP, and have worked in the retirement savings area for 34 years. I thank Chairman Enzi, Ranking Member Warren, and this subcommittee for examining the important topic of open multiple employer plans. I appreciate the opportunity to participate in this roundtable and to provide this written statement. I am providing this testimony on my own behalf based on extensive discussions and work on these issues over the years.

The core issues before us today are (1) expanding the availability of multiple employer plans (“MEPs”), and (2) removing a significant impediment to the adoption of MEPs.

SUMMARY

Expanding the availability of MEPs. Under Department of Labor guidance, all employers participating in a MEP must have a close relationship with each other—a nexus—other than participating in the same plan. This has severely limited the universe of small employers that are able to participate in a MEP because so many employers do not have a sufficient nexus with other employers.

The limited availability of MEPs deprives most small employers of the opportunity to band together in a common plan to achieve many of the economies of scale enjoyed by larger companies. As discussed in more detail below, I believe that the nexus requirement should be eliminated in the case of defined contribution plans, as reflected in several leading bills, including multiple bipartisan bills. This would permit what is often referred to as an “open MEP,” i.e., a defined contribution MEP that includes unrelated employers.

Removing an impediment to adoption of MEPs. Under current law, if there is a failure to satisfy the tax qualification rules with respect to any employer participating in a MEP, the entire MEP is considered to have failed to satisfy such rules,

triggering extremely adverse tax consequences for all the participating employers. This is often referred to as the “one bad apple” rule.

One of the main reasons that small businesses are hesitant about joining a MEP is this one bad apple rule, i.e., the possibility that they could incur substantial tax liabilities due to the actions of another participating employer. The possibility of such a result causes great concern among small risk-averse businesses that cannot afford new and unexpected costs, and do not want to risk their future based on the actions of numerous other companies.

As discussed in more detail below, I believe that the one bad apple rule should be substantially repealed, again as reflected in several leading bills, including multiple bipartisan bills.

BENEFICIAL EFFECTS OF MEPS

Data supporting the beneficial effects of MEPS. There is various data regarding the extent to which small businesses sponsor retirement plans for their employees. But there is widespread agreement on one critical point: small business coverage rates are far too low, which is jeopardizing the retirement security of millions of employees who work for small businesses. The challenge is how to raise this coverage rate.

In written testimony provided last week before the Senate Special Committee on Aging, Catherine Collinson, President of the Transamerica Center for Retirement Studies, offered the following insights, based on survey data:

Only 27 percent of companies that do not offer a plan say they are likely to begin offering one in the next 2 years. Among the 73 percent who are not likely to offer a plan, the two most frequently cited reasons are that their company is not big enough (58 percent) and concerns about cost (50 percent). However, in contrast, one in five of them (22 percent) did say they would be likely to consider joining a multiple employer plan offered by a vendor who handles many of the fiduciary and administrative duties at a reasonable cost.

This data provides powerful evidence that this subcommittee is on exactly the right track in focusing on open MEPS. By making MEPS more available and more workable, it may be possible to cause as many as 22 percent of the most reluctant employers to adopt a plan.

OPEN MEPS

Strong support for the bipartisan approaches to open MEPS. There has been substantial discussion of the need to permit open MEPS in order to broaden retirement plan coverage. In this regard, the key policy discussion has revolved around how to include sufficient safeguards to protect employers and participants in open MEPS without imposing unnecessary burdens that eliminate the only advantage of MEPS: the cost savings achieved by economies of scale. In this regard, I strongly support the following bills, which are very similar and are generally bipartisan:

- Section 207 of the SAFE Retirement Act of 2013 (S.1270 from the 113th Congress), introduced by Senate Finance Chairman Hatch (R-UT).
- Section 3 of the Retirement Security Act of 2015 (S.266), introduced by Senators Collins (R-ME) and Nelson (D-FL).
- Section 201 of the USA Retirement Funds Act (S.1979 from the 113th Congress) introduced by then Senator Harkin (D-IA) and Senator Brown (D-OH).
- Section 3 of the Retirement Security Act of 2015 (H.R. 557), introduced by Representatives Buchanan (R-FL) and Kind (D-WI) (companion bill to the Collins/Nelson bill).
- Section 17 of the SAVE Act of 2015 (H.R. 4067), introduced by Representatives Kind (D-WI) and Reichert (R-WA).

I was also very pleased that the Administration’s budget contained a proposal supporting open MEPS. That proposal did, however, impose far more burdens on open MEPS than any of the bipartisan bills referenced above, and some of the burdens would render open MEPS unusable. However, the point of my statement is to emphasize the widespread bipartisan agreement and to urge all parties to continue to work together to enact a workable bipartisan solution with respect to open MEPS.

In this regard, I offer my views below on the policy background that should be taken into account in framing the bipartisan approach.

Why elimination of the nexus requirement will not create opportunities for abuse. The nexus requirement makes great sense in the health plan area, but does not make policy sense in the context of a defined contribution MEP, as discussed below.

In the health plan area, a critical concern is the possibility that there will be insufficient funds to pay claims. If, for example, a multiple employer health plan is underpriced (either inadvertently or intentionally in abuse cases), the plan will likely have insufficient funds to pay promised claims, which obviously can lead to very adverse results. If a plan is marketed to unrelated employers by an inexperienced or unscrupulous promoter, the potential for this type of result is significant. An inexperienced promoter may price the plan too low out of ignorance; an unscrupulous promoter may price the plan too low to “make a fast dollar,” without regard to the long range viability of the plan.

On the other hand, where a group of closely related employers join forces to form and control their own health plan, the potential for these adverse effects is far less, since they have every incentive to price the plan appropriately or even conservatively. A group of closely related employers controlling their own plan is very similar to a single employer maintaining a plan; their sole interest is in a viable, sound plan. Hence, the nexus requirement makes great sense in the health plan area, since it excludes the situations where additional oversight is needed.

In the defined contribution plan area, there is no reason for the nexus requirement because the above adverse results cannot happen. In a defined contribution plan, no participant has any claim to any assets other than the assets actually in his or her account. So by definition in a defined contribution plan, the plan’s assets generally cannot be insufficient to pay promised benefits. Without this potential for adverse results, there is no policy justification for the nexus requirement.

One might argue in response that in the defined contribution plan area, there is still potential for the plan to be unable to pay promised benefits, i.e., in the case of fraud or embezzlement of funds. That is certainly true. But it is equally true in the case of a single employer plans. In other words, compare the following two situations. In case A, 1,000 employers join together in a defined contribution MEP. In case B, 1,000 employers maintain single employer plans, and the assets of such plan are held in a group trust administered by the same fiduciary and recordkeeper. In both cases, the money is held in one trust overseen by one fiduciary. The potential for fraud or embezzlement is identical.

In short, there are some who argue that we need to create extensive anti-abuse rules for open MEPs to protect against the problems that have occurred in the health plan area. The two types of plans are not comparable at all, so these arguments cannot withstand scrutiny.

Why not adopt strict requirements on open MEPs to be sure to prevent abuse? If burdensome requirements are applied to open MEPs, this will simply defeat the purpose of the open MEP legislation. In other words, the point of permitting open MEPs is to facilitate a means for small employers to band together to achieve economies of scale and thus reduce the cost of maintaining a plan. If numerous new burdens are added to open MEPs, the cost savings can be more than offset by the extra expense of the new burdens. The result would be open MEP legislation that virtually no one would use.

As noted, in my view, the numerous bills referenced above apply appropriate protections and do not include unnecessary burdens that would make open MEPs unusable.

Preserve “closed” MEPs. All of the bills cited above share another key feature. The additional safeguards applicable to open MEPs do not apply to “closed MEPs,” i.e., MEPs that satisfy the nexus requirement. These MEPs exist today, are serving a critical function for their participating employers, and have a great track record of success. Accordingly, the bills preserve the law applicable to closed MEPs without adding any additional requirements that would only add costs and burdens to a system that is working well. This is a very much needed element of any legislation with respect to open MEPs.

Level playing field. The Department of Labor has issued guidance—without public notice and comment—permitting States to maintain open MEPs in which private employers may participate. It is important for Congress to restore a level playing field here by permitting both State and privately sponsored open MEPs under a uniform set of rules. Without a level playing field, a segment of the market could move away from private providers to a single government provider, thus undercutting price and quality competition and innovation.

ONE BAD APPLE RULE

The one bad apple rule is an overly punitive rule that inhibits adoption of MEPs. If one noncompliant participating employer in a MEP can trigger enormous tax liabilities for all other participating employers, that can understandably prevent employers from participating in a MEP, even if the risk of actual disqualification of

the MEP is remote as a practical matter. Fortunately, there is widespread bipartisan agreement that this problem needs to be fixed, as evidenced by the fact that the following bills would prevent the adverse application of the one bad apple rule:

- Section 207 of the SAFE Retirement Act of 2013 (S. 1270 from the 113th Congress), introduced by Senate Finance Chairman Hatch (R-UT).
- Section 3 of the Retirement Security Act of 2015 (S. 266), introduced by Senators Collins (R-ME) and Nelson (D-FL).
- Section 3 of the Retirement Security Act of 2015 (H.R. 557), introduced by Representatives Buchanan (R-FL) and Kind (D-WI) (companion bill to the Collins/Nelson bill).
- Section 16 of the SAVE Act of 2015 (H.R. 4067), introduced by Representatives Kind (D-WI) and Reichert (R-WA).
- Section 202 of the Retirement Plan Simplification and Enhancement Act of 2013 (H.R. 2117 from the 113th Congress), introduced by Representative Neal (D-MA).

These bills do vary in one respect. They vary on whether the one bad apple rule should be modified legislatively or administratively through a legislative direction to Treasury to fix the problem. Both approaches are reasonable, and I would support both. However, based on recent discussions with the government and private sector, I would recommend resolving this issue legislatively. The Hatch bill provides an excellent framework for this approach, as it carefully delineates where the one bad apple should and should not apply. Specifically, if the violation of the qualification rules is triggered by the actions or inactions of one or more participating employers, the one bad apple rule should not apply. But if the violation is attributable to the actions of the plan administrator, the one bad apple rule should continue to apply as an incentive for compliance. We believe that this approach properly balances the need for incentives to comply with the need to avoid punitive sanctions that discourage employers from participating in a MEP.

This relief with respect to the one bad apple rule should apply to both open and closed MEPs, as under the bills referenced above.

ADDITIONAL RELATED ISSUE

New and innovative ideas are being developed to facilitate the adoption of retirement plans by small businesses. Under one new approach, service providers have developed a way to streamline plan administration by establishing a common administrative framework for small business retirement plans. This is achieved by offering retirement plans to small businesses across the country with a common trustee, a common named fiduciary, a common plan administrator, a common set of investment options, and a common recordkeeper. So any small employer participating in this arrangement would have its own plan, but the administrative framework would be the same as the framework for potentially thousands of other small business plans.

Under current law, each of these small business plans must file a separate Form 5500, even though much of the information in every one of the Form 5500's is identical. This is an unnecessary expense, and unfortunately a material expense.

The problem can be easily solved. The Department of Labor and the Treasury Department could be directed to revise the rules regarding Form 5500's to permit a single Form 5500 to be filed by the common plan administrator of defined contribution plans that also have a common named fiduciary, recordkeeper, investment menu, and trustee. DOL and Treasury would be authorized to require such single Form 5500 to contain such information about the separate plans as is necessary or appropriate to ensure that DOL and Treasury do not fail to receive needed information. In short, DOL and Treasury would be directed to eliminate the wasteful duplication that occurs today but without giving up any valuable information.

This proposal is not intended to replace or undermine the above proposals to facilitate wider usage of MEPs. On the contrary, experience with small employers indicates that different small employers may be drawn to different approaches—MEPs or similarly structured single employer plans. Accordingly, this proposal would supplement the MEP proposals by eliminating an unnecessary expense for small employers that pursue the latter approach.

CONCLUSION

I applaud this subcommittee for holding this roundtable. We have broad bipartisan agreement on MEP reforms that will materially increase retirement plan coverage among small employers, as evidenced by the survey by the Transamerica Center for Retirement Studies. Several of my clients and I stand ready to do whatever we can to help turn this agreement into enacted legislation. Thank you for the opportunity to present this statement.

Senator ENZI. Thank you.
Ms. Varnhagen.

**STATEMENT OF MICHELE VARNHAGEN, SENIOR LEGISLATIVE
REPRESENTATIVE, AARP, WASHINGTON, DC**

Ms. VARNHAGEN. Thank you for inviting me to testify on behalf of AARP. AARP for a long time has supported encouraging or requiring employers to sponsor a retirement plan. It's been a long-standing challenge to make it easy and affordable for small employers to offer retirement savings plans. But, fortunately, because of technology advances and emerging ideas like multiple employer plans, we are close to devising an easy and effective retirement option for small employers and their employees.

In the absence of congressional action, though, AARP has been working at the State level with State and local leaders to consider what can be done at the State level. You may know that several States have enacted statewide retirement reforms, including Connecticut, Illinois, Maryland, Oregon, and Washington State, and over a dozen other States are considering similar types of laws or are undergoing feasibility studies to see what is possible. Federal open MEPs have many elements in common with what is going on at the State level, and we believe that both activities can complement each other.

For consumers and employers, the key is to make sure that there is a licensed and qualified entity that is acting in their interest to offer high-performing, low-cost investment options. Actually, I want to address for a second—we all agree that rules like the commonality rule and the one-bad-apple rule can be eliminated.

But it probably would be helpful to understand why those rules exist in current law. The reason why the law has always required some commonality in a multiple plan has been because if the employers don't have some shared interest, then when something goes bad, there's nobody to look out and make sure that the plan is acting in everybody's best interest. So if Congress is going to eliminate those rules, some additional protections will be needed to offset them.

From the employees' point of view, employees want automatic payroll deduction. They want appropriate investment choices and default investments. They want low and transparent fees, and they want safe access to their money.

Several bills have been introduced at the Federal level that would eliminate some of the rules that have existed for a long time, as we mentioned. But most of the bills that have been introduced require small employers to continue to prudently select and monitor the MEP and the providing firms. In addition, some of the industry folks have also proposed creating a model MEP that would lessen the burden on small employers.

AARP believes that Congress or the Department of Labor has to determine what the key features of a MEP should be, including the type of entity that can sponsor a MEP. Basically, there are two main choices. In option one, an unbiased entity would sponsor the MEP. It could be a not-for-profit organization, a professional association, an independent financial advisor, or a State or local government.

A second option would be to let financial service firms sponsor MEPs. But if Congress is going to permit financial service firms to sponsor these entities, then you do need additional consumer protections to ensure that the financial service firms are both serving as fiduciaries, offering a prudent selection of retirement investments, and charging reasonable fees.

Once you let financial service firms sponsor MEPs, it just opens a lot of doors to conflicts of interest, and then it puts the burden back on the small employer to have to determine whether the MEP is acting in their interest and in the interests of their employees, and you're back in the situation where we are in current law.

AARP believes that any MEP should agree to act in a fiduciary capacity and comply with ERISA's longstanding consumer protections. If Congress doesn't require the MEP to act as a fiduciary, then there need to be some limits on the types of investments that can be offered through the MEP and the types of fees that can be charged.

Most retirement experts would primarily limit investments to target date funds, balance funds. There are some experts for short-term investments that would limit it to also include money market funds. Actually, there is an article in today's New York Times. There's an op-ed that might be interesting to the committee, where Steve Rattner, who is a well known financial expert, recommended many of the things that we're talking about here today.

Finally, if there's not going to be a fiduciary that's acting in the MEP, Congress would need to establish limits on administrative and investment fees. Most of the States that have started to enact these laws have set total fees limits at either .75 percent of 1 percent or 1 percent. In the market today, you can find retirement investments that have fees as little as .02 percent or as high as 4 percent. There's a very wide range of charges.

But, increasingly, fees are coming down, and I think most experts nowadays agree that being somewhere between .75 percent and 1 percent is a reasonable total fee. Usually, most financial firms will negotiate on fees, but only if there's an employer or some entity that is going to ask them to negotiate. If Congress doesn't set limits on the types of investments and the fees, then each multiple employer plan or each small employer is going to have to negotiate what fee levels, what investments, which just adds to the program complexity and its success.

Finally, we hope that all the different consumer protections that have always existed in ERISA, that Congress will make clear which ones the MEP has to undertake versus which ones the small employer would still carry out. But we do think that the more Congress can create a MEP that will act in the best interest of the employers and the employees, it can be a successful model, and we look forward to working with the committee to try to find that balance.

Thank you.

[The prepared statement of Ms. Varnhagen follows:]

PREPARED STATEMENT OF MICHELLE VARNHAGEN

AARP, with its nearly 38 million members in all 50 States and the District of Columbia, Puerto Rico, and U.S. Virgin Islands, is a nonpartisan, nonprofit, nationwide organization that helps people turn their goals and dreams into real possibili-

ties, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse. We have been working for decades, at both the Federal and State levels, to expand and improve coverage under the private retirement system. While 50 percent of the workforce is fortunate to have access to a retirement plan, 50 percent do not have a retirement plan at work.

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

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

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

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

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

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

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

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

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

KEY MEP FEATURE DECISIONS

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

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

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

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

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

Similarly, Congress or DOL should establish limits on administrative and investment fees. Again, the more government entities establish clear and fair rules, the more likely the system will be understandable and effective. Most of the States enacting laws have set total fee limits, either at .75 percent or 1 percent. In the market today, there are retirement investments that include investment charges of as little as .02 percent or as much as 4 percent, but increasingly fees are dropping and .75–1 percent is considered a reasonable maximum total fee for all services (including administration and investment). Most financial firms will reduce fees, but only if an employer or another party negotiates it. Even a 1 percent fee can reduce retirement savings by as much as 30 percent over a 20–30 year period. If Congress or

¹ Pensions & Investments, “2030 target-date strategies continue to underperform a 60/40 strategy,” May 5, 2016.

DOL does not set fee limits, each MEP or small employer will have to negotiate fee levels which will affect program complexity and success. Imposing a fee maximum balances the interests of employees, employers and the financial service firms.

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

EMPLOYER RESPONSIBILITIES

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

Employers also should be required to continue to comply with ERISA's requirements for fair participation of all qualified employees. If employer contributions are permitted or required, immediate or 1-year vesting should be the standard. MEPs also could continue to accept after-tax contributions from employees after a change in jobs.

DOL OVERSIGHT AND ENFORCEMENT

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

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

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

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

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

Senator ENZI. Thank you.

Senator SCOTT, I appreciate your attendance here, and I know you've got some background in this field. If you want to address a question, or if you want me to go ahead and see if any of them want to rebut anything that anybody's already said—

STATEMENT OF SENATOR SCOTT

Senator SCOTT. I'll let the rebuttal happen after I ask a couple of quick questions with your permission, sir.

Senator ENZI. OK.

Senator SCOTT. Thank you for providing us an opportunity to have this conversation around how to create access to retirement plans for more employees. Frankly, I think the number is 60 percent of employees who work at a firm with 20 or fewer employees. The challenges that we face are only going to get worse and not better as time moves on.

As a small business owner for 15 years myself, I think about the actual hurdles. Sometimes, the hurdles that we see in Washington aren't exactly the same hurdles that you see in the rest of the world. From my perspective, the average small employer with 20 employees or less doesn't have the time or the inclination to invest

in this process of understanding and appreciating the actual liability exposure and risk. Couple that with the fact that most employees of those firms really will need to have payroll deduction as the most important component for them making the decision to save for their own retirement.

On top of that is the fee structure. Whether it's open MEPs or the simplified 401(k), the fee structures have actually gone down substantially or significantly, but the marketing necessary to inform the small business owner has not gone up. What we really have is a vacuum that seems to exist in the real world, where the vast majority of small employers are spending more time trying to figure out how to make their ends meet and perhaps would need more expertise on what's available in the marketplace and how do you bring that into your place of business.

Those are the kinds of questions I would love for us to address. First, how do we make sure that the average employer is aware of the decisions being made on their behalf to open up the process? Second, I think a lot of the notion of commonality was driven by the health insurance industry when the SIC, the SIC codes, were necessary to have a common process of understanding the risk associated with making a decision to insure someone—very different in a 401(k). I'm not sure that we've bifurcated or decoupled that conversation.

Mr. Mason, I see you shaking your head. I think that's really an important part of the consideration.

Mr. MASON. I second everything you just said. One is you're absolutely right—the considerations in the health area. These multiple employer arrangements raise all sorts of difficult problems in the health area. We are not here to advocate for those whatsoever. The issues in the defined contribution world are much, much different and—

Senator SCOTT. Simple, comparatively speaking.

Mr. MASON [continuing]. The potential for problems and abuses is immensely different. I do want to get back to how can we help. I think Michele did a great job in terms of walking through some of the issues.

One of the key problems—and I think it addresses your issue, Senator Scott—is that what the MEP can offer is the ability—it's true that the small employer is not going to be able to monitor very effectively this national financial services firm that's offering a plan. In the single employer context, that's technically the duty, but it is very hard, and it's intimidating.

But in the multiple employer plan context, under the bills and in practice, there is always a third party independent fiduciary—and typically a trade association—that's inserted, and that makes an enormous difference, because what it does is it allows that third party independent fiduciary to effectively oversee the financial institution. So you can say to the small business owner, "You don't have the obligation to oversee the financial institution. You have the obligation to oversee that one third party named fiduciary." That's clear under the law. It's clear under the bills.

It accomplishes two things. There's a watchdog for the financial institution, which there needs to be, and I agree with Michele on that. There needs to be. Second, what it does is it relieves the

small employer from doing something they're not really capable of doing, and it allows them to say, "I can just oversee this one entity, and I can leave the rest to the experts, and I can do my business, write the checks, make sure I get the right information to people."

Hopefully, that's responsive to your question.

Senator SCOTT. It certainly is.

Mr. MASON. That would be a big step forward.

Senator SCOTT. Before we hear from you, ma'am, may I just ask Mr. Stacey to comment on Mr. Mason's comment as it relates to the opportunity to provide that bridge from a fiduciary standpoint to a trade association?

You were talking earlier in your opening comments about the number of different organizations that are not necessarily related being a part of the MEPs that you've been involved in. Is there a bridge where multiple associations or trade associations could group together in the plan that you were talking about earlier? Or is that what occurred?

Mr. STACEY. No, that's not what occurred. To maybe take a moment to give a little bit of a background on how we even came to be dealing with an open MEP, in 2005, our firm—we're an accounting firm—was approached by Mass Mutual, by a regional representative of Mass Mutual, who we had numerous common clients with. In this common give-and-take, back-and-forth conversation with that representative, we were talking about various services that we offer as an accounting firm to clients, and payroll services came up.

That prompted a discussion about a Mass Mutual client in Texas, I believe it was, who was a payroll provider that provided an open MEP to their clients. Since we provided payroll services to our clients, then the Mass Mutual representative thought of, "Well, this might be a good fit for your small business clients." That was kind of the genesis of getting that started. There wasn't any trade association or anyone else that was overseeing it.

We considered it for a good period of time. Our firm, as a little bit of history, used to be a branch office of RSM McGladrey, now RSM US, a large national accounting firm. But ever since our independence from them in 2000, we've always been a network firm of theirs, so we have their expertise to go to for certain areas that might be outside of our common day-to-day practice.

We went to them, consulted with them, and they put together a multiple employer individually designed plan document. Then our office, along with the local Mass Mutual representatives in our community, really mined our own client database, our contacts in the community, to see who might be a good opportunity to offer that type of plan to. There wasn't any organization that was pushing it for us. We had one of the large national providers come to us and say that this might be an opportunity for small businesses that don't have anything.

That's essentially how we got into it, and we had a broad array of employers that were in it. When I list a few of these off, they have no commonality other than that they were in that geographical region, and they were working with us. We had an agricultural association, commercial printer, various types of construction companies, a small law firm, a small plumbing shop, a prop-

erty manager, and then several retailers, like a furniture store, an independent pharmacy, a number of those, and there's no commonality.

Like one of my colleagues up here was talking about, those businesses, being part of our small community, had no commonality other than they were local entrepreneurs that were offered an opportunity for a plan, and they took it. We operated it for a number of years.

Senator SCOTT. Mr. Chairman, the one thing I would suggest—that the common bond that exists perhaps exists through different sources. Whether it's a trade organization or an accounting firm, providing from a retirement opportunity a common bond, to not be necessarily the single definition that we see through the Department of Labor, is an important ingredient for us to achieve success. If, in fact, Senator Warren said that we have one-third of the country close to retirement with not a penny in savings and another third without 1 year of their annual income in savings, the ability to redefine nexus perhaps will be an important part of our engagement, and we've made some progress on that already.

Thank you.

Did you have any comments, ma'am?

Ms. VARNHAGEN. The only thing I was going to add is that, even a lot of very small firms have payroll service providers these days. Even the smallest firm can use Turbo Tax or ADP or Paychecks. There are a lot of firms out there, and they do do a lot to educate small firms about what the retirement options are, healthcare options—that's another avenue that can be used to help educate, so that small employers know what the options are.

Senator SCOTT. Yes, ma'am. Thank you.

Thank you, Mr. Chairman.

Senator ENZI. Thank you.

I have kind of a tendency as an accountant to go into some of the technical things. So if I see people in the back going to sleep, I'll change tactics a little bit.

[Laughter.]

Senator ENZI. One of the things I had to do was fill out the Form 5500 for some employers, and it fascinated me—and I don't know whether this has changed or not—but the same 5500 was used for reporting on 401(k)s and on health insurance, and the questions didn't make sense for either of them.

Are there some difficulties with that Form 5500 still? It's been a long time since I filled one out, but I can't imagine any small employer having to do that by themselves.

Mr. Stacey.

Mr. STACEY. Mr. Chairman, I would invite you to look at the most recent version of the Form 5500. Many of our small employers are eligible to file a Form 5500-SF, standing for Short Form. As with many reporting and disclosure requirements, that grows over time. The SF form came out within the last 10 years and is now growing again. The IRS essentially increased the size of that filing by about another additional page, initially to be effective for the 2015 reporting year that we would be working on right now.

Because of industry pushback and concerns about some of the more invasive nature of the questions being asked on there, they've

postponed it at least for the 2015 plan year. But I would invite the panel to look at that form, and I would suggest that revisions be made to that to make it something that is essentially doable.

One of the questions I recall, now that I'm thinking about it—I don't remember if this was a proposed question or if this is actually on there. But they wanted to know what the tax deduction was that was taken on the business' tax return. Unless you're an accounting firm like us that is preparing the business' tax return, you may not know if the tax return has been prepared yet and what that number was that was put on there. So that one question alone will delay the filing and potentially cause errors on that return.

That's just one small example of some of the issues on there. But I'd invite you to look at the nature of the form now.

Senator ENZI. I will. I'm fascinated by the form.

Mr. MASON.

Mr. MASON. There is one area that I think both Jim and I highlighted in our testimony, which I think would be a great change in the 5500, and that is—again, service providers are trying in a lot of different ways to reduce costs and increase uniformity and simplicity. One of the ways they're moving is to—since they can't have an open MEP today—is trying to make the single employer plan much more efficient, have a single trustee, single plan document, single recordkeeper, single menu of investment options, so that everything is very uniform, and so you can bring in one after another small employer, and they each have their own plan, but they're on the same document, the same trust, and they're all separately record kept—tremendously efficient.

But there's one source of significant inefficiency there, and that is if you have 1,000 single employers with all these commonalities, they file 1,000 5500's, most of it duplicative—no purpose to that. Actually, it sounds like a nothing, but the cost of a 5500 for these small employers is a marginal cost that can make a difference between doing a plan and not doing a plan.

That is an area which we would encourage you to—not in lieu of the multiple employer stuff, because that can even achieve greater efficiencies, but in addition to, so that employer that chooses its own plan doesn't have to have all these duplicative costs and duplicative 5500's. You have a lot of my sympathy for working on 5500's.

Senator ENZI. If we go to the open MEPs, will that make the audit easier, then, too, or more difficult?

Mr. MASON. It has a tradeoff here. I think in terms of what it would do is it would say that there would be an audit with respect to the entire plan. In other words, today, if you have under 100, and you're a single employer plan, you don't have an audit. But if you have a bunch of 50 employee plans getting together, and they get well over 100, that MEP would have an audit.

I know that, Jeff, you had some views on the audit issue, and I don't want to step on your toes here, because you may want to jump in. From a government perspective, there are strengths to having the audit, you ensure that the assets are there and they're being protected. It also has a cost, and that's a tradeoff as to how you might view that. But it does have a material effect. Going to an open MEP means the entire plan would have an audit.

Senator ENZI. Thank you.

Jeff, did you want to comment?

Mr. STACEY. Just to briefly touch on the audit question, for three of the 5-years that our MEP was in existence, we did have an outside independent audit done of the plan, because it quickly rose above initially the 120 participant threshold, and it was never backed down below 100 participants until the plan was terminated. The audit, functionally, for us, because we were extremely hands-on—which I doubt a larger provider like a TransAmerica or another company that has hundreds or thousands of individual employers feeding into this—they wouldn't have the ability to be as hands-on as we were, because we were very concerned over the one-bad-apple issue in the way that we ran the plan.

From an audit perspective, we readily had the information available for the independent auditor when that came along, so it wasn't that big of an impediment for us. But if the plan had continued to grow and had been on the scale of a more regional or national plan, I can see where a lot of the information that's required would be difficult to provide.

Senator ENZI. Mr. Kais, did you want to comment on that?

Mr. KAIS. Yes. I don't see the audit necessarily as an impediment. Particularly, as the pooled arrangement grows, it becomes a fraction of the cost of running the arrangement and I think it can provide some useful information.

I would also say we've scaled our business, and I think our body of work is pretty good as it relates to increasing coverage to the tune of almost 12,000 businesses today. We haven't had any difficulties in our closed multiple-employer-plan business. The price or the cost of running the collection of single employer plans that Kent mentioned is a little bit higher than our closed MEP because of those individual 5500's.

I just wanted to give a little more texture to that discussion.

Senator ENZI. Thank you.

Senator WARREN, did you want to ask a question?

Senator WARREN. Yes, Mr. Chairman. Thank you.

I wanted to dive in a little bit, if I could, into the Massachusetts plan, just because it gives us an example, a very concrete example, about a need and at least how we addressed it and what you've seen from that. We start with the fact that roughly half of all employers offer no plan at all. In Massachusetts, we saw this as a problem, and we particularly identified the fact that small nonprofits, nonprofits that had 20 or fewer employees—that the proportion that were offering plans was very, very small.

Maybe I could just start there, Mr. Favorito. You're the one responsible for setting this up, so you saw what the lay of the land was before Massachusetts stepped in here. What was the principal reason that these small nonprofits had no employer-sponsored plans? It wasn't that they didn't care about their employees.

Mr. FAVORITO. I think we would echo a lot of the commentary from Senator Scott made earlier in terms of—especially when you're dealing with nonprofits of that size, who, between being engaged in fundraising or grant writing and providing the services that they have to provide, whether it's nursing services or social services or taking care of elders, they're not going to have the resources to dedicate specifically to that particular function, per se.

Then when you add on—whether it’s learning about the process or the implementation, whether it’s about learning about the administration and the complications of the filings that are required, the audits that might be required if they grow in size, the issues around fiduciary obligations they might incur going forward. From our conversations with the representatives of the nonprofits in the Commonwealth, it’s not a lack of desire. It’s an inability to be able to do what they would like to do, execute on a plan, because of the lack of resources and the cost, in light of everything else that they have to do on a day-to-day basis.

Senator WARREN. They just can’t get from here to there in a cost-effective way. Let me just ask—we did this with small nonprofits. But is there anything special about nonprofits, or would this apply to small businesses, generally?

Mr. FAVORITO. No, I think the nonprofits that we’re looking at to implement the plan—we were piloting it because of the fact that there was certainly a commonality of interest in terms of the nonprofits themselves. They are such a big sector in the economy. But I think the same characteristics would apply to any small business of that same size.

Senator WARREN. Let me ask about the benefit side of this. Massachusetts has set this up and brought all of these small employers together, and you go out and negotiate on behalf of all of the small employers collectively. Do you get a better deal for those employers and their employees than if each of those employers had been trying to negotiate on their own?

Mr. FAVORITO. The goal as we’re developing the plan design and as we look to start implementing this is to leverage from the experience that we’ve had, especially with our 457 plan, whether it’s how we secure the investment managers, whether it’s the fees associated with the different investment vehicles that we have, whether it’s having a central source of information for purposes of audits and things of that nature. We’re trying to leverage all that experience over the last 40 years and apply it and apply the economies of scale to the same exercise or the same pilot here with the nonprofits.

We think we have a model that has worked, that has benefited the participants as well as the employers in terms of the options that are available to them, whether it’s investment options and the costs that go along with it, and we want to leverage that.

Senator WARREN. By letting them pool, you not only can bring down on the cost side, but you can now negotiate for a package that is a better package than any one employer could do. I just want to ask how much this applies. Compare it for me, if you will. Suppose a half dozen employers got together? We’re talking some about these very small multiemployer plans, compared with, say, what we’ve done in Massachusetts, where we’ve opened it up to a large number of people.

Are there cost benefits, negotiation benefits that you have, even over small multiemployer plans? I’m just trying to get the economies and the benefits that come with larger size.

Mr. FAVORITO. By way of example, in terms of—with our 457 plan, the average investment management fee for that is under 40

basis points. If we can get to that or anywhere near that with regard to the nonprofits, I think it would be a success.

Senator WARREN. All right. Good. I really appreciate it. That's very helpful.

Senator ENZI. On the same topic, is there a conflict, or is the state-run plan able to coexist peacefully with the private sector plans, the small business plans? Are there conflicts there?

Mr. FAVORITO. That chapter is yet to be written. I think we're all pursuing the same goal, the same objective, in terms of making the plans accessible. I think there certainly seems to be enough space for all the participants involved. I think we share a lot of common examples and common history in terms of trying to provide these benefits. I think we can work in tandem, if given the opportunity to do it.

Senator ENZI. Mr. Kais.

Mr. KAIS. Yes, we have no issue with the Massachusetts State plan. We think any action to increase coverage is a good one. The only thing we would say is that there needs to be a level playing field in terms of the standards of duty, the requirements, so whatever they may be at the State level, we would hope that that would be the same case for the private sector to promote competition, which will, in turn, promote innovation.

I want to also agree with Senator Warren's statement. We're very careful about going too narrow with these pooled arrangements. We're coalescing around large State associations, cooperatives, affinity groups. We're even talking to municipalities now at the State level as they contend with moving from DB to DC plans. There is a lot of use in strength in numbers and not getting yourself too narrow or down a narrow corridor. So we would agree with that comment as well.

Mr. MASON. I was just going to say—and Jim just said it better than I could have.

Senator ENZI. OK. Thank you.

We have some Federal requirements about common businesses meeting together and making different kinds of rules or different competitive advantages or things on sharing. Under the present one, where they have to have commonality, are there some problems that come from that that would be overcome by opening up the pool?

Mr. Kais.

Mr. KAIS. Yes, absolutely. The biggest problem is confusion, because the rules around commonality are extraordinarily gray right now. In almost every case, if you wanted to be certain, you would have to file for an advisory opinion with the Department of Labor, and there would be an analysis done, and you would, ideally, get to a point where you felt comfortable that you're operating a closed MEP. That, in and of itself, will make professional trade associations, co-ops, where there's a little bit of confusion—it'll stop them in their tracks and make them either not consider pooling their assets together or doing it in a less efficient model.

So, yes, it's something I contend with on a daily basis. It's a very esoteric topic, and it would be a great benefit by expanding and eliminating that.

Senator ENZI. I'm going to go ahead and assume that we're going to expand it.

Go ahead.

Ms. VARNHAGEN. If I could just say, from the employee's point of view, sometimes little issues become—an employee may know, "I work for Joe's Grill Shop," but they may not necessarily know the name of their MEP, if there is one, and they won't—if they were to go to the Department of Labor and try to look for the 5500, they wouldn't necessarily know—are they looking under their employer's name, are they going to look under the plan name?

So everything Congress can do to make that as clear as possible so that employees know who exactly is sponsoring their retirement savings option, who they look under when they try to look for information if they don't have it automatically from their employer, and I think even probably some small employers don't necessarily know the technical names for things. Everything that you can do to make everything as clear and transparent and simple as possible would be wonderful.

Senator ENZI. Mr. Kais.

Mr. KAIS. Just a brief comment. I agree with that. I will say that there's a litany of communications that are required under law to go out to employees, like a summary plan description, summary annual reports. We over-communicate as a practice to these employees, and they should know where to go for their information. But it's a good point, but I think those documents today do a good job of that, by and large.

Senator ENZI. I used to be a little bit of a clearinghouse on some of those myself. I'm kind of curious if you have any ideas on how we can promote the open MEPs with a range of participants, and, of course, what I'm particularly interested in is in rural areas. You know, in cities, there's a little bit more communication, but the small employers who are really out in the rural areas.

Mr. Kais.

Mr. KAIS. I'll just make a comment. Like I said before, we're coalescing around professional trade associations and cooperatives, and from a rural perspective, I think there's a great opportunity with dairy co-ops, grocers' co-ops, grain elevators, and things like that. We've actually approached a lot of associations where you live and east into Minnesota with these particular pooled arrangements, and they're very receptive to it, and there's usually a tight financial bond, particularly in the cooperative market, where there's a lot of underwriting that's going on. There's a lot of cooperation that exists already, which is a good precursor for having a successful MEP or pooled arrangement.

Senator ENZI. Mr. Stacey.

Mr. STACEY. Going back just a bit to the disclosure and 5500 requirements, as far as when we had our own MEP that our plan sponsored, the summary annual report was, of course, published every year, which is a summary of the 5500 that was provided to participants, with the name of the plan, our name, the EIN, also directing them to the Department of Labor if they have questions. I would think that as long as that summary annual report is being distributed, that tells the participants where they can get more information.

Addressing your question, Senator, on trying to communicate this in a rural area, I'm just thinking about what we call—and I'm sure you've heard the term—windshield time in Wyoming. You can drive in this part of the country and it's a continuous city. In our part of the country, you look at the windshield for a long time before you get from one community to another. So communications can be difficult at times.

With our MEP, it was our office with an associated Mass Mutual local insurance and investment office that was doing it. For a more geographically diverse and widespread area, I would almost think you'd have to have a network of individuals, like the TransAmericas and the other investment companies have, that are spread out, whether it's one particular investment company that's telling all of the advisors in a geographic area, "Here is an open MEP that you can participate in," or whether it is some other communication that goes out and says, "This is available in your area."

But then you could have a pushback from those investment advisors that say, "I may not make as much selling this product versus selling a standalone product." So there's got to be a lot of planning into it, and I couldn't tell you an answer today. I'm sure there would be a lot of people that work on that. But outside of having a trade organization, where you're getting common communications coming from the dairy association, from whatever organization you're a part of, I would almost think that has to come through the financial community to then disperse it out into their local regions.

Senator ENZI. Mr. Mason.

Mr. MASON. Just as a broader, bigger picture answer, I guess my reaction is there are multiple ways. In other words, in a way, I think this roundtable is helping. In other words, what you want to do is raise the profile of the open MEP issue, get it out there that there's this ability to have a pooled arrangement which can provide services at a lower cost.

Having coverage of this roundtable will get picked up in the trade press. More people hear about it, and then as more people hear about it in the services industry, they'll see—they want to sell something that sells. That's their objective.

If you go to a small business with a lot of complexity and cost, you know you're not going to make that sale, and you may stop making that extra effort in a situation where you know it's not going to work, which is sad. Here, if you can give them something more efficient, more effective to sell, they will renew those efforts to sell.

I think this is a wonderful thing today. I think it's a wonderful thing that we could pass, and I think that—it's almost like we don't need anything artificial, because once you have something effective and efficient to sell, you will get out there. The business will go out to make that sale, and when they go out to make a sale, if it's something that's a good product, a good service, that small business will react well. I'm more optimistic that good products and good services will yield good results.

Mr. KAIS. I wanted to briefly agree with Mr. Stacey. I think the financial advisor community is very, very important. Just as a proof point of that, prior to the 2012 advisory opinion that came out that really put a halt to the expansion of the prior open MEPs,

we had an arrangement that had literally gone from 100 employers in the arrangement to 1,300 employers in the span of two and a half to 3 years. When the advisory opinion hit, that obviously halted that, sort of to a screeching halt.

But even now, to Kent's point about giving some exposure here at the hearing or the roundtable, the word is starting to get out into the private sector, and folks are starting to warm back up to the pooled arrangements again. We're actually seeing an uptick in the take rate for these particular plans. I think both of those points are well taken.

Senator ENZI. Mr. Favorito.

Mr. FAVORITO. I guess I would just add that on behalf of all the States that are entering into this arena, we would hope that their efforts won't be overlooked because we, in our own individual ways, have been equally as effective if not more effective in some respects in terms of getting information out there to plan participants. I think the structure and the framework already exists for lots of States who are getting involved into the private employer portion of the equation. They already have the mechanisms to distribute information. They have centrally located information.

I think, if nothing else, the competition that is driving with the private sector industry has been healthy in terms of helping to generate the conversations that we're having today and other conversations. I guess I would in a very small way stand up in terms of—for what the States are doing in terms of being examples of already exerting the effort to try and get the message out that there are options out there for private employers.

Senator ENZI. Do you handle both nonprofit and for profit in Massachusetts?

Mr. FAVORITO. Right now, the plan we're developing is for nonprofit employers, private sector. But our office oversees the public sector plans that we currently offer.

Senator ENZI. Thank you.

Mr. Stacey, in your opening comments, you made some comments about the profitability wasn't quite there, I guess, that had been anticipated as possible. Could you go through some of those factors that make the difference in whether it'll work or not?

Mr. STACEY. One of the biggest issues for us was the one-bad-apple situation, and as a result of that, we were extremely hands-on with it, which was something we could do with a small plan versus a much larger plan. In order to combat that, while our firm never touched any of the contributions going in, we always made sure that the contributions were being submitted timely and correctly because we did it.

When the plan was set up with Mass Mutual, you had a master plan with subplans. Each subplan was a participating employer that then had the bank account information for the employer there. We submitted the forms or the spreadsheet online for each contribution, whether it was weekly, biweekly, semi-monthly, or monthly. We submitted those contributions each time. Some employers were like clockwork sending it in. Others we had to beg sometimes, because we knew that we would have a bad apple in there if we didn't do that.

If the bad apple situation was to be able to be removed from new open MEP legislation and regulation, that would allow for a small organization like us that was trying to sponsor and offer this to be a little bit more hands-off and not have to have time involved with it on a daily basis, because being an accountant, you know that you watch your time, and that's billed. The way our plan worked is we had an initial one-time signup fee that the employer paid, and then we didn't bill them anything else. We were only paid from the meager revenue sharing that was generated from the plan, and we covered our expenses, or tried to cover our expenses that way.

Being able to be more hands-off with not having to have daily responsibilities in the plan, doing work on it every day, would free up some of that time. During that time, our firm paid for two plan documents, submitted those to the IRS for a favorable letter of determination, and then covered the audit cost. The first audit was done while the plan was still an ongoing concern, and the plan assets were used to pay for that, and the plan expense policy allowed for that. The final two audits for the last full year and then the last partial year were done after the plan was terminated. So our firm bore the cost of that.

Going forward, as far as the cost of operating a plan, I would like for open MEPs to be available for an organization like us to have a hand in. I was asked whether or not we would consider sponsoring a MEP if this legislation were to pass, and my answer to that is I don't know, because based on our prior experience with it, I can't tell you yes, one way or the other, that we would be open to doing that again, having had the experience that we did.

Does that mean that we wouldn't partner with someone like a TransAmerica, someone like a Mass Mutual, or many of the other providers out there, for them to have more of an ownership stake in the program and then us as a third party administrator and having a local presence in communities? I think that might be more workable in our situation. But as far as the costs, those were—the primary drivers were the time cost, the document cost, and the audit cost for us. If the plan had been larger, we could have absorbed it, but for a variety of reasons, it did not get to the point that we had hoped for.

Senator ENZI. Thank you.

Senator WARREN. May I ask another question?

Senator ENZI. Sure.

Senator WARREN. We've been talking a lot about, in effect, small employers or any employer being able to outsource the administration of the retirement plan, and I'm on board with the idea, generally. But before any legislation moves forward on this, there's an important question here, and that is in the absence of an employer, who is best positioned to sponsor the retirement plans?

I thought maybe you could start that one, Ms. Varnhagen. You're at AARP. You are the senior legislative representative for Social Security and retirement at AARP. What kind of firms or entities or organizations do you think could best sponsor these plans?

Ms. VARNHAGEN. Much like we've been talking about here, I think we're hopeful that trade associations, like the national Chamber or local Chambers or other kinds of nonprofits—would be able to do it or independent financial advisors. I think we're a little

nervous if it is a financial advisor who only represents one company's products.

There is a very large community out there of independent financial experts. I think we are hopeful that if entities like that—

Senator WARREN. Let me just followup, so I get it. One option would just be to say it's an unbiased independent source, as you say, like a trade association, like an AARP, like a union, something like that that could then be responsible. If it were either financial services companies or representatives of financial services companies doing it, that kind of now starts to sound like a conflict of interest potentially here.

What kinds of protections would need to be put in place before you would feel comfortable that this is a direction permitting financial services companies themselves or their agents to set this up?

Ms. VARNHAGEN. In our world, the gold standard of financial protection—the fiduciary standard, which basically says you promise to act prudently and solely in the interest of your clients, has generally worked well in the financial markets. But in addition—generally, the gold standard is considered that you do a request for proposals, that you put something out to bid, you ask everyone in the financial markets, this is what I'm looking for. I'm looking for a range of retirement investments that will cover 1,000 people or 10,000 people, and you see what bids you get.

Usually, you do get a wide variety of firms that will bid when you put out a request for proposals. Then it is a negotiation of trying to figure out what are the best performing investment options, what are the fees that they've been offering, and you engage in a negotiation. But you need to have an entity that is capable to engage in that negotiation.

Senator WARREN. But that's not the question here. The question is will the financial services company—in negotiating with itself, I'm sure we'd have a point of view about how that works. The question I'm asking is what kind of constraints would you want to put on that? I'm not concerned if a trade association does it. I understand they would negotiate on behalf of their members. If a union did it, they would negotiate on behalf of their members, I presume. If AARP did it, they would negotiate on behalf of their members.

But if a financial services company is doing it, I'm not sure if they're negotiating on behalf of the people who sign up or if they're negotiating on behalf of the financial services company. I'm asking what kind of constraints you would want in place.

Mr. Mason, it looks like you'd like to jump in on that.

Mr. MASON. Yes. I agree with everything that Michele said. But I would add one clarification, which is the financial services companies do not seek to be the ones setting up the plan, and they shouldn't be the ones setting up the plan, because they shouldn't be the ones overseeing themselves. I think this is one where they look for that independent third party, because that's the way the structure works.

Senator WARREN. You say just take them out of the picture because it's just not the right structure.

Mr. MASON. Absolutely, absolutely.

Senator WARREN. Mr. Kais.

Mr. KAIS. Affirmative.

Senator WARREN. OK. You just say take them out.

Mr. MASON. Right.

Senator WARREN. We won't do things like fee caps so they can only offer certain products. Just get them off the table.

Mr. MASON. Right.

Senator WARREN. OK. It's just very valuable to think about this, because I think Republicans and Democrats alike agree that the current system is broken, that the current structure of Federal law is inhibiting more small businesses from offering these plans, offering them in cost-effective ways, negotiating to get the best possible plans.

As we think about how to go forward, I just want to think about what the right structure is. We can't just say multiemployer and then we're done. It's actually got to have some elements so that it's built the right way that works for the employees.

Thank you.

Senator ENZI. We have to be careful with the rules, too, or again we'll discourage the small businesses from looking at it. If there are too many requirements there, they'll say, "My employees don't need that."

Senator WARREN. Yes. I hear you. Thank you.

Senator ENZI. I've got one more, Mr. Kais. I wanted to talk a little bit about the open MEPs that are permitted to exist in the private sector and see what benefits you feel are provided to the people who participate in that kind of a plan. We've talked a little bit about the State plan, but we haven't talked about the private plans.

Mr. KAIS. Sure. I think a lot of the same tenets, cost reduction through asset pooling; reduction, if not elimination, of administrative burden; and eliminating fiduciary risk to the fullest extent allowable under the law. Those are the main reasons why small businesses do not set up plans today, and they're the main reason why they're adopting these arrangements in droves in the private sector. We've only hit the tip of the iceberg.

If we develop a system where the State can participate, the private sector can participate, that's great. As long as the rules are the same, a level playing field, I think we'll all do a great job and get our names in the paper for something good.

Senator ENZI. Do you have another question?

Senator WARREN. No. Thank you very much, Mr. Chairman.

Senator ENZI. This has been very helpful. I'll have some more detailed questions for some of you.

Senator ENZI. I do know that the Federal Government has the TSP, and it apparently doesn't have very many requirements as far as individuals are concerned, because there are a lot of them involved in it. There's an employer match that gets a lot of people interested in it. In fact, they all should be interested in it, especially with the match that's done there.

I think that this can be opened up for small businesses without putting a whole lot of requirements in there that will discourage them from wanting to participate in it. At the same time, I don't want to put so many requirements in there for the accountants or the administrators that they don't want to start any of these plans, because it has to work for everybody.

I hope that we can come up with something that will expand this dramatically, because we do want people to save for retirement, and right now, we don't even have a tax structure that encourages them to save. We'll be working on that as well.

I want to thank all of you for your participation today, and if you have any additional statements or suggestions or ways that we can set this up that you want to share with us, we're open to that, and we'll make that a part of the record as well. Anybody who wants to submit questions will have until 5 o'clock June 28, 2016 to do so. Some of the people who aren't here may want to do that, and we may want to, as well.

Thank you for participating, and thank all of you for participating.

Adjourned.

[Whereupon, at 4 p.m., the hearing was adjourned.]

