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RETIREMENT PLAN OPTIONS FOR SMALL BUSINESSES

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

FIRST SESSION

ON

EXAMINING RETIREMENT PLAN OPTIONS FOR SMALL BUSINESSES

OCTOBER 28, 2015

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RETIREMENT PLAN OPTIONS FOR SMALL BUSINESS

WEDNESDAY, OCTOBER 28, 2015

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 2:35 p.m., in room SH-216, Hart Senate Office Building, Hon. Michael Enzi, chairman of the subcommittee, presiding.

Present: Senators Enzi, Whitehouse, and Murphy.

OPENING STATEMENT OF SENATOR ENZI

Senator ENZI. I want to call to order the Senate Committee on Health, Education, Labor, and Pensions' Subcommittee on Primary Health and Retirement Security. Please come to order.

There are only three of us here at the moment. There'll be others that will come and go. These are people that understand something about retirement, and they kind of rely on us for the information. I've been a part of every retirement bill that we've put through the U.S. Senate.

I'm an accountant, and I learned a long time ago that if you talk accounting, people go to sleep. We've got some great witnesses here today, and I'm sure that won't be the case, and we'll get a lot of good information that we can put into solving some of the problems so that we can get more people into retirement plans.

I'd like to welcome everyone to this roundtable discussion on Retirement Plan Options for Small Businesses. We'll be examining the expansion of multiple employer plans—I prefer to call them small business pooling—and other ways that the Federal Government can make it easier for small businesses to provide retirement benefits for their employees.

I'm grateful to Ranking Member Sanders for agreeing to host this roundtable with me. I appreciate the bipartisan way that this roundtable was organized. I prefer roundtables to hearings because, too often, people think that the purpose of a hearing is to divide up sides and beat up on each other's witnesses.

You're invited because you know something about the topic that we're talking about, and I prefer to get the information from you rather than us inundating you with questions. I'm grateful for the participation of the expert witnesses that we have here today.

We've assembled an expert panel that includes a representative of the U.S. Chamber, who is from my home State of Wyoming; a representative of the American Benefits Council from the Principal Financial Group; Prudential Retirement; and the AARP.

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 the small business. One way to do this is by allowing the expansion of multiple employer plans.

Multiple employer plans, MEPs, which have been permitted under ERISA and the Federal tax law for decades, allow small businesses to join together to make retirement plans much easier to manage and significantly less expensive to provide for owners of those businesses. Under current law, multiple employer plans must consist only of employees that are joined together by significant interests unrelated to the provision of benefits.

It seems to me that access to multiple employer plans can and should be broadened to provide small businesses with administrative simplicity with regard to retirement benefits. I used to do accounting and did it for some businesses that had some of these retirement plans, and I know how complicated they can be and how poor the manuals are that are put out by the IRS, and I know that if we can simplify it for small businesses—and they don't have time to read manual after manual—that maybe we can make a better situation for the employees.

In Wyoming, we have very small communities and very small businesses, and they're separated by great distances. Unless they can get together without having that significant interest related, we're going to have problems.

In fact, as we'll hear today from the author of an excellent report on the expansion of multiple employer plans, this idea has been endorsed by a number of organizations who often have conflicting views on retirement issues. This past year, the bipartisan Senate Finance Committee Savings and Investment Report included a recommendation to allow employers to join together to open multiple employer plans. The report also notes, however, that current law hinders the formation of multiple employer plans by requiring a nexus between the employers who wish to join a Multiple Employer Plan.

My interest in holding this roundtable is based on my view that Congress can help narrow the retirement coverage gap in America. I believe we can do this by helping the expansion of plan options for small businesses, including multiple employer plans, specifically by allowing the broadening of diversity among those businesses within such plans.

Our goal for this roundtable is for our members to discuss the following three themes with our witnesses and each other. No. 1, what are some policy recommendations you can offer which would open up multiple employer plans to allow small businesses more flexibility? No. 2, what could the Federal Government be doing to encourage small businesses to help employees with retirement savings? And, No. 3, elaborate on any current regulatory or statutory

challenges you've experienced or observed in offering retirement plans to employees in small businesses.

Finally, I would 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 multiple employer plans. This discussion will be a great opportunity for us to examine those bipartisan ideas.

I had the opportunity to work with Senator Ted Kennedy as chairman and ranking member of the HELP Committee, and we were able to accomplish a great amount that we did when we adhered to an 80/20 rule. We focused on the 80 percent of the ideas that we had some agreement on, and we left the 20 percent for another time. With any of those issues that we worked on, we usually found 80 percent that we could agree on and 20 percent that if we left out would achieve the 80 percent that we could agree on and still be able to work on the other 20 percent until there was some other agreement. I hope all the committee members will join me in focusing on what we can agree on first.

I'll invite Ranking Member Sanders to offer opening remarks. When he gets here, we'll allow him to make opening remarks.

We'll get on to the witnesses, and I'll briefly introduce our witnesses and ask them to give a brief opening statement on the three topics I stated earlier, and then we'll begin the discussion. All of the testimony that you submitted will be a part of the record.

Of course, another part that I always ask is that when the hearing is over, there'll be people that have questions, some who have been here, and some of us who won't have had an opportunity to ask all of our questions. We know we have a panel that has some expertise, and so we hope that we can submit questions this week and then get, hopefully, as quick a response as we can from you. We appreciate you taking the time to be here for the hearing as well as, hopefully, being willing to answer some of the written questions.

Our first witness is Scott Anderson from Jackson, WY. He's the owner of Static Peak, a small business in Jackson, and a member of the board of directors of the U.S. Chamber of Commerce and the past president of the Jackson Chamber of Commerce. I particularly appreciate you coming out because I do that trip almost every week and know how difficult that is.

Our second witness is Mr. Lance Schoening from Des Moines, Iowa. Mr. Schoening is a member of the board of directors of the American Benefits Council and the director of product management for the Principal Financial Group.

Our third witness is Mr. Jamie Kalamarides from Hartford, CT. Mr. Kalamarides is the senior vice president for Institutional Investment Solutions with Prudential Retirement. He is also one of the authors of Prudential's white paper on multiple employer plans.

Our fourth witness is Mr. David Certner from Washington, DC. Mr. Certner is the legislative counsel and the director of legislative policy for the Government Affairs at AARP. Mr. Certner has pre-

viously served as the chairman of the ERISA Advisory Council of the Department of Labor.

Thank you all again for joining us for the discussion. After you each give a brief opening statement, we'll pose some questions and open it up for discussion. We'd like this discussion to be focused with members and witnesses having a dialog with each other on a number of issues.

One of the things I've noticed in roundtables is that, sometimes, something that one of you says will remind another one of something, or a possibility of something you already thought of that could be combined to make things better. We can have a discourse between the four of you, too. We'll begin with the opening statements, and I'll go to Mr. Anderson first.

STATEMENT OF SCOTT ANDERSON, OWNER, STATIC PEAK, LLC; MEMBER, BOARD OF DIRECTORS, U.S. CHAMBER OF COMMERCE, JACKSON, WY

Mr. ANDERSON. Thank you very much, Chairman Enzi, and also thanks to Ranking Member Sanders and members of the committee for hosting this opportunity to participate in today's discussion.

My name is Scott Anderson. I own a company called Static Peak in Jackson, WY. We're a media company that reports on local community news. Like many other businesses in Wyoming, I'm what I would call a micro-business. My company has two employees, including myself.

I'm here today representing the U.S. Chamber of Commerce, of which I'm a member of the Board of Directors, and I sit on the Small Business Council as well. I'm here to share my own experiences as a small business owner, as well as those of similarly situated businesses in the State of Wyoming.

Because Jackson, WY, is a particularly small tourist town, there is a lot of turnover which creates a difficult time in hiring from the talent pool. Providing retirement benefits is a way that we can attract and maintain long-term employees for all businesses.

Even though a number of small businesses already offer retirement plans, there are many more that would like to do so. As a business owner who would like to do so myself, I'm familiar with some of the hurdles of doing this. In addition, as past chairman of the Jackson Hole Chamber of Commerce, I've interacted with thousands of other small and micro-businesses in our area that are facing these same hurdles.

In short, the hurdles facing small businesses are the costs and administrative complexity of retirement plans. I hope my comments will shed further light on these issues today.

[The prepared statement of Mr. Anderson follows:]

PREPARED STATEMENT OF SCOTT ANDERSON

The U.S. Chamber of Commerce would like to thank Chairman Enzi and Ranking Member Sanders, and members of the committee for the opportunity to participate in today's Roundtable Discussion on Retirement Plan Options for Small Businesses. I am Scott Anderson, owner of Static Peak, LLC in Jackson, WY. Static Peak is a media company that aggregates and reports on community news. Like many other businesses in Wyoming I am a micro-business—my company has two employees, including me. I am here today representing the U.S. Chamber of Commerce of which I am a member of the board of directors and sit on the Small Business Council.

The Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector and region. Over ninety-six percent of the Chamber members are small businesses with fewer than 100 employees.

The topic of today's hearing—Retirement Plan Options for Small Businesses—is of significant concern to Chamber membership. Many small employers, like larger employers, offer benefits to their employees. These small businesses want to continue offering benefits but have their own unique issues. Other small businesses would like to start retirement benefits but face significant burdens. As a business owner who would like to offer retirement benefits, I am very familiar with the hurdles of doing so. In addition, as a past Chairman of the Jackson Hole Chamber of Commerce, I have interacted with thousands of other small and micro-businesses facing these same hurdles. As such, the Chamber believes that this is a critical topic to address and appreciates the opportunity to share our concerns and recommendations in response to the questions you have asked.

1. WHAT ARE SOME POLICY RECOMMENDATIONS YOU CAN OFFER WHICH WOULD OPEN UP MULTIPLE EMPLOYER PLANS TO ALLOW SMALL BUSINESSES MORE FLEXIBILITY?

The Chamber views Multiple Employer Plans (MEPs) as another tool to encourage small businesses to implement retirement plans. MEPs offer an attractive and cost-efficient alternative for small businesses for which a stand-alone 401(k) plan is not feasible. MEPs allow for the pooling of resources to allow small businesses to tailor provisions in the plan in a way that wouldn't be possible in a prototype plan. The Chamber believes that MEPs can reach a potentially different audience than other plans designs because organizations (such as State Chambers) would be able to offer them to members. Thus, the use of MEPs could be expanded through trade associations and other organizations that work closely with small businesses.

The greatest advantage of the MEP is the centralized functions that the MEP sponsor can provide. Costs are shared among the adopting employers, regardless of the number. For example, one plan administrator, trustee and named fiduciary can act for the entire MEP. The MEP can provide centralized payroll, one investment line-up and one annual report and audit for the entire plan. This translates to substantial economies of scale and cost efficiencies over stand-alone plans for small businesses.

However, there are also significant disadvantages to participation in a MEP. The biggest of these is that every employer is jointly liable for the qualification failures of every other employer in the MEP. This liability can be a daunting hurdle for many employers. In addition, some employers may be discouraged by the inability to find a MEP sponsor or by the notice and disclosure requirements that are not completed by the plan administrator.

Changing several of the rules regarding MEPs could significantly expand their use. For one, the Chamber recommends the implementation of safe harbors for MEP sponsors and adopting employers that would immunize them from non-compliant adopting employers. In addition, we recommend that MEP reporting and disclosure obligations under ERISA be simplified. Further, the Chamber recommends that the IRS and DOL clarify that "employer commonality" is not required to establish a MEP. While the Chamber believes that there is no basis to apply this requirement to MEPs, there is sufficient ambiguity to create reluctance on the part of the employers who might otherwise consider participation in a MEP.¹

2. WHAT COULD THE FEDERAL GOVERNMENT BE DOING TO ENCOURAGE SMALL BUSINESSES TO HELP EMPLOYEES WITH RETIREMENT SAVINGS?

There is no silver bullet that will resolve the issues of retirement coverage and savings. However, the Chamber believes that there are significant steps that policy-makers can take to increase plan sponsorship and participation among small businesses.

¹ Under ERISA's definition of an "employer" that can sponsor a retirement plan, the independent provider of a MEP can be construed as a person "acting indirectly" in the interest of an employer in relation to an employee benefit plan, and a group of participating employers can be reasonably construed as a group of employers acting in such capacity. (ERISA section 3(5)). By way of contrast, in two often-cited ERISA Advisory Opinions, the DOL found that certain organizations that were not organized primarily for the purpose of providing retirement benefits, and were open to membership by individuals and other non-employers, were not bona fide groups of employers, and therefore, were not employers under ERISA. (See, ERISA Adv. Op. 83-15A (March 22, 1983); and ERISA Adv. Op. 88-07A (March 28, 1988)). Thus, the Chamber believes that these Advisory Opinions can be differentiated in cases in which the "members" must be employers.

Enhance the Small Business Tax Credit. Enhancing the current small businesses tax credit for 401(k) startup costs would also encourage greater plan formation. The credit is allowed for the first 3 years of startup costs of a new small business retirement plan (with fewer than 100 participants) of up to 50 percent of the first \$1,000 (i.e., \$500) in startup administrative and retirement-education expenses.² The current credit is too small and short-lived to change behavior. Lawmakers should consider expanding the credit and making it refundable to increase the incentive for small businesses to set up 401(k) plans.

Give Small Businesses a Dedicated Voice on Advisory Councils. Small businesses play an important role in the debate over the effectiveness of the voluntary employer-provided system; therefore, it is important to increase their representation in the debate. The advisory councils to the DOL, IRS, and PBGC are important sources of input to those agencies. However, none of them have a seat specified for small business. An important way to increase the voice of small business in the discussion of the employer-provided system is to have a small business representative on each of these advisory councils. As members of these advisory groups, small business representatives could work within the agencies to continue to find ways to encourage plan sponsorship among small businesses.

3. PLEASE ELABORATE ON ANY CURRENT REGULATORY OR STATUTORY CHALLENGES YOU HAVE EXPERIENCED (OR OBSERVED) OFFERING RETIREMENT PLANS TO YOUR EMPLOYEES IN YOUR SMALL BUSINESS.

Small businesses members have stated that the Chamber cannot over-emphasize the need for simplification and a reduction in unnecessary regulatory requirements in the current retirement system. Small businesses are focused on running a business; therefore, anything that avoids increasing their liability and decreases their administrative burdens is important. In addition, stability, predictability and consistency among the regulatory agencies would go a long way toward encouraging greater participation in the private retirement system.

Eliminate Top-Heavy Rules. The top-heavy rules are an unnecessary burden on employers that want to offer a 401(k) plan but are not inclined or are unable to provide a matching contribution.³ Under current requirements, if a key employee makes a deferral and the plan is top-heavy, it triggers a 3 percent required contribution for non-key employees.⁴ In addition, the deferrals made on behalf of family members of key employees are attributed to the key employee; thereby increasing the likelihood of triggering the top-heavy contribution. Because these rules directly affect the decisionmakers and owners in the company, they may effectively deter the implementation of the plan, which would have benefited all employees.⁵

The Chamber believes that the top-heavy rules are unnecessary since the contributions are already subject to average deferral percentage (ADP) testing to ensure equanimity between highly paid and non-highly paid employees. Therefore, we believe the top-heavy rules should be eliminated. If they are not eliminated, we recommend that the rule be modified to encourage greater implementation and maintenance of retirement plans. For example, eliminating the requirement that deferrals made by family members be attributed to the key employee would be extremely useful.⁶

Simplify Discrimination Testing. Another step policymakers could take is to simplify the average deferral percentage ("ADP") test for nondiscrimination. For example, a plan would not pass the ADP test if (a) non-highly compensated employees' contribution percentage is less than 6 percent, and (b) the contribution percentage of highly compensated employees is 200 percent or more of that amount. If non-highly compensated employee contributions exceed 6 percent, then the plan would pass the ADP test.⁷

²I.R.C. section 45E.

³A qualified retirement plan that primarily benefits key employees—a top-heavy plan—can qualify for tax-favored status only if, in addition to the regular qualification requirements, it meets several special requirements. A retirement plan is top heavy if more than 60 percent of the plan's assets are attributable to Key Employees.

⁴I.R.C. § 416(g); Treas. Reg. § 1.416-1, Q M-7.

⁵I.R.C. § 416(i)(1).

⁶Another recommendation is to revise the rule so that, if a plan were top heavy, the eligible participants to receive the benefit would be only participants who meet the age and service requirements under Code section 401(a)(4) and 410(b) rather than all eligible individuals who remain employed on the last day of the plan year regardless of the amount of hours worked in the plan year.

⁷Another alternative is to use the nondiscrimination rules under Code section 403(b)(12) which are based on eligibility rather than utilization.

Streamline Notice Requirements and Allow for Greater Use of Electronic Disclosure. Consolidating and streamlining certain notice requirements would make retirement plan sponsorship more attractive for all businesses—small businesses, in particular. Currently, plan sponsors and participants are overwhelmed by the disclosure requirements. This feeling is particularly acute for small businesses that may not have a human resources department to focus on notice requirements.⁸ Furthermore, the notice requirements do not occur in a vacuum. Most employers that offer a retirement plan also offer other benefit plans such as a health care plan; therefore, employers are also subject to those notice requirements. Additionally, employers are required to provide many other notices outside of the ERISA context.

In general, the Chamber recommends a congressional review of all retirement plan notices under ERISA and the tax code to determine where there is overlap and duplication. The following are specific recommendations that we offer at this time:

- Eliminate the notice for the 3 percent nonelective safe harbor. While it may have intended to serve a policy purpose at one time, it appears to serve no purpose today.
- Include the 401(k) safe harbor match information in the Summary Plan Description rather than it remaining as a stand-alone notice.
- Replace quarterly investment statements with annual notices for participants who have internet access to their investment account information.

There are many more notices that can be consolidated or eliminated. A thorough congressional review could identify many ways of relieving unnecessary administrative burdens of little or no marginal utility while ensuring that participants receive information that is meaningful and relevant.

In addition to consolidation and elimination, it is important for regulators to recognize the benefit of electronic delivery. Moreover, we believe that it is critical that the Department of Labor, Treasury and the PBGC create a single, uniform electronic disclosure standard.

To start, the Chamber recommends that the Department of Labor's safe harbor for the use of electronic delivery of required disclosures be changed in accordance with the guidance provided under Field Assistance Bulletin 2006-3.⁹ Field Assistance Bulletin 2006-03 provides that with respect to the furnishing of pension benefit statements, good faith compliance is met if the disclosure is provided in accordance with Treasury regulations.¹⁰ The Treasury regulations provide that information may be provided electronically without consumer consent provided that the "electronic medium used to provide an applicable notice must be a medium that the recipient has the effective ability to access." The Treasury standard differs from the Department of Labor standard in that the ability to effectively access the electronic medium is not required to be in a location where the participant performs their job duties and use of the medium does not have to be an integral part of those duties.

Beyond this initial step, we recommend that the Department of Labor change its standard for electronic delivery to encourage the use of electronic delivery and to allow, for those plan sponsors that wish, that electronic delivery be the default delivery option for benefit notices. The Chamber believes that modernizing the restrictive rules on electronic delivery in this manner is a critical element in the larger task of reforming employee benefit plan notice and disclosure requirements. These changes can allow for the provision of important information without it being submerged in an avalanche of rarely used information.

In conclusion, the Chamber encourages action by policymakers that will encourage small businesses to participate in the employer-provided retirement system. We look forward to working with this committee and Congress to forward ideas that will encourage further plan sponsorship and participation by all businesses and small businesses in particular. Thank you for your consideration of this statement.

Senator ENZI. Mr. Schoening.

⁸Roughly 95 percent of small businesses have 25 employees or fewer. In addition, many do not have a human resources department or a CFO. Consequently, small businesses may not have management personnel who can effectively deal with the volume of notice and disclosure requirements.

⁹The safe harbor rule is found under ERISA section 2520.104b-1(b).

¹⁰Field Assistance Bulletin 2006-03 requires compliance with Treasury regulation section 1.401(a)-21.

STATEMENT OF LANCE SCHOENING, MEMBER, BOARD OF DIRECTORS, AMERICAN BENEFITS COUNCIL; DIRECTOR OF PRODUCT MANAGEMENT, PRINCIPAL FINANCIAL GROUP, DES MOINES, IA

Mr. SCHOENING. Good afternoon. I'm Lance Schoening from Principal Financial Group. I'm director of product management and also a Policy Board member of the American Benefits Council.

Chairman, Ranking Member and other members of the subcommittee, we want to thank you on behalf of the Council and Principal Financial Group for spending time and attention on this very important issue. At Principal, this is an issue that we discuss on a daily basis. It's part of our strategic focus.

The American Benefits Council is a national nonprofit organization dedicated to protecting and fostering privately sponsored employee benefit plans. Its members include large multistate U.S. employers that offer employee benefit plans to their active and retired workers and families, as well as organizations that provide employee benefit services to employers of all sizes.

As a Council board member, the Principal fits both of those qualifications. We're a multistate U.S. employer, and we're also a provider of retirement services to over 43,000 employer-sponsored retirement plans today, and there are more than 4 million plan participants. The Council asked us to represent them today because of our focus on small and mid-size employers.

Of those plans that I mentioned that we provide services to, the vast majority of those are for employers that have employees of 500 or less. This is what our company was founded on. It's what we do day in and day out and have done for the last 70 years. For the last several years, encouraging retirement readiness efforts has been a high level initiative at our company, encouraging employers and their financial advisors to consider plan designs that drive appropriate levels of savings.

My specific role at Principal is to ensure that we have an appropriate and appealing product and service set for our employer-plan sponsor clients, and also to encourage them to use retirement readiness plan designs. While I'm more confident today than ever that the innovations we've been able to apply to the market and for our clients' plans, as well as those of our peer industry firms, are meeting the needs, we need to encourage more small businesses to establish plans, and we need to encourage greater plan participation and higher levels of savings with existing plans. That's really the key challenge and two facets of that challenge.

When you look at small plan sponsors today, and you look at the adoption rates of auto features, they are significantly underutilized when compared to large employers in the United States today. That means that a larger percentage of their employees are not participating in the plan and not having the opportunity to save. We must find ways to improve this result.

In our written statement, we've laid out a three-prong strategy to approach these challenges, including supporting multiple employer plans for unrelated employers; establishing a more flexible, cost-effective, auto feature safe harbor that's really designed to appeal to small employers today; and providing targeted and mean-

ingful tax incentives for small businesses who form plans and adopt progressive auto feature designs.

In summary, I'm very excited to be part of this discussion on behalf of Principal and American Benefits Council, and we'd like to offer any continued assistance that we can provide to the subcommittee on this topic.

[The prepared statement of Mr. Schoening follows:]

PREPARED STATEMENT OF LANCE SCHOENING

As the Senate Subcommittee on Retirement Security considers retirement plan formation and sponsorship among small businesses, the Principal Financial Group®, on behalf of the American Benefits Council (the "Council"), is pleased to offer our insights based on our work with thousands of small business retirement plan clients. Principal is a member of the Council's board of directors.

The Council is a national nonprofit organization dedicated to protecting and fostering privately sponsored employee benefit plans. Its members include large multistate U.S. employers that provide employee benefits to active and retired workers and their families as well as organizations that provide employee benefit services to employers of all sizes. Collectively, the Council's members either directly sponsor or provide services to retirement and health plans covering virtually all Americans who participate in employer-sponsored benefit programs.

As a leading provider of retirement plans and a global investment management leader, the Principal Financial Group provides comments based on more than 70 years in the retirement industry and our experience with small- to medium-sized businesses and their employees. We currently provide retirement services to more than 43,000 retirement plans and 4.2 million employee participants, including more than 38,000 retirement plans of small businesses¹ and their 1.6 million participants.

For millions of Americans, a workplace retirement plan is the primary vehicle, beyond Social Security benefits, for accumulating savings to generate comfortable income in retirement. According to data from the Bureau of Labor and Statistics,² 76 percent of full-time private sector workers have access to a workplace retirement plan, and 78 percent of those with access participate. Furthermore, government and the industry have made great strides at enhancing the system and improving retirement readiness among participants.

There is still a significant portion of the working population that does not have access to a workplace retirement savings plan. The gap in workplace retirement plan coverage is most pronounced among employees of small businesses. For workers without access to a workplace retirement plan, 57.8 percent work for companies with fewer than 100 employees.³

ADDRESSING THE CHALLENGE

Tackling the retirement coverage gap will require a multi-faceted approach focused on America's small employers. Our recommendations mirror many of those outlined in the Senate Finance Committee's Savings & Investment Bipartisan Tax Working Group's July 2015 report.

- First, we must expand access by encouraging more small businesses to establish workplace retirement plans and multiple employer plans (MEPs) should serve a key role. A MEP is a single retirement plan that is adopted by multiple, unrelated employers that want to significantly reduce the administrative burdens and fiduciary responsibilities of sponsoring a plan on their own. MEPs also afford small businesses the opportunity to band together with others to gain scale and realize benefits available to larger plans.

- Second, we must address the dual challenges of improving participation and savings rate adequacy among single-employer plans sponsored by small businesses. Automatic feature plan designs are significantly underutilized and of those plans that have adopted automatic enrollment, the default deferral rate is typically set at 3 percent of pay with no automatic escalation.

¹ Retirement plans of small business defined as those with less than 500 participants.

² Bureau of Labor Statistics, U.S. Department of Labor, National Compensation Survey, March 2015.

³ Employee Benefit Research Institute, Issue Brief No. 405, "Employment-Based Retirement Plan Participation: Geographic Differences and Trends, 2013."

- Finally, effective incentives are needed to encourage small plan formation with particular emphasis on encouraging adoption of progressive automatic feature designs.

We will address each of these approaches in the context of the subcommittee's specific questions below.

What are some policy recommendations you can offer which would open up multiple employer plans to allow small businesses more flexibility?

A number of regulatory and legislative changes are necessary to open up MEPs to the broader small business community.

- Current guidance from the Department of Labor requires a nexus or bona fide relationship between each adopting employer to consider a MEP a single plan and afford certain administrative and expense efficiencies, such as a single 5500 filing and plan audit. New guidance or legislation should expand MEP availability to small businesses with no formal, joint relationship—given conditions are established to ensure appropriate ERISA protections. We recommend the approaches discussed in the Senate Finance Committee's Savings & Investment Bipartisan Tax Working Group's July 2015 report.

- The Internal Revenue Code, while recognizing multiple employer plans, applies many requirements to each adopting employer. Referred to as the "bad apple rule," any adopting employer failing to meet tax-qualified plan criteria can disqualify the entire MEP's tax-qualified status. The IRS or Congress should provide that the adverse consequences of a non-compliant employer are limited to that employer and allow the MEP to spin the offending employer out of the MEP.

- Employers adopting a plan should be permitted—to the extent workable—to shift the fiduciary responsibility to third parties to make it easier for employers and to ensure appropriate expertise. We stand ready to work with Congress and regulators to establish appropriate and workable rules.

What could the Federal Government be doing to encourage small businesses to help employees with retirement savings?

We know that automatic features can work in driving improved retirement outcomes for participants. Adoption has become virtually mainstream for many large businesses. However, among small businesses auto-feature adoption is significantly underutilized. A report from Vanguard⁴ found that approximately 60 percent of large employers utilize automatic enrollment but only between one-quarter and one-third of smaller plans (under 1,000 employees) do so. Other studies focused on micro-plans show even lower adoption rates. For those small businesses who do utilize automatic enrollment, the default deferral is most often set at 3 percent of pay with no automatic escalation feature. Such a design gets employees enrolled in plans, but does not generate adequate savings rates.

A regulatory safe harbor design, the Qualified Automatic Contribution Arrangement (QACA), was created in an effort to incorporate adequate automatic enrollment and escalation features (minimum 3 percent deferral escalated to at least 6 percent), while offering the plan sponsor the ability to forgo nondiscrimination testing. The design requires a minimum 3 percent automatic deferral escalated to at least 6 percent and a minimum two-tier matching formula of 100 percent on the first 1 percent of pay and 50 percent on the next 5 percent of pay. Unfortunately, take-up has been limited. Of the Principal's own block of clients that utilize automatic features, only 8 percent use the safe harbor design. We feel this is due to two reasons: the inflexibility and complexity of the matching formula and the fundamental increase in matching cost for most plans (the minimum employer match contribution is 3.5 percent of pay).

In an effort to encourage increased coverage, wider adoption of auto-feature designs, and increases in automatic feature adoption rates with provisions to drive adequate savings levels, we urge Congress to support additional automatic arrangement safe harbor designs that will appeal to the majority of small business plan sponsors, designs that are simple and sensitive to increased costs. The Council supports recent bipartisan proposals and looks forward to working with Congress as the legislative process continues.

Tax credits such as those outlined in The Savings & Investment Bipartisan Working Group's July 2015 report are another tool that is important to encouraging small plan formation and adoption of successful designs. The credits include increased tax credits for new plan formation and new credits tied to adoption of progressive auto-feature plan designs, specifically those with default deferrals of 6 percent.

⁴Vanguard's Center for Retirement Research, How America Saves 2014.

Please elaborate on any current regulatory or statutory challenges you have experienced (or observed) offering retirement plans to your employees in your small business.

From the broader perspective of a retirement services provider of many small businesses, the common statutory and regulatory challenges that we hear from small businesses relate to administrative burden, fiduciary liabilities, and specifically, nondiscrimination testing. Regarding the latter, small business sponsors of plans with low participation rates often fail nondiscrimination testing, requiring owners and highly compensated employees to receive refunds limiting their ability to adequately save for retirement in their own plan.

The recommendations we have laid out in this statement directly address challenges identified by small businesses. Multiple employer plans are excellent choices for small businesses seeking to offer a retirement benefit to their employees but do not have the resources, time or expertise to feel comfortable sponsoring their own plan. A workable auto-feature safe harbor, with incentives including safe harbors from nondiscrimination tests and additional tax incentives, will appeal broadly to small businesses and particularly those who have been challenged by testing failures. Such changes will result in good public policy, increasing auto-feature adoption among small plans, increasing plan participation among workers, and establishing adequate savings rates.

ABOUT THE PRINCIPAL FINANCIAL GROUP

*The Principal Financial Group (The Principal®)*⁵ is a global investment management leader offering retirement services, insurance solutions and asset management. The Principal offers businesses, individuals and institutional clients a wide range of financial products and services, including retirement, asset management and insurance through its diverse family of financial services companies. Founded in 1879 and a member of the FORTUNE 500®, the Principal Financial Group has \$53.3 billion in assets under management and serves some 19.9 million customers worldwide from offices in Asia, Australia, Europe, Latin America and the United States.⁶ Principal Financial Group, Inc. is traded on the New York Stock Exchange under the ticker symbol PFG. For more information, visit www.principal.com.

Senator ENZI. Thank you.
Mr. Kalamarides.

STATEMENT OF JOHN J. KALAMARIDES, SENIOR VICE PRESIDENT OF INSTITUTIONAL INVESTMENT SOLUTIONS, PRUDENTIAL RETIREMENT, HARTFORD, CT

Mr. KALAMARIDES. Thank you, Chairman Enzi and Ranking Member Sanders and members of the committee. I'm Jamie Kalamarides. I lead the Investment Businesses and Trust Company at Prudential Retirement in Hartford, CT.

Prudential is the second largest U.S. life insurer and a top 10 global asset manager. We provide retirement plans in all sizes of corporations, governments, unions, and not-for-profits. As detailed in our white paper entitled, "Multiple Employer Plans—Expanding Retirement Savings Opportunities," retirement plan coverage is the critical gap in providing financial security to working Americans.

According to the Employee Benefits Research Institute, those with access to workplace-based retirement plans save 16.4 times more than those without. Retirement plans are available at most medium and large employers, and because of automatic enrollment, automatic escalation, and QDIAs, they work.

Only 50 percent of the 5.6 million small businesses with less than 100 employees offer retirement plans. This lack of coverage is especially acute for the 30 million women, 12 million Latinos, 6

⁵ "The Principal Financial Group" and "The Principal" are registered service marks of Principal Financial Services, Inc., a member of the Principal Financial Group.

⁶ As of April 2015.

million African Americans, and 4 million Asian Americans that work at these small businesses.

Prudential surveyed 850 small businesses without retirement plans in March and April of this year and found that there are three barriers to adoption: cost, administrative hassle, and fiduciary responsibilities. In that same survey, we found that small business demand would increase by 250 percent by removing these barriers.

Open multiple employer plans can be a solution. When I refer to open multiple employer plans, I'm not referring to those multiple employer plans that are sponsored by bona fide employer organizations, long permitted under the DOL interpretations. Rather, my focus is on MEPs that have not been, but should be, permitted and encouraged, that is, open MEPs. To expand sponsorship and participation in open MEPs, Congress should address the challenges presented by tax law, ERISA, fiduciary liability, and ensuring the integrity of the marketplace.

We at Prudential recommend five changes to Federal law. First, allowing unaffiliated businesses with separate employee groups to pool their purchasing power. This means removing the commonality of interest requirement.

Second, reducing the liability of small business owners to only those decisions that they actually make. That is, removing the one-bad-apple rule and transferring fiduciary responsibility to professionals.

Third, directing the IRS and Labor Department to develop a model plan design that includes all the best behavioral finance best practices and eliminates discrimination testing.

Fourth, empowering the Department of Labor with enforcement capabilities, such as registration, reporting, and cease and desist powers.

And, fifth, passing the Lifetime Income Disclosure Act sponsored by Senators Isakson and Murphy of this committee and directing the Department of Labor to reduce barriers to employees' selection of lifetime income options.

The benefits of these small changes can be substantial. Employees without access will be automatically enrolled, save through institutional investments, and have the possibility of employer matches. Employers will have limited ongoing costs and administrative hassle. And, finally, according to the ICI/Deloitte survey, all-in fees could fall by 80 to 100 basis points.

Open MEPs are supported as a small business solution in every retirement coverage bill introduced in the 113th and 114th Congresses. The Senate bills with MEP concepts have been sponsored by Senator Whitehouse and Senators Collins, Nelson, and McCaskill, and in the past by Chairman Hatch and Senators Harkin and Brown.

Thank you, Chairman Enzi, Ranking Member Sanders, and members of the committee, for your focus on retirement savings solutions at small businesses through MEPs.

[The prepared statement of Mr. Kalamarides follows:]

PREPARED STATEMENT OF JOHN J. KALAMARIDES

INTRODUCTION

Thank you Chairman Enzi and Ranking Member Sanders and members of the committee for the opportunity to participate in today's discussion of how we can expand retirement savings opportunities for the millions of Americans employed by small businesses in this country.

I am Jamie Kalamarides, Head of Institutional Investment Solutions, Prudential Retirement. Prudential is the second largest life insurer and a top 10 global asset manager with over \$1.2 trillion in assets under management. Prudential provides workplace-based retirement solutions to all sizes of corporations, governments, unions and consumer groups.¹

Prudential has long been concerned about what is often referred to as the "retirement coverage gap," that is, the absence of retirement savings opportunities for employees in far too many of today's small businesses. It is well-established that employer-sponsored retirement savings plans have become a critical component of the private retirement system in the United States, and a proven tool for helping working Americans prepare for life after work. According to calculations by the nonprofit Employee Benefit Research Institute, workers earning between \$30,000 and \$50,000 per year are 16.4 times more likely to save for retirement if they have access to a workplace plan.

Unfortunately, tens of millions of working Americans don't have access to a plan on the job, leaving many ill-prepared to meet their financial needs after they stop working. With 10,000 individuals reaching retirement age each day, this is a large and growing problem. We know that a comprehensive retirement plan requires a stable three-legged stool—Social Security, personal savings, and pensions. While Social Security is a critical program, for median income earners, it replaces only 47 percent of pre-retirement income, leaving those without a workplace retirement plan with a potentially significant income gap in retirement.

The workplace retirement system works very well for employees of medium and large companies. Employees of small companies, however, are far less likely to have access to savings opportunities. According to data from the Bureau of Labor Statistics, only 50 percent of workers in firms with fewer than 100 employees have access to retirement plans at work. This compares to 89 percent for workers at larger firms.

This retirement coverage gap is especially problematic given that small employers provide jobs for a large and diverse section of the American population. Small businesses in the private sector provide over 30 million jobs for women. Small businesses employ over 12 million Latino Americans, 6 million African Americans, and 4 million Asian Americans—and yet, only 50 percent of employees of small businesses have access to a workplace retirement plan.

The retirement coverage gap can and should be narrowed. While a variety of solutions are possible, there is a growing consensus among financial institutions, consumer groups and some Members of Congress¹ that one of the broadest and most expedient ways to close the gap is to expand access to multiple employer plans, or MEPs, for small employers and their employees. MEPs—single plans utilized by two or more employers—have been utilized successfully for years by trade associations and professional employee organizations. Unfortunately, tax laws and regulations discourage or prevent most small employers from taking advantage of them.

Addressing the constraints on multiple employer plans has bipartisan support in both the U.S. Senate and U.S. House of Representatives, as well as support from the U.S. Chamber of Commerce, AARP, many affinity groups, and the financial services industry. Most recently, the Senate Finance Committee's Savings & Investment Bipartisan Tax Working Group issued a report in which it indicated that,

"[t]o enable small employers to sponsor high-quality, low-cost plans, the working group recommends that the committee consider proposals that allow employers to join open multiple employer plans."²

For the small employer market, multiple employer plans would enable small businesses to participate in a single, professionally administered plan that affords them economies of scale and minimal fiduciary responsibility. The plans would provide employees of those organizations the same opportunities to invest for retirement

¹ Legislation relating to addressing MEP issues has been introduced in the 114th Congress by Representative Richard Neal (D-MA)—H.R. 506; Senator Sheldon Whitehouse (D-RI)—S. 245; Senators Susan Collins (R-MA), Bill Nelson (D-FL) and Claire McCaskill (D-MO)—S. 266; and Representatives Vern Buchanan (R-FL) and Ron Kind (D-WI)—H.R. 557.

² The Savings & Retirement Bipartisan Work Group Report, July 2015, at page 6.

that employees of large companies already enjoy on a near universal basis via 401(k)s and similar defined contribution plans.

SMALL BUSINESS RETIREMENT SURVEY BY PRUDENTIAL

In an effort to better understand why small businesses do not offer retirement plans, Prudential Retirement conducted a survey of more than 850 small employers during the months of March and April 2015. All the survey participants were business owners who do not offer retirement plans today, and who have the responsibility for making decisions on employee benefits. Included in the survey were small businesses of between 3 and 500 employees.

When asked un-prompted why they don't offer retirement plans for their employees, almost 50 percent cited cost as the concern. When prompted with a list of reasons, the top reasons why they do not sponsor plans include cost, administrative burden and hassle, and fiduciary concerns. Importantly 29 percent indicated a lack of understanding as to how retirement plans work.

Reflecting these concerns, baseline interest in offering a retirement plan is low. Only 14 percent of small business respondents are likely to consider offering a plan over the next 5 years. However, if provided an opportunity to offer a plan with little or no cost, most responsibility assumed by an independent trustee, and minimal retained responsibility beyond forwarding contributions, the rate of interest increases by more than 250 percent. Also, almost half indicated support for legislation that would make it easier for small businesses to provide retirement plans to their employees, with only 17 percent saying legislation is not needed.

Finally, the survey measured employers' attitudes toward offering retirement plans. Attitudes varied widely, highlighting the differing mindsets of small employers. We found that about $\frac{1}{3}$ of employers had the most positive attitudes: That saving for retirement is very important; that programs to make it easier are very important; and, that they have a key role in the process. For the $\frac{1}{3}$ of employers with the most positive attitudes, almost 70 percent were likely to consider offering a plan with little or no cost and minimal responsibility.

Given small businesses employ over 55 million workers, capitalizing on employer interest by offering plans which have little or no cost to employers, and minimal employer responsibility, could be an important step toward reducing the retirement coverage gap. At Prudential, we believe multiple employer plans can be part of the solution, but there are challenges—challenges to expanding MEP sponsorship and challenges to expanding MEP participation.

CHALLENGES TO EXPANDING MEP SPONSORSHIP AND PARTICIPATION

Expanding access to multiple employer plans for small businesses and their employees will require Federal legislative and/or regulatory action. The challenges, in our view, are concentrated in four areas:

Tax Law—Section 413(c) of the Internal Revenue Code already recognizes plans maintained by more than one unrelated employer. However, it imposes a number of requirements on these plans as a condition of maintaining their tax-qualified status. As currently interpreted, some of these requirements, such as nondiscrimination rules, are applied on an employer-by-employer basis rather than a plan basis. This means that just one non-compliant employer can jeopardize the tax status of the entire plan, putting all employers at risk. This barrier is often referred to as the “one bad apple” rule.

ERISA—For purposes of ERISA, the Department of Labor treats as a single retirement plan only those multiple employer plans that are sponsored by a “cognizable, bona fide group or association of employers” acting in the interest of its members. It also requires that this group of employers have a “commonality of interest,” such as operating in the same industry, and exercise either direct or indirect control over the plan. Taken together these conditions significantly limit the ability of other organizations, such as a local Chamber of Commerce, to sponsor a MEP for a diverse population of small employers.

Fiduciary Liability—Some employers—particularly small employers—shy away from offering a plan because they are concerned about the responsibilities and liabilities they might assume under ERISA as plan fiduciaries. The uptick in retirement plan litigation relating to plan fees and other factors has only exacerbated their concerns.

Enforcement—The Labor Department has expressed concern that expanding the number of “open” multiple employer plans—those sponsored by any entity other than a “bona fide group or association of employer”—could allow promoters of such

plans to take advantage of small employers and their employees under the guise of offering a low cost, no liability plan.³

FACILITATING SPONSORSHIP OF AND PARTICIPATION IN MEPS

To make multiple employer plans more accessible to small businesses, lawmakers and regulators will need to take action on several fronts.

Tax Law

First, Treasury and IRS or Congress needs to clarify tax law so that any adverse consequences of not complying with the applicable tax qualification requirements for MEPs will be limited to the noncompliant employer, rather the entire plan and rest of its participating employers.

ERISA

Second, the Department of Labor or Congress needs to modify the ERISA requirements to allow a broader array of entities, organizations or associations to sponsor MEPs, subject to conditions that will ensure plans comply with ERISA's fiduciary requirements and minimize risk to plan sponsors and their employees. These conditions might include the following:

- The sponsor must exist for bona fide purposes unrelated to the sponsoring of a retirement plan.
- The documents of the plan must identify the person(s) who will serve as the named fiduciary of the plan. That person(s) must acknowledge in writing joint and several liability for controlling and managing the operation and administration of the plan.
- The documents of the plan must identify the trustee(s) of the plan responsible for the management and control of the plan's assets and for the prudent collection of contributions to the plan.
- The documents of the plan must identify the person(s) who will act as the administrator of the plan, responsible for satisfying reporting, disclosure, and other statutory obligations.
- The plan and plan officials must maintain a fidelity bond in accordance with ERISA section 412.
- The documents of the plan must ensure that participating employers will not be subject to unreasonable restrictions, penalties, or fees upon ceasing participation in the plan.
- Inasmuch as the retirement coverage gap is most acute among smaller employers, participation in these new MEPs should be limited to those employers with no more than 500 employees. While it is likely that MEPs will appeal principally to employers with 100 or fewer employees, establishing the ceiling at 500 employees will give smaller employers ample time to grow without having to worry about identifying a new retirement savings vehicle for their employees.

Fiduciary Responsibility

Congress and regulators, in our view, should consider limiting the fiduciary responsibility of employers participating in an MEP to the prudent selection of the MEP sponsor and remitting timely contributions. Similar to the selection of an investment manager under ERISA, such a limitation is not intended to eliminate or reduce fiduciary responsibility with respect to the management and operation of the plan, but rather appropriately allocates those responsibilities to professionals best positioned to protect the interest of plan participants and beneficiaries.

Enforcement

Importantly, lawmakers and regulators can help ensure the integrity of MEPs in the marketplace by strengthening the protections afforded plan sponsors and their employees. We believe they can do this by establishing accountability for, and meaningful oversight of, MEPs. Appropriate measure could include:

- A requirement that MEP sponsors file a registration statement with the Department of Labor in advance of offering a retirement plan to employers. The statement could include, among other things, the name of the sponsor; the scope of its intended offering in terms of its geographic area; representations that all applicable conditions—such as those enumerated above—have been satisfied; and copies of the plan documents.

³Letter from Phyllis Borzi to Charles Jezeck, reprinted in "Private Sector Pensions, Federal Agencies Should Collect Data and Coordinate Oversight of Multiple Employer Plans," a GAO report to Chairman, Committee on Health, Education, Labor, and Pensions, U.S. Senate, September 2012, at page 44.

- A requirement that the MEP file an annual report, in addition to any other information required in its Form 5500 annual return/report, an audit and a listing of participating employers.
- An amendment to ERISA giving the Department of Labor authority to issue ex parte cease and desist orders, as well as summary seizure orders, similar to the authority it already enjoys in overseeing multiple employer welfare arrangements (MEWAs).

A Safe Harbor MEP

To facilitate participation in MEPs and reduce compliance risks for small employers, the Department of the Treasury and the Internal Revenue Service, in coordination with the Department of Labor, should develop a safe-harbor model plan that minimizes the administrative complexities and costs of MEPs, is not subject to complex tax-qualification testing requirements, and enhances the ability of MEPs to generate positive retirement outcomes for plan participants.

A template we would recommend for such a model would include the following characteristics:

- A single plan, with a centrally administered trust, serving all participating employers.
- Plan participation would be limited to employers with no more than 500 employees.
- Specifically identified persons to serve as the named fiduciary, trustee(s), and administrator.
- Funded by employee contributions, with employer contributions permitted, but not required.
- Automatic enrollment of employees at a rate equal to 6 percent of pay, with employees eligible to opt out or select an alternative contribution rate.
- Automatic escalation of employee contributions to 10 percent of pay, in annual 1 percent increments, with employee opportunity to opt out.
- Hardship withdrawals in accordance with IRS rules, but no participant loans.
- A broad range of diversified investment options.
- In the absence of investment direction, contributions would be defaulted into a preservation of principal investment option for the first 4 years and, thereafter, into a qualified default investment alternative (QDIA) in accordance with Labor Department standards.
- At least one investment or distribution option that includes a lifetime income product.

We believe that use of a model plan, similar to the above, should avoid the need for complex and costly nondiscrimination testing and, through reduced administrative costs, increase retirement savings for plan participants.

MEPS—A “WIN WIN”

We—at Prudential—see MEPs as a “win” for both employees and employers.

MEPs will afford employees the opportunity for better retirement outcomes. A properly designed MEP will promote savings by employees through the use of automatic enrollment and automatic escalation of their contributions. MEPs may further encourage appropriate investment behavior by providing investment options selected by investment professionals, better ensuring that plan participants will be able to tailor their portfolio to their investment goals and tolerance for risk.

Unlike IRAs, MEPs offer employees the potential for an employer match and the opportunity to save for retirement at levels more appropriate for meaningful retirement savings (\$18,000 per year, as compared to \$5,500 per year for 2015 and 2016), as well as access to institutionally priced investments. MEP participants would further benefit from having their plan’s fiduciary and administrative responsibilities discharged by plan and investment professionals, thereby enhancing the fiduciary and other protections afforded by Federal law—the Employee Retirement Income Security Act (ERISA).

Small businesses will be better positioned to compete for talent. For employers, MEPs represent an opportunity to offer employees a meaningful opportunity to save for retirement in a tax-advantaged plan, without the administrative costs and fiduciary risks attendant to maintaining a stand-alone retirement plan. Moreover, surveys consistently show that workers consider retirement savings plans a valued employee benefit. The offering of a retirement plan, therefore, can increase an employer’s ability to attract and retain a high quality workforce and, thereby, be more competitive.

CONCLUSION

While multiple employer plans may not be the only solution to closing the retirement coverage gap, we believe it is an important one and one that should be available to substantially more employers than is the case today. For a more comprehensive discussion of MEPs and our proposals, we have a copy of our recent white paper, *Multiple Employer Plans—Expanding Retirement Savings Opportunities*, for your consideration. (Available through our website at: http://research.prudential.com/documents/rp/mep_paper_final_2015.pdf).

With the support from benefits professionals, consumer groups and Members of Congress, we believe the climate is right for expanding both the sponsorship of and participation in multiple employer plans and, with 10,000 individuals reaching retirement age everyday in this country, the time for action is now.

We thank Chairman Enzi, Ranking Member Sanders and members of the committee for their focus on the challenges facing small businesses in offering retirement savings opportunities to their employees. We look forward to working with members of this committee and other interested persons in expanding retirement savings opportunities through MEPs.

Senator ENZI. Thank you.

Mr. Certner.

**STATEMENT OF DAVID CERTNER, LEGISLATIVE COUNSEL AND
LEGISLATIVE POLICY DIRECTOR, AARP, WASHINGTON, DC**

Mr. CERTNER. Thank you, Mr. Chairman and members of the committee. My name is David Certner. I am Legislative Counsel and Policy Director for AARP. Thank you for inviting us today.

Only about half of the workforce has access to a retirement plan at work, leaving approximately 55 million Americans without the ability to save for retirement. Many of these work for small employers. We know that people will take advantage of the opportunity to save at work. A retirement plan makes it 15 times more likely that someone will save.

For these reasons, AARP has long supported expanding employer sponsorship of retirement savings vehicles. The real challenge, especially for small employers, is to make it as easy and as automatic as possible to have plan coverage.

As an aside, we're currently engaged with many State and local officials on what can be done at the State level to essentially do pooling of small employers. Several states have already acted, and we have about 20 states that are considering action.

While we support these State efforts, we're also committed to working at all levels and many different models to see what we can do to expand coverage. At the Federal level, we are open to developing open MEP arrangements. In many ways, MEPs have very similar elements to the work that's going on at the State level, and we believe that both efforts have merit and actually complement each other.

I'm going to speak from the consumer perspective. For the individual who is trying to invest, what they want is essentially a licensed and qualified entity that's going to be acting in their interest. Several models, as has been noted, have been proposed in Congress, and we think we can adopt some of the best features of these proposals.

For small employers, as a first rule, we want to keep it simple. We understand that Congress should avoid burdening small employers with too many requirements, and we really shouldn't expect them to become retirement experts. There are some employers who do want to take on this responsibility, but for those who don't, we

should provide automated options in which employers or the payroll service providers simply transmit the payroll contributions to a designated and legally responsible entity.

We believe the open MEP models under consideration can work if they include the right standards. AARP believes that there are some essential features that an open MEP should include. Employer and multi-employer plan duties really should be clear, and that's really key. Employers or the MEP must be under a duty to, for example, timely transmit payroll contributions, distribute material, prudently select investments and other providers, and periodically monitor and review performance.

We think MEPs should also meet certain minimum qualification requirements and standards that would include licensing, bonding, reserve and insurance requirements. The MEPs should also agree to act in a fiduciary capacity, and all moneys that are transmitted need to be held in trust and timely transmitted either to investments or to pay benefits to participants.

We think the plans should also include basic consumer safeguards. Consumers need access to understandable information, either provided by the MEP or the participating employer. The plans need trained staff to handle questions, including any consumer complaints.

What's really fundamental here is that we need to be clear which entity is going to be responsible for these things. Is it going to be the small employer, or is it going to be the MEP? For example, who's going to file the plan documents and the financial statements? We also want to make sure that the Department of Labor has enforcement authority and can audit these MEPs.

Most of these protections that I've talked about today already exist in ERISA. What Congress needs to do in terms of helping to encourage these kinds of plans is to really specify which functions remain the responsibility of the small employer and which ones are the responsibility of the MEP.

Obviously, the easier we make it for the small employer, the more likely they are to use a MEP or some similar option. In addition, we want to ensure that the MEPs are required to act in the best interest of the workers as well as the employers, and that, we think, will lead to greater overall retirement security. In short, we want Congress to help establish the framework to ensure that the participants benefit from the economies of scale derived from, as you say, the pooled investments and group pricing that we get.

We know that meaningful retirement security is still a challenge, particularly for small employers, and we think there are many promising approaches. We look forward to working with the committee to expand retirement coverage and adequacy to the tens of millions of Americans who need access to retirement savings in the workplace.

Thank you.

[The prepared statement of Mr. Certner follows:]

PREPARED STATEMENT OF DAVID CERTNER

Chairman Enzi, Ranking Member Sanders, and other members of the subcommittee, thank you for inviting me to speak to you today on behalf of AARP.

AARP is the Nation's largest nonprofit nonpartisan organization representing the interests of almost 38 million Americans age 50 and older. We share many of the

same concerns as other speakers here today on the need to expand pension coverage—particularly for small employers—and we have been working for decades, at both the Federal and State levels, to improve and expand coverage under the private retirement system.

It goes without saying that we need a strong and adequate retirement system for when we no longer work and need 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.

According to the Center for Retirement Research, access to a workplace retirement plan is second only to having a job as the most important factor in helping families build retirement savings in addition to Social Security. However, only about half of the workforce has access to a retirement plan at work, leaving approximately 55 million Americans without the ability to save for retirement at work.

We know that people will take advantage of the opportunity to save for retirement at work. 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.

For these reasons, AARP has long supported encouraging or requiring employer sponsorship of retirement savings vehicles. We have supported legislative proposals for 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 and opening retirement plans to part-time workers are worthy of legislative support.

The problem is not that there are not enough types of retirement plans. If anything, the many types of plans—including defined benefit, 401(k), SEPs, Simples, payroll deduction IRAs, etc.—can make it confusing and lead to inertia among employers.

The real challenge is to make it as easy, and as automatic, for employers and employees to have retirement plan coverage. Small employers in particular are focused on keeping their doors open; they do not have human resource departments or in-house plan experts to call on. It is unreasonable to ask over five million small employers to become retirement experts.

To effectively tackle financial insecurity in retirement, we should continue to learn from the growing body of behavioral economics research, including the demonstrated power of automatic plan designs, such as automatic enrollment and escalation. We have also learned 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 re-balance and lack of portfolio diversification, and even the inability to make decisions if presented with too many choices.

AARP continues to work at both the national and State level to make it easier to have retirement coverage for employers and employees. While we believe there are ongoing opportunities at the national level, we are also 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. For example, according to a recent Utah study, the total cost to taxpayers for new retirees in that State will top \$3.7 billion over the next 15 years. The study also found that 18 percent of retirees in the next 15 years will retire with more debt than savings. Failure to address the retirement savings shortfall will translate into more costs for taxpayers.

Several States have already enacted statewide legislative reforms, including Illinois, 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 in 2016. Utah and Virginia passed study bills, with overwhelming bipartisan support, to examine what their State legislatures can do to avert the retirement crisis. Minnesota and Connecticut have both appropriated funds to conduct feasibility studies as a precursor to setting up State-facilitated savings plans. Over a dozen other States are actively considering similar types of laws or feasibility studies to determine how to do so.

While AARP has strongly supported these State efforts, we support and are committed to working at all levels on many different models to expand coverage. At the Federal level, we are open to and willing to work with Congress and other stakeholders on developing what is being called an open multiple-employer pension (MEP) model. In many ways open MEPs have many elements in common with ongo-

ing State work, 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, the key is to make sure there is a licensed and fully qualified entity that is acting in their interest to offer them high performing low-cost investment options. Several models have been proposed, and we urge Congress to adopt the best features of these proposals. For example, some have proposed empowering the Department of Labor (DoL) to establish criteria for these entities or to develop a model MEP. Others have not delegated design authority to DOL, but rather proposed that entities be required to register with DOL and undertake some or all of their activities as fiduciaries—i.e., legally required to act prudently and solely on behalf of covered workers.

For small employers, we must keep it simple. Congress should avoid burdening employers with too many requirements and not expect them to become retirement experts. Employers who want to offer and design their own plans and legally oversee them should be able to do so. For employers who do not wish to take on the responsibility of administering a retirement plan, we should also provide automated options in which employers—or their payroll service providers—simply transmit payroll contributions to a designated legally responsible entity.

We believe the open MEP models under consideration can be made to work with the right development and bipartisan stakeholder input. We stand ready to work with the committee to help move a proposal forward. AARP believes any proposal in this area should include specific essential features and protections to ensure all parties are fairly protected:

1. Employer and multiple employer plan duties should be clear. Employers or the MEP must be under a duty to timely transmit payroll contributions, distribute materials, prudently select investments and other providers, and periodically monitor and review provider performance. For example, in the health plan area, we have seen problems where an employer fails to timely transmit contributions. In order to avoid the issues that arose with failed employer contributions to multiple employer welfare arrangements (MEWAs), clear rules are needed to specify the employer and plan duties, including when and how the MEP and DOL need to act if parties do not act as required.

Employers also should continue to comply with ERISA's requirements for fair participation of all qualified employees. Congress should decide if all workers will be vested immediately in any employer contributions—which AARP believes is the right standard to maximize retirement savings—or whether employers can impose individual employer vesting requirements.

2. Multiple employer plans should meet minimum qualification requirements. The committee or DOL should establish the licensing, bonding, reserve, and insurance requirements that plans must meet. We also believe the MEP should agree to act in a fiduciary capacity. 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—either through a transparent internal process or an external competition for appropriate retirement investments. 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.

3. Plans should include consumer standards and safeguards. Consumers need access to understandable information either provided by the MEP or the participating employer. Plans need trained staff to handle consumer questions and grievances, with the consumer right to either file a complaint with DOL or seek court redress.

There should be clear rules as to which entity, the employer or the MEP, will file plan documents and financial statements with participants and necessary government agencies. Participants and the public have a right to know all employer members of a MEP in order to track 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.

In addition to the above features, we also urge the committee to consider encouraging retirement plans to pay benefits in the form of lifetime income so that retirees are protected from outliving their retirement savings. Workers covered by any retirement plan should also be encouraged to retain or roll-over their savings to an

other retirement vehicle when they change jobs or retire. Spousal consent features will also help to enhance women's retirement security.

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 we make it for small employers, the more likely they are to use a MEP or similar option. In addition, ensuring that MEPs are required to act in the best interests of workers and employers will help improve overall retirement security.

Meaningfully expanding retirement security, particularly for employees of small employers, remains a critical challenge for the Congress. We believe there are many promising ideas worthy of consideration. 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.

That's a lot of great information in a very short period of time. You were all very concise, and I appreciate that. We'll probably need to go back over some of that in order to actually absorb it now, and that's what I'd like for us to do. I'll ask a couple of questions here, and then if Senator Whitehouse wants to ask a couple, we'll do that, and then we'll just kind of open it up for general discussion among you and among us.

I noted that most of you mentioned that we have a lot of businesses that aren't covered, about 50 percent, and that was 56 million people. I'm not sure which. It's a lot, anyway, and what we'd like to do is to get that 50 percent to have some incentive to do that sort of thing and not a fear of doing it, so that more people are covered.

You gave some policy recommendations regarding the expansion, and one of the best ways that we at the Federal level can help is to give those people access to plans. How do you recommend that Congress makes it easier for the MEPs, specifically open MEPs, to grow and make it easier for small businesses to offer retirement coverage for their employees?

If somebody wants to jump in, just stand your name card up, and we'll know that you want to say something.

Mr. Kalamarides.

Mr. KALAMARIDES. As I mentioned in my opening comments, I believe Congress should take five sets of actions, and I'll walk through them in a little bit more detail than I did in my summary.

Senator ENZI. Good.

Mr. KALAMARIDES. To reduce the barriers in tax law, ERISA, fiduciary responsibilities, and DOL enforcement. I want to agree with many of the things that David also described in his opening comments.

I believe that Congress should pass a bill that allows unaffiliated businesses with separate employee groups to pool their purchasing power. That means removing the commonality of interest current requirement on MEPs, that is, fundamentally allow open MEPs.

The second piece is to reduce the liability of small business owners, removing the joint and several liability and just make it several liability, and not eliminating fiduciary responsibility, but transferring it to an independent fiduciary, a board, for that plan, and make the small business owner still responsible for the timely transmittal of contributions and the distribution of any education that the MEP isn't distributing directly to the participants.

We also believe, No. 3, that the IRS and the Labor Department should develop a model plan design. A model plan design will allow providers and MEPs to compete based on price, investment performance, and service, and not based on plan design.

Some of the best practices of plan design that could be included are: funded by employee contributions at 401(k) limits; automatic enrollment at 6 percent, escalating to 10; employer contributions permitted but not required; no loans; hardships only under IRS safe harbor contributions; a broad range of diversified investment options; investments into a principal protection product to create a beginning savings pool and then investments into a QDIA; lifetime-income solutions.

We think because of all that and that safe harbor approach, discrimination testing is probably not required. We do think the Department of Labor should have enforcement capability, such as requiring MEPs to register; requiring them to report on an annual basis, including audits and a list of all the participating employers; and cease and desist powers.

We also think that the Lifetime Income Disclosure Act is really critical to help enable financial security. There are other simplification items that we might want to talk about later that could also be included.

Senator ENZI. Anyone else want to comment on that?

Mr. Certner.

Mr. CERTNER. I agree with much of what my colleague here was talking about. I just want to go back to what is critical. We know that we only have about 50 percent coverage in this country among employers, and that really has not changed in the last 40 years. We have not really moved the dial in terms of improving pension coverage. We've changed the type of pensions people have dramatically, but on actual coverage itself we haven't moved, and most of it is in the small employer arena.

Moving to these pooling arrangements, we think, makes a lot of sense. We want to just make sure that the people who are being covered by these plans are going to be covered and secure and know that the monies they transmit are going to be secure, and that they're going to get good investments and good oversight and good trustee responsibility, essentially.

We also know that the small employer is running a business. They don't really want to run a pension plan. They're not benefit experts. If they're not going to have the responsibility, and you're going to shift that responsibility, that's fine. We want to make sure that responsibility is shifted somewhere. We don't want to end up with a situation where nobody is taking responsibility for the operation of a plan.

We think the employer will have certain responsibilities, such as making sure the money gets transmitted and making sure that they pick, for example—select a proper MEP. At that point, you could transfer that fiduciary responsibility over to the MEP to be able to handle many of the things that I cited before in terms of monitoring investments, selecting investments, getting information out to individuals.

We think that can make a lot of sense, and we can make sure that people can take advantage of the pooling arrangements, and

that will work both for the small employer and for the individuals who are covered by the plan.

Senator ENZI. Mr. Schoening.

Mr. SCHOENING. It's amazing how much consensus that we see on this idea, that we have a proposal from the bipartisan tax working group, from the ERISA advisory council, from various offices in Congress, as well as industry and organizational groups.

I think we agree very wholeheartedly with the design that was laid out in Prudential's white paper, specifically the model plan design. We feel the way that it's been laid out provides the greatest opportunity to appeal to the broadest set of small employers. A small employer can participate, even if they don't have the financial means to make an employer contribution.

By doing so, they are adopting auto features and getting their employees automatically enrolled at appropriate default deferral levels, as well as escalation features. That's a good thing, even better for those small employers and the employees of those firms that the employer is willing to commit to that match.

One of the ideas or proposals we put forth is in regards to a more streamlined, simplified, auto feature safe harbor that particularly uses a match formula that's most used, most commonly used by small businesses today, and that's very simply a 50 percent match on 6 percent of pay. When we look at our client base, that is the most common match formula that we see used.

However, the current safe harbor match formulas do not take that into account. For a small employer that wants to benefit from the safe harbor that exists today, they have to do two things: (1) They have to amend their plan document with a more complex match design; and (2) they also have to increase the fundamental cost of their match formula.

Any small business that's envisioning using automatic enrollment is going to have a cost increase associated with their match, because they'll have more participants enrolling in the plan, and they'll be matching those deferrals that are made.

It's very important that, as we lay out a safe harbor match formula, that that formula fundamentally doesn't increase cost as well. We hope that by part of our strategy, which is more targeted tax credits for small employers that adopt those progressive features, that they can offset some of that cost of those new participants entering the plan. Again, their fundamental match formula cost will not increase.

Senator ENZI. Mr. Anderson.

Mr. ANDERSON. I wanted to go back over a couple of more specific points that the Chamber wanted to make. The advantages of MEPs are the ability for small businesses, such as myself and others, to pool their resources together, to provide centralized payroll, one investment lineup, and one annual report and audit for the entire plan.

The significant disadvantages to participating currently in a MEP are, as has been mentioned before, the joint liability for qualification failures of every other employee in the plan, and that is something that turns a lot of employers off.

Changing several of the rules regarding MEPs could significantly expand their use, and we recommend the following changes: the

implementation of safe harbors for adopting employees that immunizes them from noncompliant employers, and to simplify the MEP reporting and disclosure obligations under ERISA, clarifying that employer commonality is not required to establish the MEP.

Further, we've got a couple of suggestions. The first is to enhance the small business tax credit. The current credit allows for a maximum of \$500 for the first 3 years of a plan, and the credit is too small and too short-lived to change behavior. Lawmakers should consider expanding the credit and making it refundable to increase their incentive for small businesses to set up plans.

Second, we recommend giving small business a dedicated voice on advisory councils. Advisory councils to the DOL, IRS, and PBGC are important sources for input to those agencies, but none of them have a seat that is specified for small business.

An important way to create a voice for small business in the discussion of the employer-provided system is to have small business representatives on each of these advisory councils. As members of these advisory groups, small businesses could work within the agencies to continue to find ways to encourage plan sponsorship among small business.

Senator ENZI. Thanks. I've got to help get some of those advisory committees started.

I'd like to go back to Mr. Schoening for just a minute. You mentioned, but it was very briefly, that they should be allowed to put these in place even if they can't afford to have a company participation to begin with. Could you elaborate on that a little bit more?

Mr. SCHOENING. Sure. One of the challenges with small plan formation is that we're dealing with small businesses that are focused on getting their business up and running. Oftentimes there's a tipping point for small businesses as to when they have the kind of certainty to be able to commit to an employer match contribution in a retirement plan. That comes well before the decision to actually establish a retirement plan.

Again, one of the benefits that we see from the model plan design laid out by Prudential is that you could establish one single plan, a multiple employer plan, that would allow multiple adopting employers that could come in and either commit to a match or not if they don't have that capability. It gets their employees saving at an appropriate rate, and, hopefully, through that kind of gestation process, at some point, they find that certainty and they're able to commit to a match going forward.

Senator ENZI. Thank you. One of the frustrations I had when I was working with this was that the forms that the Federal Government made you fill out every year were used both for health insurance and for retirement plans, and the questions didn't really match up for both of them. You had to use a manual that was about that thick to figure out what the real question was, and then when you put an answer down there, it looked like a really stupid answer based on what the actual question was on the page.

It would be helpful if we had some of those simplified, as well, and the questions being specific for what we're talking about. If it's healthcare, it would be a healthcare form, and if it's retirement, it would be a retirement form. That would eliminate some of the difficulty for small businesses as well.

Senator Whitehouse, did you have some clarifications you wanted or questions you wanted to ask?

STATEMENT OF SENATOR WHITEHOUSE

Senator WHITEHOUSE. Yes, I'd be delighted to, Chairman. Thank you very much for hosting this.

You may know I'm the sponsor of the Automatic IRA Act, which moves a lot in this direction. As I understand it, as you've all testified, 50 percent of employers don't even offer something, and that hasn't moved in eons. We've really got to figure out a way to encourage employers to do this.

My understanding also is that for small employers, 10 or 20 employee companies, to set up an automatic deduction IRA, for instance, is not a big expense. We've had people ask what you could do this for, and we've had known companies, big, responsible, legitimate companies, say, a \$400 setup fee and \$100 a month. It's not as if we're asking businesses to take on a colossal burden by doing this. If you can't afford \$400 and \$100 a month, you're probably not going to afford the nuisance of getting involved in a MEP.

What we'd like to do is to see that it's required for most employers to do this, and we set the bar at 10 employees, and then there's a tax credit for \$750, which should offset the cost for smaller employers, actually with a little bit to spare in some cases. That's the first piece.

The second piece is that we learn more and more that people behave because of the default setting, not because of free choice every time. The numbers that I have are that where the default is no retirement plan, you've got to think about it and go to H.R. and check the box and sign up on it. Then you get 10 percent participation, and 90 percent of people do nothing and go on toward their future with no retirement plan.

Switch the default setting so that they've got to go into the H.R. department and say, "No, I don't want this," and sign off, sign out, and it goes from 10 percent to 90 percent. It exactly reverses.

I don't know why, when that is a cost-free circumstance, we wouldn't want to take advantage of that change in behavior from the default setting. Anybody who wants to opt out can still opt out, but at least you start moving down that road.

The other thing that's been mentioned is the effect that boosting this participation could have on employers who have a match obligation. I just want to clarify that under our bill, no employer has a match obligation. All they have to do is set it up. And, frankly, that could be as easy as a phone call to ABP or whoever does their processing.

I'm totally willing to work with anybody on this, on fiduciary liability. It should not be on the employer unless the employer has sent the money to their brother-in-law to invest in, you know, a lead mine in Peru. If it's a legitimate company and an arm's length transaction, then done, and that should be pretty easy to police.

If I could ask—there's a couple of different issues, the default issue, the requirement issue, and the fiduciary liability positioning—where you'd fall on those. If you think that there are improvements that are necessary to the bill, we'd be happy to consider them. I really think it's that default setting change and mak-

ing it mandatory that's really going to make the big difference if we are going to get something significant done here. With that, I leave it to you.

Mr. Certner has his sign up first.

Mr. CERTNER. Thank you for mentioning auto IRA. It's certainly an approach that we've endorsed many years ago as a way of trying to get at coverage in the small business sector. Again, it's another model, another approach. It's one that, as I mentioned, we're pursuing, and a number of States are now looking at auto IRA approaches at the State level since there's been a lack in progress at the Federal level. We think it makes a lot of sense.

We think the automatic features that have been discussed by you and some of the panelists here have been an excellent addition to the pension system. One of the most powerful forces in the universe is inertia, and we should make it work for us in terms of improving retirement savings, whether it's getting people automatically enrolled or having automatic escalation features for when you get in the plan so you're not automatically enrolled at a low rate.

Very often, we see someone automatically enrolled at, say, a 3 percent rate, but then they just stay there. That's a problem, too. If we can move that up every year, that would help get you more toward your goal of retirement income security. We very much are supportive of automatic features, whether it be in auto IRA or in other places, and we think the automatic IRA is an excellent way of improving coverage.

Senator WHITEHOUSE. Mr. Chairman, I've just been summoned to another meeting, so I've got to leave. I would ask that any other witness who has any comment on the automatic IRA bill—if we could make that a question for the record, and please just write to us, and I'd be more than happy to take those into consideration. I should add that the bill also has a provision requiring the secretaries of Treasury and Labor to simplify the MEP process.

If that set of instructions is not adequate, then please look at the end of the bill, those last few pages, and make recommendations to us on what further amendments you would like.

This seems to me like a really great opportunity, Mr. Chairman, for sensible bipartisan action that, to use Mr. Certner's analogy, puts the power of inertia with doing the right thing instead of the wrong thing. Thank you.

Senator ENZI. Thank you for coming.

Of course, auto enrollment has been proven to do just exactly what he said. It reverses the 10 percent that sign up to the 90 percent that wind up involved in the system. I'd like to see if you have any specific recommendations for how we can change the regulatory structure, too.

Mr. Anderson.

Mr. ANDERSON. Thank you, Senator. A couple of things—just a point on the last subject about the mandatory plan. Creating an auto IRA is something that the Chamber would support—auto enrollment in the plan—as long as it's voluntary for the employer to establish.

In a lot of business situations, certain benefits have certain meanings to employees and employers that might not exist in other markets. As an example—as I'm sure you're aware—in a town like

Jackson Hole, a great employer benefit for an employee might be a free ski pass or a \$700 a month housing allowance. By creating a mandatory requirement of having folks on the retirement plan might not fit for every business. A one-size-fits-all is something that the Chamber doesn't support.

As to changing some of the regulations, I would say the following. We need to eliminate some top-heavy rules. There are top-heavy rules and an unnecessary burden on employers that want to offer a 401(k) but are not inclined or unable to provide a matching contribution. Moreover, the Chamber believes that the top-heavy rules are unnecessary since contributions are already subject to average deferral percentage or ADP testing to ensure equanimity between highly paid and non-highly paid employees.

Another step policymakers could take is to simplify the average deferral percentage test for nondiscrimination. As I mentioned earlier, administrative complexity is a great deterrent to small business plan sponsorship, especially when most small businesses are unlikely to have a human resources department that is simply dedicated to providing benefit support.

We also want to streamline requirements and allow for greater use of electronic disclosure. Consolidating and streamlining certain notice requirements would make the retirement plan sponsorship more attractive for all businesses and small businesses, in particular. Plan sponsors currently and participants are overwhelmed by disclosure requirements. This feeling is particularly acute for small businesses that don't have the staff to deal with these.

Most employers that offer retirement plans also offer other benefit plans such as healthcare and, as I said, the free ski pass program at my business. Employers are also required to provide many other notices outside the ERISA context.

Those are a few of our suggestions for reducing the regulatory top-heaviness.

Senator ENZI. Thank you. Anybody else want to comment?

Mr. Kalamarides.

Mr. KALAMARIDES. Mr. Chairman, there are many regulations that we can change to make it easier for small business owners to offer retirement plans. I would want to point specifically to the Senate Finance Working Committee recommendations, but then also to two bills from the 113th Congress that not only focused on open MEPs but also talked about simplification: Senator Hatch's SAFE Act in Title II, Subtitle B; and Mr. Neal's Retirement Plan Simplification Enhancement bill.

Some of the items—although many of them are worthy, some of the items I specifically wanted to note was modifying deadline restrictions to make it easier for small businesses to file; termination of the top-heavy rules, as my colleague has talked about; amendments to safe harbor plans during the year; and then also rollover of insurance contracts into IRAs; portability of lifetime income; and, importantly, easing restrictions on electronic communication. Small business owners with a distributed workforce, not all in the same location, use electronic communications, and the requirements for paper communications can be an undue burden on small businesses.

Senator ENZI. Mr. Schoening.

Mr. SCHOENING. Senator, I would concur with all of those thoughts, and I won't repeat them for the interest of time. I do want to make one statement, and that's that we cannot understate the value of the voluntary retirement system that's in place today.

We know that employees who work for an employer who sponsors a retirement plan are more likely to be prepared for their retirement. We know that there are benefits to an engaged employer at the workplace in terms of providing education, communication, and nudges for their employees to participate in those plans.

As we talk about mandated types of options—that's an important consideration, specifically when it comes to that engagement level of the employer and how they can help incent their employees to make the appropriate savings decisions.

Senator ENZI. Mr. Certner.

Mr. CERTNER. I just want to comment on the requirement for employers to engage in something like an auto IRA. The reality is, Mr. Chairman, that we've been trying to improve pension coverage for 40 years under a voluntary system, and we have clearly hit a ceiling. We have done some things that have helped improve coverage, like automatic enrollment.

We do know some facts from behavioral economics, which is we know that people like to save at work. We know they like to have the money taken out of their paycheck before they see it. Particularly where there are low and modest incomes, that's the best way for them to save.

You have less than 10 percent of people open up an IRA at the end of the year because they don't have \$2,000 come April when they're filing their taxes to contribute. If you ask them to put away a certain amount every paycheck that's taken out of their paycheck that they don't see, it's the best way for them to save. The success of 401(k) plans has really demonstrated that.

We would like more people to have access to a retirement savings plan at work. We currently have a voluntary system. It's only reaching 50 percent of the workforce.

We don't think it's much of a burden to ask an employer to be, basically, the payroll transmitter. They already do that for many other kinds of payments, for example, payroll taxes, unemployment insurance. Particularly, for those who have a service provider like an ADP or others, it's just another box on the form. We are certainly happy to give a tax cut to employers for any additional costs that might be there, which we think is minimal.

This way, you have—the way to reach the worker's paycheck directly is at the workplace. If you really want to move the needle on getting more retirement savings, you really do have to require employers to at least play that role, to be the one who's going to transmit the money to somewhere else. It's about as minimal a role as you can ask. It's one that they already do, and it's really one way we can actually get more savings for more people.

Quite frankly, we're doing a disservice to our population when we know that social security is basically the only retirement plan that most people have. It's certainly the only lifetime protected income plan that they have, and we're going to need to supplement social security with additional savings, and the way to do it is at the

workplace. If we really want to move the needle on more coverage and more savings, that would be one way to do it.

Senator ENZI. That would probably get a lot more people into it. Usually, we start with a little bit smaller step than that, doing a voluntary program and setting it up simple enough that it's an incentive plan, and then later it can be looked at for being made a mandatory one.

I don't think that the employers are having a problem with doing the withholding for them. They're more worried about the other rules, as mentioned, with the top-heavy—when you've got a really small organization, it can be pretty easy to violate that rule, not intentionally, but practically.

I know one fellow in Wyoming that started a plan, and he did a very substantial match on it. What he wanted to be able to do was fire anybody that didn't take him up to the match that he was providing, because he said, "They're too dumb to work for me." We're not going to allow that, either.

Those are helpful comments. Does anybody else want to comment on that part?

[No verbal response.]

The Government Accountability Office report stated that potential advantages of the plans are appealing, yet current data and information as well as other safeguards will be necessary to ensure that interests are protected and promises to participants are not broken. The report cites, however, that there appears to be a lack of coordination between the IRS and the Department of Labor on the different statutory requirements related to MEPs.

While I agree that data is important for the analysis of such plans, especially the open MEPs concept, it seems to me that the data can't be accurately collected until the IRS and the Department of Labor are on the same page on these requirements. Do you agree with that assessment? And how best can we direct the necessary collection of data to alleviate the concerns of the Government Accountability Office, yet not place unnecessary burdens on small business so they don't want to do the plans?

Mr. Kalamarides.

Mr. KALAMARIDES. Prudential believes that three items are helpful in the collection of the data. First, having a model plan design takes away a lot of the variability that would normally be reported. If each MEP adopts the same model plan design, that dramatically simplifies the need for reporting, and the IRS and the Department of Labor would agree on what that model plan design is when they issue it.

Second, we believe the multiple employer plan should register with the department, and that registration will make sure that the marketplace is suitable and appropriate.

And third, we think that the multiple employer plan should file an annual report, not the small businesses, but the multiple employer plan sponsor, that independent trust with the fiduciary responsibility.

They should form a 5500, they should file their audit, and they should file a list of the participating employers so that the Department of Labor knows how to hold those employers responsible for the timely remittance of contributions. The multiple employer plan

should be communicating to the Department of Labor if they don't find that someone is remitting their contributions on a timely basis.

Senator ENZI. Mr. Schoening.

Mr. SCHOENING. Senator, the protections that are outlined in Prudential's paper are there today for ERISA plans, and so the concept here is simply applying those to the MEP plan sponsor. Those protections work very well today in the single employer space, and they can work just as well in the multiple employer space.

When we look at, again, the appeal of the open MEP concept to single employers, it provides a simple type of package solution that is professionally managed and does not allow or does not require that small business to be an ERISA expert. We will be holding the MEP plan sponsor accountable, and we'll have the appropriate protections and filings associated with any ERISA plan focused on that MEP plan sponsor.

Senator ENZI. Mr. Certner.

Mr. CERTNER. I just want to agree with some of those comments, Mr. Chairman. We think one way of helping to improve coverage is to remove some of the burden off the small employer.

The burden can't just disappear, because those burdens, at least the ERISA protections which exist, need to go somewhere else. If they're transferred to the MEP, and the MEP is the fiduciary acting on behalf of both the small employer and the workers in the plan, then we still have those protections in place, and yet we've removed the burden and responsibility from the employer, as long as we then shift it to another fiduciary who will be responsible for all the pieces that are necessary in administering the plan.

We think that can work very well, and we would agree that a model plan would also help to do this simply and effectively.

Senator ENZI. Mr. Anderson.

Mr. ANDERSON. Senator, the Chamber thinks it's important for regulators to recognize the benefit of electronic delivery. In particular, we think it's critical that the Department of Labor, Treasury, and the PBGC create a simple, uniform, electronic disclosure standard. Beyond that step, we'd like to see the Department of Labor change its standard for electronic delivery to encourage the use of it and to allow, for the plan sponsors who wish, that electronic delivery be the default delivery option for those benefit notices.

The Chamber believes that modernizing the restrictive rules on electronic delivery in this manner is a critical element in the larger task of reforming the employee benefit plan notice and disclosure requirements, and bringing the notification into sort of the modern technology is of great value to the employers.

Senator ENZI. Thank you.

Mr. Certner.

Mr. CERTNER. A comment about electronic delivery, because we've done a number of surveys on this, both of our members and the American public, in general. We agree that there are some things, particularly some background informational things, that can be done by electronic delivery.

Particularly, when we're talking about pieces of information that are critical to someone's either health or pension benefit security,

we find that most people like to have the paper. They like to get the information. They like to read it. They like to be able to put it in a file.

We're all for encouraging individuals who want to sign up for electronic disclosure to do it that way. I know this may change in 20 or 30 years, but, at least, still today, we certainly find that people like to have the paper. We think it's pretty critical that we let people have the paper that they need to make the decisions.

Some people don't have the kind of download speeds that are necessary. Some people can't flick back and forth easily between a booklet and a pamphlet. People don't necessarily want to have the burden or the facility or the cost of printing all this down.

I appreciate that we've made some great strides in electronic delivery. At least, all the surveys we've done have suggested that people—at least for the important pieces of paper that they need to take action on and be informed on in terms of their benefit and health security—still want it in paper form.

Senator ENZI. I heard what was said a little differently than you did. The way that I heard it is, yes, you ought to be able to get some printouts, but the electronic programming ought to be there for doing the disclosure so you know you're covering all of the disclosure aspects.

I'm the one that tried to get computers on the floor of the U.S. Senate. I've been working on that for 18½ years. And I finally, when I was working the budget, got permission—during the budget—to be able to use my computer on the floor, and I was pleased that nobody noticed.

It's relatively simple, if you already have the disclosure, if you want a printed copy to hit a couple of buttons and get it printed out and be able to give it to the customer or to file it in your own records if you want. I'm hoping that the emphasis there is on having something standardized that's provided to these small employers so they don't have to invent the system themselves every time.

When I first came to the Senate, I thought that we were required to enter into blind trusts. I don't have very much in the way of assets, but I wanted to make sure I was complying. I had to hire an attorney to draw up a whole bunch of papers for me, and I put it in a blind trust.

Then I found out how a blind trust works and that they were actually eliminating my money. I thought I'd call and find out why, and I found out you can't do that on a blind trust—had to answer a lot of questions for having done that.

I went to them and said,

“You know, you ought to have just a uniform form so we don't have to spend \$5,000 getting one of these things set up.”

And they said, “Well, we wondered why you had one. There are only two in the U.S. Senate, you and Jay Rockefeller.”

[Laughter.]

I guess I didn't ask the really basic question of whether I had to have one or not. That's the problem with some of the small employers. They're not sure whether they have to have them, and if it's made simple for them, they're much more likely to do it. If it's a standardized disclosure that they can use that is electronic—because most everybody uses computers now, mostly because it's so

much easier to keep track of payroll that way than it was the old pencil way.

I'm hoping that's the way that I heard that. I understand that some people do like to have paper. There are occasions when I'd like to have paper, too. So thank you for making that comment.

Did anybody else want to comment on that one?

[No verbal response.]

A key question: What do you think should be the next steps for us to do? The best way to get things done is usually in steps. We like to do things comprehensive, but comprehensive around here usually means so big that nobody will understand it. If you can't bring the people along, as well as the Senators and the House, we usually wind up with somewhat of a mess. We still like to do comprehensive because we can hide things in there, and that's not the right way to do it, either.

Are there any logical steps that you would suggest to us, getting from here to there? A lot of the things that you've mentioned ought to be able to be done in one bill. If there are some other steps that we ought to take, I'd like to know about those.

If there are concerns that you have about some leaping off point that's going to draw some opposition—you can tell there's not a lot of opposition. This is an organization that's designed around controversy. When there isn't a lot of controversy, we don't have a lot of attendance, and they rely on some of us who have an interest in it to kind of go ahead with it, which is what we'll do. I'm interested in how much you think we can bite off.

Mr. Kalamarides.

Mr. KALAMARIDES. Mr. Chairman, the next step is putting together a bill that includes these items. With this hearing and the number of bills that have multiple employer plan concepts in them, the Senate Finance Working Group recommendation—this being the first recommendation of the Senate Finance Working Group—the hearings from 2012 in the Senate Aging Committee, this concept is, from our point of view, one of the most bipartisan ideas to expand coverage and to address this problem. We are seeing that the marketplace is really interested in us providing this solution.

As I mentioned in my opening comments, if we can eliminate the barriers of cost, administrative hassle, and this fiduciary responsibility and transfer it to a professional, small business demand for these retirement plans will increase 250 percent. The time is now. Consumers and American workers are really demanding financial security, and that's why we see some States starting to take action.

We need a Federal solution beyond what the States are doing. You're hearing from us broad consensus, and it's time to move forward.

Senator ENZI. You mentioned the Aging Committee had hearings in 2012?

Mr. KALAMARIDES. The Aging Committee did hearings in 2012 on small business retirement solutions, and multiple employer plans, in particular, were talked about there as well.

Senator ENZI. Thank you.

Mr. Schoening.

Mr. SCHOENING. Senator, once again, I would very much agree with Jamie's comments. We're ready for a legislative package that

encompasses the ideas that we've discussed. The telling point is that there is demand in the marketplace among small employers for this type of, particularly, open MEP design.

We know from our experience working with our existing plan sponsors that they want a simpler, more inexpensive safe harbor match contribution auto feature arrangement. I would be remiss if I didn't mention that we do have a proposal around that design and we'll submit that. We have a handout and can submit that for the record today.

These things have all aligned where we have a very baked concept with demand in the marketplace, and that would translate, as Jamie indicated, to significant increases in uptake.

Senator ENZI. Mr. Certner.

Mr. CERTNER. Mr. Chairman, I would agree with that. There is some very commonality here of interest, and we can move forward. There are a number of proposals on the table. There's a number of things that we all talked about today in terms of protections, both for the employer and the workers.

Most of it already exists in current law, and the concern only is when you're moving to a new vehicle, to making sure that we don't sort of somehow lose enforcement authority for it and somebody is responsible for this. I would also urge that you also bring in the regulatory agencies to make sure that they're comfortable, that they still have the necessary enforcement authority to make sure we're protecting both the small employer and the workers.

There's a lot of commonality here moving forward, and as long as we can ensure that we maintain the protections that are in the law for a good reason, that have helped protect the system—as long as we can make sure that we can hold onto those protections, we can move forward.

Senator ENZI. Good. Yes, any bill that I work on, I like to get the stakeholders and the regulatory, separately, to talk about it. One of the things that I've noted over the years is that sometimes it's the very groups that want them that wind up opposing because it isn't as comprehensive as they had envisioned it to be, and they think it's a waste of time unless we do absolutely everything.

I hope you can help us convince them that sometimes those things are what keeps it from happening, too. We'll hope to come up with something that can actually be completed and, hopefully, with everybody's help, because I'm not sensing this huge disagreement, which I'm used to in this committee.

Several of you mentioned tax credits. Could you elaborate a little bit more on how you think those tax credits would work?

Mr. Schoening.

Mr. SCHOENING. Senator, the tax credits that exist today for formation of new plans are essentially \$500 to offset startup costs and administrative costs over a 3-year period, so approximately \$1,500 total for new businesses starting plans. We would like to see an increase in that, and there have been proposals suggested by the President and others to increase those tax credits for small businesses that make the decision to sponsor a retirement plan for the first time.

We would also like to see a targeted tax credit associated with plans that adopt progressive auto features.

Senator ENZI. Adopt what?

Mr. SCHOENING. Progressive auto features.

Senator ENZI. Oh, yes.

Mr. SCHOENING. Specifically, setting an automatic default deferral at 6 percent or higher. Senator Whitehouse mentioned that default levels are commonly whatever they're set at. That's where participants tend to land. We would like to see, obviously, more use of those progressive auto features that start at a higher level and escalate those individuals to a higher level every year, unless they choose to opt out.

Senator ENZI. Mr. Certner.

Mr. CERTNER. Mr. Chairman, we've certainly been supportive of tax credits to help small employers start plans, and, obviously, we know they come with a cost, and we're, obviously, all willing to balance the cost and effectiveness of that.

I guess I would also encourage you to also look not just at perhaps expanding credits for small employers to establish plans, but also look at a potential expansion of the saver's credit for the individuals who contribute to the plan. This helps encourage people, particularly the moderate-income ones, to contribute more to the plan and to get a little bit more savings for the money that they do contribute.

Senator ENZI. Mr. Kalamarides.

Mr. KALAMARIDES. Yes, and to build on that, a refundable saver's credit is especially important in the small business environment. As we mentioned earlier, employer matches are challenging for some small business owners, and a refundable saver's credit into the multiple employer plan would provide essentially a match for those low- to moderate-income families. That would encourage their participation, encourage their savings, and dramatically help their financial security.

Senator ENZI. Good. I'm also on the Finance Committee, where we do the tax extenders almost at the end of the next year, and some of these things—the tax extenders ought to be done so that they could be actually planned on. Some of these things are things that could be done for small—most of the tax extenders are for big business, and I've always been looking for some things that we could do that would help small business out. I appreciate these suggestions.

Mr. Anderson.

Mr. ANDERSON. Senator, we also support raising the tax credit. Any tool you can put in the toolbox of a small business to help encourage and incentivize their behavior is a help, and it's something we should pursue.

Senator ENZI. Some of the States already let some of these things happen. Would a MEP be a better form of retirement option for employees than the current State-led efforts? And what would be the impact on those State-led efforts if we do a national one for small business?

Mr. Certner.

Mr. CERTNER. Mr. Chairman, as I mentioned in my statement, there are at least three States that have acted. There's another—around 20 or so that are at least looking at some type of activity. They're not all looking at one model. They're looking at all different

kinds of models. We think it's great that we have some experimentation, and we can learn from these things.

The MEP, which is similar and complementary to some of those models, is certainly another option that should be on the table. I'm not sure I could tell you which model would work best at this point, and we're happy to have 52 flowers bloom.

Senator ENZI. If you're familiar with State ones, if you would share those with us—and we'll be finding those anyway—but to see what kind of complementary or adverse situations we'd find in those.

Mr. Kalamarides.

Mr. KALAMARIDES. I, too, want to acknowledge that States have a shared purpose with us, and that is to expand workplace-based retirement plans. The States have taken action because they see the situation as dire for those 55 million American workers at those small businesses.

Two States have passed bills that are using payroll deduction IRAs. Open MEPs, using a 401(k) contribution as we've described here, compared to IRAs have differences. The open MEPs can offer, as we've described it, protections underneath ERISA. The group IRAs would not be covered by ERISA. They would have all the fiduciary rules associated with ERISA held and responsible by the MEP.

With an open MEP, employers can—they have the ability to offer a match. Employers do not have the ability to offer a match in the way the IRA rules are written today. The way the 401(k) and MEP rules can be written, there can be automatic escalation, automatic contributions as well, and that is not within the current IRA environment. There's higher contribution limits.

There is, with an open MEP, an ability to pool across States. The challenge—while I again want to commend the States that are taking action, the challenge is that small business activities don't stop at State borders, and we have the possibility and the risk of having a patchwork of solutions.

States are going to continue to act until we do something at the Federal level. They are complementary solutions that we want to make sure that we continue to encourage to encourage financial security. We absolutely need a Federal solution to make sure that small business activities that cross State boundaries don't have this patchwork of regulations that they need to comply with.

Senator ENZI. Very good.

Mr. Schoening.

Mr. SCHOENING. Senator, in terms of looking at the designs that have kind of progressed in the States to more formalized proposals, what we see is an auto IRA type of program, and they entail a 3 percent default. As Mr. Kalamarides has mentioned, when you look at that type of construct versus what we're talking about with an open MEP type of design, it certainly will not deliver the same levels of retirement outcomes for those savers.

Those programs may seek to allow low-income savers to supplement some level of social security, but certainly not deliver the benefits of an open multiple employer plan. More of a cautionary statement that, again, going back to the power of the voluntary employer-sponsored environment, we want to ensure that that value

persists and that employees benefit from those workplace savings programs.

Senator ENZI. Thank you.

Mr. ANDERSON. Senator, having the MEPs available to small businesses, particularly in a place where so many businesses have such small staffs and limited resources to oversee a plan themselves, is just another option for them to have. It probably is not the perfect option for every business, but it certainly should be on the table.

Senator ENZI. Thank you. You've all been fantastic. What question should I have asked? Does anybody have an additional question or a closing comment?

Mr. Kalamarides.

Mr. KALAMARIDES. As a closing comment, I want to thank you, Chairman Enzi and Ranking Member Sanders and the members, for your focus on expanding retirement savings solutions for small businesses through MEPs. As we've talked about, passing open MEPs, a bill, is incredibly important, removing the commonality of interest requirement, reducing liability of small business owners, developing a model plan design, creating enforcement capabilities for MEPs for the Department of Labor.

Including lifetime income solutions is critical. We haven't talked about that much. If we're going to create savings for a lifetime, but we don't create income for life for those individuals, we're doing them a disservice.

There are a number of bills and considerations, like the Lifetime Income Disclosure Act, like some of the simplification requirements, some of the simplification suggestions in Mr. Neal's and Senator Hatch's bills. We think that those are absolutely critical, along with the tax credits that we've been talking about. By doing this, we can dramatically improve the financial security of those 55 million American workers who work at small businesses and especially focus on the women and people of color there.

We're very grateful for your leadership in this effort, Mr. Chairman.

Senator ENZI. Thank you. Any other closing comments?

Mr. Schoening.

Mr. SCHOENING. Chairman, I also thank you for your time and attention. Obviously, from my perspective at Principal as well as on behalf of the American Benefits Council, this is an extremely important issue for us.

The themes that we discussed today tend to focus on simplicity, reduced expense, reduced administrative burden, and reduced financial responsibility or liability for small businesses. As we look at the package of recommendations that we've laid out, including open MEPs, improved safe harbors for auto features and tax credits, the combination of those things is very powerful in terms of what industry can do in driving increased plan adoption in the marketplace.

If I put my marketing hat on, I like all of those elements, and I think I can sell that. I can go out to small businesses, and I can get them excited about that.

Again, thank you for your time and attention, and we look forward to working with you as you continue to lead on the effort.

Senator ENZI. Thank you.

Mr. Certner.

Mr. CERTNER. Mr. Chairman, this seems to be a good week, in general, for bipartisanship and agreements around here. To the extent we can get an agreement on both sides of the aisle to move forward in this area, to expand coverage, we think that's something that we can get the American public on board with as well.

Senator ENZI. Thank you. I'll see how quietly I can work on this. I don't do press.

Mr. Anderson.

Mr. ANDERSON. Senator, thanks very much on behalf of the Chamber of Commerce. We appreciate the hard work this committee is doing. And as a small business owner and operator, I do, too.

Senator ENZI. Thank you. Thanks for coming all this way.

Thanks to all of you for your time, and I'll see if others have questions they want to throw in. We'll be sharing my notes, if my staff can decipher them. If they can't, I can. Thank you very much. We appreciate it.

This hearing is adjourned with the opportunity for questions to be submitted until tomorrow night at 6 o'clock.

[Additional Material follows.]

PREPARED STATEMENT OF THE AMERICAN COUNCIL OF LIFE INSURERS (ACLI)

The American Council of Life Insurers (ACLI) is pleased to submit this statement for the record regarding retirement plan options for small businesses. We thank subcommittee Chairman Michael Enzi and Ranking Member Bernard Sanders for holding this important roundtable.

The ACLI is a Washington, DC-based trade association with more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States. Its members represent more than 90 percent of the assets and premiums of the U.S. life insurance and annuity industry. In addition to life insurance, annuities, long-term care, and disability income insurance, ACLI member companies offer insurance contracts and investment products and services to employment-based retirement plans (including defined benefit pension plans, 401(k), SIMPLE, SEP, 403(b), and 457(b) plans) and to individuals (through individual retirement accounts (IRAs) and annuities). Our members also are employer sponsors of retirement plans for their employees. As service and product providers, as well as employer sponsors, life insurers believe that savings for retirement, managing assets throughout retirement, and utilizing financial protection products are all critical to Americans' retirement income and financial security.

As leading providers in the small plan formation marketplace,¹ ACLI members agree that a critical challenge in enhancing Americans' retirement security is expanding retirement plan coverage among small businesses that do not currently offer a stand-alone plan. Only 50 percent of workers employed in small businesses have access to retirement plans. Growing stress on government programs adds to the need for greater incentives for these small businesses to start and maintain retirement plans.

ACLI SUPPORTS SOLUTIONS TO EXPAND ACCESS TO WORKPLACE SAVINGS

ACLI supports a number of other policies to voluntarily expand access to workplace savings. For example, ACLI supports reforms to and expansion of the private multiple employer plan ("MEP") system to further encourage and facilitate participation by employers that are not prepared to sponsor their own retirement plan.² MEPs can be an important tool in reducing the costs and administrative burdens to small employers. Under a MEP, many businesses can join together to achieve economies of scale and advantages with respect to plan administration, and advisory services, making plans much more affordable and effectively managed.

In addition to reforming and expanding MEPs, ACLI supports:

- **Starter 401(k)s:** Small employers should be encouraged to offer workplace savings opportunities with simple administrative rules and no required employer contributions.³
- **Auto-IRA:** Employers without a retirement savings plan should be encouraged to automatically enroll employees into a payroll deduct IRA. "Auto-IRA" sponsors should receive the same level of protection and State wage law preemption offered to employers sponsoring "auto-401(k)s."⁴
- **Start-up credit:** Small employers that provide payroll deduction IRAs should be eligible for a startup credit to offset the employer's initial plan formation and administration expenses.⁵
- **SIMPLE IRA and 401(k)s:** SIMPLE plans should be made more appealing to small businesses. Permitting a higher level of employer contribution and improving rollover rules could make the plans more valuable to employees.⁶

The Administration took an important step this year in support of this effort with the myRA plan. Small businesses without retirement plans may offer employees an

¹As part of an employer-provided plan, life insurers provided products and services to over one-third plan participants. Small-employers (99 or fewer employees) overwhelmingly rely on life insurers for products and services. Three-fifths of these employees rely on life insurer products and services in their employment-based retirement plan.

²See S. 266, the Retirement Security Act of 2015, co-sponsored by Senators Collins (R-MA) and Nelson (D-FL) and H.R. 5875, the SAVE Act of 2014, co-sponsored by Representatives Kind (D-WI) and Reichert (R-WA).

³See S. 1270, the SAFE Retirement Act of 2013, sponsored by Senator Hatch (R-UT).

⁴See H.R. 5875, the SAVE Act of 2014, co-sponsored by Representatives Kind (D-WI) and Reichert (R-WA).

⁵See S. 1270, the SAFE Retirement Act of 2013, sponsored by Senator Hatch (R-UT), H.R. 2117, the Retirement Plan Simplification and Enhancement Act of 2013m sponsored by Representative Neal (D-MA), and H.R. 5875, the SAVE Act of 2014, co-sponsored by Representatives Kind (D-WI) and Reichert (R-WA).

⁶See H.R. 5875, the SAVE Act of 2014, co-sponsored by Representatives Kind (D-WI) and Reichert (R-WA).

opportunity to participate in the new “my Retirement Account,” a Roth IRA backed by Treasury bonds. Offered by the U.S. Treasury, myRA provides the option to save for retirement with as little as \$5 a month.⁷

XPANSION OF STATE-RUN RETIREMENT PROGRAMS WOULD LEAD TO SIGNIFICANT COSTS AND LIABILITIES FOR STATES

Recently, some States have proposed government-run retirement programs to accommodate those without access to a workplace plan. These proposals largely ignore the wide array of products and services currently available from financial services providers and would impose significant costs and liabilities on States, employers, and taxpayers.

Currently, many States are already struggling to meet the obligations of State employee pension plans and other large government programs. New government-run plans for private sector employers would add to this burden. A State-run retirement plan would:

- **Cause uncertainty for small businesses.** Under proposed legislation to create new government-run retirement programs, employers could face significant operational costs and be subject to fiduciary responsibilities. Some legislation mandates employers to participate in State plans while other legislation mandates employer contributions to State plans.

- **Be costly to set up and implement and would create an ongoing expense and liability for the State and taxpayers.** A study authored by the Maryland Supplemental Retirement Plans (MSRP) concluded that a State-sponsored voluntary accounts program would require significant long-term State expenses. Furthermore, a 2009 Washington State report estimated that a State-sponsored basic IRA plan would have startup costs of \$1.8 million and annual on-going State costs of almost \$1.4 million.

- **Be subject to the Employee Retirement Income Security Act (ERISA).** All retirement plans for private sector workers must adhere to the complex requirements set by Federal law—including ERISA and IRS rules. Workers benefit from these important protections, while employers and plan sponsors have strict compliance and fiduciary responsibilities. Therefore, once a plan is established, a State and any participating employer would incur ongoing operational, oversight, compliance, and insurance costs associated with these rules.

With an existing competitive market among private providers of portable retirement solutions, State-run retirement plans are unnecessary. States should not use funding, regardless of the source, to compete with private providers of 401(k) plans, 403(b) plans, 457(b) plans, IRAs, and other retirement options.

ACLI stands ready to assist this subcommittee, and Congress, as it further explores retirement plan options for small businesses.

RESPONSE BY JOHN J. KALAMARIDES TO QUESTION OF SENATOR SCOTT

Mr. Kalamarides, I am happy to see that there is bipartisan support for finding retirement solutions in this committee. I am also happy there seems to be a consensus that the open multiple employer pension (open-MEP) model is one that can work for workers and employers alike. You note in your testimony that one of the biggest challenges in MEP participation is the amount of liability that employers are subject to on account of policies that make them jointly liable for the qualification failures of every employer in the MEP.

Question. Can you expand on the reasons why all employers in an MEP should not be held jointly liable and discuss possible solutions to this problem? It seems like common sense that an employer should only be responsible for their own qualifications.

Answer. Thank you for the question Senator Scott. The problem of shared liability for participating employers in a MEP arises from the qualification requirements of the Internal Revenue Code (the Code) that, while treating a MEP as a single plan, apply certain compliance requirements (such as the nondiscrimination rules of Code section 401(a)(4) and the minimum coverage rules of Code section 410(b)) on an employer-by-employer basis. The risk presented by the application of these rules is that noncompliance by one employer could result in the disqualification of the MEP, adversely impacting all participating employers and their employees. In light of the fact that employers participating in a MEP generally will not have any ability to control the extent of any other participating employer's compliance efforts, holding the MEP and all of its participating employers accountable for the potential non-

⁷ <https://myra.gov>.

compliant acts of any other employer is a risk many employers will not want to assume and should not need to assume.

Prudential agrees that employers electing to participate in a MEP should be accountable only for their own compliance. We believe, as do many others, that the rule must be fixed to foster MEP sponsorship and participation. In this regard, we note that Senators Hatch, Collins, Nelson and Whitehouse have all introduced bills in this or the prior Congress that would fix or direct the Department of the Treasury to fix the tax qualification rules applicable to MEPs. We also note that, in November 2014, Senators Wyden, Stabenow, Cardin and Brown wrote Secretary of the Treasury Lew specifically requesting, among other things, that the Department help Americans save for retirement by fixing this tax qualification problem.

In terms of possible solutions, we believe the Department of the Treasury would benefit from a specific legislative solution, similar to that set forth in section 207 of Senator Hatch's bill, S. 1270 (113th Congress). We also believe the fixes contained in section 2 of Senators Collins' and Nelsons' bill, S. 266 (114th Congress) and in section 5 of Senator Whitehouse's bill, S. 245, represent viable approaches to addressing this particular impediment to MEP participation.

We hope this is responsive to your question. We thank you for your interest in this important issue. Should you have any further questions, please do not hesitate to contact us.

[Whereupon, at 3:56 p.m., the hearing was adjourned.]

